

VOYA INVESTMENTS, LLC
Form 40-APP
October 27, 2015

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

In the matter of:	X	File No. 812-
	:	
Voya ETF Trust	:	
Voya Investments, LLC	:	
Directed Services LLC	:	
Voya Investments Distributor, LLC	X	

Application for an Order (i) under Section 6(c) of the Investment Company Act of 1940 (the Act) for an exemption from Sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and Rule 22c-1 under the Act, (ii) under Sections 6(c) and 17(b) of the Act for an exemption from Sections 17(a)(1) and 17(a)(2) of the Act and (iii) under Section 12(d)(1)(J) of the Act for an exemption from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

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I. INTRODUCTION

A. Summary of Application

In this application (**Application**), Voya ETF Trust (the **Trust**), Voya Investments, LLC and Directed Services LLC (each, an **Initial Adviser**) and Voya Investments Distributor, LLC (the **Distributor** and, together with the Trust and the Initial Advisers, **Applicants**)(1) apply for and request from the U.S. Securities and Exchange Commission (**Commission**) an order (i) under Section 6(c) of the Investment Company Act of 1940, as amended (the **Act**), for an exemption from Sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and Rule 22c-1 thereunder, (ii) under Sections 6(c) and 17(b) of the Act for an exemption from Sections 17(a)(1) and 17(a)(2) of the Act and (iii) under Section 12(d)(1)(J) of the Act for an exemption from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (referred to herein as the **Order**).

The Order, if granted, would permit:

- (a) Funds (as defined below) to issue shares (**Shares**) redeemable in large aggregations only (**Creation Units**) (e.g., at least 25,000 shares);
- (b) secondary market transactions in Shares to be effected at negotiated market prices rather than at net asset value (**NAV**) on a national securities exchange as defined in Section 2(a)(26) of the Act (**Exchange**), such as NYSE Arca, Inc. and NYSE Arca Marketplace, LLC (collectively, **NYSE Arca**), and The Nasdaq Stock Market, Inc. (**NASDAQ**);
- (c) certain affiliated persons of the open-end investment company described herein to deposit securities into, and receive securities from, such investment company, in connection with the purchase and redemption of aggregations of Shares of such investment company;
- (d) the payment or satisfaction of redemptions in periods exceeding seven (7) calendar days under specified limited circumstances;
- (e) registered management investment companies and unit investment trusts (**UITs**) that are not advised or sponsored by the Adviser or an entity controlling, controlled by or under common control with the Adviser, and not part of the same **group of investment companies**, as defined in Section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as **Investing Management Companies**, such UITs are referred to as **Investing Trusts**, and Investing Management Companies and Investing Trusts are collectively referred to as **Funds of Funds**), to acquire Shares beyond the limits of Section 12(d)(1)(A) and (B) of the Act;
- (f) the Funds, and any principal underwriter for the Funds, and/or any broker dealer (**Broker**) registered under the Securities Exchange Act of 1934, as amended (**Exchange Act**), to sell Shares to Funds of Funds beyond the limits of Section 12(d)(1)(B) of the Act;

(g) a Fund that is advised by the Adviser to operate as a feeder fund (**Feeder Fund**) to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund (**Master Fund**) beyond the limitations in Section 12(d)(1)(A) of the Act and the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in Section 12(d)(1)(B) of the Act; and

(1) All existing entities that intend to rely on the requested Order have been named as Applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the Order.

(h) a Feeder Fund to deposit securities into, and receive securities from, its Master Fund in exchange for shares of the Master Fund, both in connection with in-kind sales and redemptions of Shares (together with the relief discussed in (g), **Master-Feeder Relief**).(2)

Applicants believe that (i) with respect to the relief requested pursuant to Section 6(c), the requested exemption for the proposed transactions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (ii) with respect to the relief requested pursuant to Section 17(b), the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transactions are consistent with the policy of each Fund and will be consistent with the investment objectives and policies of each Fund of Funds and that the proposed transactions are consistent with the general purposes of the Act; and (iii) with respect to the relief requested under Section 12(d)(1)(J) of the Act, the requested exemption is consistent with the public interest and the protection of investors.

The relief requested by Applicants with respect to Sections 2(a)(32), 5(a)(1), 17(a)(1), 17(a)(2), 22(d) and 22(e) of the Act and Rule 22c-1 thereunder will be referred to herein as **ETF Relief** and the relief requested with respect to Sections 12(d)(1)(A), 12(d)(1)(B) and 17(a) of the Act will be referred to herein as **12(d)(1) Relief**. The ETF Relief, 12(d)(1) Relief and Master-Feeder Relief collectively, will be referred to herein as **Relief**.

Applicants seek the Order to create and operate one or more Funds that operate as index-based ETFs (defined below) and offer Shares and (i) for which a third party that is not an **affiliated person** (as such term is defined in Section 2(a)(3) of the Act), or an affiliated person of an affiliated person, of the Trust, the Adviser, any Sub-Adviser (defined herein), the Distributor (defined herein) or a promoter of the Fund will serve as the Index Provider (defined herein) (each an **Index-Based Fund**), or (ii) for which an **affiliated person**, as defined in Section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust or a Fund, of the Adviser, any Sub-Adviser (defined herein), the Distributor (defined herein) or a promoter of a Fund, will serve as the Index Provider (each a **Self-Indexing Fund**).

Applicants request that the Order apply to the Index-Based Fund or Self-Indexing Fund that will form the initial series of the Trust (**Initial Fund**) and any additional series of the Trust, as defined below, and any other open-end management investment company or series thereof, that may be created in the future that operate as ETFs and that track a specified index comprised of domestic and/or foreign equity securities (**Equity Funds**) and/or domestic and/or foreign fixed income securities (**Fixed Income Securities**) (together, **Future Funds**).(3) Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an **Adviser**) and (b) comply with the terms and conditions of this Application.

B. Comparability of Relief Sought to Prior Relief Granted by the Commission

Applicants seek Relief substantially similar to the relief granted by the Commission to other open end management investment companies commonly referred to as exchange-traded funds (**ETFs**), including PIMCO ETF Trust, Old Mutual Global Shares Trust, Global X Funds, Javelin Exchange-Traded Trust, ALPS ETF Trust, iShares Trust, SSgA Funds Management, NETS Trust and PowerShares Exchange Traded Fund Trust (collectively, **Prior Index-Based ETFs**). Applicants further seek Relief with respect to the Self-Indexing Funds substantially similar to the relief granted by the Commission to ETFs issued by Janus ETF Trust, Claymore Exchange-Traded Fund Trust, Claymore Exchange-Traded Fund Trust 2, Claymore Exchange-Traded Fund Trust 3, IndexIQ ETF Trust, WisdomTree Trust and Market Vectors ETF Trust (collectively, **Prior Self-Indexing ETFs**). Applicants also seek Relief with respect to Long/Short Funds and 130/30 Funds (each as defined below) substantially similar to the relief granted by the Commission to ETFs

(2) Applicants request that the Master-Feeder Relief apply to any Feeder Fund, any Master Fund and any principal underwriter for the Master Funds selling shares of a Master Fund to a Feeder Fund.

(3) For purposes of this Application, references to Funds include the Initial Fund, as well as any Future Funds.

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issued by FQF Trust (collectively, **Prior Long/Short ETFs**).(4) The Prior Index-Based ETFs, Prior Self-Indexing ETFs and Prior Long/Short ETFs are collectively referred to herein as the **Prior ETFs** .(5) The requested Master-Feeder Relief is similar to the relief granted to T. Rowe Price Associates, Inc.(6)

No form having been specifically prescribed for this Application, Applicants proceed under Rule 0-2 of the General Rules and Regulations of the Commission.

II. **BACKGROUND**

A. **General**

Applicants intend to establish certain index based market basket investment products intended to be made available to both institutional and retail investors. The Trust intends to create diversified and non-diversified Funds, each of which will operate pursuant to the terms and conditions stated in this Application.

Voya ETF Trust is organized as a Delaware statutory trust. The Trust will be registered with the Commission as a series open-end management investment company. The Trust is overseen by a board of trustees (the **Board**). The Trust will offer and sell its Shares pursuant to a registration statement on Form N-1A filed with the Commission under the Securities Act of 1933 (the **Securities Act**) and the Act (the **Registration Statement**). The Funds will each be a separate series of the Trust and will offer and sell their Shares pursuant to the Registration Statement. Funds which track Domestic Indexes (as defined below) are referred to as **Domestic Funds** and Funds which track Foreign Indexes (as defined below) are referred to as **Foreign Funds**. While each Fund will be managed by the Adviser and, if applicable,

(4) In the Matter of FQF Trust, et al., Investment Company Act Release Nos. 29720 (July 11, 2011) (notice) and 29747 (August 5, 2011) (order).

(5) Pacific Investment Management Company LLC, et al., Investment Company Act Release Nos. 28723 (May 11, 2009) (notice) and 28752 (June 1, 2009) (order); Old Mutual Global Shares Trust, et al., Investment Company Act Release Nos. 28847 (August 12, 2009) (notice) and 28898 (Sep. 9, 2009) (order); Global X Funds, et al., Investment Company Act Release Nos. 28378 (Sep. 10, 2008) (notice) and 28433 (October 3, 2008) (order); Javelin Exchange-Traded Trust, et al., Investment Company Act Release Nos. 28350 (July 31, 2008) (notice) and 28367 (August 26, 2008) (order); ALPS Advisers, Inc., et al., Investment Company Act Release Nos. 28235 (April 9, 2008) (notice) and 28262 (May 1, 2008) (order); Barclays Global Fund Advisors, Investment Company Act Release Nos. 24394 (April 17, 2000) (notice) and 24451 (May 12, 2000) (order); Barclays Global Fund Advisors, Investment Company Act Release Nos. 24393 (April 17, 2000) (notice) and 24452 (May 12, 2000) (order); Barclays Global Fund Advisors, et al., Investment Company Act Release Nos. 25594 (May 29, 2002) (notice) and 25622 (June 25, 2002) (order), as subsequently amended by iShares Trust, et al., Investment Company Act Release Nos. 25969 (March 21, 2003) (notice) and 26006 (Apr. 15, 2003) (order), Barclays Global Fund Advisors, et al., Investment Company Act Release Nos. 26151 (August 15, 2003) and 26175 (Sept. 8, 2003) (order), and Barclays Global Fund Advisors, et al., Investment Company Act Release Nos. 27387 (June 1, 2006) (notice) and 27417 (June 23, 2006) (order); NETS Trust, et al., Investment Company Act Release Nos. 28166 (Feb. 25, 2008) (notice) and 28195 (March 17, 2008) (order); SSgA Funds Management, Inc. et al., Investment Company Act Release Nos. 27809 (April 30, 2007) (notice) and 27839 (May 25, 2007) (order); PowerShares Exchange-Traded Fund Trust, et al., Investment Company Act Release Nos. 25961 (March 4, 2003) (notice) and 25985 (March 28, 2003) (order), PowerShares Exchange-Traded Fund Trust, et al., Investment Company Act Release Nos. 27811 (April 30, 2007) (notice) and 27841 (May 25, 2007) (order); In the Matter of WisdomTree Investments Inc., et

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al., Investment Company Act Release Nos. 27324 (May 18, 2006) (notice) and 27391 (June 12, 2006) (order) (WisdomTree Order); In the Matter of IndexIQ ETF Trust, et al., Investment Company Act Release Nos. 28638 (Feb. 27, 2009) (notice) and 28653 (March 20, 2009) (order) (IndexIQ Order); Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 29455 (Oct. 1, 2010) (notice) and 29490 (Oct. 26, 2010) (order) (Market Vectors Order); In the Matter of Guggenheim Funds Investment Advisors, LLC, et al., Investment Company Act Release Nos. 30560 (June 14, 2013) (notice) and 30598 (July 10, 2013) (order) (Guggenheim Order) and In the Matter of Janus ETF Trust, et al., Investment Company Act Release Nos. 31544 (April 1, 2015) (notice) and 31580 (April 28, 2015) (order) (Janus Order). The WisdomTree Order, IndexIQ Order, Market Vectors Order, Guggenheim Order and Janus Order are collectively referred to herein as the Prior Self-Indexing Orders and the orders cited above are collectively referred to herein as the Prior Index-Based Orders.

(6) See T. Rowe Price Associates, Inc., et al., Investment Company Act Release Nos. 30299 (Dec. 7, 2012) (notice) and 30336 (Jan. 2, 2013) (order).

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Sub-Advisers (as defined below), the applicable Board will have overall responsibility for the Funds' operations. The composition of each Board is in compliance with the requirements of Section 10 of the Act.

Each Fund will seek to provide investment returns that correspond, before fees and expenses, generally to the performance of a specified equity and/or a specified fixed income securities index (each an **Underlying Index** and collectively, **Underlying Indexes**). Each Fund, or its respective Master Fund, will hold certain securities, currencies, other assets and other investment positions (**Portfolio Holdings**) selected to correspond generally to the performance of its Underlying Index. Certain of the Funds will be based on Underlying Indexes which will be comprised of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets (**Domestic Indexes**). Other Funds will be based on Underlying Indexes which will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities (**Foreign Indexes**). Future Funds may be based on Domestic Indexes as well as Foreign Indexes.

The Trust will issue, with respect to each Fund on a continuous offering basis, only Creation Units. The size of a Creation Unit for each Fund will initially be determined by the Adviser, in part on the estimated initial trading price per individual Share of such Fund and the size of Creation Units for other ETFs trading at that time, as well as each Fund's target audience.⁽⁷⁾ Applicants expect that the initial price of a Creation Unit will be a minimum of \$1 million and will fall in the range of \$1 million to \$10 million, and that the initial trading price per individual Share of each Fund will fall in the range of \$15 to \$100. Individual Shares will not be individually redeemable. Only Shares assembled into Creation Units will be redeemable, but Creation Units will not be listed or traded. Applicants intend that the initial NAV of the Shares will be established per Share at a level convenient for trading purposes.

Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as market makers and maintain a market for Shares trading on the Exchange. If NYSE Arca is the Exchange on which the Shares are primarily listed (**Listing Exchange**), it is expected that one or more of the market makers that are members of NYSE Arca (**Arca Market Makers**) will register to make a market in Fund Shares listed on NYSE Arca. If NASDAQ is the Listing Exchange, one or more member firms of NASDAQ will act as market makers (**NASDAQ Market Makers** and together with Arca Market Makers, **Market Makers**) and maintain a market on NASDAQ for Shares trading on NASDAQ.⁽⁸⁾

Applicants believe that the Funds, like all other ETFs, must offer securities that will be available on an open-end basis (i.e., continuously offered) and provide ready redeemability for investors presenting one or more Creation Units for redemption. This open-end structure of each Fund will permit efficiencies in pricing, be most responsive to market needs and demands, and minimize the costs that are sometimes encountered in connection with the underwritten public offerings of shares of closed-end funds. Therefore, purchases and redemptions of Creation Units of the Funds generally will be made by an in-kind tender of specified securities, with any cash portion of the purchase price and redemption proceeds to be kept to a minimum, all in the manner described below in Section II.K. Sales of Shares. Applicants believe that this in-kind method minimizes the need to liquidate Portfolio Holdings to meet redemptions or to acquire Portfolio Holdings in connection with purchases of Creation Units and would permit closer tracking of each

⁽⁷⁾ The size of a Creation Unit as stated in a Fund's prospectus (**Prospectus**) may be changed from time to time if the individual Share price of such Fund increases to such an extent that the Creation Unit price becomes unappealing to investors and arbitrageurs seeking to create or redeem.

⁽⁸⁾ If Shares are listed on NASDAQ, no particular NASDAQ Market Maker will be contractually obligated to make a market in Shares, although NASDAQ's listing requirements stipulate that at least two NASDAQ Market Makers must be registered in Shares to maintain the listing. Registered Arca Market Makers and NASDAQ Market Makers are required to make a continuous, two-sided market at all times or they are subject to regulatory sanctions. No Arca Market Maker or NASDAQ Market Maker will be an affiliated person, or an affiliated person of an

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affiliated person, of the Funds, within the meaning of Section 2(a)(3) of the Act, except pursuant to Sections 2(a)(3)(A) and (C) of the Act due to ownership of Shares, as described below.

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Fund's Underlying Index. Applicants submit that this in-kind mechanism also will provide a number of benefits to investors such as efficiencies in pricing, response to market needs and reductions in certain costs, such as brokerage fees, custodian fees and various other fund overhead costs and fund accounting costs, and significant reductions in transfer agency fees, as well as potential tax efficiencies, all as discussed herein.

B. Initial Fund

The Initial Fund will be an Equity Fund whose performance will correspond generally to the performance of a securities index, which may be developed by an affiliated or unaffiliated index provider. The Initial Fund will seek to achieve its investment objective by investing in debt securities and listed equity securities of global and/or U.S. companies. In seeking to achieve its investment objective, the Initial Fund may take short positions in equity securities.

The component securities of an Underlying Index are referred to herein as **Component Securities**. Each Fund, or its respective Master Fund, will consist largely of some or all of the Component Securities of an Underlying Index selected to correspond generally to the price and yield performance of such Underlying Index.

Each Fund that intends to qualify as a regulated investment company (**RIC**) will maintain the required level of diversification, and otherwise conduct its operations, so as to meet the RIC diversification requirements under the Internal Revenue Code of 1986, as amended (the **Code**).

C. The Initial Advisers

An Initial Adviser will be the investment adviser to the Initial Fund. The Initial Advisers are Voya Investments, LLC, a limited liability company organized under the laws of Arizona, and Directed Services LLC, a limited liability company organized under the laws of Delaware. Each Initial Adviser has its principal office located at 7337 East Doubletree Ranch Road, Suite 100, Scottsdale, Arizona 85258. The Initial Advisers, and any other Adviser, are registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940, as amended (the **Advisers Act**).

The Adviser, subject to the oversight and authority of the Board, will develop the overall investment program for each Fund, or its respective Master Fund.(9) The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers with respect to particular Funds, or their respective Master Funds, (each, a Sub-Adviser and collectively, the **Sub-Advisers**). The Sub-Advisers, if any, will serve as the portfolio managers for the Funds, or their respective Master Funds. The Adviser will compensate any Sub-Adviser out of the advisory fees paid to the Adviser pursuant to the investment advisory contract. Under the Adviser's supervision, each Sub-Adviser will manage the investment and reinvestment of the applicable Fund's, or its respective Master Fund's, assets in accordance with such Fund's investment objective. Any Sub-Adviser for the Initial Fund will be registered under the Advisers Act or will not be required to register thereunder, and any future Sub-Adviser to a Fund, or its respective Master Fund, will either be registered under the Advisers Act or will not be required to register thereunder.

Each Sub-Adviser may have a number of other clients, which may include open-end management investment companies that are registered under the Act, separately managed accounts for institutional investors, privately offered funds that are not deemed to be investment companies in reliance on Section 3(c)(1), (3)(c)(7) or 3(c)(11) of the Act, closed-end funds and business development companies.

(9) The term Board also includes any board of directors or trustees of a Future Fund, if different.

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D. The Distributor

The Trust will enter into a distribution agreement with the Distributor. The distributor for the Initial Fund will be Voya Investments Distributor, LLC, an Arizona limited liability company. The Distributor is, and each Future Distributor (as defined below) will be, a broker-dealer registered under the Exchange Act. The Distributor will act as distributor and principal underwriter (**Distributor**) of one or more of the Funds. The Distributor will distribute Shares on an agency basis. The Distributor is not, and no Future Distributor will be, affiliated with any Exchange. The Distributor for each Fund will comply with the terms and conditions of this Application. The Distributor of any one Fund may be an affiliated person or an affiliated person of an affiliated person of that Fund's Adviser and/or Sub-Advisers. Applicants request that the Order also apply to any other future principal underwriter and distributor to Future Funds (**Future Distributor**), provided that any such Future Distributor complies with the terms and conditions of this Application.

E. Administrator, Custodian, Fund Accountant, Transfer Agent, Dividend Disbursing Agent and Securities Lending Agent

Each Fund will have an administrator (**Administrator**), custodian (**Custodian**), fund accountant (**Fund Accountant**), transfer agent (**Transfer Agent**), dividend disbursing agent (**Dividend Disbursing Agent**) and may have a