

Igoramuses and muppets are advising that Personal Exchange Traded Funds are non-reportable Active NFEs and hence an



Preface

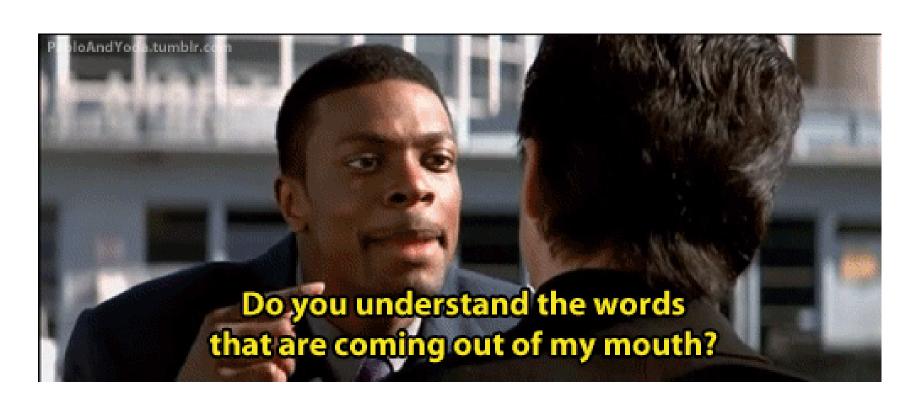


• Unbelievably, there is still widespread misunderstanding between an entity that is "Listed" versus "Regularly Traded". Only regularly traded entities qualify as an Active NFE. Merely being listed doesn't cut the mustard.

Background

- Some finance structure practioners are helping clients to list their own ETF as a CRS non-
- reportable solution.
 The client is led to believe the listed ETF qualifies as an Active NFE and that there is no reporting on the Controlling Person of the Active NFE.

Difference between Listed and Regularly traded



• To qualify as a regularly traded Active NFE, at least 10% of the shares must be sold to unrelated parties each year, and there must be at least 60 days trading per year. See CRS Commentary page 193 paragraph (113)

With respect to each class of stock of the corporation, there is a "meaningful volume of trading on an on-going basis" if (i) trades in each such class are effected, other than in de minimis quantities, on one or more established securities markets on at least 60 business days during the prior calendar year; and (ii) the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10% of the average number of shares outstanding in that class during the prior calendar year.



No doubt, the client's ETF does not meet the requirements to be an Active NFE. Thus it
will be reported as an Investment Entity or Passive NFE.

Round no. 2 - No need for FI to Identify the Controlling Persons of an ETF?

- OK, so even if the ETF does not qualify as an Active NFE, what about OECD saying it is understandable the Financial Institution maintaining the ETF account will not be able to determine the Controlling Persons of a listed entity?
- Singapore AML law says beneficial owner of a listed Collective Investment Scheme need not be identified.
- Switzerland's due diligence code exempts identification of owners of client on a stock exchange.

CRS Implementation Handbook Pg. 69 par (144) The term Controlling Persons corresponds to the term "beneficial owner" as described in the **Financial Action Task Force Recommendations**.

FATF recommendations do not require the determination of beneficial ownership if an Entity listed on a stock exchange and is subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) to ensure adequate transparency of beneficial ownership.

In such cases, it is accepted that a Reporting Financial Institution will not be able to determine the Controlling Persons for CRS purposes.

Follow the FATF recommendation carefully regarding adequate transparence of listed entities

- The controlling person information can be obtained from the directors with confirmation from public registers, as the FATF says "listing is subject to disclosure requirements, either by stock exchange rules or through law or enforceable means to ensure adequate transparency of beneficial ownership.".
- If on the other hand, this information is not available from the exchange, then the FATF exempsighhhhhhition of identifying beneficial owners does not qualify as the exchange must ensure adequate transparency, then FI must in any event identify beneficial owners, say over 25% which is the threshold for all other entities. This is really a simple loophole to close using the FATF's recommendation that information can be obtained because regulation ensures transparency.

Summary

- Only carnival barkers, grifters and con advisors recommend personal ETFs as a way to avoid the CRS.
- the FATF Recommendation is not a strategy I would advise to avoid the CRS.

• The AML non-identification of beneficial owners of an ETF which is in direct contrast to



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