Bringing ETFs to Market

Listing in Europe

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

/7115951v1

The European ETF Market

It has been 16 years since the first ETF came to market in Europe. Assets under management in the European ETF market reached €473.6 billion at the end of July 2016.

The European ETF industry has over 1,500 ETFs with Ireland leading the way as domicile with 47% of all product structures. Luxembourg accounts for a further 27%. Of these ETFs only 32% have a single stock exchange listing, with 44% having between 2-3 listings on exchange in the region, and a further 22% with 4-5 listings. This fragmentation and local focus is a significant factor in the estimated breakeven cost of €8 billion for ETFs in the European market.

Notwithstanding that most ETFs are set up as UCITS, as benefit from the UCITS passport for sale, in Europe ETFs must be locally registered in each jurisdiction in which they are to be sold, with a local listing preferable in each market.

With many ETFs listed on multiple exchanges across Europe, liquidity is fragmented into small discrete pools. Transparency is limited by a lack of trade reporting in the ETF sector, with an estimated 70% of ETF trades currently unreported. This memorandum aims to serve as a guide through the process, key considerations and differences at local market level in bringing ETFs to market and to listing across the principal European exchanges.

Dillon Eustace ETF Team

Dillon Eustace has a dedicated ETF team, including partners and senior associates from both the financial services and listing groups. We have established passive and active ETFs for a range of global providers, which are listed on multiple European and global exchanges. Through our international reach and network, we offer our clients one stop expertise in bringing their products to market.

Cross Listing on Multiple Exchanges

The process of bringing ETFs to market in Europe differs substantially from the US environment, with European ETFs having to consider the requirements of a range of national exchanges, local regulations and the appointment of local agents.

With no centralised exchange system in Europe, the European ETF market is largely centred on the more popular European exchanges such as the London Stock Exchange ("LSE"), Deutsche Borse, SIX, Borsa Italiana and Euronext. ETFs are usually cross listed on a number of these markets as the product is sold across Europe, with 68% of European ETFS listed on 2 or more exchanges. It is important to be aware that listing requirements and regimes at each exchange can differ substantially and involve separate listing applications and separate compliance and reporting requirements in each jurisdiction.

By way of example, the following table shows the extent to which some of the larger ETF ranges are distributed across Europe:

	Total number of countries of distribution
Blackrock iShares	22
DB X-Trackers	21
Lyxor	18
ETF Securities	18
Vanguard Group	17
State Street	16
Source	16
BNP Paribas	14
Amundi Group	14
UBS	13
Nomura	12
Morgan Stanley	12
PIMCO	11
HSBC	10
Wisdomtree	9

Source: PWC

Trading volumes across the main exchanges show that the top 6 exchanges accounted for 98% of on exchange ETF turnover in October 2016:

London Stock Exchange	45%
Deutsche Boerse	17%
Euronext – Paris	13%
Euronext Amsterdam	3%
Borsa Italiana	11%
SIX	9%

Source: London Stock Exchange

Local Registration for Sale

The first step in selling in Europe involves the registration of the ETF for sale in each jurisdiction in which it is to be sold or listed. Registration is facilitated under the UCITS brand. This efficient passport regime allows UCITS to be sold on a retail basis throughout the EU. The UCITS regime provides a 10 day timescale for local registration in each Member State, and is undertaken directly by the ETF's Home Competent Authority. An Issuer should however consider that requirements to appoint local agents in each jurisdiction for such registrations may extend this timeline.

Switzerland, being outside of the EU, and therefore outside of the scope of the UCITS Directive, operates on a different basis. Registration with the local regulator, FINMA, takes 30 days. It is possible to sell to institutional investors in Switzerland without a local listing.

Local Listing

Following registration for sale, the ETF is generally listed on the domestic exchange in each jurisdiction. The listing process in each jurisdiction differs considerably, but generally involves the following steps:

1. Appointment of local service providers (as appropriate) – Paying Agent, Registration Agent, Legal Adviser, Listing Sponsor, Market Makers, Distributors;
2. Application to Listing Authority for listing approval (in the UK only through UKLA);
3. Application to Exchange for listing & trading.

The main considerations for listing an ETF on the key European exchanges are summarised in the following table:

	Possible to sell in country without listing?	Local Registration for Sale	Local Listing Sponsor Required	Listing Mechanism and Timing	Market Maker Required	Settlement System	Currencies Traded	Note
London Stock Exchange	Yes under UCITS passport Local listing preferred	FCA 10 days from filing with Home Competent Authority. Local Rep. required.	Yes Local Listing Particulars required	Allow 2 months to engage with sponsor and UKLA	At least 1	Crest Euroclear International Settlement System	Up to 3 currency lines per ETF GBP, EUR, USD, through Crest HKD and RMB through Euroclear	Simplified listing process if listed on another EEA exchange. No UKLA approval, no local Listing Sponsor and no Local Listing documentation required. EEA listings also trade on main ETF market segment with locally listed ETFs. Allow 2 weeks for listing application for EEA listed ETFs.
Deutsche Boerse	Yes under UCITS passport Local listing preferred	BAFIN 10 days from filing with Home Competent Authority. Local Rep. required	Yes No requirement for local Listing Particulars	"Fast-track" - Allow 8 business days	At least 1	Euroclear/ Euroclear International Settlement ClearstreamCSD/ICSD	AUD, CAD, CHF, EUR, GBP, SEK, USD, YEN, CNY	Simplified listing possible if listed on another EEA exchange. However, as such EEA listings do not trade on the ETF segment, most ETFs chose to seek a full DB listing.
SIX	Yes, only where ETF marketed to Institutional Investors Local listing preferred	FINMA 30 days from filing with FINMA. Local Rep. required	Yes No requirement for local Listing Particulars	Sponsor applies to SIX. Allow 20 business days	At least 1	SIX SIS Euroclear	EUR CHF USD GBP SGD AUD JPY CAD	No simplified listing available.
Borsa Italiana	Yes under UCITS passport Local listing preferred	CONSOB 10 days from filing with Home Competent Authority. Local Rep. required	Yes Italian translation of summary required	Issuer and Rep makes application Allow 3 weeks	At least 1	Monte Titoli	EUR	No simplified listing available.
BATS Chi –X Europe	Yes, under UCITS passport	FCA 10 days from filing with Home Competent Authority. Local Rep reqd.	No No requirement for local Listing Particulars	Application can be made by issuer or Rep. Allow one week	At least 1	Any European CSD or ICSD	All European Currencies USD YEN AUD CAD TRY	Simplified listing available from other EEA listing.

Simplified Cross Listing – ISE and LSE

Certain exchanges recognise listings from other EEA jurisdictions, and offer a simplified route to market. This mechanism works best for listings in the UK on the LSE and BATS.

These exchanges admit EEA listed ETFs to the same ETF segment as ETFs which have undertaken a full UKLA listing. This simplified route eliminates the requirement for a separate UK listing application, the appointment of local legal and listing advisors in the UK, the drafting of local listing documentation, reducing the timescale of bringing the ETF to market and involving significant cost efficiencies estimated at a minimum of £150,000.

All of the active ETFs listed on the LSE have used this simplified route from other EEA listings. For example, by listing firstly on the Irish Stock Exchange ("ISE"), where a straightforward and cost-effective listing regime exists, the process for admission to trading on a host exchange such as the LSE or BATS is very straightforward.

1. Irish Fund Authorisation Application;
2. Listing Application to ISE (within fund authorisation timetable);
3. Irish authorisation and ISE listing approval (within 2 months of initial application);
4. Filing for registration for sale in UK with FCA by Home Competent Authority(10 days);
5. Filing of listing application with LSE by Dillon Eustace (11 days) – admission forms, market maker forms, ISE listing particulars, certificate of UCITS compliance, evidence of FCA recognition; and
6. Listing on ISE and LSE.

It is possible for Dillon Eustace to cross list an Irish listed ETF to the ETF segment of the LSE within 10 days, without the need for local listing documentation, UK legal advisers or a local listing sponsor in the UK.

Further information on this listing option is available under "Further Information" herein.

Local Differences

Aside from the mechanics of bringing ETFs to market in multiple jurisdictions, there are a range of operational considerations. These include proprietary settlement systems, currency and reporting requirements for ETFs in the European context which warrant particular attention.

Currency

ETFS can be traded in a range of global currencies on European exchanges. These are summarised in the above table. It should be noted that while most exchanges offer trading in a range of currencies, Borsa Italiana only permits trading in EUR.

Settlement

Settlement of ETFs across Europe has traditionally been performed on a local basis through the domestic Central Securities Depositary of the exchange where the trade is executed. For example, if the ETF is listed on the LSE it would typically settle via CREST (as the UK's domestic Central Securities Depositary). Other European exchanges use a range of common and proprietary settlement systems, such as Euroclear, and some, such as SIX and Borsa Italiana, use proprietary systems unique to that specific market. Further details on these settlement systems are set out in the table above. This fragmentation of settlement regimes can cause difficulties with respect to ETFs which are cross-listed on multiple exchanges.

However, recent developments, such as the International Central Securities Depositary (ICSD) structure, aim to provide a simpler, centralised and efficient standardised European platform with a single settlement location for all exchanges on which the ETF is listed, overcoming the issues of local settlement in each jurisdiction.

Reporting

Exchanges vary considerably in their reporting requirements, and ETFs which are traded on multiple exchanges will be required to separately report in each jurisdiction. Most exchanges require reporting on general corporate changes, service providers and general corporate actions, etc. As a general rule, exchanges require the publication of a regular iNAV throughout the business day. Certain exchanges, such as the LSE, have no requirements for reporting an iNAV.

Actively Managed ETFs – Portfolio Transparency

It has been 8 years since the first actively managed ETF came to market, with an estimated 130 active ETFs being launched globally in that time, and approximately 25 currently listed across markets in Europe. The growth of actively managed ETFs has slowed and the AUM of active ETFs continues to represent approximately 1% of total ETF AUM.

It is worth noting that these classifications of what constitute “active” ETFs are often provided by the relevant ETF issuers themselves and may not provide a clear picture of the state of the market in terms of passive, smart-beta and true active strategies.

A key concern for active ETFs and a subject of much debate in the ETF community in the US and Europe is the requirement for disclosure of the portfolio of the ETF on a daily basis. The requirements of European exchanges in this regard could not be more varied, and requirements are constantly changing as the topic is debated more widely by regulators and industry.

Some exchanges, like the LSE and the ISE, take a view that no portfolio disclosure is required for active ETFs. Other exchanges require the disclosure of portfolio on a daily basis, with some permitting delays in reporting.

The distinctions in approach are demonstrated in that within one week of each other in late 2014, the ISE removed its requirements for daily full portfolio disclosure, and contrarily, the Borsa Italiana imposed a requirement for full daily disclosure. Further, the LSE and Borsa Italiana, part of the same group of companies, have entirely opposing requirements.

The following table summarises the portfolio and iNAV reporting obligations across the main exchanges for active ETFS:

	Portfolio Disclosure	**iNAV**
London Stock Exchange	No requirement	No requirement
Irish Stock Exchange	No requirement	Regular reporting of iNAV (no definition of regular)
Deutsche Boerse	Full Disclosure with a one month delay. Daily top 20 positions to be disclosed	Every 60 seconds
SIX	Full disclosure with maximum 4 week delay on Issuers website	Every 15 seconds
Borsa Italiana	Full disclosure of previous days portfolio prior to trading each day	Every 60 seconds
BATS Chi-X Europe	No requirement	No requirement

Exchange Costs

	Admission Fees	Annual Fees	Notes
Irish Stock Exchange	*Application Fee €2,000* *Administration Fee €300* *Formal Notice Fee €676.50*	*Per ETF (1-5) €2,000* *Per ETF (6-10) €1,210* *Per ETF (11 +) €800*	http://www.ise.ie/Products-Services/Investment%20Funds/Funds-Listing-Fees.pdf
*London Stock Exchange **	*Individual security €5,000* *Daily Cap €20,000* *(up to 20 securities admitted on the same day)* *Each additional security €1,000* *(on the same day)*	*Based on Market Cap* *£0 - £99,999,999 €940* *£100,000,000 - £749,999,999 €3,000* *£750,000,000 – 1,499,999,999 €8,000* *> £1,500,000,000 €15,000*	http://www.londonstockexchange.com/companies-and-advisors/listing/fees/fees-for-issuers-2015-2016.pdf
Deutsche Boerse	*Admission fee €3,000* *Introduction Fee €500*	*Based on AUM*	http://www.deutsche-boerse-cash-market.com/blob/1187656/eae4fcae0a7b10f7f0f7301d38c01633/data/2016-07-01_Fee-Regulations.pdf
*Euronext***	*Admission Fee – Primary/Secondary Listings* *Up to 10 €5,000/€7,500* *10 – 20 €3,350/€5,000* *20 + €2,250/€3,350*	*Based on AUM* *Minimum €2,000* *Maximum €45,000*	https://www.euronext.com/sites/www.euronext.com/files/listing_fee_book_etps.pdf
*Borsa Italiana **	*Admission - €8,500*	*Half yearly fee based on AUM*	http://www.borsaitaliana.it/azioni/mercati/comequotarsi/listing-fees/listingfees161024.en_pdf.htm
SIX	*New Issuer CHF 10,000* *1st product in application CHF 3,000* *Additional Subsequent ETF CHF 2,000* *Additional Currency Line CHF 1,000*	*Annual Fee CHF 500-3,000*	http://www.six-swiss-exchange.com/issuers/products/funds/listing_costs_en.html
BATS	*No admission or annual fees*	*No admission or annual fees*	*Trading commission only*

**Discounts available where ETFs are listed on both LSE and Borsa Italiana, as both exchanges are part of the same group.*

***Discounts available for Issuers with >20 ETFs listed on any Euronext market.*

The Future

Europe traditionally lags behind the US in the ETF space and while growth in European ETFs is exceeding that in the US, it is reasonable to assume that trends in Europe will follow the more mature US market.

It is anticipated that the US regulatory landscape for ETFs is about to change. Firstly, SEC proposals to address liquidity risk in the case of certain registered open-end investment companies, including ETFs, would require funds to classify assets into liquidity categories. These rules, designed to protect investors from high-risk investment strategies, will have a significant impact on both active and passive high yield fixed income ETFs. Statements by the SEC in the past year to undertake a “root and branch review” of the ETF industry can also be expected to shake up the industry.

Secondly, and specifically in relation to actively managed ETFs, repeated applications to the SEC for non-transparent active ETFs including Fidelity’s closed ended Exchange Traded Active Fund, and blind trust models continue. If such applications finally get regulatory approval, the market will decide whether there really is an appetite for non-transparent actively-managed ETFs, and the European market will continue to evolve its requirements in this regard. This year did see the long-anticipated launch of Exchange-traded managed funds, the hybrid structure patented by Eaton Vance. The first ETMF, the Eaton Vance Stock NextShares, launched in February of this year.

A recent development that should reveal the US market’s enthusiasm for actively managed ETFs is the SEC approval, in July 2016, of proposals by Bats BZX Exchange, Inc. and NYSE Arca, Inc. to adopt generic listing standards for shares of actively managed exchange-traded funds. This move is expected to ease the regulatory burden associated with bringing actively managed ETFs to market.

Innovation on cross listings and in product development by European Exchanges such as the listing of actively managed (non-ETF) UCITS on Borsa Italiana, and the introduction of the RFQ platform by the LSE, will continue to evolve trading mechanisms, increase transparency and distribution. Other changes in Europe, such as Brexit and the proposed mega-merger of the LSE and Deutsche Borse will change the ETF landscape.

Regulatory innovation, such as EU wide directives like MiFID II and national legislation, will increase focus on transparency and reporting around ETFs. MiFID II specifically requires the reporting of ETF trades for the first time, which also aims to provide a consolidated tape showing all trading in ETFs across multiple exchanges in the EU.

It is likely that the requirements for ETFs and particularly active ETFs will continue to be amended and are likely to converge further under ESMA guidance. It is hoped that these regulatory developments together with comprehensive educational initiatives for IFAs and the public will help push the ETF product in Europe to retail investors, which currently represent only a fraction of the market, as opposed to almost half of the ETF users in the US.

Further Information:

Dillon Eustace:

A Guide to UCITS in Ireland -
http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/A%20Guide%20to%20UCITS%20in%20Ireland.pdf

Exchange Traded Funds and the UCITS Framework -
http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/Exchange%20Traded%20Funds%20and%20the%20UCITS%20Framework.pdf

A Guide to Listing on the ISE -
http://www.dilloneustace.ie/download/1/Guide%20to%20Listing%20Investment%20Funds%20on%20the%20Irish%20Stock%20Exchange%202013.pdf

ISE Removes Requirement for Portfolio Disclosure for active ETFs -
http://www.dilloneustace.ie/download/1/Publications/Listings/ISE%20removes%20daily%20disclosure%20requirement%20for%20Actively-Managed%20ETFs.pdf

ISE:
http://www.ise.ie/Products-Services/Listing-ETFs/

LSE:
http://www.lseg.com/areas-expertise/our-markets/london-stock-exchange/fixed-income-markets/listed-products/etfs

http://www.lseg.com/sites/default/files/content/documents/2015-10-01%20updated%20LSE_CM_ETF_LISTING_%26_ADMISSION_GUIDE_02.pdf

EEA Cross Listings on LSE;
http://www.lseg.com/sites/default/files/content/documents/Exchange%20Traded%20Funds%20-%20EEA%20Listing.pdf

Deutsche Boerse:
http://www.xetra.com/xetra-en/instruments/etf-exchange-traded-funds/information-material

Euronext:
https://www.euronext.com/en/etf/listing

Borsa Italiana:
http://www.borsaitaliana.it/etf/emittenti/listing-etfplus/etf-comequotarsi.en.htm

SIX:
http://www.six-swiss-exchange.com/download/market/funds/publications/etf_factsheet_en.pdf

Date: **November 2016**
Author: **Tara O'Callaghan**

DILLON EUSTACE

CONTACT US

Our Offices

Dublin
33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022
Fax: +353 1 667 0042

Cayman Islands
Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022
Fax: +1 345 945 0042

New York
245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo
12th Floor
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006
Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

e-mail: enquiries@dilloneustace.com
website: www.dilloneustace.com

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.

Tara O'Callaghan
e-mail: tara.ocallaghan@dilloneustace.ie
Tel : +353 1 673 1831
Fax : + 353 1 667 0042

Brian Kelliher
e-mail: brian.kelliher@dilloneustace.ie
Tel : +353 1 673 1721
Fax : + 353 1 667 0042

Brian Higgins
e-mail: brian.higgins@dilloneustace.ie
Tel : +353 1 673 1891
Fax : + 353 1 674 1022

Fionnan Gannon
e-mail: fionnán.gannon@dilloneustace.ie
Tel : +353 1 673 1867
Fax : + 353 1 674 1022

DISCLAIMER:
This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO