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ETF HANDBOOK

Third Edition

Introduction

Exchange-traded funds ("ETFs") have become increasingly popular with investors, resulting in a growing number of traditional fund sponsors and entrepreneurs exploring entry into the ETF market. Entering and operating in the ETF market, however, requires an understanding of the unique regulatory requirements applicable to ETFs. In order to assist clients and other ETF industry participants to understand such requirements, K&L Gates LLP and EdgarAgents have teamed up to bring you this ETF Handbook, Third Edition.

This Third Edition of the ETF Handbook (the "Handbook") provides easy access to key ETF regulatory documents, including:

- Rule 6c-11 (the "ETF Rule") under the Investment Company Act of 1940, as amended (the "1940 Act") and extracts from the ETF Rule's adopting release;
- Form N-1A, the registration statement form used by most ETFs, highlighting the disclosure requirements unique to ETFs;
- the exemptive orders issued by the U.S. Securities and Exchange Commission ("SEC" or "Commission") to permit non-transparent actively managed ETFs to operate;
- the exemptive order issued by the SEC from the Securities and Exchange Act of 1934 to permit ETFs generally to trade on securities exchanges in the same manner as traditional issuers;
- the generic listing standards adopted by the national securities exchanges to permit ETFs, which either rely on the ETF Rule or a non-transparent active ETF exemptive order, to list their shares for trading; and
- certain guidance from the Financial Industry Regulatory Authority applicable to ETF marketing materials.

This Handbook is intended to be used as a reference for industry participants. Like the Second Edition of the Handbook, this Third Edition continues to include the ETF Rule and Form N-1A. The ETF Rule chapter, however, has been updated to reflect the SEC's amendments to the ETF Rule in connection with the promulgation of Rule 18f-4, making reliance on the ETF Rule possible for leveraged and inverse index ETFs. Also new to this Edition are the materials related to non-transparent actively managed ETFs and cryptocurrency exchange-traded products ("ETPs").

K&L Gates and EdgarAgents hope that you find this Handbook useful in connection with your development, launch and operation of ETFs. We look forward to working with you on your ETF legal, filing and printing needs.

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EdgarAgents' Role as your SEC Filing Agent for your SEC Mandated Regulatory Compliance & Shareholder Services

Complex and rapidly expanding SEC regulations create many challenges for investment funds trying to achieve their regulatory and shareholder communication requirements.

How do I launch an ETF?

What are the regulatory and legal requirements?

What are the filing requirements?

How do I distribute materials to shareholders?

EdgarAgents is a technology-driven, full-service SEC Filing Agent and Financial Printing Company. As an industry leader, we help our clients successfully achieve their regulatory and shareholder reporting requirements. EdgarAgents uses next generation proprietary compliance software along with the experience and expertise of our tenured staff to quickly and accurately onboard, format and submit all required SEC EDGAR filings, including forms N-1A, 485APOS, 485BPOS w/iXBRL, N-CSR, N-PORT, N-CEN etc.

If you are establishing a new ETF, or if you are an existing ETF, an Open or Closed End Fund, EdgarAgents offers the insight, infrastructure and technology you need to meet your regulatory compliance and shareholder reporting requirements.

Services we provide:

- Document Composition — Traditional Full-Service EDGAR and Typesetting Conversions
- Two proof/editing options; Microsoft Word "Track Change" editing or traditional PDF proof editing
- Document Composition — SaaS Structured Content Management Platform
- Inline XBRL Tagging and Filing
- N-PORT & N-CEN Preparation and SEC Submission
- Full Suite of Print and Mail Capabilities

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ETF DOCUMENTS AND FILINGS

Because ETFs fall under the guidelines of Form N-1A, document and regulatory workflow typically follow the path dictated by Fund Accounting and Legal/Compliance departments.

Legal documents include Summary & Statutory Prospectus, Statement of Additional Information and Supplements. ETFs must meet the requirements of the SEC's Interactive Data requirements — Inline XBRL tagging and filing the Risk/Return Summaries, consistent with Mutual Fund XBRL regulations.

Fund accounting documents include periodic shareholder reports, such as annual and semi-annual reports, and other portfolio reporting, such as N-PORT and N-CEN, as well as Form N-MFP2 for Money Market funds.

Additionally, the marketing team may provide branding input as to the style of compliance documents, Fact Sheets and website design and layout.

Meeting SEC Requirements

Form ID: An electronic application that all new filers must complete before gaining access to EDGAR. All new entities complete Form ID to obtain access codes to permit them to file SEC forms on EDGAR.

Form ID can be accessed at: https://www.filermanagement.edgarfiling.sec.gov/filermgmt/selectFormId.html

After completing the Form ID, EDGAR filers will be provided codes, including:

CIK (Central Index Key) — a unique public identifier, which serves as the logon ID for EDGAR, is a 10-character numeric code;

Password — a confidential code used to log on to the EDGAR system, is a case-sensitive 12-character code, which must include at least one number and at least one special character (@, #, *, $);

CCC (CIK Confirmation Code) — a confidential code, used in conjunction with the CIK to submit EDGAR filings, is a case-sensitive 8-character code, which must include at least one number and at least one special character (@, #, *, $);

PMAC (Password Modification Authorization Code) — a confidential code required to authorize a Password change, is a case-sensitive 8-character code, which must include at least one number and at least one special character (@, #, *, $);

Passphrase — The passphrase permits an EDGAR filer to use the Filer Management website to manage all of its filing codes.

40-APP: Exemptive Application. An application for an Order under Section 6(c) of the Investment Company Act of 1940 (40 Act) granting an exemption from certain sections of the Act and Rules.

N-8A: Initial notification of registration under Section 8(a). This will generate the 40 Act file number (also known as the 811 number) for the filer. Each CIK can only have one 40 Act number.

N-1A: Initial Registration Statement for open-end management investment companies. For securities issued to the public, upon the filing of the N-1A, a Securities Act of 1933 (33 Act) filer number will be issued for the filer. Although a filer can have only one 40 Act number, a filer can have multiple 33 Act filer numbers.

The Form N-1A consists of:

- Facing Sheet (Form cover page)
- Prospectus (or Prospectuses), also called (Part A)
- Statement(s) of Additional Information also called (Part B)
- (Part C) would include Other Information:
  - Exhibit List
  - Signature Page
  - Exhibit Index

(SEC's template for Form N-1As can be found at:
https://www.sec.gov/files/formn-1a.pdf)

The filing of the N-1A will include information about at least one new fund. Each fund will receive a Series Identifier, which is a unique 10-character code made up of an "S" with 9 numbers (e.g., S000098765). Additionally, the SEC requires that there be at least one Class/Contract Identifier per Series, which is a unique 10-character code made up of a "C" with 9 numbers (e.g., C000012345). Series and Class Identifiers are issued upon filing.

Post-Effective Filings

After the Registration Statement is declared effective, ongoing update filings are required to be done annually, unless an event requiring SEC staff review dictates additional post-effective filings. For example:

485APOS: Post-effective amendment to Form N-1A pursuant to Rule 485(a). This form type is usually used when a new Series is being generated or there are major changes relating to the ETF.

485BPOS: Post-effective amendment to Form N-1A pursuant to Rule 485(b). Used for financial and minor updates.

497: Interim material changes to a Prospectus and/or SAI are filed as a Supplement.

497K: Summary Prospectus. Although not required, once an ETF adopts Summary Prospectus as the primary disclosure document, 497K must be filed and the Summary Prospectus posted to the website before any sales can commence.

485BXT: Delaying Amendment filed to extend the prior registration statement for up to 30 days and designate a new effective date for the new registration statement.

Risk/Return Inline XBRL: XBRL for the annual prospectus update and for supplements, requiring changes to the Risk/Return Summary information, items 2, 3 and 4 of the Statutory Prospectus. Inline XBRL as a tagging and filing format will eliminate the 15-business day period between event and XBRL filing.

Periodic Financial and Holdings Reports

N-CSR/N-CSRS: Certified Shareholder Reports (Annual Report/Semi-Annual Report), must be filed within 10 days of commencement of the mailing of the Annual or Semi-Annual Report, typically 70 days after the close of the second and fourth quarters of each fiscal year and are filed with two Certification exhibits. Additionally, a Code of Ethics must be filed once per year.

N-Q*: Quarterly Report, must be filed not later than 60 days after the close of the first and third quarters of each fiscal year and are filed with one Certification exhibit.

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* As part of the SEC's Investment Company Modernization rule, Form N-Q is being rescinded and will no longer be required once a fund begins filing reports on Form N-PORT.

N-PORT: Monthly filing for all registered funds, except Money Market Funds, to report series level portfolio data and analytical risk and liquidity data.

N-CEN: Used by all registered investment companies, other than face-amount certificate companies, to file annual reports, containing census information and must be filed not later than 75 days after the close of each fiscal year.

Other Filings

Throughout the year, ETFs and/or their Advisors will have other filings such as:

Required: N-PX, 13F, 24F-2NT, 40-17G

Potential: N-14, DEF 14A, DEF 14C, 497AD, 40-17F1, 40-17F2, N-MFP2, N-30B-2, N-8F

ABOUT COMMUNICATION TIMEFRAMES

Prospectus(es) and Summary Prospectus(es)

Prospectuses or Summary Prospectuses must be provided annually to shareholders, either electronically or in printed form, no later than 160 days from the close of the fund's fiscal year end.

Pursuant to SEC Rule 498, a Summary Prospectus is a standalone document consisting of Items 2 through 8 of an ETF Statutory Prospectus, along with the fund's ticker symbol(s) and language describing how to find more information in the Statutory Prospectus or SAI.

An ETF may reduce its printing requirement by creating a Summary Prospectus and filing a 497K as its primary disclosure document.

Supplements, aka "Stickers"

Throughout the year, a Registrant may make changes to Summary Prospectuses, Statutory Prospectuses and SAIs. Those changes can be filed as **497 supplements without re-filing the entire document or registration statement.**

They are sometimes referred to as "stickers" because the changes were historically printed as a sticker and pasted over the old text in printed documents.

Supplements must be provided to Shareholders, either electronically or in printed form.

Periodic Shareholder Reporting

Annual and Semi-Annual Reports must be provided to shareholders, either electronically or in printed form. Mailing of these reports must commence no later than 60 days after the close of the second and fourth quarters of each fiscal year. The EDGARized version must then be filed within 10 days of commencement of that mailing. There is no printing/mailing requirement for Quarterly reports, but ETFs can opt to provide them to shareholders.

On June 5, 2018, the SEC adopted new rule 30e-3 and rule amendments that would, subject to conditions, provide certain registered investment companies ("funds") with an optional method to transmit shareholder reports by making such reports and other materials accessible at a website address specified in a notice to investors. This optional method is intended to modernize the manner in which funds deliver periodic information to investors, which the SEC believes will improve the information's overall accessibility while reducing expenses associated with printing and mailing shareholder reports for funds, and, ultimately, for their investors.

Fact Sheets

A Fact Sheet is typically used as part of an ETF's marketing materials, providing an overview of the ETF, and is created on a monthly or quarterly basis. Fact Sheets are not filed on EDGAR, but still fall under FINRA compliance guidelines. They are not required to be distributed to shareholders but must be submitted to and approved by FINRA before being made public.

Web Posting of ETF Literature

The SEC requires web posting of Summary Prospectuses, Statutory Prospectuses, SAIs and other documents, following specific inter-document linking and bookmark requirements. The documents must be available on the public website and available for download and ordering by current or potential investors.

Updating Series Names, Class Names and Tickers on the SEC Portal

The SEC requires registrants to keep certain information up to date on the EDGAR system. This includes Series and Class Names, Ticker symbols and the status of each Series and Class (Active, Inactive, Liquidated, Merged). EdgarAgents is here to assist you with these tasks.

EdgarAgents is not a substitute for counsel and does not provide legal advice.

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ETF Handbook

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On September 26, 2019, the U.S. Securities and Exchange Commission ("SEC") approved Rule 6c-11 under the Investment Company Act of 1940 ("1940 Act") and related amendments to Form N-1A (and Form N-8B-2, if applicable) for exchange-traded funds ("Disclosure Amendments"). Rule 6c-11 ("ETF Rule") allows for index-based and actively-managed exchange-traded funds ("ETFs") so long as they comply with the ETF Rule's enumerated conditions, including providing full portfolio transparency.

The ETF Rule provides an exemption from Section 22(d) of the 1940 Act, which requires open-end fund shares to be purchased and sold only at net asset value ("NAV"), to allow ETF shares to be purchased and sold at secondary market prices. It also grants an exemption from the affiliated transaction provisions of the 1940 Act to permit persons, who are affiliated with an ETF by virtue of owning 5% or more of an ETF's shares (and their affiliates), to purchase and redeem ETF shares in-kind (i.e., in exchange for a basket of securities). It also grants an exemption from Section 22(e) of the 1940 Act, which generally requires open-end funds to honor redemption requests within seven days, to allow ETFs up to 15 days to deliver foreign investments in connection with in-kind redemptions of ETF shares.

The compliance date of the ETF Rule was December 23, 2020. As of such date, the SEC automatically rescinded exemptive orders previously granted to ETFs that may rely on the rule. The rescission, however, did not impact exemptive orders for ETFs that are structured as unit investment trusts, operate as a share class of a mutual fund or do not provide full portfolio transparency because such ETFs may not rely on the rule. Such ETFs continue today to rely on bespoke exemptive orders.

In addition, as adopted, the ETF Rule also did not impact exemptive orders for leveraged and inverse leveraged (also called "geared") ETFs because such ETFs were not permitted to rely on the ETF Rule. In connection with the adoption of Rule 18f-4 under the 1940 Act (the "Derivatives Rule"), however, the SEC amended the ETF Rule to allow leveraged and inverse leveraged ETFs to rely on it, provided that they comply with the Derivatives Rule, including its VaR-based leverage risk limit. Thus, today, most leveraged and inverse leveraged ETFs operate in reliance on the ETF Rule. To the extent any do not, including because they cannot comply with Rule 18f-4, they are permitted by Rule 18f-4 to continue to rely on their bespoke exemptive orders, so long as they were operational before October 28, 2020. The text of the ETF Rule provided in this Handbook reflects the amendment, permitting certain leveraged and inverse leveraged ETFs to operate in reliance on it. The SEC release extracts are from the adopting release for the ETF Rule and the adopting release for the Derivatives Rule, though the extract from the Derivatives Rule release is limited to that portion of the release directly addressing the amendment of the ETF Rule.

THE ETF RULE

§ 270.6c-11 Exchange-traded funds.

(a) *Definitions*.

(1) For purposes of this section:

Authorized participant means a member or participant of a clearing agency registered with the Commission, which has a written agreement with the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

Basket means the securities, assets or other positions in exchange for which an exchange-traded fund issues (or in return for which it redeems) creation units.

Business day means any day the exchange-traded fund is open for business, including any day when it satisfies redemption requests as required by section 22(e) of the Act (15 U.S.C. 80a-22(e)).

Cash balancing amount means an amount of cash to account for any difference between the value of the basket and the net asset value of a creation unit.

Creation unit means a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount if any.

Custom basket means:

(A) A basket that is composed of a non-representative selection of the exchange-traded fund's portfolio holdings; or

(B) A representative basket that is different from the initial basket used in transactions on the same business day.

Exchange-traded fund means a registered open-end management company:

(A) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and

(B) Whose shares are listed on a national securities exchange and traded at market-determined prices.

Exchange-traded fund share means a share of stock issued by an exchange-traded fund.

Foreign investment means any security, asset or other position of the ETF issued by a foreign issuer as that term is defined in § 240.3b-4 of this title, and that is traded on a trading market outside of the United States.

Market price means:

(A) The official closing price of an exchange-traded fund share; or

(B) If it more accurately reflects the market value of an exchange-traded fund share at the time as of which the exchange-traded fund calculates current net asset value per share, the price that is the midpoint between the national best bid and national best offer as of that time.

National securities exchange means an exchange that is registered with the Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

Portfolio holdings means the securities, assets or other positions held by the exchange-traded fund.

Premium or discount means the positive or negative difference between the market price of an exchange-traded fund share at the time as of which the current net asset value is calculated and the exchange-traded fund's current net asset value per share, expressed as a percentage of the exchange-traded fund share's current net asset value per share.

(2) Notwithstanding the definition of exchange-traded fund in paragraph (a)(1) of this section, an exchange-traded fund is not prohibited from selling (or redeeming) individual shares on the day of consummation of a reorganization, merger, conversion or liquidation, and is not limited to transactions with authorized participants under these circumstances.

(b) *Application of the Act to exchange-traded funds*. If the conditions of paragraph (c) of this section are satisfied:

(1) *Redeemable security*. An exchange-traded fund share is considered a "redeemable security" within the meaning of section 2(a)(32) of the Act (15 U.S.C. 80a-2(a)(32)).

(2) *Pricing*. A dealer in exchange-traded fund shares is exempt from section 22(d) of the Act (15 U.S.C. 80a-22(d)) and § 270.22c-1(a) with regard to purchases, sales and repurchases of exchange-traded fund shares at market-determined prices.

(3) *Affiliated transactions*. A person who is an affiliated person of an exchange-traded fund (or who is an affiliated person of such a person) solely by reason of the circumstances described in paragraphs (b)(3)(i) and (ii) of this section is exempt from sections 17(a)(1) and 17(a)(2) of the Act (15 U.S.C. 80a-17(a)(1) and (a)(2)) with regard to the deposit and receipt of baskets:

(i) Holding with the power to vote 5% or more of the exchange-traded fund's shares; or

(ii) Holding with the power to vote 5% or more of any investment company that is an affiliated person of the exchange-traded fund.

(4) *Postponement of redemptions*. If an exchange-traded fund includes a foreign investment in its basket, and if a local market holiday, or series of consecutive holidays, or the extended delivery cycles for transferring foreign investments to redeeming authorized participants prevents timely delivery of the foreign investment in response to a redemption request, the exchange-traded fund is exempt, with respect to the delivery of the foreign investment, from the prohibition in section 22(e) of the Act (15 U.S.C. 80a-22(e)) against postponing the date of satisfaction upon redemption for more than seven days after the tender of a redeemable security if the exchange-traded fund delivers the foreign investment as soon as practicable, but in no event later than 15 days after the tender of the exchange-traded fund shares.

(c) *Conditions*.

(1) Each business day, an exchange-traded fund must disclose prominently on its website, which is publicly available and free of charge:

(i) Before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares, the following information (as applicable) for each portfolio holding that will form the basis of the next calculation of current net asset value per share:

(A) Ticker symbol;

(B) CUSIP or other identifier;

(C) Description of holding;

(D) Quantity of each security or other asset held; and

(E) Percentage weight of the holding in the portfolio;

(ii) The exchange-traded fund's current net asset value per share, market price, and premium or discount, each as of the end of the prior business day;

(iii) A table showing the number of days the exchange-traded fund's shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);

(iv) A line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);

(v) The exchange-traded fund's median bid-ask spread, expressed as a percentage rounded to the nearest hundredth, computed by:

(A) Identifying the exchange-traded fund's national best bid and national best offer as of the end of each 10 second interval during each trading day of the last 30 calendar days;

(B) Dividing the difference between each such bid and offer by the midpoint of the national best bid and national best offer; and

(C) Identifying the median of those values; and

(vi) If the exchange-traded fund's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the exchange-traded fund's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount, which must be maintained on the website for at least one year thereafter.

(2) The portfolio holdings that form the basis for the exchange-traded fund's next calculation of current net asset value per share must be the ETF's portfolio holdings as of the close of business on the prior business day.

(3) An exchange-traded fund must adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets; *provided, however*, if the exchange-traded fund utilizes a custom basket, these written policies and procedures also must:

(i) Set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the exchange-traded fund and its shareholders, including the process for any revisions to, or deviations from, those parameters; and

(ii) Specify the titles or roles of the employees of the exchange-traded fund's investment adviser who are required to review each custom basket for compliance with those parameters.

(4) An exchange-traded fund that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time, must comply with all applicable provisions of §270.18f-4.

(d) *Recordkeeping*. The exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place:

(1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units;

(2) For each basket exchanged with an authorized participant, records setting forth:

(i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units;

(ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of this section;

(iii) Cash balancing amount (if any); and

(iv) Identity of authorized participant transacting with the exchange-traded fund.

An extracted version of the adopting release for the ETF Rule is reproduced for your reference. The full text of the adopting release can be accessed at: https://www.sec.gov/rules/final/2019/33-10695.pdf.

SEC RELEASE EXTRACT FROM THE ETF RULE

[…]

I. INTRODUCTION

The Commission is adopting rule 6c-11 under the Investment Company Act to permit ETFs that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order from the Commission under the Act. This rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.

The Commission approved the first ETF in 1992. Since then, ETFs registered with the Commission have grown to $3.32 trillion in total net assets.[2] They now account for approximately 16% of total net assets managed by investment companies,[3] and are projected to continue to grow.[4] ETFs currently rely on exemptive orders, which permit them to operate as investment companies under the Act, subject to representations and conditions that have evolved over time.[5] We have granted over 300 of these orders over the last quarter century, resulting in differences in representations and conditions that have led to some variations in the regulatory structure for existing ETFs.[6]

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2 This figure is based on data obtained from Bloomberg. As of December 2018, there were approximately 2,000 ETFs registered with the Commission.

3 ICI, 2019 Investment Company Fact Book (59th ed., 2019) ("2019 ICI Fact Book"), *available at* https://www.ici.org/pdf/2019_factbook.pdf, at 93. When the Commission first proposed a rule for ETFs in 2008, aggregate ETF assets were less than 7% of total net assets held by mutual funds. *See* Exchange-Traded Funds, Investment Company Act Release No. 28193 (Mar. 11, 2008) [73 FR 14618 (Mar. 18, 2008)] ("2008 ETF Proposing Release").

4 *See* Greg Tusar, *The evolution of the ETF industry,* Pension & Investments (Jan. 31, 2017), *available at* http://www.pionline.com/article/20170131/ONLINE/170139973/the-evolution-of-the-etf-industry (describing projections that ETF assets could reach $6 trillion by 2020).

5 As the orders are subject to the terms and conditions set forth in the applications requesting exemptive relief, references in this release to "exemptive relief" or "exemptive orders" include the terms and conditions described in the related application. *See, e.g.,* Barclays Global Fund Advisors, Investment Company Act Release Nos. 24394 (Apr. 17, 2000) [65 FR 21215 (Apr. 20, 2000)] (notice) and 24451 (May 12, 2000) (order) and related application.

6 In addition, since 2000, our ETF exemptive orders have provided relief for future ETFs. *See id.* This relief has allowed ETF sponsors to form ETFs without filing new applications to the extent that the new ETFs meet the terms and conditions set forth in the exemptive order. Applications granted before 2000, unless subsequently amended, did not include this relief.

On June 28, 2018, we proposed new rule 6c-11 under the Investment Company Act, which would simplify this regulatory framework by eliminating conditions included within our exemptive orders that we no longer believe are necessary for our exemptive relief and removing historical distinctions between actively managed and index-based ETFs.[7] We also proposed to rescind certain exemptive orders that have been granted to ETFs and their sponsors in order to level the playing field for ETFs that are organized as open-end funds and pursue the same or similar investment strategies.[8] In addition, the Commission proposed certain disclosure amendments to Form N-1A and Form N-8B-2 to provide investors additional information regarding ETF trading and associated costs, regardless of whether ETFs are organized as open-end funds or UITs. Finally, the Commission proposed related amendments to Form N-CEN.

We received more than 85 comment letters on the proposal.[9] As discussed in greater detail below, commenters were supportive of the adoption of an ETF rule and generally supported rule 6c-11 as proposed. Commenters did, however, recommend modifications or clarifications to certain aspects of the rule. For example, several commenters suggested expanding the scope of ETFs covered by the rule or the scope of certain exemptions.[10] Many commenters recommended modifications to

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7 *See* Exchange-Traded Funds, Investment Company Act Release No. 33140 (June 28, 2018) [83 FR 37332 (July 31, 2018)] ("2018 ETF Proposing Release").

8 Proposed rule 6c-11 did not include ETFs that: (i) are organized as UITs; (ii) seek to exceed the performance of a market index by a specified multiple or to provide returns that have an inverse relationship to the performance of a market index, over a fixed period of time; or (iii) are structured as a share class of a fund that issues multiple classes of shares representing interests in the same portfolio ("share class ETFs"). Under the proposal, these ETFs would continue to operate pursuant to the terms of their exemptive orders. Since that time, we have granted an exemptive order permitting certain ETFs that are actively managed to operate without being subject to the daily portfolio transparency condition included in other actively managed ETF orders ("non-transparent ETFs"). *See* Precidian ETFs Trust, *et al.,* Investment Company Act Release Nos. 33440 (Apr. 8, 2019) [84 FR 14690 (Apr. 11, 2019)] (notice) and 33477 (May 20, 2019) (order) and related application ("2019 Precidian"). Because these non-transparent ETFs do not provide daily portfolio transparency, they would not meet the conditions of rule 6c-11. We use the term "actively managed ETFs" in this release to refer to actively managed ETFs that provide daily portfolio transparency and "non-transparent ETFs" to refer to actively managed ETFs that do not.

9 The comment letters on the 2018 ETF Proposing Release (File No. S7-15-18) are available at https://www.sec.gov/comments/s7-15-18/s71518.htm.

10 *See, e.g.,* Comment Letter of BNY Mellon (Sept. 27, 2018) ("BNY Mellon Comment Letter") (suggesting the rule should cover all ETFs registered under the Investment Company Act); Comment Letter of Dechert LLP

the proposed rule's conditions, particularly relating to the timing and presentation of portfolio holdings information, the requirements related to custom baskets, the publication of basket information, and the availability of an intraday indicative value.[11] In addition, although commenters were largely supportive of our efforts to improve the information that ETFs disclose to investors about the trading costs of investing in ETFs, several commenters objected to the bid-ask spread disclosure requirements and the related interactive calculator.[12] Others recommended alternatives to the proposed format and placement of the trading cost disclosures.[13] Finally, commenters were largely supportive of our proposal to rescind certain exemptive orders that have been granted to ETFs and their sponsors and to replace such relief with rule 6c-11.[14]

After consideration of the comments we received, we are adopting rule 6c-11 and the proposed form amendments with several modifications that are designed to reduce the operational challenges that commenters identified, while maintaining protections for investors and providing investors with useful information regarding ETFs. As proposed, we also are rescinding the exemptive relief that we have issued to ETFs that fall within the scope of rule 6c-11, while retaining the exemptive relief granted to ETFs outside the scope of the rule. In addition, we are retaining

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(Sept. 28, 2018) ("Dechert Comment Letter") (suggesting that the Commission should provide ETFs with uniform exemptive relief from certain provisions of the Securities Exchange Act of 1934 (the "Exchange Act")).

11 *See, e.g.,* Comment Letter of the Asset Management Group of the Securities Industry and Financial Markets Association (Sept. 28, 2018) ("SIFMA AMG Comment Letter I") (relating to the timing and presentation of portfolio holdings and basket information); Comment Letter of the Investment Company Institute (Sept. 21, 2018) ("ICI Comment Letter") (relating to custom baskets); Comment Letter of Professor James G. Angel, Georgetown University (Oct. 1, 2018) ("Angel Comment Letter") (relating to intraday indicative values).

12 *See, e.g.,* Comment Letter of Independent Directors Council (Sept. 27, 2018) ("IDC Comment Letter"); Comment Letter of State Street Global Advisors (Oct. 1, 2018) ("SSGA Comment Letter I").

13 *See e.g.,* Comment Letter of The Vanguard Group, Inc. (Sept. 28, 2018) ("Vanguard Comment Letter"); Comment Letter of BlackRock, Inc. (Sept. 26, 2018) ("BlackRock Comment Letter"); IDC Comment Letter; Comment Letter of Fidelity Investments (Sept. 28, 2018) ("Fidelity Comment Letter").

14 *See, e.g.,* Comment Letter of Federal Regulation of Securities Committee, Business Law Section, American Bar Association (Oct. 11, 2018) ("ABA Comment Letter"); ICI Comment Letter; Comment Letter of Invesco Ltd. (Sept. 26, 2018) ("Invesco Comment Letter"). Exemptive orders granted to ETFs and their sponsors often include relief allowing funds to invest in other funds in excess of statutory limits. We did not propose to rescind that relief. *See infra* section II.G.

the exemptive relief allowing ETFs to enter into fund of funds arrangements. We believe that the resulting regulatory framework will level the playing field for ETFs that are organized as open-end funds and pursue the same or similar investment strategies.[15] The rule also will assist the Commission with regulating ETFs, as funds covered by the rule will no longer be subject to the varying provisions of exemptive orders granted over time. Furthermore, rule 6c-11 will allow Commission staff, as well as funds and advisers seeking exemptions, to focus exemptive relief on products that do not fall within the rule's scope.

The Commission will continue to monitor this large, diverse and important market. We welcome continued engagement with ETF sponsors, investors and other market participants on matters related to the ETF market, including with regard to ETFs that do not fall within the scope of rule 6c-11 and ETFs that may not function in a manner consistent with the expectations embodied in our regulatory framework.

A. Overview of Exchange-Traded Funds

ETFs are a type of exchange-traded product ("ETP").[16] ETFs possess characteristics of both mutual funds, which issue redeemable securities, and closed-end funds, which generally issue shares that trade at market-determined prices on a national securities exchange and are not redeemable.[17] Because ETFs have characteristics that

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15 Additionally, as discussed below in section II.B, the Commission is issuing an order granting an exemption from certain provisions of the Exchange Act and the rules thereunder for certain transactions in securities of ETFs that can rely on rule 6c-11. *See* Order Granting a Conditional Exemption from Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10; 15c1-5; 15c1-6; and 14e-5 for Certain Exchange Traded Funds, Release No. 34-87110 (September 25, 2019) ("ETF Exchange Act Order").

16 ETFs are investment companies registered under the Investment Company Act. *See* 15 U.S.C. 80a-3(a)(1). Other types of ETPs are pooled investment vehicles with shares that trade on a securities exchange, but they are not "investment companies" under the Act because they do not invest primarily in securities. Such ETPs may invest primarily in assets other than securities, such as futures, currencies, or physical commodities (*e.g.,* precious metals). Still other ETPs are not pooled investment vehicles. For example, exchange-traded notes are senior, unsecured, unsubordinated debt securities that are linked to the performance of a market index and trade on securities exchanges.

17 The Act defines "redeemable security" as any security that allows the holder to receive his or her proportionate share of the issuer's current net assets upon presentation to the issuer. 15 U.S.C. 80a-2(a)(32). While closed-end fund shares are not redeemable, certain closed-end funds may elect to repurchase their shares at periodic intervals pursuant to rule 23c-3 under the Act. Other closed-end funds may repurchase their shares in tender offers pursuant to rule 13e-4 under the Exchange Act.

distinguish them from the types of investment companies contemplated by the Act, they require exemptions from certain provisions of the Investment Company Act in order to operate. The Commission routinely grants exemptive orders permitting ETFs to operate as investment companies under the Investment Company Act, generally subject to the provisions of the Act applicable to open-end funds (or UITs).[18] The Commission also has approved the listing standards of national securities exchanges under which ETF shares are listed and traded.[19]

As discussed above, ETFs have become an increasingly popular investment vehicle over the last 27 years, providing investors with a diverse set of investment options.[20] They also have become a popular trading tool, making up a significant portion of secondary market equities trading. During the first quarter of 2019, for example, trading in U.S.-listed ETFs made up approximately 18.3% of U.S. equity trading by share volume and 27.2% of U.S. equity trading by dollar volume.[21]

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18 Historically, ETFs have been organized as open-end funds or UITs. *See* 15 U.S.C. 80a-5(a)(1) (defining the term "open-end company") and 15 U.S.C. 80a-4(2) (defining the term "unit investment trust").

19 Additionally, ETFs regularly request relief from 17 CFR 242.101 and 242.102 (rules 101 and 102 of Regulation M); section 11(d)(1) of the Exchange Act and 17 CFR 240.11d1-2 (rule 11d1-2 under the Exchange Act); and certain other rules under the Exchange Act (*i.e.,* 17 CFR 240.10b-10, 240.10b-17, 240.14e-5, 240.15c1-5, and 240.15c1-6 (rules 10b-10, 10b-17, 14e-5, 15c1-5, and 15c1-6)). *See* Request for Comment on Exchange-Traded Products, Exchange Act Release No. 75165 (June 12, 2015) [80 FR 34729 (June 17, 2015)] ("2015 ETP Request for Comment"), at section I.D.2 (discussing the exemptive and no-action relief granted to ETPs under the Exchange Act and the listing process for ETP securities for trading on a national securities exchange).

20 While the first ETFs held portfolios of securities that replicated the component securities of broad-based domestic stock market indexes, some ETFs now track more specialized indexes, including international equity indexes, fixed-income indexes, or indexes focused on particular industry sectors. Some ETFs *see*k to track highly customized or bespoke indexes, while others *see*k to providea level of leveraged or inverse exposure to an index over a predetermined period of time. The Commission historically has referred to ETFs that have stated investment objectives of maintaining returns that correspond to the returns of a securities index as "index-based" ETFs. Investors *also* have the ability to invest in ETFs that do not track a particular index and are actively managed. *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn. 18 – 20.

21 These estimates are based on trade and quote data from the New York Stock Exchange and Trade Reporting Facility data from FINRA.

Investors can buy and hold shares of ETFs (sometimes as a core component of a portfolio) or trade them frequently as part of an active trading or hedging strategy.[22] Because certain costs are either absent in the ETF structure or are otherwise partially externalized, many ETFs have lower operating expenses than mutual funds.[23] ETFs also may offer certain tax efficiencies compared to other pooled investment vehicles because redemptions from ETFs are often made in kind (that is, by delivering certain assets from the ETF's portfolio, rather than in cash), thereby avoiding the need for the ETF to sell assets and potentially realize capital gains that are distributed to its shareholders.

B. Operation of Exchange-Traded Funds

An ETF issues shares that can be bought or sold throughout the day in the secondary market at a market-determined price. Like other investment companies, an ETF pools the assets of multiple investors and invests those assets according to its investment objective and principal investment strategies. Each share of an ETF represents an undivided interest in the underlying assets of the ETF. Similar to mutual funds, ETFs continuously offer their shares for sale.

Unlike mutual funds, however, ETFs do not sell or redeem individual shares. Instead, "authorized participants" that have contractual arrangements with the ETF (or its distributor) purchase and redeem ETF shares directly from the ETF in blocks called "creation units."[24] An authorized participant may act as a principal for its own account when purchasing or redeeming creation units from the ETF. Authorized participants also may act as agent for others, such as market makers, proprietary trading firms, hedge funds or other institutional investors, and receive fees for processing creation units on their behalf.[25] Market makers, proprietary trading firms, and hedge funds provide additional liquidity to the ETF market through their trading

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22 *See, e.g.,* Chris Dieterich, *Are You An ETF 'Trader' Or An ETF 'Investor'?*, Barrons (Aug. 8, 2017), *available at* https://www.barrons.com/articles/are-you-an-etf-trader-or-an-etf-investor1470673638; Greenwich Associates, *Institutions Find New, Increasingly Strategic Uses for ETFs* (May 2012). ETF investors *also* can sell ETF shares short, write options on them, and set market, limit, and stop-loss orders on them.

23 For instance, ETFs typically do not bear distribution or shareholder servicing fees. In addition, ETFs that transact on an in-kind basis can execute changes in the ETF's portfolio without incurring brokerage costs, leading to transaction cost savings.

24 As discussed below, rule 6c-11(a)(1) defines "authorized participant" as a member or participant of a clearing agency registered with the Commission, which has a written agreement with the ETF or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

25 *See* David J. Abner, The ETF Handbook: How to Value and Trade Exchange Traded Funds, 2nd ed. (2016) ("ETF Handbook").

activity. Institutional investors may engage in primary market transactions with an ETF through an authorized participant as a way to efficiently hedge a portion of their portfolio or balance sheet or to gain exposure to a strategy or asset class.[26]

An authorized participant that purchases a creation unit of ETF shares directly from the ETF deposits with the ETF a "basket" of securities and other assets identified by the ETF that day, and then receives the creation unit of ETF shares in return for those assets.[27] The basket is generally representative of the ETF's portfolio,[28] and together with a cash balancing amount, it is equal in value to the aggregate net asset value ("NAV") of the ETF shares in the creation unit.[29] After purchasing a creation unit, the authorized participant may hold the individual ETF shares, or sell some or all of them in secondary market transactions.[30] Investors then purchase individual ETF shares in the secondary market. The redemption process is the reverse of the purchase process: the authorized participant redeems a creation unit of ETF shares for a basket of securities and other assets.

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26 *Id.*

27 An ETF may impose fees in connection with the purchase or redemption of creation units that are intended to defray operational processing and brokerage costs to prevent possible shareholder dilution ("transaction fees").

28 The basket might not reflect a pro rata slice of an ETF's portfolio holdings. Subject to the terms of the applicable exemptive relief, an ETF may substitute other securities or cash in the basket for some (or all) of the ETF's portfolio holdings. Restrictions related to flexibility in baskets have varied over time. *See infra* section II.C.4.c.

29 An open-end fund is required by law to redeem its securities on demand from shareholders at a price approximating their proportionate share of the fund's NAV at the time of redemption. *See* 15 U.S.C. 80a-22(d). 17 CFR 270.22c-1 ("rule 22c-1") generally requires that funds calculate their NAV per share at least once daily Monday through Friday. *See* rule 22c-1(b)(1). Today, most funds calculate NAV per share as of the time the major U.S. stock exchanges close (typically at 4:00 p.m. Eastern Time). Under rule 22c-1, an investor who submits an order before the 4:00 p.m. pricing time receives that day's price, and an investor who submits an order after the pricing time receives the next day's price. *See also* 17 CFR 270.2a-4 ("rule 2a-4") (defining "current net asset value").

30 ETFs register offerings of shares under the Securities Act, and list their shares for trading under the Exchange Act. Depending on the facts and circumstances, authorized participants that purchase a creation unit and sell the shares may be deemed to be participants in a distribution, which could render them statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. See 15 U.S.C. 77b(a)(11) (defining the term "underwriter").

The combination of the creation and redemption process with secondary market trading in ETF shares and underlying securities provides arbitrage opportunities that are designed to help keep the market price of ETF shares at or close to the NAV per share of the ETF.[31] For example, if ETF shares are trading on national securities exchanges at a "discount" (a price below the NAV per share of the ETF), an authorized participant can purchase ETF shares in secondary market transactions and, after accumulating enough shares to compose a creation unit, redeem them from the ETF in exchange for the more valuable redemption basket. The authorized participant's purchase of an ETF's shares on the secondary market, combined with the sale of the ETF's basket assets, may create upward pressure on the price of the ETF shares, downward pressure on the price of the basket assets, or both, bringing the market price of ETF shares and the value of the ETF's portfolio holdings closer together.[32] Alternatively, if ETF shares are trading at a "premium" (a price above the NAV per share of the ETF), the transactions in the arbitrage process are reversed and, when arbitrage is working effectively, keep the market price of the ETF's shares close to its NAV.

Market participants also can engage in arbitrage activity without using the creation or redemption processes. For example, if a market participant believes that an ETF is overvalued relative to its underlying or reference assets (*i.e.,* trading at a premium), the market participant may sell ETF shares short and buy the underlying or reference assets, wait for the trading prices to move toward parity, and then close out the positions in both the ETF shares and the underlying or reference assets to realize a profit from the relative movement of their trading prices.

Similarly, a market participant could buy ETF shares and sell the underlying or reference assets short in an attempt to profit when an ETF's shares are trading at a discount to the ETF's underlying or reference assets. As with the creation and redemption process, the trading of an ETF's shares and the ETF's underlying or reference assets may bring the prices of the ETF's shares and its portfolio assets closer together through market pressure.[33]

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31 The arbitrage mechanism for ETFs that would be subject to rule 6c-11 has been dependent on daily portfolio transparency.

32 As part of this arbitrage process, authorized participants are likely to hedge their intraday risk. For example, when ETF shares are trading at a discount to an estimated intraday NAV per share of the ETF, an authorized participant may short the securities composing the ETF's redemption basket. After the authorized participant returns a creation unit of ETF shares to the ETF in exchange for the ETF's basket assets, the authorized participant can then use the basket assets to cover its short positions.

33 Some studies have found the majority of all ETF-related trading activity takes place on the secondary market. *See, e.g.,* Rochelle Antoniewicz & Jane Heinrichs, *Understanding Exchange-Traded Funds: How ETFs Work,* ICI Research Perspective 20, No. 5 (Sept. 2014) ("Antoniewicz I"), *available at* https://www.ici.org/pdf/per20-05.pdf, at 2 ("On most trading days, the vast

The arbitrage mechanism is important because it provides a means to maintain a close tie between market price and NAV per share of the ETF, thereby helping to ensure ETF investors are treated equitably when buying and selling fund shares. In granting relief under section 6(c) of the Act for ETFs to operate, the Commission has relied on this close tie between what retail investors pay (or receive) in the secondary market and the ETF's approximate NAV to find that the required exemptions are necessary or 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.[34] Investors also have come to expect that an ETF's market price will maintain a close tie to the ETF's NAV per share, which may lead some investors to view ETFs or some types of ETFs more favorably than similar closed-end funds.[35] On the other hand, if the expectation of a close tie to NAV per share is not met, investors may sell or refrain from purchasing ETF shares.[36]

II. DISCUSSION

Given the growth in the ETF market, ETFs' popularity among retail and institutional investors, and our long experience regulating this investment vehicle, we believe that it is appropriate to adopt a rule that will allow most ETFs to operate without first obtaining an exemptive order from the Commission under the Act. We believe, and commenters on proposed rule 6c-11 generally agreed, that such a rule will help create a consistent, transparent, and efficient regulatory framework for the regulation of most ETFs and help level the playing field for these market participants.[37]

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majority of ETFs do not have any primary market activity — that is, they do not create or redeem shares."); 2019 ICI Factbook, *supra* footnote 3 ("On average, 90 percent of the total daily activity in ETFs occurs on the secondary market.").

34 *See* 15 U.S.C. 80a-6(c).

35 Scott W. Barnhart & Stuart Rosenstein, *Exchange-Traded Fund Introductions and Closed-End Fund Discounts and Volume,* 45 The Financial Review 4 (Nov. 2010) (within a year of the introduction of a similar ETF, the average discount widens significantly and volume falls significantly in U.S. domestic equity, international equity, and U.S. bond closed-end funds, which may indicate that closed-end funds lose some desirability when a substitute ETF becomes available). As of December 31, 2018, total net assets of ETFs were $3.4 trillion compared to $250 billion for closed-end funds. *See* 2019 ICI Fact Book, *supra* footnote 3.

36 *See* Staff of the Office of Analytics and Research, Division of Trading and Markets, *Research Note: Equity Market Volatility on August 24, 2015* (Dec. 2015) ("August 24 Staff Report"), *available at* https://www.sec.gov/marketstructure/research/equity_market_volatility.pdf.

37 *See, e.g.,* BlackRock Comment Letter; IDC Comment Letter; Fidelity Comment Letter; Angel Comment Letter; Comment Letter of Nasdaq, Inc. (Sept. 28, 2018) ("Nasdaq Comment Letter").

As adopted, rule 6c-11 will exempt ETFs organized as open-end funds from certain provisions of the Act and our rules. The exemptions will permit an ETF to: (i) redeem shares only in creation unit aggregations; (ii) permit ETF shares to be purchased and sold at market prices, rather than NAV; (iii) engage in in-kind transactions with certain affiliates; and (iv) in certain limited circumstances, pay authorized participants the proceeds from the redemption of shares in more than seven days.

These exemptions are subject to several conditions designed to address the concerns underlying the relevant statutory provisions and to support a Commission finding that the exemptions necessary to allow ETFs to operate are in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The conditions are based upon existing exemptive relief for ETFs, which we believe has served to support an efficient arbitrage mechanism, but reflect several modifications based on our experience regulating this product and commenters' input on the proposed rule.

- First, rule 6c-11 will require an ETF to disclose portfolio holdings each business day on its website before the opening of trading on the ETF's primary listing exchange in a standardized manner. The rule also will require daily website disclosure of the ETF's NAV, market price, premium or discount, and the extent and frequency of an ETF's premiums and discounts. These disclosures are designed to promote an effective arbitrage mechanism and inform investors about the risks of deviation between market price and NAV when deciding whether to invest in ETFs generally or in a particular ETF.

- In addition, the rule will require daily website disclosure of the ETF's median bid-ask spread over the last thirty calendar days. This requirement is designed to provide investors with additional information regarding potential costs associated with buying and selling ETF shares.

- With respect to baskets, the rule will require an ETF to adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets. The rule will allow ETFs to use "custom baskets" if their basket policies and procedures: (i) set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interest of the ETF and its shareholders, including the process for any revisions to, or deviations from, those parameters; and (ii) specify the titles or roles of the employees of the ETF's investment adviser who are required to review each custom basket for compliance with those parameters. As discussed below, these conditions will provide ETFs with additional basket flexibility, which we believe could benefit investors through more efficient arbitrage and narrower bid-ask spreads, subject to protections designed to address the risks that such flexibility may present.

- Rule 6c-11 also will include a condition that excludes an ETF that seeks, directly or indirectly, to provide investment returns over a predetermined period of time that: (i) correspond to the performance of a market index by

a specified multiple; or (ii) have an inverse relationship to the performance of a market index (including by an inverse multiple) ("leveraged/inverse ETFs").[38]

- An ETF also must retain certain records under rule 6c-11, including information regarding each basket exchanged with an authorized participant.

In order to harmonize the regulation of most ETFs, we are rescinding, one year after the effective date of rule 6c-11, those portions of our prior ETF exemptive orders that grant relief related to the formation and operation of an ETF, including certain master-feeder relief.[39] We are not rescinding the exemptive relief of UIT ETFs, leveraged/inverse ETFs, share class ETFs, and non-transparent ETFs, however, which are outside the scope of rule 6c-11. In addition, we are not rescinding the portions of our prior ETF exemptive orders allowing funds to invest in ETFs in excess of statutory limits in connection with this rulemaking and we are providing relief to allow newly formed ETFs to enter into certain fund of funds arrangements.[40]

Finally, we are adopting amendments to Forms N-1A and N-8B-2 to eliminate certain disclosures that we believe are no longer necessary and to require ETFs that do not rely on rule 6c-11 to provide secondary market investors with disclosures regarding certain ETF trading and associated costs. For example, the form amendments will require such an ETF to provide median bid-ask spread information either on its website or in its prospectus. We believe these amendments will provide investors who purchase ETF shares in secondary market transactions with information to better understand the total costs of investing in an ETF.

A. Scope of Rule 6c-11

1. Organization as Open-End Funds

As proposed, rule 6c-11 will define an ETF as a registered open-end management investment company that: (i) issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount (if

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38 *See infra* section II.A.3.

39 *See infra* sections II.F. and II.G. We are *also* amending approximately 200 ETF exemptive orders that automatically expire on the effective date of a rule permitting the operation of ETFs to give them time to make any adjustments necessary to rely on rule 6c-11.

40 *See infra* section II.G. In December 2018, we proposed new 17 CFR 270.12d1-4 (rule 12d1-4 under the Act) to streamline and enhance the regulatory framework applicable to fund of funds arrangements. *See* Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) [84 FR 1286 (Feb. 1, 2019)] (proposing release) ("FOF Proposing Release"). In connection with proposed rule 12d1-4, we *also* proposed to rescind the exemptive orders granting relief for certain fund of funds

any); and (ii) issues shares that are listed on a national securities exchange and traded at market-determined prices.[41] ETFs organized as UITs ("UIT ETFs") will continue operating pursuant to their exemptive orders, which include terms and conditions more appropriately tailored to address the unique features of a UIT.[42] Additionally, as proposed, our form amendments will require UIT ETFs to provide disclosures similar to those provided by other ETFs that are subject to the Investment Company Act.

We understand that most ETF sponsors prefer the open-end fund structure over the UIT structure given the increased investment flexibility the open-end structure affords.[43] For example, ETFs organized as open-end funds can be actively managed or use a "sampling" strategy to track an index.[44] An open-end ETF also may

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arrangements, including the relief from sections 12(d)(1)(A) and (B) that has been included in our ETF exemptive orders. *See id.* at nn.236-237 and accompanying text.

41 *See* rule 6c-11(a)(1). Under the rule, the term "basket" will be defined to mean the securities, assets, or other positions in exchange for which an ETF issues (or in return for which it redeems) creation units. The term "exchange-traded fund" thus will include ETFs that transact on an in-kind basis, on a cash basis, or both.

42 A UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities. *See* section 4(2) of the Act [15 U.S.C. 80a-4]. By statute, a UIT is unmanaged and its portfolio is fixed. Substitution of securities may take place only under certain pre-defined circumstances. A UIT does not have a board of directors, corporate officers, or an investment adviser to render advice during the life of the trust. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.A.1.

Unlike the exemptive relief we have granted to certain ETFs organized as open-end funds (*see supra* footnote 6), the relief we have granted to ETFs organized as UITs does not provide relief for future ETFs formed pursuant to the same order.

43 We have received very few exemptive applications for new UIT ETFs since 2002, and no new UIT ETFs have come to market in that time. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.A.1.

44 UIT ETFs *see*k to track the performance of an index by investing in the component securities of an index in the same approximate proportions as in the index (*i.e.,* "replicating" the index) rather than acquiring a subset of the underlying index's component securities or other financial instruments that the ETF's adviser believes will help the ETF track the underlying index (*i.e.,* "sampling" the index). In addition, because the exemptive relief granted to UIT ETFs does not provide relief from the portion of section 4(2) that requires UIT securities to represent an undivided interest in a unit of "specified securities," the investment strategies that a UIT ETF can pursue are limited. *See id.* at n.37.

participate in securities lending programs, has greater flexibility to reinvest dividends, and may invest in derivatives, which typically require a degree of management that is not provided for in the UIT structure.[45]

Commenters addressing this aspect of the proposal generally supported excluding UIT ETFs from the scope of rule 6c-11. These commenters stated that the structural and operational nuances associated with UIT ETFs would make their inclusion in rule 6c-11 impractical.[46] These commenters also generally agreed that existing UIT ETFs should continue to rely on their individual exemptive orders, and that the Commission should review new UIT ETFs as part of the exemptive order process. One commenter suggested, however, that the Commission consider potential updates to UIT ETFs' exemptive orders to account for certain sponsor services that were not contemplated at the time the orders were granted.[47]

After considering comments, we continue to believe that rule 6c-11 should apply only to ETFs organized as open-end funds, while UIT ETFs should continue to rely on their existing exemptive orders.[48] We acknowledge that excluding UIT ETFs will result in a segment of ETF assets outside the regulatory framework of rule 6c-11. However, we do not believe there is a need to include UIT ETFs within the scope of the rule given the limited sponsor interest in developing ETFs organized as UITs.

In addition, even if we were to include UIT ETFs within the scope of the rule, the unique structural and operational aspects of UIT ETFs noted by commenters would necessitate a regulatory framework that differs from the structure we are adopting for open-end ETFs. We believe that the unmanaged nature of the UIT structure, in

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45 *See* Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 31933 (Dec. 11, 2015) [80 FR 80883 (Dec. 28, 2015)] ("Derivatives Proposing Release"), at n.139.

46 *See, e.g.,* Invesco Comment Letter; SSGA Comment Letter I; Comment Letter of CFA Institute (Nov. 15, 2018) ("CFA Institute Comment Letter"); Comment Letter of Cboe Global Markets, Inc. (Oct. 1, 2018) ("Cboe Comment Letter") (stating that the "unique issue set applicable to UITs as compared to non-UIT ETFs warrant the disparate treatment between UITs and other ETFs.").

47 Invesco Comment Letter (stating that these services include chief compliance officer services and ongoing trading services). UIT ETFs have obtained exemptive relief from section 26(a)(2)(C) of the Act to allow the ETF to pay certain enumerated expenses. *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.52 and accompanying text.

48 The vast majority of ETFs currently in operation are organized as open-end funds, though the earliest ETFs were organized as UIT ETFs, and these early UIT ETFs represent a significant portion of the assets within the ETF industry. As of Dec. 31, 2018, the eight existing UIT ETFs had total assets of approximately $379 billion, representing approximately 11.3% of total assets invested in ETFs (based on data obtained from MIDAS, Bloomberg, and Morningstar Direct).

particular, would require conditions that differ from the conditions applicable to open-end ETFs. For example, rule 6c-11 will allow ETFs the flexibility to use baskets that differ from a *pro rata* representation of the ETF's portfolio if certain conditions are met.[49] Because such conditions require ongoing management and board oversight, we do not believe that extending such basket flexibility to UIT ETFs would be appropriate.[50] The relief granted to UIT ETFs also includes relief from sections of the Act that govern key aspects of a UIT's operations, which differ from the relief we are providing under rule 6c-11.[51] In short, we believe including UIT ETFs within the scope of rule 6c-11 would complicate the rule significantly and would continue to result in a regulatory framework where the relief and conditions applicable to UIT ETFs and open-end ETFs differ.

To the extent that ETF sponsors develop novel UIT ETFs, we believe that the Commission should review such products as part of its exemptive process to determine whether the relief is necessary or appropriate in the public interest and consistent with the protection of investors. We also believe that the Commission's exemptive process is well-suited to handle requests to modify existing UIT ETF exemptive relief.

Consistent with the proposal, we are not rescinding existing exemptive orders that allow UIT ETFs to operate. Two commenters addressing the exclusion of UIT ETFs from the rule urged the Commission to clarify that UIT ETFs operating pursuant to their exemptive orders can nevertheless continue marketing themselves as "ETFs."[52] As discussed below, the Commission is not limiting use of the term "ETF" or "exchange-traded fund" to funds relying on rule 6c-11. UIT ETFs therefore may continue to use these terms in their marketing materials and otherwise hold themselves out as "ETFs." Further, while UIT ETFs are excluded from the scope of rule 6c-11, we are adopting amendments to Form N-8B-2 that will require them to provide certain additional disclosures regarding ETF trading costs.[53]

2. Index-Based ETFs and Actively Managed ETFs

Consistent with the proposal, rule 6c-11 will provide exemptions for both index-based ETFs and actively managed ETFs, but will not by its terms establish different requirements based on whether an ETF's investment objective is to seek returns that correspond to the returns of an index. Index-based and actively

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49 *See infra* section II.C.4.c.

50 *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.46 – 48 and accompanying text.

51 *See, e.g.,* SPDR Trust, Series 1, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) [57 FR 43996 (Sept. 23, 1992)] (notice) and 19055 (Oct. 26, 1992) (order) and related application ("SPDR").

52 *See* SSGA Comment Letter I; SIFMA AMG Comment Letter I.

53 *See* Form N-8B-2 disclosure requirements *infra* section II.I.

managed ETFs that comply with the rule's conditions function similarly with respect to operational matters, despite different investment objectives or strategies. For example, both index-based and actively managed ETFs register under the Act, issue and redeem shares in creation unit sizes in exchange for baskets of assets, list on national securities exchanges, and allow investors to trade ETF shares throughout the day at market-determined prices in the secondary market.

The distinction between index-based ETFs and actively managed ETFs in our current exemptive orders is largely a product of ETFs' historical evolution. The Commission did not approve the first actively managed ETF until nearly 15 years after index-based ETFs were introduced[54]. Since 2008, however, the actively managed ETF market has grown considerably.[55] The Commission has observed how actively managed ETFs operate during this time, and has not identified any operational issues that suggest additional conditions for actively managed ETFs are warranted.

Commenters that addressed this aspect of the proposal supported the rule's elimination of the historical distinction between index-based and actively managed ETFs.[56] Specifically, commenters agreed that ETFs operate similarly irrespective of whether they are index-based or actively managed, and stated that there are no operational issues that warrant additional conditions for actively managed ETFs.[57]

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54 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.58. Approximately 100 exemptive orders have been issued since 2008 for actively managed, transparent ETFs.

55 Based on data obtained from MIDAS, Bloomberg and Morningstar Direct as of December 31, 2018, we estimate that there are now over 270 actively managed ETFs with approximately $72 billion in assets.

56 *See, e.g.,* ICI Comment Letter; Invesco Comment Letter; Comment Letter of the Index Industry Association (Sept. 30, 2018); Comment Letter of the Fixed Income Market Structure Advisory Committee (Oct. 29, 2018) ("FIMSAC Comment Letter"); Comment Letter of NYSE Arca, Inc. (Oct. 10, 2018) ("NYSE Arca Comment Letter"); CFA Institute Comment Letter; Comment Letter of J.P. Morgan Asset Management (Oct. 1, 2018) ("JPMAM Comment Letter").

57 *See, e.g.,* NYSE Arca Comment Letter; Comment Letter of WisdomTree Asset Management, Inc. (Oct. 1, 2018) ("WisdomTree Comment Letter"). As discussed in section II.C.4. *infra*, however, some commenters opposed, or suggested alternatives to, full portfolio transparency for actively managed ETFs.

We *also* received 43 comment letters requesting that the Commission approve an ETP with an investment objective that *see*ks results that correspond to the performance of bitcoins or other digital assets. *See, e.g.,* Comment Letter of Charles Brown (July 12, 2018); Comment Letter of Lars Hoffman (July 14, 2018). Rule 6c-11, however, is based on existing relief for ETFs relating to the formation and operation of ETFs under the Investment Company Act and does not relate to specific strategies. *See* Letter from Dalia Blass, Director

In addition, one commenter stated that, in its experience, deviations between market price and NAV per share are more variable across asset classes underlying ETFs than between index-based and actively managed ETFs investing in the same asset class.[58]

We continue to believe that index-based and actively managed ETFs do not present significantly different concerns under the provisions of the Act from which the rule grants relief because they function similarly with respect to operational matters. As noted below, the arbitrage mechanism for existing actively managed ETFs has worked effectively with small deviations between market price and NAV per share.[59] Permitting index-based and actively managed open-end ETFs to operate under the rule subject to the same conditions also will provide a level playing field among those market participants.

Furthermore, we believe that it would be unreasonable to create a meaningful distinction within the rule between index-based and actively managed ETFs given the proliferation of highly customized, often methodologically complicated indexes. Commenters agreed that the proliferation of these indexes has blurred the distinction between index-based and actively managed ETFs, while ETF industry practices in areas such as portfolio transparency generally do not vary between these types of funds.[60] We therefore believe that eliminating the regulatory distinction between index-based ETFs and actively managed ETFs for purposes of exemptive relief under the Act will help to provide a more consistent and transparent regulatory framework for ETFs organized as open-end funds. This approach is consistent with our regulation of other types of open-end funds, which does not distinguish between actively managed and index-based strategies.

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of Investment Management, to Paul Schott Stevens, President and CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group — Head, Securities Industry and Financial Markets Association (Jan. 18, 2018), *available at* http://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm (noting that in the staff's view ETFs and other funds that hold substantial amounts of cryptocurrencies and related products raise significant questions regarding how they would satisfy certain other requirements of the Investment Company Act and its rules). The Commission continues to welcome engagement with the public on issues related to cryptocurrency ETPs.

58 *See* JPMAM Comment Letter ("[O]ur active ETFs trade with similar, and at times lower, deviations than our index ETFs; all of them typically trade within 50 basis points of their NAVs.").

59 *See supra* section II.B.2.

60 *See* FIMSAC Comment Letter ("[I]ndustry participants note that distinctions between active and passive products... are increasingly blurred with the advent of 'smart beta' or factor products, or of index products with active elements...);

In addition, consistent with our proposal, rule 6c-11 does not include additional conditions relating to index-based ETFs with affiliated index providers ("self-indexed ETFs"). Commenters generally agreed with the proposal's approach to self-indexed ETFs, indicating that existing securities laws adequately address any special concerns presented by these ETFs.[61] One commenter, however, noted that the concerns that were expressed by the Commission when it granted individualized exemptive relief for self-indexed ETFs remain important.[62] This commenter stated that the Commission should permit self-indexed ETFs only "on the condition that [an information] firewall between the index provider and the asset manager exists."[63]

We agree with the commenters who stated that the existing federal securities laws adequately address any special concerns that self-indexed ETFs present, including the potential ability of an affiliated index provider to manipulate an underlying index to the benefit or detriment of a self-indexed ETF.[64] For example, ETF sponsors are

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JPMAM Comment Letter ("[A]s the proposal notes, practices around portfolio transparency have converged across index-based and actively managed ETFs.").

61 *See* Invesco Comment Letter; BlackRock Comment Letter; IIA Comment Letter; JPMAM Comment Letter; SSGA Comment Letter ("[C]urrent regulatory requirements..... effectively require a heightened set of requirements associated with affiliated index providers…"); WisdomTree Comment Letter ("Advisers are already required to adopt policies designed to prevent portfolio information from being misappropriated.").

62 *See* Morningstar Comment Letter. *See also* Guggenheim Funds Investment Advisors, LLC, et al., Investment Company Act Release Nos. 30560 (June 14, 2013) [78 FR 37614 (June 21, 2013)] (notice) and 30598 (July 10, 2013) (order) and related application ("Guggenheim Funds") (discussing concerns regarding the ability of an affiliated index provider to manipulate an underlying index to the benefit or detriment of a self-indexed ETF and the potential for conflicts that may arise with respect to the personal trading activity of an affiliated index provider's personnel). Guggenheim Funds permitted a self-indexed ETF to address these concerns through full portfolio transparency, instead of certain policies and procedures that had been required in earlier exemptive orders for self-indexed ETFs. *But see, e.g.,* HealthShares Inc., *et al.,* Investment Company Act Release Nos. 27916 (July 27, 2007) [72 FR 42447 (Aug. 2, 2007)] (notice) and 27930 (Aug. 20, 2007) (order) and related application.

63 *See* Morningstar Comment Letter.

64 *See* 17 CFR 270.38a-1 (rule 38a-1 under the Act) (requiring funds to adopt policies and procedures reasonably designed to prevent violation of federal securities laws); 17 CFR 270.17j-1(c)(1) (rule 17j-1(c)(1) under the Investment Company Act) (requiring funds to adopt a code of ethics containing provisions designed to prevent certain fund personnel ("access persons") from misusing information regarding fund transactions); section 204A of the Investment

likely to be in a position to understand the potential circumstances and relationships that could give rise to the misuse of non-public information, and can develop appropriate measures to address them. Therefore, we continue to believe that portfolio transparency combined with existing requirements should be sufficient to protect against the abuses addressed in exemptive applications of ETF sponsors that either use affiliated index providers or create their own indexes.[65]

3. Leveraged/Inverse ETFs

As proposed, rule 6c-11 includes a condition that excludes leveraged/inverse ETFs.[66] These ETFs may not rely on the rule, and will instead continue to operate pursuant to their exemptive orders.[67] Broadly speaking, leveraged/inverse ETFs seek to amplify the returns of an underlying index by a specified multiple or to profit from a decline in the value of an underlying index over a predetermined period of time using financial derivatives. Leveraged/inverse ETFs also rebalance their portfolios on a daily or other periodic basis in order to maintain a constant leverage ratio.[68] These funds' use of leverage together with this periodic rebalancing (or "reset"), and the resulting effects of compounding, can result in performance that differs significantly from some investors' expectations of how index investing generally works.

Advisers Act of 1940 ("Advisers Act") (15 U.S.C. 80b-204A) (requiring an adviser to adopt policies and procedures that are reasonably designed, taking into account the nature of its business, to prevent the misuse of material, non-public information by the adviser or any associated person, in violation of the Advisers Act or the Exchange Act, or the rules or regulations thereunder); section 15(g) of the Exchange Act (15 U.S.C. 78o(f)) (requiring a registered broker or dealer to adopt policies and procedures reasonably designed, taking into account the nature of the broker's or dealer's business, to prevent the misuse of material, nonpublic information by the broker or dealer or any person associated with the broker or dealer, in violation of the Exchange Act or the rules or regulations thereunder).

Cf., e.g., Rule Commentary .02(b)(i) of NYSE American Rule 1000A (requiring a "fire wall" between an ETF and an affiliated index provider).

65 *See infra* section II.C.4. (discussing requirements in rule 6c-11 regarding portfolio transparency).

66 *See* rule 6c-11(c)(4).

67 As of December 2018, 167 ETFs employed leveraged or inverse investment strategies. These ETFs had total net assets of $29.64 billion or approximately 1% of all ETF assets.

68 *See* Rafferty Asset Management, LLC, *et al.,* Investment Company Act Release Nos. 28889 (Aug. 27, 2009) [74 FR 45495 (Sept. 2, 2009)] (notice) and 28905 (Sept. 22, 2009) (order) and related application (amending the applicant's prior order) ("Rafferty II") (providing a description of maintaining a stated ratio to an underlying index as a daily investment objective).

For example, as a result of compounding, a leveraged/inverse ETF can outperform a simple multiple of its index's returns over several days of consistently positive returns, or underperform a simple multiple of its index's returns over several days of volatile returns.[69] Investors holding shares over periods longer than the time period targeted by the ETF's investment objective may experience performance that is different, and at times substantially different, from the returns of the targeted index over the same investment period. Buy-and-hold investors with an intermediate or long-term time horizon that invest in a leveraged/inverse ETF — who may not evaluate their portfolios frequently — may experience large and unexpected losses or otherwise experience returns that are different from what they anticipated.[70] As a result, leveraged/inverse ETFs are complex products that serve a markedly different investment purpose than most other ETFs.[71]

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69 *See* Office of Investor Education and Advocacy, SEC, *Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors* Investor Alert and Bulletins (Aug. 1, 2009), *available at* http://www.sec.gov/investor/pubs/leveragedetfs-alert.htm; FINRA, *Non-Traditional ETFs: FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds,* Regulatory Notice 09-31 (June 2009), *available at* http://www.finra.org/sites/default/files/NoticeDocument/p118952.pdf ("FINRA Regulatory Notice 09-31").

70 *See* FINRA Regulatory Notice 09-31, *supra* footnote 69 (reminding member firms of their sales practice obligations relating to leveraged/inverse ETFs and noting that leveraged/inverse ETFs are typically not suitable for retail investors who plan to hold these products for more than one trading session).

71 *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)] at n.39 and accompanying text ("[I]nverse or leveraged exchange-traded products that are designed primarily as short-term trading tools for sophisticated investors may not be in the best interest of a retail client absent an identified, short-term, client-specific trading objective and, to the extent that such products are in the best interest of a retail client initially, they would require daily monitoring by the adviser"). *See also* Regulation Best Interest, Exchange Act Release No. 86031 (June 5, 2019) [84 FR 33318 (July 12, 2019)] at text accompanying n.596 (stating that broker-dealers recommending leveraged or inverse exchange-traded products with a daily reset should understand that such products may not be suitable for, and as a consequence *also* not in the best interest of, retail customers who plan to hold them for longer than one trading session, particularly in volatile markets); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Nasdaq Rules 5705 and 5710 to Adopt a Disclosure Requirement for Certain Securities, Exchange Act Release No. 85362 (Mar. 19, 2019) [84 FR 11148 (Mar. 25, 2019)] (adopting certain disclosure requirements for leveraged/inverse ETFs).

Leveraged/inverse ETFs' use of derivatives also raises issues under section 18 of the Act, which limits a fund's ability to obtain leverage.[72] The Commission has been evaluating these section 18 issues as part of a broader consideration of derivatives use by registered funds and business development companies ("BDCs").[73] We therefore proposed to exclude leveraged/inverse ETFs from the scope of rule 6c-11 so that the Commission could consider these concerns in a comprehensive manner with other funds that use leverage.[74] We also proposed to allow leveraged/inverse ETFs and their sponsors to continue to rely on their existing exemptive relief in order to preserve the status quo.[75]

Most commenters who addressed this aspect of the proposal agreed that leveraged/inverse ETFs present issues and concerns that should be addressed outside the context of rule 6c-11.[76] One such commenter stated that leveraged/inverse ETFs present "highly specific and accentuated risks" and stated that the

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72 15 U.S.C. 80a-18.

73 *See* Derivatives Proposing Release, *supra* footnote 45 (proposing new rule 18f-4 under the Act, which was designed to address the investor protection purposes and concerns underlying section 18 of the Act and to provide an updated and more comprehensive approach to the regulation of funds' (including leveraged/inverse ETFs') use of derivatives transactions).

74 Proposed rule 6c-11 would have provided that an ETF relying on the rule "may not *see*k, directly or indirectly, to provide returns that exceed the performance of a market index by a specified multiple, or to provide returns that have an inverse relationship to the performance of a market index, over a fixed period of time." *See* proposed rule 6c-11(c)(4).

75 The staff has not supported new exemptive relief for leveraged/inverse ETFs since 2009. The orders issued to current leveraged/inverse ETF sponsors, as amended over time, relate to leveraged/inverse ETFs that *see*k daily investment results of up to 300% of the return (or inverse of the return) of the underlying index. Rydex ETF Trust, *et al.,* Investment Company Act Release Nos. 27703 (Feb. 20, 2007) [72 FR 8810 (Feb. 27, 2007)] (notice) and 27754 (Mar. 20, 2007) (order) and related application; Rafferty Asset Management, LLC, *et al.,* Investment Company Act Release Nos. 28379 (Sept. 12, 2008) [73 FR 54179 (Sept. 18, 2008)] (notice) and 28434 (Oct. 6, 2008) (order) and related application ("Rafferty I"). *See also* ProShares Trust, *et al.,* Investment Company Act Release Nos. 28696 (Apr. 14, 2009) [74 FR 18265 Apr. 21, 2009)] (notice) and 28724 (May 12, 2009) (order) and related application (amending the applicant's prior order) ("ProShares"); Rafferty II, *supra* footnote 68.

76 *See* BlackRock Comment Letter; Invesco Comment Letter; SSGA Comment Letter I; Comment Letter of ICE Data Services (Oct. 1, 2018) ("IDS Comment Letter"); FIMSAC Comment Letter; CFA Institute Comment Letter; *see also* Cboe Comment Letter (indicating that these ETFs should be "treated differently" but not specifically stating whether such ETFs should be excluded from the scope of the rule).

Commission should regulate these products under tailored exemptive orders.[77] Other commenters urged the Commission to consider additional investor protection requirements for leveraged/inverse ETFs, such as requiring marketing materials to notify retail investors about the risks of investing in these instruments or other enhanced disclosure requirements.[78] Some commenters stated that the Commission should not permit leveraged/inverse ETFs to use the terms "ETF" or "exchange-traded fund" in their names, because investors might mistakenly assume that all products referred to as ETFs are structured and regulated like "traditional" ETFs.[79]

Other commenters were less specific as to whether the Commission should regulate leveraged/inverse ETFs under exemptive orders or through a separate rule, but stated that leveraged/inverse ETFs should be regulated by means other than rule 6c-11.[80] One commenter agreed that leveraged/inverse ETFs "raise important disclosure and investor protection issues," but strongly encouraged the Commission to "initiate proceedings, whether as part of its consideration of derivative usage or otherwise, to determine what its future approach" to leveraged/inverse ETFs will be.[81]

Sponsors of leveraged/inverse ETFs, however, advocated that the rule should not exclude leveraged/inverse ETFs. They asserted that leveraged/inverse ETF investors understand the special concerns related to these products, accept the products' risks, and utilize the products appropriately.[82] One of these commenters stated that the rule's exemptive relief targets ETFs' structural and operational characteristics,

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77 *See* Invesco Comment Letter.

78 *See* CFA Institute Comment Letter; Nasdaq Comment Letter (stating that there is significant investor confusion regarding existing leveraged/inverse ETFs' daily investment horizon). *See also* Comment Letter of Rafferty Asset Management, LLC (Oct. 1, 2018) ("Direxion Comment Letter") (supporting enhanced disclosure requirements for leveraged/inverse ETFs if reliance on rule 6c-11 is allowed for the operation of leveraged/inverse ETFs).

79 *See* BlackRock Comment Letter; FIMSAC Comment Letter.

80 *See* SSGA Comment Letter I ("Leveraged ETFs... present issues which are appropriately addressed through means other than the Proposed ETF Rule."); IDS Comment Letter ("IDS believes that leveraged and inverse ETFs strategies carry significantly different risk profiles than index-based ETFs. For that reason we agree that they should be excluded from the scope of funds that may rely on the proposed rule.").

81 Comment Letter of the Mutual Fund Directors Forum (Oct. 1, 2018) ("MFDF Comment Letter").

82 *See* Direxion Comment Letter ("Given [certain data findings and educational efforts by regulators, brokerage firms, and the ETFs themselves] we believe it would be hard for investors *not* to understand that our leveraged ETFs are complex products that are 'different' from other ETFs, and we have not *see*n any recent empirical data or other evidence to the contrary."); Comment Letter of ProShare Advisors LLC (Oct. 1, 2018) ("ProShares Comment Letter").

and that leveraged/inverse ETFs are structured and operated in the same manner as other ETFs within the rule's scope.[83] Among other similarities, the commenter noted that leveraged/inverse ETFs are structured as open-end funds, provide full portfolio transparency, and accept creation and redemption baskets using the same operating mechanisms as other ETFs. The commenter also opined that leveraged/inverse ETFs should not be excluded from the scope of the rule because other ETFs that utilize leverage in their investment strategies are not excluded from the scope of the rule.

Another commenter did not object to excluding leveraged/inverse ETFs from rule 6c-11, but opined that the proposed rule's condition excluding leveraged/inverse ETFs was overly broad, potentially capturing ETFs that have an inverse relationship to the performance of a market index or ETFs that use other hedging strategies to reduce risk.[84] This commenter also asked the Commission to confirm that the exclusion would not, in effect, apply to every ETF that seeks to track an index that includes derivatives. Additionally, several commenters did not specifically address leveraged/inverse ETFs, but generally stated that rule 6c-11 should apply across all ETFs registered under the Investment Company Act to create an even playing field.[85]

After considering these comments, we have determined to include a condition that prevents leveraged/inverse ETFs from relying on the rule.[86] Although leveraged/inverse ETFs are structurally and operationally similar to other types of ETFs within the scope of rule 6c-11, we believe it is premature to permit sponsors to form and operate leveraged/inverse ETFs in reliance on the rule without first addressing the investor protection purposes and concerns underlying section 18 of the Act. We therefore believe that the Commission should complete its broader consideration of the use of derivatives by registered funds before considering allowing leveraged/inverse ETFs to rely on the rule.

Given that rule 6c-11 is intended to help create a consistent regulatory framework for ETFs and a level playing field among ETF sponsors, we acknowledge that excluding leveraged/inverse ETFs from the rule's scope and permitting existing leveraged/inverse ETFs to continue to operate pursuant to their exemptive orders at this time delays, in part, achieving those goals. However, because leveraged/inverse ETFs raise policy considerations that are different from those we seek to address in the rule, we believe rule 6c-11 should exclude leveraged/inverse ETFs.

As adopted, rule 6c-11 will exclude ETFs that seek to provide leveraged or inverse investment returns over a predetermined period of time. The periodic reset that such strategies necessitate distinguish leveraged/inverse ETFs from other types of ETFs that may use leverage. In the proposal we did not specify the period of time over which

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83 *See* ProShares Comment Letter.

84 *See* Cboe Comment Letter (stating that the exclusion should cover only those inverse ETFs that *see*k to provide returns that exceed the performance of a market index by a "specified inverse multiple").

85 *See, e.g.,* BNY Mellon Comment Letter.

86 *See* Rule 6c-11(c)(4).

an ETF had to seek to deliver a leveraged or inverse return of an index to be covered by the proposed rule's leveraged/inverse ETF exclusion, and we similarly decline to specify a period of time here.[87] However, the condition relating to leveraged/inverse ETFs continues to include a temporal element (*i.e.,* "over a predetermined period of time") in order to specifically capture ETFs that seek to deliver the leveraged or inverse return of a market index over a set period of time, daily or otherwise.[88]

In addition, while the rule uses the term "multiple," leveraged/inverse ETFs with strategies that seek directionally leveraged or inverse returns of an index present the investor protection concerns discussed above regardless of whether the amplification factor or inverse factor is evenly divisible by 100 (*e.g.,* a fund that seeks to provide a daily investment return equal to 150% of the performance of an index). Thus, to clarify the rule's use of the term "multiple," leveraged/inverse ETFs are excluded from the scope of the rule regardless of whether the returns they seek over a predetermined time period are evenly divisible by 100.[89] The exclusion also includes strategies that pursue a specified range of a multiple or inverse multiple of an index's performance (*e.g.,* 200% to 300% of an index's performance or -200% to -300% of an index's performance). This approach is consistent with our existing exemptive orders and will capture those ETFs that have historically been considered "leveraged/inverse ETFs" in the marketplace.

We also continue to believe that it is important to specify that an ETF relying on the rule may not *indirectly* seek to provide investment returns that correspond to the performance of a market index by a specified multiple or to provide returns that have an inverse relationship to the performance of a market index over a predetermined period of time in order to prevent a fund from circumventing this condition, such as by embedding leverage in the underlying index.[90] For example,

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87 *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.A.3.

88 *See* rule 6c-11(c)(4). The current exemptive orders that allow leveraged/inverse ETFs contemplate a daily reset, because the orders relate to ETFs that pursue daily investment objectives. *See* 2018 ETF Proposing Release, *supra* footnote 7 at n.77 and related discussion. Proposed rule 6c-11 used the term "fixed period of time" to prevent both these ETFs and leveraged/inverse ETFs contemplating non-daily resets (*e.g.,* weekly or monthly resets) from relying on the rule. *See* proposed rule 6c-11(c)(4). Rule 6c-11 as adopted uses the term "predetermined period of time" to clarify that leveraged/inverse ETFs contemplating predetermined but variable resets (*e.g.,* leveraged/inverse ETFs that contemplate a range of daily-to-weekly resets) are similarly prohibited from relying on the rule.

89 Additionally, though a strict mathematical interpretation of the term "multiple" may include a multiple of 100%, an ETF that simply *see*ks to track the performance of an index is not considered "leveraged" for these purposes and may rely on the rule. *But see infra* footnotes 90-91 and accompanying text.

90 Rule 6c-11(c)(4) (emphasis added). *See also* 2018 ETF Proposing Release, *supra* footnote 7, at text following n.82.

an ETF could not circumvent the rule's conditions and rely on the rule to track an index if the index itself tracks 300% or -100% of the performance of the S&P 500.[91] In response to commenter concerns discussed above, however, this does not mean that the exclusion would apply to every ETF that tracks an index with constituents that are derivatives.[92] Whether a particular index is "leveraged" would depend on the economic characteristics of the index's constituents, and not just on whether some or all of the constituents are derivatives.

Finally, we are not adopting enhanced website or other disclosure requirements for leveraged/inverse ETFs at this time as some commenters had recommended. We believe all registered funds that pursue leveraged or inverse strategies raise similar disclosure issues. We therefore believe that the Commission should address any such potential disclosure issues separately for all leveraged/inverse registered funds.

B. Exemptive Relief under Rule 6c-11

Rule 6c-11 will provide ETFs that fall within the scope of the rule exemptive relief from certain provisions of the Act that are necessary to allow ETFs to operate. These exemptions are consistent with the relief we have given to ETFs under our exemptive orders.[93] As discussed below in section II.C., the exemptions will be subject to conditions that are designed to address the concerns underlying the relevant statutory provisions and to support a Commission finding that the exemptions are in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.[94]

1. Treatment of ETF Shares as "Redeemable Securities"

Consistent with our proposal, ETFs relying on rule 6c-11 will be considered to issue a "redeemable security" within the meaning of section 2(a)(32) of the Act.[95] ETFs have features that distinguish them from both traditional open-end and closed-end funds. A defining feature of open-end funds is that they offer redeemable securities, which allow the holder to receive his or her proportionate share of the fund's NAV

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91 The exemptive orders that we have issued to sponsors of leveraged/inverse ETFs do not provide relief to ETFs described as *see*king investment returns that correspond to the performance of a leveraged or inverse leveraged market index over a predetermined period of time. *See supra* footnote 75.

92 *See supra* footnote 84 and following text.

93 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.88 and related discussion. Our exemptive orders *also* provide relief allowing certain types of funds to invest in ETFs beyond the limits of section 12(d)(1) of the Act. *See infra* section II.F. (discussing our treatment of master-feeder relief) and section II.G. (discussing our treatment of other relief for fund investments in ETFs).

94 *See* 15 U.S.C. 80a-6(c).

95 Rule 6c-11(b)(1).

per share upon presentation of the security to the issuer. Although individual ETF shares cannot be redeemed, except in limited circumstances, they can be redeemed in creation unit aggregations.[96] Therefore, we believe that ETF shares are most appropriately classified under the final rule as redeemable securities within the meaning of section 2(a)(32), and that ETFs should be regulated as open-end funds within the meaning of section 5(a)(1) of the Act.[97]

Unlike our exemptive orders, which have provided exemptions from the definitions of "redeemable security" in section 2(a)(32) and "open-end company" in section 5(a)(1), rule 6c-11 will not provide exemptions from these definitions. Instead, we believe that it is more appropriate for the rule to address these questions of status by classifying ETF shares as "redeemable securities." Thus, any ETF that relies on the rule's conditions and requirements will be subject to requirements imposed under the Act and our rules that apply to open-end funds.[98]

In addition, the rules under the Exchange Act that apply to transactions in redeemable securities issued by an open-end fund will apply to ETFs relying on rule 6c-11.[99] Shares issued by ETFs relying on rule 6c-11 therefore are eligible for the "redeemable securities" exceptions in rules 101(c)(4) and 102(d)(4) of Regulation M and rule 10 b-17(c) under the Exchange Act in connection with secondary market

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96 *See* rule 6c-11(a)(1) (defining an exchange-traded fund, in part, as a registered open-end management company that issues and redeems its shares in creation units). The rule defines "creation unit" to mean a specified number of ETF shares that the ETF will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount (if any). *See* rule 6c-11(a)(1). *See also infra* section II.C.1. (discussing circumstances where ETF shares can be individually redeemed).

97 15 U.S.C. 80a-2(a)(32) (defining "redeemable security"); 15 U.S.C. 80a-5(a)(1) (defining "open-end company" as "a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer"). If ETF shares were not classified as redeemable securities within the meaning of section 2(a)(32) of the Act, an ETF that is a management company (as defined under the Act) would be subject to the provisions of the Act applicable to closed-end funds. *See* 15 U.S.C. 80a-5(a)(2) (defining a "closed-end company" as any management company other than an open-end company).

98 *See, e.g.,* 15 U.S.C. 80a-22; 17 CFR 270.22c-1. ETFs that are management companies and operate in reliance on rule 6c-11 and those that operate in reliance on an exemptive order would equally be subject to the Act and our rules as open-end funds.

99 *See, e.g.,* 17 CFR 240.15c3-1. *See also* Securities Transaction Settlement Cycle, Exchange Act Release No. 80295 (Mar. 22, 2017) [82 FR 15564 (Mar. 29, 2017)] (shortening the standard settlement cycle for most broker-dealer securities transactions to two business days).

transactions in ETF shares and the creation or redemption of creation units. ETFs relying on rule 6c-11 similarly will qualify for the "registered open-end investment company" exemption in rule 11d1-2 under the Exchange Act.

Many commenters supported our proposed classification of ETF shares as "redeemable securities."[100] Commenters also supported our view that the arbitrage mechanism that is central to the operation of an ETF (and the conditions in the final rule designed to facilitate an effective arbitrage mechanism) serves to keep the market price of ETF shares at or close to the ETF's NAV per share.[101] As a result, even though only authorized participants may redeem creation units at NAV per share, commenters agreed that investors are able to sell their ETF shares on the secondary market at or close to NAV, similar to investors in an open-end fund that redeem their shares at NAV per share.[102]

Commenters also supported the resulting eligibility for the redeemable securities exceptions and the registered open-end investment company exemption under the Exchange Act rules discussed above.[103] Commenters stated that such treatment would reduce regulatory complexity and eliminate potential inconsistencies between rule 6c-11 and this Exchange Act relief.[104] Several commenters recommended extending the "redeemable security" classification to ETFs that are not eligible to rely on rule 6c-11, such as UIT ETFs or share class ETFs, to make them similarly eligible for the exceptions under the Exchange Act that apply to redeemable securities issued by an open-end fund.[105]

After considering comments, we are clarifying that we view securities of all ETFs, including those that do not rely on rule 6c-11, as eligible for the redeemable securities exceptions in rules 101(c)(4) and 102(d)(4) of Regulation M and rule 10b-17(c) under the Exchange Act in connection with secondary market

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100 *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; Comment Letter of the Asset Management Group of the Securities Industry and Financial Markets Association (Feb. 22, 2019) ("SIFMA AMG Comment Letter II"); Vanguard Comment Letter; SSGA Comment Letter; Comment Letter of Virtu Financial, Inc. (Oct. 3, 2018) (Virtu Comment Letter"); Comment Letter of Eaton Vance Corp. (Oct. 4, 2018) ("Eaton Vance Comment Letter"); ABA Comment Letter.

101 *See, e.g.,* ICI Comment Letter. *See also* 2018 ETF Proposing Release, *supra* footnote 7, at n.95 and related discussion.

102 *See, e.g.,* ICI Comment Letter; Virtu Comment Letter.

103 *See, e.g.,* Dechert Comment Letter; BlackRock Comment Letter; Invesco Comment Letter I; ABA Letter.

104 *See, e.g.,* Vanguard Comment Letter; Dechert Comment Letter; WisdomTree Comment Letter; ABA Comment Letter; SIFMA AMG Comment Letter I.

105 *See* ICI Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter I; Vanguard Comment Letter; SSGA Comment Letter I; ABA Comment Letter; BlackRock Comment Letter.

transactions in ETF shares and the creation or redemption of creation units and the exemption in rule 11d1-2 under the Exchange Act for securities issued by a registered open-end investment company or unit investment trust. We believe that securities issued by ETFs that are exempt from the definitions of "redeemable security" in section 2(a)(32) and "open-end company" in section 5(a)(1) of the Investment Company Act pursuant to their orders do not raise different concerns with respect to these Exchange Act provisions than those issued by ETFs relying on rule 6c-11.

Several commenters recommended further harmonization between rule 6c-11 and certain other Exchange Act relief that ETFs must currently seek in order to operate.[106] Commenters expressed concern that this Exchange Act relief is duplicative or, in some cases, inconsistent with other requirements applicable to ETFs.[107] In particular, commenters noted that rule 6c-11 as proposed would not address relief for ETFs from section 11(d)(l) of the Exchange Act as well as rules 10b-10, 15c1-5, 15c1-6, and 14e-5 thereunder.[108] Commenters also recommended that the ETF generic listing standards of national securities exchanges be broadened and harmonized with any final ETF rule.[109]

We agree that complementary exemptive relief under the Exchange Act could further reduce regulatory complexity, administrative delay, and eliminate potential inconsistencies between rule 6c-11 and the related Exchange Act relief that ETFs must obtain to operate. Accordingly, the Commission is issuing an order granting exemptive relief to ETFs operating in reliance on rule 6c-11 from the requirements of section 11(d)(1) of the Exchange Act and rules 10b-10, 15c1-5, 15c1-6, and 14e-5 under the Exchange Act for ETFs, where certain conditions are met.[110]

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106 *See*, *e.g.,* BlackRock Comment Letter; ICI Comment Letter; Fidelity Comment Letter; SIFMA AMG Comment Letter I; Comment Letter of John Hancock Investments (Oct. 1, 2018) ("John Hancock Comment Letter"); Comment Letter of Flow Traders US LLP (Oct. 1, 2018) ("Flow Traders Comment Letter").

107 *See, e.g.,* BlackRock Comment Letter. *See also, e.g.,* ICI Comment Letter ("Currently, ETFs often must satisfy multiple and sometimes conflicting requirements from different divisions within the SEC."). Commenters *also* expressed concerns about the administrative delay in obtaining these additional approvals. *See, e.g.,* SIFMA AMG Comment Letter I.

108 *See*, *e.g.,* Dechert Comment Letter; *see also* 2015 ETP Request for Comment, *supra* footnote 19.

109 *See, e.g.,* Cboe Comment Letter ("Cboe encourages the Commission to evaluate exchange proposals to broaden their generic listing standards …in order to achieve efficiencies with exchange listing processes in a manner very similar to those which [rule 6c-11] is designed to accomplish."). *See also, e.g.,* ABA Comment Letter, Nasdaq Comment Letter.

110 *See* ETF Exchange Act Order, *supra* footnote 15. ETFs that do not operate in reliance on rule 6c-11 and currently have relief from the Exchange Act provisions discussed above may continue to rely on such relief.

Finally, commenters asked that we exempt ETF insiders and large shareholders from certain section 13(d) and section 16 reporting requirements under the Exchange Act beyond the conditions in several staff no-action letters.[111] The staff no-action letters stated that the staff would not recommend enforcement action to the Commission if certain insiders and large shareholders of ETFs seeking to track the performance of a benchmark index through a replication strategy did not file reports under section 13(d) and section 16(a) based on certain facts and circumstances, including that there is no material deviation between the ETF's secondary market price and NAV.[112] Commenters stated that the portfolio transparency requirements in rule 6c-11 would address the concerns underlying section 13(d) and section 16 without conditioning relief on there being no material deviation between the ETF's market price and NAV per share.[113]

As discussed above, the exemptions we are providing today under rule 6c-11 are based on the existence of a close tie between market price and NAV per share. Expanding on the existing staff no-action letters by providing exemptions from the reporting requirements in sections 13(d) and 16 even when there is a material deviation between market price and NAV would be inconsistent with the exemptions in rule 6c-11. We therefore refrain from taking additional action concerning the conditions outlined in our existing staff no-action letters.

2. Trading of ETF Shares at Market-Determined Prices

Rule 6c-11 will provide exemptions from section 22(d) and rule 22c-1 to permit secondary market trading of ETF shares at market-determined prices as proposed. Section 22(d) of the Act, among other things, prohibits investment companies, their principal underwriters, and dealers from selling a redeemable security to the public except at a current public offering price described in the prospectus.[114] Rule 22c-1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV.[115] Together, section 22(d) and rule 22c-1 are designed to: (i) prevent dilution caused by certain riskless trading practices of principal underwriters and dealers; (ii) prevent unjust discrimination or preferential treatment among investors purchasing and redeeming fund shares; and

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111 *See, e.g.,* Fidelity Comment Letter; Comment Letter of Thompson Hine LLP (Oct. 1, 2018) ("Thompson Hine Comment Letter").

112 *See PDR Services Corporation,* SEC Staff No-Action Letter (pub. avail. December 14, 1998) ("PDR Services Letter"); *Select Sector SPDR Trust,* SEC Staff No-Action Letter (pub. avail. May 6, 1999) ("Select Sector SPDR Trust Letter").

113 *See, e.g.,* Thompson Hine Comment Letter.

114 15 U.S.C. 80-a-22(d).

115 *See* 17 CFR 270.22c-1.

(iii) preserve an orderly distribution of investment company shares.[116] ETFs seeking to register under the Act obtain exemptions from these provisions because investors may purchase and sell individual ETF shares from and to dealers on the secondary market at market-determined prices (*i.e.,* at prices other than those described in the prospectus or based on NAV). Consistent with our prior exemptive orders, rule 6c-11 will provide exemptions from these provisions.[117]

As discussed above, only authorized participants can purchase and redeem shares directly from an ETF at NAV per share and only in creation unit aggregations. Because authorized participants (and other market participants transacting through an authorized participant) can take advantage of disparities between the market price of ETF shares and NAV per share, they may be in a different position than investors who buy and sell individual ETF shares only on the secondary market.[118] However, if the arbitrage mechanism is functioning effectively, entities taking advantage of these disparities in market price and NAV per share move the market price to a level at or close to the NAV per share of the ETF. The final rule will provide exemptions from section 22(d) and rule 22c-1 because we believe this arbitrage mechanism — and the conditions in this rule designed to promote a properly functioning arbitrage mechanism — have adequately addressed, over the significant operating history of ETFs, the potential concerns regarding shareholder dilution and unjust discrimination that these provisions were designed to address.

The arbitrage mechanism is the foundation for why retail and other secondary market investors generally can buy and sell ETF shares at prices that are at or close to the prices at which authorized participants are able to buy and redeem shares directly from the ETF at NAV. In the Commission's experience, the deviation between the market price of ETFs and NAV per share has generally been relatively small.[119] However, we recognize that under certain circumstances, including during periods of market stress, the arbitrage mechanism may work less effectively.[120] We also

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116 *See generally* Mutual Fund Distribution Fees; Confirmations, Investment Company Act Release No. 29367 (July 21, 2010) [75 FR 47064 (Aug. 4, 2010)] (discussing legislative history of section 22(d)).

117 *See* rule 6c-11(b)(2). The reference in the rule to "repurchases … at market-determined prices" refers to secondary market transactions with dealers. Thus, the rule will not allow an ETF to repurchase shares from an investor at market-determined prices.

118 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.113 and accompanying discussion.

119 In an analysis of various asset classes during 2017 – 2018, end-of-day deviations between closing price of ETFs and NAV were relatively rare and generally not persistent. *See also id.,* at nn.119 – 123 and accompanying text (discussing similar staff analysis for 2016 – 2017 period).

120 The Commission and its staff have observed the operation of the arbitrage mechanism during periods of market stress when the deviation between intraday market prices and the next-calculated NAV per share significantly

recognize that secondary market investors who trade in ETF shares during these periods may be harmed by trading at a price that is not close to the NAV per share of the ETF (or the contemporaneous value of the ETF's portfolio). On balance, however, we continue to believe these investors are more likely to weigh the potential benefits of ETFs (*e.g.,* low cost and intraday trading) against any potential for market price deviations when deciding whether to utilize ETFs.[121] Further, we believe that the conditions we are adopting as part of rule 6c-11, along with other recent actions that are designed to promote an effective arbitrage mechanism, will continue to result in a sufficiently close alignment between an ETF's market price and NAV per share in most circumstances, and provide an appropriate basis for the exemptive relief we are granting.[122] We particularly find this to be the case given the benefits ETFs offer investors as discussed above.

Moreover, to the extent that there are instances where bid-ask spreads widen, or premiums and discounts persist, the final rule and disclosure amendments will require ETFs to disclose certain information on their website.[123] These disclosure

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widened for short periods of time. During periods of extraordinary volatility in the underlying ETF holdings, it may be difficult for authorized participants or market makers to confidently ascribe precise values to an ETF's holdings, thereby making it more difficult to effectively hedge their positions. These market participants may widen their quoted spreads in ETF shares or, in certain cases, may elect not to transact in or quote ETF shares, rather than risk loss. *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.124 – 130 and accompanying text.

121 *See id.,* at n.131 and accompanying text. The Commission *also* has taken steps to address disruptions in the arbitrage mechanism. For example, the Commission approved changes to the limit up-limit down rules following the market events on August 24, 2015. *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Operation of the Regulation NMS Plan to Address Extraordinary Market Volatility, Exchange Act Release No. 78435 (July 28, 2016) [81 FR 51239 (Aug. 3, 2016)]; Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Effective Date of SR-FINRA-2016-028, Exchange Act Release No.78660 (Aug. 24, 2016) [81 FR 59676 (Aug. 30, 2016)].

122 For example, 17 CFR 270.22e-4 (rule 22e-4) under the Act requires ETFs to consider certain additional factors that address the relationship between the liquidity of the ETF's portfolio and the arbitrage mechanism in assessing, managing, and periodically reviewing its liquidity risk. *See* Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)] ("LRM Adopting Release"). We have taken these requirements into consideration in adopting the conditions in rule 6c-11.

123 *See infra* section II.C.6.

requirements are designed to increase investor awareness of these risks. We continue to believe that it is important for investors to be informed where costs may increase beyond what they would reasonably expect.

Commenters generally agreed that rule 6c-11 should provide the proposed exemptions from section 22(d) and rule 22c-1.[124] These commenters highlighted the ability of investors to transact in ETF shares intraday at market-determined prices as one of the primary benefits of the ETF structure. Commenters also agreed with our observation that the arbitrage mechanism generally has kept the deviation between the ETF market price and NAV per share relatively small, and that an efficient arbitrage mechanism adequately addresses potential concerns under section 22(d) and rule 22c-1.[125] One commenter agreed that, on balance, given the historically insignificant and short duration of unusual ETF premiums and discounts, and the relatively low risks presented to investors as a result, ETF investors are likely to weigh the potential benefits of ETFs against any potential for market price deviations when selecting an investment in ETFs.[126]

3. Affiliated Transactions

As proposed, rule 6c-11 will provide exemptions from sections 17(a)(1) and (a)(2) of the Act with regard to the deposit and receipt of baskets by a person who is an affiliated person of an ETF (or who is an affiliated person of such a person) solely by reason of: (i) holding with the power to vote 5% or more of an ETF's shares; or (ii) holding with the power to vote 5% or more of any investment company that is an affiliated person of the ETF.[127] The relief from section 17(a) in rule 6c-11 is consistent with the exemptive relief that we have granted to ETF applicants.[128]

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124 *See, e.g.,* ICI Comment Letter; SSGA Comment Letter I; Invesco Comment Letter.

125 *See, e.g.,* ICI Comment Letter; Invesco Comment Letter.

126 *See* Invesco Comment Letter.

127 *See* rule 6c-11(b)(3).

128 ETF applicants have requested, and we have granted, exemptive relief from section 17(a) of the Act for: (i) persons affiliated with the ETF based on their ownership of 5% or more of the ETF's outstanding securities ("first-tier affiliates"); and (ii) affiliated persons of the first-tier affiliates or persons who own 5% or more of the outstanding securities of one or more funds advised by the ETF's investment adviser ("second-tier affiliates"). In *see*king this relief, applicants have stated that first- and second-tier affiliates are not treated differently from non-affiliates when engaging in purchases and redemptions of creation units. All purchases and redemptions of creation units are at an ETF's next-calculated NAV pursuant to rule 22c-1. Additionally, the securities deposited or delivered upon redemption are valued in the same manner, using the same standards, as those securities are valued for purposes of calculating the ETF's NAV per share. *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.140-141 and accompanying discussion.

Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from knowingly selling any security or other property to or purchasing any security from the company.[129] Purchases and redemptions of ETF creation units are typically effected in kind, and section 17(a) would prohibit these in-kind purchases and redemptions by affiliated persons of the ETF. An affiliated person of an ETF includes, among others: (i) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the ETF; (ii) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the ETF; and (iii) any person directly or indirectly controlling, controlled by, or under common control with the ETF.[130]

Commenters expressed support for our proposed exemptions from sections 17(a)(1) and (a)(2), concurring with our view that this relief is necessary to facilitate the efficient functioning of the arbitrage mechanism.[131] Commenters noted that, without this relief, an authorized participant or other market participant that becomes an affiliated person of the ETF due to its holdings would be prevented from engaging in arbitrage using an in-kind basket, which, in turn, could have the adverse effect of limiting the pool of market participants that could engage in arbitrage.[132] Ultimately, this could result in the deviation between market price and NAV per share widening in cases where there are very few authorized participants or other market participants actively engaged in transactions with the ETF. Commenters also stated that in-kind purchases and redemptions of ETF creation units between an ETF and authorized participants, which may be affiliated persons, or affiliated persons of affiliated persons, as a result of such transactions are not the types of potentially harmful transactions that section 17(a) is designed to prevent.[133]

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129 15 U.S.C. 80a-17(a).

130 15 U.S.C. 80a-2(a)(3)(A), (B) and (C). A control relationship is presumed when one person owns more than 25% of another person's outstanding voting securities. 15 U.S.C. 80a-2(a)(9).

131 *See e.g.,* Thompson Hine Comment Letter; ICI Comment Letter; JPMAM Comment Letter; SSGA Comment Letter I; Fidelity Comment Letter; SIFMA AMG Comment Letter I.

132 *See, e.g.,* ICI Comment Letter. Newly launched ETFs could face particular challenges without this relief because every purchaser of a creation unit would be considered an affiliated person of the ETF so long as there are fewer than twenty creation units outstanding.

133 *See, e.g.,* Thompson Hine Comment Letter; *see also* Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] ("Rule 38a-1 Adopting Release") ("To prevent self-dealing and overreaching by persons in a position to take advantage of the fund, the Investment Company Act prohibits funds from entering into certain transactions with affiliated persons.") (internal citations omitted).

We continue to believe that this relief is appropriate to facilitate the efficient functioning of the arbitrage mechanism after considering comments. As noted above, all purchases and redemptions of creation units with such an affiliated person are at an ETF's next-calculated NAV, and an ETF would value the securities deposited or delivered upon redemption in the same manner, using the same standards, as the ETF values those securities for purposes of calculating the ETF's NAV. We do not believe that these transactions will give rise to the policy concerns that section 17(a) is designed to prevent.

Several commenters asked us to confirm that the section 17(a) relief in rule 6c-11 would extend to entities that are affiliated with the ETF by virtue of holding more than 25% of the ETF's shares or more than 25% of any investment company that is an affiliated person of the ETF ("25% holders"), consistent with the terms of our existing exemptive orders.[134] Our proposal was designed to provide relief from section 17(a) similar to our orders.[135] We do not believe that an express reference to 25% holders in rule 6c-11(b)(3) is necessary, however, because the rule text will capture entities that are affiliated with the ETF by virtue of share ownership greater than 5%. We confirm that 25% holders are within the scope of this exemption.

A number of commenters also recommended expanding the relief to cover additional types of affiliated relationships, such as exempting broker-dealers that are affiliated with the ETF's adviser,[136] or permitting an ETF's adviser or its affiliates to transact with the ETF to provide in-kind seed capital to the ETF.[137] These commenters noted that increasing the entities eligible to transact with an ETF could further help facilitate the arbitrage mechanism, reduce concentration risk, and lower transaction costs. These commenters also noted that a fund's policies and procedures on baskets and custom baskets, as well as the federal securities laws and regulations that prohibit manipulative practices and misuse of nonpublic information, would address potential concerns regarding overreaching and similar abusive practices by these affiliated entities.

While permitting additional types of affiliated entities to transact with the ETF could provide additional benefits to an ETF, expanding the scope of affiliated persons covered by the exemption would constitute novel section 17(a) relief. To date, our

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134 *See e.g.,* SIFMA Comment Letter I. The related exemptive application to our orders usually includes an express reference to holders of 25% or more of the ETF's shares or 25% or more of an investment company that is an affiliated person of the ETF. *See, e.g.,* Pacer Funds, *et al.,* Investment Company Act Release Nos. 33374 (Feb. 13, 2019) [84 FR 5125 (Feb. 20, 2019)] (notice) and 33397 (March 12, 2019) (order).

135 Our 2008 proposal expressly included section 17(a) relief for 25% holders. *See* 2008 ETF Proposing Release, *supra* footnote 3. One commenter on that proposal stated that the reference to 25% holders was superfluous in light of the reference to 5% holders. *See* Comment Letter of Stradley Ronan Stevens & Young, LLP (May 19, 2008).

136 *See* ICI Comment Letter; JPMAM Comment Letter; SSGA Comment Letter I.

137 *See* Fidelity Comment Letter; SIFMA AMG Comment Letter I.

exemptive orders have been narrowly tailored to permit in-kind purchases and redemptions between an ETF and certain affiliates to facilitate efficient arbitrage. Expanding this relief would raise novel affiliation issues that would require a careful consideration of whether the current protections embedded in our relief sufficiently address any risks posed by such transactions with additional categories of affiliates. This would be especially the case if the exemption were expanded to include affiliated entities such as the ETF's sponsor and other service providers that typically have greater ability to influence an ETF. Given that rule 6c-11 is generally intended to codify existing relief for ETFs, we therefore do not believe that it is appropriate to expand the scope of affiliated persons covered by the exemption as part of this rulemaking, although such exemptions may be considered within our regular exemptive applications process.

4. Additional Time for Delivering Redemption Proceeds

We are adopting, largely as proposed, an exemption from section 22(e) to permit an ETF to delay satisfaction of a redemption request in the case of certain foreign investments for which a local market holiday or the extended delivery cycles of another jurisdiction make timely delivery unfeasible. Section 22(e) of the Act generally prohibits a registered open-end management investment company from postponing the date of satisfaction of redemption requests for more than seven days after the tender of a security for redemption.[138] This prohibition can cause operational difficulties for ETFs that hold foreign investments and exchange in-kind baskets for creation units. For example, local market delivery cycles for transferring foreign investments to redeeming investors, together with local market holiday schedules, can sometimes require a delivery process in excess of seven days.[139]

Section 22(e) was designed to prevent unreasonable delays in the actual payment of redemption proceeds.[140] Rule 6c-11 will provide an exemption from section 22(e) of the Act because we believe that the limited nature of the exemption addresses the concerns underlying this section of the Act. Rule 6c-11 will grant relief from section 22(e) to permit an ETF to delay satisfaction of a redemption request for more than seven days if a local market holiday, or series of consecutive holidays,

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138 15 U.S.C. 80a-22(e).

139 ETFs that hold foreign investments have previously requested, and we have granted, relief from section 22(e) so that they may satisfy redemptions up to a specified maximum number of days (depending upon the local markets), as disclosed in the ETF's prospectus or statement of additional information ("SAI"). Other than in the disclosed situations, these ETFs satisfy redemptions within seven days.

140 *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3d Sess. 291 – 293 (statements of David Schenker).

or the extended delivery cycles for transferring foreign investments to redeeming authorized participants, or the combination thereof prevents timely delivery of the foreign investment included in the ETF's basket.[141]

Under this exemption, an ETF must deliver foreign investments as soon as practicable, but in no event later than 15 days after the tender to the ETF. The exemption therefore will permit a delay only to the extent that additional time for settlement is actually required, when a local market holiday, or series of consecutive holidays, or the extended delivery cycles for transferring foreign investments to redeeming authorized participants prevents timely delivery of the foreign investment included in the ETF's basket.[142] If a foreign investment settles in less than 15 days, the rule will require an ETF to deliver it pursuant to the standard settlement time of the local market where the investment trades. To the extent that settlement times continue to shorten, the "as soon as practicable" language embedded in the exemption is designed to minimize any unnecessary settlement delays.[143]

Commenters generally supported our proposed exemption from section 22(e).[144] Commenters stated that the relief would provide additional assurance that an ETF could postpone payment of redemption proceeds in certain circumstances outside of its control.[145] One commenter observed that a period of 15 days, accompanied by a requirement that delivery be made as soon as practicable, is appropriate and reasonable.[146] Another commenter agreed that it was appropriate to limit the exemption to the particular foreign investment and not the entire basket.[147]

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141 Rule 6c-11(b)(4). The relief from section 22(e) does not affect any obligations arising under rule 15c6-1 under the Exchange Act, which requires that most securities transactions settle within two business days of the trade date. 17 CFR 240.15c6-1.

142 This exemption permits a delay in the delivery of foreign investments only if the foreign investment is being transferred in kind as part of the basket. While mutual funds *also* may invest in foreign investments that require a delivery process in excess of seven days, mutual funds typically deliver redemption proceeds in cash, rather than in kind. Mutual funds, ETFs that redeem in cash, and ETFs that substitute cash in lieu of a particular foreign investment in a basket do not require an exemption from section 22(e) of the Act.

143 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.155 (discussing settlement cycles for various foreign markets).

144 *See, e.g.,* ICI Comment Letter; Fidelity Comment Letter; Comment Letter of Charles Schwab Investment Management (Oct. 1, 2018) ("CSIM Comment Letter"); John Hancock Comment Letter.

145 *See* John Hancock Comment Letter; ICI Comment Letter.

146 *See* CSIM Comment Letter.

147 *See* ICI Comment Letter.

Proposed rule 6c-11 would have included a ten-year sunset provision in light of the continued movement toward shorter settlement times in markets around the world.[148] Commenters generally objected to the proposed sunset provision, citing a number of reasons for why the section 22(e) relief would likely remain necessary beyond the sunset period. Although we continue to believe that technological innovation and changes in market infrastructures and operations should lead to further shortening of settlement cycles, we recognize commenters' concerns that these developments may be gradual and difficult to predict.[149] Moreover, given that certain local market holidays may last for up to seven business days, we agree with commenters that settlement within seven days may continue to pose challenges even in light of continued technological progress and changes in market operations.[150] We therefore are not adopting a sunset provision to limit the relief from section 22(e) to ten years from the rule's effective date.

The rule will define "foreign investment" as any security, asset or other position of the ETF issued by a foreign issuer (as defined by rule 3b-4 under the Exchange Act), and that is traded on a trading market outside of the U.S.[151] As under the proposal, this definition is not limited to "foreign securities," but also includes other investments that may not be considered securities. Although these other investments may not be securities, they may present the same challenges for timely settlement as foreign securities if they are transferred in kind. This approach is consistent with the terms of some recent exemptive orders that provide relief from section 22(e) for the delivery of foreign investments that may not be securities.[152] We received no comments on this aspect of the definition of "foreign investment."

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148 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.156 and accompanying text (proposing that the exemption from section 22(e) for postponement of delivering redemption proceeds expire ten years from the rule's effective date).

149 *See, e.g.,* Dechert Comment Letter; CSIM Comment Letter; ICI Comment Letter; Invesco Comment Letter; Fidelity Comment Letter; WisdomTree Comment Letter; ABA Comment Letter.

150 *See, e.g.,* Invesco Comment Letter (citing Taiwan market holidays); CSIM Comment Letter; Fidelity Comment Letter; ICI Comment Letter; John Hancock Comment Letter.

151 *See* rule 6c-11(a)(1). We believe this approach is appropriate because it creates consistency with a long-accepted definition under Exchange Act rules.

152 *See, e.g.,* Redwood Investment Management, LLC, *et al.,* Investment Company Act Release Nos. 33076A (Apr. 26, 2018) [83 FR 19367 (May 2, 2018)] (notice) and 33100 (May 21, 2018) (order) and related application.

Unlike our proposal, we are not defining "foreign investment" as an investment for which there is no "established U.S. public trading market."[153] A number of commenters recommended that we modify or eliminate this aspect of the definition.[154] These commenters expressed concern that this requirement could make the exemption from section 22(e) unavailable whenever a foreign issuer has issued a security in the U.S. Commenters stated that ETFs investing in certain foreign markets typically hold the security that is traded in the foreign issuer's local trading market ("foreign-traded security") rather than its U.S.-traded equivalent.[155] These commenters explained that this is particularly true for ETFs tracking certain international indexes because those indexes often include foreign-traded securities, which generally have greater liquidity and trading volume than their U.S.-traded equivalents. Several commenters cited potential compliance costs, operational considerations (*e.g.,* transacting in the foreign-traded security may entail lower transaction costs for the ETF), and possible disruptions to their investment strategy (*e.g.,* tracking error) that might result due to this requirement.[156]

The proposed definition of foreign investment was designed to make relief from section 22(e) unavailable to an ETF that included a foreign issuer's U.S.-traded investment in its basket, thereby avoiding the settlement delay that is the basis for the relief.[157] It was not intended to require an ETF to buy and sell the U.S.-traded equivalent of a foreign-traded security when one is available, nor was it intended

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153 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.166 and accompanying text (proposing to define "foreign investment" as any security, asset or other position of the ETF issued by a foreign issuer (as defined by rule 3b-4 under the Exchange Act) for which there is no established U.S. public trading market (as that term is used in Regulation S-K)).

154 *See* ICI Comment letter; SIFMA AMG Comment Letter I; SSGA Comment Letter I; BlackRock Comment Letter; Invesco Comment Letter.

155 *See, e.g.,* ICI Comment Letter; SIFMA Comment Letter I.

156 *See, e.g.,* BlackRock Comment Letter (stating that "ETFs currently do not monitor whether a foreign issuer has equivalent securities that both trade on a US market and the foreign issuer's local market since our primary investment practices are to invest in the securities of the underlying index."); Invesco Comment Letter; SSGA Comment Letter I.

157 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.166 and accompanying discussion. As proposed, the rule will not rely on registration status because an unregistered large foreign private issuer may have an active U.S. market for its securities, in which case the ETF should be able to meet redemption requests in a timely manner. *See* Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Exchange Act Release No. 55540 (Mar. 27, 2007) [72 FR 16934 (Apr. 5, 2007)].

to deny section 22(e) relief to an ETF that includes a foreign-traded security in its basket because a U.S.-traded equivalent exists. In order to address commenters' concerns and potential confusion, however, we have eliminated the requirement that the foreign investment have "no established U.S. public trading market." Instead, in relevant part, rule 6c-11(a)(1) will define "foreign investment" as an investment that "is traded on a trading market outside of the U.S."[158] We believe this definition will capture the foreign investments that may experience settlement delays without creating unintended consequences for ETF portfolio management. Under rule 6c-11, a delay in settlement is permitted only to the extent that additional time for settlement is actually required due to a local market holiday or the extended delivery cycles in a foreign market. As a result, the exemption from section 22(e) already is unavailable where an ETF could readily trade an investment in its basket on a U.S. market.

C. Conditions for Reliance on Rule 6c-11

Rule 6c-11 requires ETFs to comply with certain conditions designed to protect investors and to be consistent with the purposes fairly intended by the policy and provisions of the Act in order to operate within the scope of the Act. These conditions generally are consistent with the conditions in our exemptive orders, which we believe have effectively accommodated the unique structural and operational features of ETFs while maintaining appropriate protections for ETF investors. The conditions also reflect certain modifications that, based on our experience regulating ETFs and comments we received on the proposal, we believe will improve the overall regulatory framework for these products.

1. Issuance and Redemption of Shares

As proposed, the definition of exchange-traded fund under rule 6c-11 will require that an ETF issue (and redeem) creation units to (and from) authorized participants in exchange for baskets and a cash balancing amount (if any).[159] This definition is designed to preserve the existing ETF structure, reflected in our exemptive orders,

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158 *See, e.g.,* BlackRock Comment Letter (recommending that "foreign investment" be defined by reference to whether "there is an established trading market […] outside of the US"). As proposed, we *also* are not requiring an ETF to disclose in its registration statement the foreign holidays that it expects may prevent timely delivery of foreign securities, and the maximum number of days that it anticipates it will need to deliver the foreign securities. *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.161 and accompanying discussion. No commenters disagreed with this aspect of the proposal.

159 *See* rule 6c-11(a)(1). *See also infra* section II.C.4.c.(discussing definitions of baskets and cash balancing amount).

which permit only an authorized participant of an ETF to purchase creation units from (or sell creation units to) the ETF. An orderly creation unit issuance and redemption process is essential to a properly functioning arbitrage mechanism. Commenters supported the proposed definition of exchange-traded fund.[160]

Rule 6c-11 will define an authorized participant to mean a member or participant of a clearing agency registered with the Commission that has a written agreement with the ETF or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units, as proposed.[161] This definition differs from the definition of "authorized participant" in the Commission's exemptive orders and Form N-CEN because it does not include a specific reference to an authorized participant's participation in DTC, as DTC is itself a clearing agency.[162] We proposed to amend Form N-CEN to make the two definitions consistent. We believe the definition that we are adopting remains largely consistent with the exemptive relief we have granted to ETFs, while eliminating unnecessary terms.

Several commenters expressed support for the proposed definition of authorized participant.[163] One commenter, however, asserted that rule 6c-11 should use the existing definition of authorized participant in Form N-CEN to avoid confusion and regulatory inconsistency.[164] We believe that amending Form N-CEN to make the definition of authorized participant consistent with the definition in rule 6c-11 addresses this commenter's concern.[165]

We also received several comments on issues relating to authorized participants more generally. One commenter, for example, suggested that the Commission confirm that authorized participants who buy and sell ETF shares in creation units are not considered, for that reason alone, "principal underwriters" under the Investment Company Act.[166] The commenter stated that the plain language of section 2(a)(29) of the Act would exclude an authorized participant from the definition of principal underwriter when the authorized participant purchases ETF

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160 *See, e.g.,* Invesco Comment Letter.

161 *See* rule 6c-11(a)(1).

162 *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.170-171. Form N-CEN, in relevant part, defined the term as a broker-dealer that is *also* a member of a clearing agency registered with the Commission or a DTC Participant and has a written agreement with the ETF or one of its service providers that allows the authorized participant to place orders to purchase and redeem creation units of the ETF. *See* Form N-CEN, Item E.2.

163 *See* SSGA Comment Letter I; ICI Comment Letter; Cboe Comment Letter.

164 *See* Invesco Comment Letter.

165 *See infra* section II.J.

166 *See* ABA Comment Letter.

shares through a principal underwriter acting as agent for the ETF.[167] We agree that an authorized participant that purchases ETF shares from the ETF's principal underwriter is not a principal underwriter as defined in section 2(a)(29) of the Act solely because it buys and sells ETF shares in creation units.

Another commenter suggested that the Commission require an ETF to have a minimum number of authorized participants (*i.e.,* 2 or 3) to reduce the risk of anti-competitive behavior and to safeguard the arbitrage mechanism.[168] This commenter, however, also pointed to data indicating that large ETFs (with more than $790 million in assets) typically have an average of nine active authorized participants, and that smaller ETFs (with less than $27 million in assets) have an average of two active authorized participants.[169] This commenter further noted that it has observed ETFs using single authorized participants in "some markets outside of the United States" but that this type of arrangement is "less common within the United States."[170] We have not observed the types of "excessive deviations" between ETFs' NAV and market price that, according to this commenter, could indicate that ETFs' use of one authorized participant is a persistent problem.[171] Additionally, based upon Form N-CEN data through September 5, 2019, we found that out of 1672 funds reviewed that could rely on rule 6c-11, only 30 (approximately 1.8% of the funds reviewed) reported having fewer than 2 authorized participants. We therefore do not believe that it is appropriate at this time to prescribe a minimum number of authorized participants that an ETF may use.

As proposed, rule 6c-11 will define "creation unit," to mean a specified number of ETF shares that the ETF will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount (if any).[172] Rule 6c-11 will not mandate a maximum or minimum creation unit size

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167 *Id.* (noting that the definition of principal underwriter excludes "a dealer who purchases from such company through a principal underwriter acting as agent.").

168 *See* Comment Letter of Jane Street Capital, LLC (Oct. 1, 2018) ("Jane Street Comment Letter"). Another commenter suggested that the Commission should provide guidance regarding ETF sponsors giving certain APs special treatment in the negotiation of baskets. *See* Comment Letter of Bluefin Trading, LLC (Oct. 19, 2018) ("Bluefin Comment Letter"). We address this comment in our discussion of custom basket policies and procedures, *infra,* in section II.C.5.a.

169 *See* Jane Street Comment Letter (citing "The Role and Activities of Authorized Participants of Exchange-Traded Funds," Investment Company Institute, March 2015).

170 *See id.*

171 *See, e.g.,* 2018 ETF Proposing Release, *supra* footnote, at section II.B.2

172 *See* rule 6c-11(a)(1).

or otherwise place requirements on creation unit size. We continue to believe, and commenters agreed, that ETFs are incentivized to establish creation unit sizes that are appropriate for market demand pursuant to their investment strategies and objectives.[173] Thus, ETFs are not likely to set very large or very small creation unit sizes that could disrupt the arbitrage mechanism or prevent the use of in-kind baskets when in-kind baskets would otherwise be desirable for an ETF to obtain the typical efficiencies of ETFs. We also believe that the conditions in rule 6c-11, as adopted, are better suited to promote effective arbitrage than conditions related to creation unit size.[174]

An ETF generally would issue and redeem shares in creation unit size aggregations, rather than as individual shares, under the rule. We proposed to permit an ETF to sell or redeem individual shares on the day of consummation of a reorganization, merger, conversion, or liquidation.[175] In these limited circumstances, an ETF may need to issue or redeem individual shares, and may need to transact without utilizing authorized participants. Commenters that addressed this aspect of the proposal generally supported it.[176] One commenter, however, suggested that the rule should explicitly provide that an ETF may transact with investors other than authorized participants in these limited circumstances.[177] We agree and have modified rule 6c-11 to clarify that, on the day of a reorganization, merger,

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173 *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.175-176 and accompanying text (noting that an ETF tracking a narrowly focused niche strategy may establish a smaller creation unit size than an ETF tracking a broad-based index, such as the S&P 500, in order to facilitate arbitrage). *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter I; Vanguard Comment Letter. *See also* Nasdaq Comment Letter (noting that minimum creation unit size requirement can lead to wider spreads, particularly for newer, thinly-traded ETFs).

174 One commenter *also* suggested that the rule should not require an ETF to define a specific creation unit size, noting that permitting variable creation unit sizes could help further facilitate market making and reduce transaction costs. *See* Nasdaq Comment Letter. The rule's definition of "creation unit" will require an ETF to specify a single number of ETF shares composing a creation unit. Although an ETF could not use variable creation unit sizes under this definition, an ETF could change its specified creation unit size as conditions change over time.

175 *See* 2018 ETF Proposing Release, *supra* footnote 7, at text preceding n.82 (discussing proposed rule 6c-11(c)(5)).

176 *See, e.g.,* BlackRock Comment Letter; Thompson Hine Comment Letter.

177 *See* Thompson Hine Comment Letter. This commenter *also* suggested moving this exception to the definition of exchange-traded fund because it is not a condition to reliance on the rule. We agree and have moved this exception to rule 6c-11(a)(2).

conversion, or liquidation, an ETF may sell or redeem individual shares and is not limited to transacting with authorized participants.[178] We believe that permitting ETFs to conduct redemptions with investors other than authorized participants in these circumstances is operationally necessary to facilitate these transactions and will allow an ETF to compensate individual shareholders exiting the reorganized, merged, converted or liquidated ETF — activities likely to involve small amounts and to be outside the scope of an authorized participant's expected role of transacting in creation units.

Commenters also addressed the Commission's proposed guidance concerning the extent to which an ETF may directly or indirectly suspend the issuance or redemption of ETF shares.[179] An ETF that suspends the issuance or redemption of creation units indefinitely could cause a breakdown of the arbitrage mechanism, resulting in significant deviations between market price and NAV per share. Such deviations may harm investors that purchase shares at market prices above NAV per share and/or sell shares at market prices below NAV per share.

With respect to redemptions, an ETF may suspend the redemption of creation units only in accordance with section 22(e) of the Act,[180] and may charge transaction fees on these redemptions only in accordance with rule 22c-2.[181] While no commenters disagreed with our statement in the 2018 ETF Proposing Release that an ETF may suspend redemptions only in compliance with section 22(e), several commenters requested that we eliminate the 2% cap on redemption fees for ETFs.[182] One commenter asserted that, unlike the mutual fund redemption fees that were the Commission's focus in adopting rule 22c-2, the transaction fees charged by an ETF on redemptions are not intended to inhibit frequent trading of the ETF's shares,

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178 *See* rule 6c-11(a)(2).

179 *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.1.

180 Section 22(e) of the Act permits open-end funds to suspend redemptions and postpone payment for redemptions already tendered for any period during which the New York Stock Exchange is closed (other than customary weekend and holiday closings) and in three additional situations if the Commission has made certain determinations. *See* LRM Adopting Release, *supra* footnote 122, at n.36.

181 17 CFR 270.22c-2 (rule 22c-2) limits redemption fees to no more than 2% of the value of shares redeemed. *See* rule 22c-2(a)(1)(i).

182 *See, e.g.,* Dechert Comment Letter; WisdomTree Comment Letter; Invesco Comment Letter (noting that the redemption fee framework for ETFs under rule 22c-2 is "workable" in most circumstances, but that in certain circumstances greater flexibility to charge redemption fees in excess of 2% would benefit ETFs). Commenters did not provide any fee-related data in support of their contention that the 2% limit on redemption fees should be eliminated for ETFs.

but are primarily designed to protect shareholders against the costs of certain cash redemptions.[183] This commenter further stated that an ETF's inability to pass through certain incremental costs to an authorized participant could adversely impact performance and result in dilution of the interests of the ETF's remaining shareholders.

As discussed above, we believe that ETFs should be regulated as open-end funds and that ETF shares are most appropriately classified as redeemable securities under the relevant provisions of the Act. In adopting the 2% limit on redemption fees under rule 22c-2, we stated that higher redemption fees would impose an undue restriction on the redeemability of shares.[184] Consistent with this belief, our exemptive orders permitting ETFs to operate as open-end funds have not permitted ETFs to charge transaction fees in excess of the 2% limit. We believe the 2% limit allows ETFs to pass on certain costs related to the redemption transaction to authorized participants, while preserving the redeemability of ETF shares.[185] Accordingly, we believe that ETFs may charge transaction fees on the redemption of creation units only in accordance with rule 22c-2.

We also stated in the 2018 ETF Proposing Release that we believe that an ETF generally may suspend the issuance of creation units only for a limited time and only due to extraordinary circumstances, such as when the markets on which the ETF's portfolio holdings are traded are closed for a limited period of time.[186] Some commenters agreed that an ETF may suspend creations only for a limited time and only due to extraordinary circumstances, but requested that we provide clarification regarding the specific circumstances under which an ETF may suspend

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183 *See* Dechert Comment Letter. *See also* Invesco Comment Letter (noting that these fees include the difference between the cash in-lieu amount calculated on the trade date and the actual sale price of the security (reflecting market movement)).

184 *See* Mutual Fund Redemption Fees, Investment Company Act Release No. 26782 (March 11, 2005) [70 FR 13328 (March 18, 2005)] (noting that a goal of the Commission under the Act is to preserve the redeemability of mutual fund shares).

185 *See id.* at text accompanying nn.29-30. Mutual funds, particularly those that invest in foreign markets, may face similar types of costs and are subject to the 2% cap in rule 22c-2.

186 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.185 and accompanying text. In addition, we stated that an ETF could not set transaction fees so high as to effectively suspend the issuance of creation units. *See id.* One commenter addressed this issue, stating that ETFs generally do not set transaction fees at a level that would effectively suspend creations "in lieu of transparently informing the market that creations are halted." Jane Street Comment Letter.

creations.[187] Other commenters did not support our position on this issue. For example, one commenter stated that current ETF practices for suspending creations have proven effective and advocated against limiting or imposing restrictions on the circumstances in which ETFs may suspend creations.[188] Another commenter recommended that, rather than precluding an ETF from suspending the issuance of creation units, the Commission should require ETFs that suspend creations to add supplemental disclosures addressing the risk that the ETF's market price may deviate from NAV per share.[189]

As discussed above, however, the expected close tie between an ETF's market price and NAV per share provides a basis for our relief from section 22(d) and rule 22c-1 under rule 6c-11 (as well as our prior exemptive orders).[190] If a suspension of creations impairs the arbitrage mechanism, it could lead to significant deviations between what retail investors pay (or receive) in the secondary market and the ETF's approximate NAV. Such a result would run counter to the basis for relief from section 22(d) and rule 22c-1 and therefore would be inconsistent with rule 6c-11.

2. Listing on a National Securities Exchange

As proposed, rule 6c-11 will define an "exchange-traded fund," in part, to mean a fund that issues shares that are listed on a national securities exchange and traded at market-determined prices.[191] Exchange-listing is one of the fundamental characteristics that distinguishes ETFs from other types of open-end funds (and UITs) and is one reason that ETFs need certain exemptions from the Act and the

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187 *See, e.g.,* BlackRock Comment Letter; SIFMA AMG Comment Letter I; SSGA Comment Letter I; Vanguard Comment Letter; Invesco Comment Letter.

188 *See* Comment Letter of ETF BILD LLC (Oct. 1, 2018) ("ETF BILD Comment Letter") ("[T]here may be a variety of reasons to suspend creations and limiting them or [restricting] certain activity will not allow for differentiation of the circumstances related to the underlying securities…. [C]urrent practices developed in the ETF industry allow for the flexibility needed to address this issue.").

189 *See* Eaton Vance Comment Letter. Another commenter suggested requiring any ETF that suspends creations, or otherwise has its creation process halted, to immediately notify the market via a Form 8-K or other mechanism. *See* Jane Street Comment Letter.

190 *See supra* section II.B.2 (discussing the potential concerns regarding shareholder dilution, unjust discrimination and preferential treatment among investors purchasing and redeeming fund shares that section 22(e) and rule 22c-1 were designed to address).

191 Rule 6c-11(a)(1). As proposed, rule 6c-11(a)(1) *also* will define a "national securities exchange" as an exchange that is registered with the Commission under section 6 of the Exchange Act.

rules thereunder. Exchange-listing provides an organized and ongoing trading market for the ETF shares at market-determined prices, and therefore is important to a functioning arbitrage mechanism.[192] The Commission has premised all of its previous exemptive orders on an ETF listing its shares for trading on a national securities exchange.

Several commenters generally supported the requirement that an ETF list its shares on a national securities exchange.[193] On the other hand, one commenter stated that ETFs that are temporarily suspended from listing or engaged in an orderly delisting and liquidation process should not fall outside of the scope of the proposed rule.[194] Another commenter opined that delisted ETFs should remain within the rule to prevent a possible race to redeem the ETF's shares that could result from confusion about the ETF's regulatory status.[195] This commenter stated the definition of exchange-traded fund instead should include ETFs that have been listed within the past 90 days. Other commenters requested that we clarify the specific circumstances that constitute a "delisting," citing trading suspensions and trading halts as examples of circumstances that should not disqualify an ETF from relying on rule 6c-11.[196] These commenters also urged the Commission to clarify that a temporary non-compliance notice from an exchange for failure to continuously meet the exchange's listing standards would not disqualify an ETF from relying on the rule.

As noted above, the listing requirement was designed to ensure that all ETF shares have an organized and ongoing secondary trading market to support an effective arbitrage mechanism. We therefore continue to believe that an ETF should no

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192 As proposed, the definition *also* requires that an ETF's shares trade at market-determined prices. This requirement is not designed to establish a minimum level of trading volume for ETFs necessary in order to rely on the rule, but rather to distinguish ETFs from other products that are listed on exchanges but trade at NAV-based prices (*i.e.,* exchange-traded managed funds ("ETMFs")). *See* 2018 ETF Proposing Release, *supra* footnote 7, at text accompanying n.192. Commenters did not address this aspect of the definition of exchange-traded fund.

193 *See, e.g.,* ICI Comment Letter; SSGA Comment Letter I.

194 SIFMA AMG Comment Letter I.

195 Thompson Hine Comment Letter ("[D]eeming the former ETF to no longer have [status as an ETF under the rule] may lead to confusion and a possible race to redeeming shares by remaining shareholders while liquid assets are still available.").

196 *See* SSGA Comment Letter I; ICI Comment Letter; Invesco Comment Letter. *See also* FINRA, Investor Alert, When Trading Halts: What You Need to Know About Halts, Suspensions and Other Interruptions (February 7, 2013), available at http://www.finra.org/investors/alerts/when-trading-stops-halts-suspensions-other-interruptions (describing trading halts and trading suspensions).

longer be eligible to rely on rule 6c-11 and must meet individual redemption requests within seven days pursuant to section 22(e) of the Act or liquidate if it is not listed on an exchange.[197] In response to commenters' request that we clarify the specific circumstances constituting a "delisting" for purposes of rule 6c-11, an ETF is considered no longer listed on an exchange as of the effective date of the removal of the ETF's shares from listing pursuant to rule 12d2-2 under the Exchange Act.[198] Circumstances such as a trading suspension, a trading halt, or a temporary non-compliance notice from the exchange therefore would not constitute a "delisting" for purposes of rule 6c-11. An ETF also may request temporary relief from the Commission to permit the ETF to suspend redemptions for a limited period of time where necessary to protect ETF shareholders.[199]

3. Intraday Indicative Value ("IIV")

As proposed, rule 6c-11 will not require ETFs to disseminate an intraday estimate of their NAV per share (an "intraday indicative value" or "IIV") as a condition for reliance on the rule. Our orders require the dissemination of an IIV, and ETFs have stated in their exemptive applications that an ETF's IIV is useful to investors because it allows them to determine (by comparing the IIV to the market value of the ETF's shares) whether and to what extent the ETF's shares are trading at a premium or discount on an intraday basis.[200] The exchange listing standards also currently require ETFs to disseminate an IIV at least every 15 seconds during regular trading hours.[201]

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197 Indeed, an ETF that does not comply with the provisions of the rule would be required to comply with the Investment Company Act in all respects unless it was relying on other relief.

198 *See* 17 CFR 240.12d2-2 (rule 12d2-2 under the Exchange Act) (requiring a national securities exchange to file with the Commission an application on Form 25 (17 CFR 249.25) to strike a class of securities from listing on a national securities exchange and/or registration under section 12(b) of the Exchange Act).

199 *See* section 22(e)(3) of the Act.

200 *See, e.g.,* WisdomTree Investments, Inc., *et al.,* Investment Company Act Release Nos. 27324 (May 18, 2006) [71 FR 29995 (May 24, 2006)] (notice) and 27391 (June 12, 2006) (order) and related application ("2006 WisdomTree Investments").

201 *See, e.g.,* NYSE Arca Equities Rule 5.2E(j)(3), Commentary .01(c) (stating that IIV may be based upon "current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value"). The IIV is *also* sometimes referred to as the "iNAV" (indicative net asset value) or the "PIV" (portfolio indicative value).

We did not propose, however, an IIV dissemination requirement under rule 6c-11 because of our concerns regarding the accuracy of IIV estimates for certain ETFs.[202] For example, the IIV may not accurately reflect the value of an ETF that holds securities that trade less frequently. The IIV can be stale or inaccurate for ETFs with foreign securities or less liquid debt instruments. For such ETFs, there may be a difference between the IIV, which is constructed using the last available market quotations or stale prices, and the ETF's NAV, which uses fair value when market quotations are not readily available.[203] Conversely, in today's fast moving markets, given the dissemination lags, the IIV may not accurately reflect the value of an ETF that holds frequently traded component securities.[204] Because there are no uniform methodology requirements, the IIV also can be calculated in different and potentially inconsistent ways.

In addition, we understand that market makers and authorized participants no longer use IIV to evaluate arbitrage opportunities for ETFs that provide full portfolio transparency.[205] These market participants typically calculate their own intraday value of an ETF's portfolio with proprietary algorithms that use an ETF's daily portfolio disclosure and available pricing information about the assets held in the ETF's portfolio and generally use the IIV as a secondary or tertiary check on the value that their proprietary algorithms generate.

The majority of commenters that addressed IIV requirements supported our proposed approach. For example, commenters agreed that authorized participants and other market participants calculate their own intraday values based on other sources of information such as an ETF's published baskets and portfolio

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202 *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.3. The exemptive relief we provided to certain non-transparent ETFs included a condition requiring those ETFs to provide a verified intraday indicative value ("VIIV") throughout the trading day. *See* 2019 Precidian, *supra* footnote 8. Those ETFs' VIIV, considering their limited investment strategies, addressed the Commission's concerns regarding the traditional IIV. *See id.*

203 Section 2(a)(41)(B) of the Act defines "value" as: "(i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors." This definition also is used in rule 2a-4 under the Act as the required basis for computing a fund's current NAV per share. With daily portfolio disclosure, market participants can estimate fair value on their own for the ETF's current holdings. 15 U.S.C. 80a-2(a)(41)(B).

204 An ETF's current portfolio value changes every time the value of any underlying component of the ETF changes. The IIV for an ETF that includes a more frequently traded component security might not reflect the most recent trading information for that underlying security.

205 *See* ETF Handbook, *supra* footnote 25.

holdings.[206] Some of these commenters stated, therefore, that the proposed rule's conditions regarding daily portfolio holdings information would provide more useful information to market participants than IIV.[207] Commenters also agreed that IIV can have significant limitations depending on the types of securities the ETF holds. For example, one commenter stated that these limitations for ETFs holding fixed income securities are the result of market structure issues and that increasing the frequency of the IIV publication would not change these limitations.[208]

Commenters also noted that under current regulatory requirements, IIV can be confusing or misleading to market participants. For example, one commenter stated that current requirements for IIV actually reduce ETF transparency, because the IIV does not reflect the true value of an ETF due to dissemination delays, stale pricing for underlying holdings, and inconsistent calculation methodologies.[209] One commenter opined that IIV is inaccurate for 80% of all ETFs and the rule should not require its dissemination.[210] Another commenter stated that "[IIV] is, at best, slow and likely stale and, at worst confusing, inaccurate, and misleading."[211] In addition, several of these commenters stated that the IIV requirements across regulatory regimes applicable to ETFs should be harmonized.[212] Specifically, these commenters noted that, even if rule 6c-11 were to omit an IIV requirement, existing relief under the Exchange Act and certain exchange listing requirements would require ETFs to continue disseminating IIV. They encouraged the Commission to work with the exchanges to remove these listing requirements.

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206 *See, e.g.,* Jane Street Comment Letter; Invesco Comment Letter; WisdomTree Comment Letter; Vanguard Comment Letter ("These other sources of data include the ETF's published basket, its last published portfolio holdings list, the index tracked by the ETF, and data from third party vendors").

207 *See* Comment Letter of Legg Mason, Inc. (Oct. 1, 2018) ("Legg Mason Comment Letter"); Cboe Comment Letter. *See also* SSGA Comment Letter I ("[t]o the extent there is market demand for information similar to the IIV by market participants absent a regulatory mandate, we expect industry-led solutions will be available, perhaps as part of a broader discussion around market price validation.").

208 *See* Legg Mason Comment Letter (noting, for example, that fixed-income securities are predominantly traded by dealers and not on exchanges). *See also* ICI Comment Letter.

209 *See* SSGA Comment Letter I.

210 Comment Letter of ETF.com (Aug. 28, 2018) ("ETF.com Comment Letter") (stating that "the idea of contemporaneous measure of fair value is enticing" but IIV "is not accurate enough for authorized participants to use in arbitrage analysis.").

211 Cboe Comment Letter.

212 *See, e.g.,* Invesco Comment Letter; SIFMA AMG Comment Letter I; WisdomTree Comment Letter; SSGA Comment Letter I; ETF.com Comment Letter.

Some commenters disagreed with this aspect of the proposal and encouraged the Commission to require ETFs to disseminate IIV as a requirement of the rule. These commenters generally asserted that IIV — despite its limitations — can be useful to retail investors.[213] One such commenter stated that IIV is important for informed trading of ETFs (and other ETPs) by retail investors because it is an "important signal of the value of the underlying portfolio."[214] One commenter stated that IIV allows investors to screen for significant price deviations that could signal breakdowns in the market maker arbitrage process.[215]

Some of these commenters noted that an ETF's IIV may be the only source of pricing information publicly available to retail investors.[216] Another commenter asserted that the rule should include an IIV requirement, but that market participants, particularly retail investors, also would benefit from an explanation of the potential limitations of IIV.[217] Many of the commenters who recommended that the Commission retain an IIV requirement also recommended that the Commission standardize and otherwise improve the IIV calculation.[218]

After considering these comments, we continue to believe that rule 6c-11 should not require ETFs to disseminate IIV as IIV is not necessary to support the arbitrage mechanism for ETFs that provide daily portfolio holdings disclosure. Instead, rule 6c-11's portfolio holdings disclosure will provide market participants with the relevant data to input into their internal algorithms and thus allow them to determine if arbitrage opportunities exist.

We also do not believe that IIV will provide a reliable metric for retail investors to assess all ETFs relying on rule 6c-11 given the breadth of asset classes that ETFs may hold (and the particular shortcomings of IIV when an ETF holds assets that do not trade contemporaneously with the ETF or are traded less frequently). Furthermore, retail investors do not have easy access to IIV through free, publicly available websites today even for those asset classes where an IIV may be more reliable. A staff review of the websites for the ten largest ETFs by assets under management

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213 *See, e.g.,* Angel Comment Letter; Nasdaq Comment Letter; IDS Comment Letter.

214 *See* Angel Comment Letter.

215 *See* Nasdaq Comment Letter.

216 *See* IDS Comment Letter. *See also* CFA Comment Letter; Eaton Vance Comment Letter.

217 *See* FIMSAC Comment Letter.

218 *See, e.g.,* NYSE Comment Letter; IDS Comment Letter; Nasdaq Comment Letter; Eaton Vance Comment Letter. *See also* Angel Comment Letter (recommending dissemination on standard CQS and UTP feeds, one-second updates, and standardization of IIV suffixes).

found that none provides a real-time IIV on its website. Some of these ETFs disclose a specific ticker symbol for the ETF's IIV (as opposed to the ticker symbol for the ETF itself) on their websites, others provide the IIV with a delay of up to 45 minutes, while others provide no information about the ETF's IIV at all.[219] A review of several publicly available, free financial websites also found that not all of these websites provide an ETF's IIV.[220] Where these websites did provide the IIV, it was delayed by at least 15 minutes.[221] We believe this raises a significant risk that retail investors using these websites may be receiving stale IIVs for ETFs. We have noted, and commenters agreed, that even the 15-second interval for dissemination of an ETF's IIV required under the exchange listing standards may be too infrequent to effectively reflect the full trading activity for component securities, and therefore to reflect the actual value of the ETF. Therefore, we do not believe that adopting rule 6c-11 without an IIV requirement would remove information from the market that retail investors could reliably use when making investment decisions.

We considered whether to require an ETF to publicly disseminate a modified IIV on its website on a real time basis as a condition to rule 6c-11, requiring ETFs to calculate IIVs more frequently and in a more accessible manner. We also considered creating a methodology that takes into account circumstances when market prices for underlying assets are not available or should not be used to reflect the ETF's intraday value. However, we believe that these modifications are not necessary given that an ETF operating in reliance on rule 6c-11 will provide full portfolio transparency on its website.

We recognize that intraday information accurately reflecting the current value of an ETF's shares can be important to retail investors and encourage the ETF industry to undertake efforts to develop intraday value metrics targeted at these investors.[222] We believe that ETFs are in a position to consider and develop tailored metrics for

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219 Fewer than half of the ETFs included in the review use a specific ticker symbol that allows an investor to locate the ETF's IIV (*e.g.,* the ETF's ticker symbol followed by ".iv" or "– iv").

220 When input into a free financial website, the IIV was provided with a delay of at least 15 minutes.

221 *See, e.g.,* https://finance.yahoo.com/quote/%5ESPY-IV/; https://www.morningstar.com/etfs/arcx/spy/betaquote.html.

222 One commenter noted that a lack of disclosure regarding potential intraday deviations could, in some circumstances, be misleading. *See* Comment Letter of Henry Hu and John Morley, Yale Law School (Aug, 27, 2018) "(Hu and Morley Comment Letter") (incorporating article by Henry T. C. Hu, University of Texas Law School and John D. Morley, *A Regulatory Framework for Exchange-Traded Funds*, 91 S. Cal. Law Review 839 – 941 (July 2018) at 920, which describes a particular ETF that "suffered extraordinary [intraday] departures from NAV on August 24, 2015" and noting how "[in looking] only

ETFs holding different asset classes in a format that is useful for retail investors. As one commenter noted, rule 6c-11's portfolio holdings disclosure requirements may promote a market-based solution to today's IIV shortcomings by making the information required to calculate intraday values broadly available in a standardized, user-friendly format, which could "encourage pricing services and other potential providers to develop commercial ETF intraday valuation services that would compete in the market on the basis of timeliness, accuracy, reliability and price."[223]

4. Portfolio Holdings Disclosure

Since the first exemptive order for an ETF, the Commission has relied on the existence of an arbitrage mechanism to keep market prices of ETF shares at or close to the NAV per share of the ETF. One mechanism that facilitates the arbitrage mechanism is daily portfolio transparency.[224] Portfolio transparency provides authorized participants and other market participants with a tool to facilitate valuing the ETF's portfolio on an intraday basis, which, in turn, enables them to identify arbitrage opportunities and to effectively hedge their positions. Accordingly, as proposed, rule 6c-11 will require an ETF to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will form the basis for each calculation of NAV per share.[225]

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at the close and not intra-day performance, the result was an emphatically reassuring picture being presented to investors. As a result, an investor may have a misleading sense as to the true risks and returns of the ETF.").

223 *See* Eaton Vance Comment Letter.

224 Our exemptive orders for actively managed ETFs and recent orders for self-indexed ETFs have required full portfolio transparency. Exemptive orders for index-based ETFs with an unaffiliated index provider have required publication of the ETF's baskets. We understand, however, that all ETFs that can rely on rule 6c-11 currently provide full transparency as a matter of industry practice.

225 Rule 6c-11(c)(1)(i). For purposes of this requirement, as well as other requirements to disclose information on a publicly available website under rule 6c-11, an ETF should not establish restrictive terms of use that would effectively make the disclosures unavailable to the public or otherwise difficult to locate. For example, the required website disclosure should be easily accessible on the website, presented without encumbrance by user name, password, or other access constraints, and should not be subject to usage restrictions on access, retrieval, distribution or reuse. However, this requirement does not preclude the ETF from making other, unrelated sections of its website private or password protected. We *also* encourage ETFs to consider whether there are technological means to make the disclosures more accessible. For example, today, ETFs could include the portfolio holdings information in a downloadable or machine-readable format, such as comma-delimited or similar format.

We received numerous comments on this aspect of the proposal. Many commenters generally supported requiring full, daily portfolio holdings disclosure on the ETF's website as a condition for reliance on rule 6c-11.[226] These commenters agreed with our view that portfolio transparency supports an efficient arbitrage mechanism and thus helps maintain the close tie between the market price of an ETF's shares and the value of its portfolio. One commenter stated that portfolio transparency is important to individual investors because it allows them to better discern differences between ETFs that purport to track similar indexes or have similar investment objectives.[227]

On the other hand, one commenter did not support daily disclosure of an ETF's full portfolio, opining that an effective arbitrage mechanism is sufficiently supported by disclosure of well-constructed baskets with performance that closely tracks the performance of both the fund and its index.[228] This commenter further asserted that daily portfolio transparency may harm ETF investors by permitting market participants to front-run index funds, which could negatively impact the prices at which the ETF trades portfolio holdings and thus reduce investors' returns. This commenter recommended, as an alternative to the proposed requirement, that the Commission require ETFs to provide daily disclosure of portfolio holdings, with an exception for the portion of holdings that are "subject to sensitive trading strategies," such as those related to index changes.[229]

One commenter supported requiring daily portfolio transparency for index-based ETFs, but opposed requiring it for actively managed ETFs, due to the risk of market participants using the portfolio holdings disclosures to front-run or piggyback on actively managed strategies.[230] Similarly, another commenter asserted that daily portfolio transparency is not a necessary condition for effective arbitrage, and noted that the risks of front-running and "free riding" that arise from portfolio transparency were preventing it from offering more actively managed ETFs.[231]

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226 *See*, *e.g.,* Comment Letter of Stuart Cary (July 3, 2018) ("Cary Comment Letter"); ETF.com Comment Letter; Comment Letter of Jack Reagan (July 12, 2018) ("Reagan Comment Letter"); BlackRock Comment Letter; Cboe Comment Letter; BNY Mellon Comment Letter; Fidelity Comment Letter; SIFMA AMG Comment Letter I; CSIM Comment Letter; Virtu Comment Letter; Eaton Vance Comment Letter.

227 *See* CSIM Comment Letter.

228 Vanguard Comment Letter.

229 *Id.* (recommending that the rule permit ETFs to disseminate a list of index securities that, when combined with disclosed portfolio holdings, would be reasonably designed to track the ETF's (and the index's) performance).

230 *See* Invesco Comment Letter (recommending that the rule permit actively managed ETFs to delay disclosure of portfolio holdings at least two days).

231 *See* JPMAM Comment Letter. *See also* Dechert Comment Letter (urging the Commission to consider moving to a more uniform, standardized approach in determining whether to grant exemptive relief for non-fully transparent ETFs).

We continue to believe ETFs relying on rule 6c-11 should provide full daily portfolio transparency in order to facilitate an efficient arbitrage process. Notably, we believe it is likely that all current ETFs that may rely on the rule already provide full portfolio transparency as a matter of market practice and this approach will eliminate regulatory distinctions between index-based and actively managed ETFs that rely on rule 6c-11. Moreover, although we recognize there are alternative approaches to facilitate efficient arbitrage, the Commission has limited experience with such approaches, which are new and continuing to evolve and we therefore believe that these alternatives should be considered within our exemptive applications process.

Accordingly, rule 6c-11 will require full, daily portfolio holdings disclosure for ETFs relying on the rule. As discussed below, however, the portfolio transparency requirement we are adopting includes several modifications from the proposed rule, including modifications regarding the required timing and presentation of the portfolio holdings disclosure.

a. Timing of Portfolio Holdings Disclosure

Rule 6c-11 will require website disclosure of an ETF's portfolio holdings on each business day before the opening of regular trading on the primary listing exchange of the ETF's shares.[232] Our proposal also would have required an ETF to disclose its portfolio holdings before the ETF starts accepting orders for the purchase or redemption of creation units.[233] The proposed rule's timing requirements were designed to prevent an ETF from disclosing its portfolio holdings only after the beginning of trading or after the ETF has begun accepting orders for the next business day.[234]

We received several comments on this aspect of the proposal, particularly on the proposed requirement that an ETF disclose its portfolio holdings before the ETF starts accepting orders on a given business day. Several commenters opposed the proposed timing requirement because it could prevent certain ETFs from accepting creation and redemption orders shortly after the US market closes ("T-1 orders").[235] These commenters explained that T-1 orders allow ETFs, authorized participants, and other market participants to place orders for the purchase and sale of portfolio securities in non-U.S. markets with hours that do not overlap (or have limited overlap) with U.S. market hours when those markets are open.[236] An ETF that holds Japanese equities, for example, may permit authorized participants to submit T-1 orders (between 4:00 pm ET and 5:00 pm ET) to allow for trading in the underlying

232 Rule 6c-11(c)(1)(i).

233 *See* proposed rule 6c-11(c)(1)(i).

234 *See* 2018 Proposing Release, *supra* footnote 7, at n.209 and accompanying text.

235 *See*, *e.g.,* ICI Comment Letter; BlackRock Comment Letter.

236 *See*, *e.g.,* Invesco Comment Letter.

Japanese securities before the Japanese market closes (2:00 am ET).[237] Some commenters explained that the operational steps necessary to disclose an ETF's portfolio holdings would take 2 – 3 hours after NAV calculation (typically 4:00 pm ET) and the requirement to disclose portfolio holdings before accepting orders therefore would eliminate the T-1 order window.[238]

Several commenters discussed the benefits of permitting ETFs to accept T-1 orders. Commenters stated that T-1 orders allow market participants to align the execution time of underlying securities transactions with the NAV calculation of the order, and thus minimize costs and support effective arbitrage.[239] Some commenters stated that eliminating the T-1 order window may lead to wider bid-ask spreads, larger premiums/discounts, and greater tracking differences for these ETFs.[240] One commenter stated that, without T-1 orders, an ETF may have uninvested cash for longer periods of time (leading to increased tracking error) and authorized participants may need to hedge their exposures for longer than usual due to the delay between when the creation order is placed and when the ETF acquires the portfolio securities (leading to wider bid-ask spreads).[241] Another commenter noted that moving the T-1 order window later into the evening to allow the ETF to calculate and disclose its portfolio holdings before accepting T-1 orders would require an additional staffing shift, and thus would impose additional staffing costs on sponsors, custodians, and other market participants.[242]

Commenters recommended alternatives to the proposed rule's timing requirements. Several commenters suggested we require portfolio holdings disclosure only before the opening of regular trading on the primary listing exchange.[243]

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237 *See* ICI Comment Letter.

238 *See* Invesco Comment Letter.

239 *See*, *e.g.,* ICI Comment Letter (discussing the importance to authorized participants of the ability to trade or hedge the underlying exposures at the same time the ETF strikes its NAV); BlackRock Comment Letter; Jane Street Comment Letter (stating that "market participants have found that that benefits of agreeing to an order shortly after market close outweighs] the costs imposed by lack of certainty").

240 *See*, *e.g.,* ICI Comment Letter (asserting that inability to trade at T-1 could introduce slippage, which in turn may lead to wider bid-ask spreads and larger premium/discounts); CSIM Comment Letter; Comment Letter of OppenheimerFunds (Oct. 1, 2018) ("Oppenheimer Funds Comment Letter"). *See also* BlackRock Comment Letter ("Many ETFs in the marketplace currently take orders prior to publication of basket or portfolio holdings information and operate efficiently and with tight spreads.").

241 *See* Dechert Comment Letter.

242 *See* Invesco Comment Letter.

243 *See* NYSE Comment Letter; CSIM Comment Letter; WisdomTree Comment Letter.

These commenters asserted that authorized participants placing purchase or redemption orders on a T-1 basis are able to assess and hedge market risk associated with transacting in underlying foreign securities prior to regular trading in U.S. equity markets. Other alternatives suggested by commenters included: (i) carving out ETFs investing in foreign markets from the proposed timing requirements;[244] and (ii) permitting ETFs to accept T-1 orders provided that they first share certain standardized information with authorized participants.[245]

After considering these comments, we are not adopting the proposed requirement that an ETF disclose its portfolio holdings before it starts accepting orders for the purchase or redemption of creation units. Instead, rule 6c-11 will require an ETF to disclose the portfolio holdings that will form the basis for the ETF's next calculation of NAV per share each business day before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares.[246] This will accommodate T-1 orders, as requested by commenters, and is consistent with our existing exemptive orders.[247]

The goal of our proposed timing requirement was to facilitate effective arbitrage by providing authorized participants and other market participants buying and selling ETF shares with portfolio holdings information at the time of the transaction. We believe that accommodating T-1 orders, but requiring disclosure before the opening of regular trading on the primary listing exchange of the ETF's shares, will nonetheless allow for effective arbitrage. Commenters stated that ETFs utilizing T-1 orders have shown relatively narrow bid-ask spreads and small premiums and discounts, and stated that precluding T-1 orders could have the unintended effect of actually widening bid-ask spreads and disrupting existing market practices.[248]

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244 *See* Nasdaq Comment Letter.

245 *See* Invesco Comment Letter (suggesting that, as a condition for accepting T-1 orders, ETFs be required to provide APs with (1) the last-published portfolio holdings, (2) applicable corporate action information, (3) data relating to index changes, and (4) an updated basket file).

246 For these purposes, "business day" is defined as any day the ETF is open for business, including any day when it satisfies redemption requests as required by section 22(e) of the Act. *See* rule 6c-11(a)(1).

247 *See*, *e.g.,* Salt Financial, LLC, et al., Investment Company Act Release Nos. 32974 (Jan. 23, 2018) [83 FR 4097 (Jan. 29, 2018)] (notice) and 33007 (Feb. 21, 2018) (order), and related application ("Salt Financial") (requiring disclosure of portfolio holdings before commencement of trading on the exchange).

248 *See*, *e.g.,* Jane Street Comment Letter; ICI comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter I.

Moreover, staff review of the websites of several ETFs that disclose that they use T-1 orders indicates that these ETFs' bid-ask spreads and premiums and discounts fall approximately within the same range as ETFs that do not use T-1 orders.

We considered whether to impose other conditions for the acceptance of T-1 orders, such as disclosure of the last published portfolio holdings. However, given the information already available to market participants and the data demonstrating that existing market practices have led to effective arbitrage, we do not believe additional conditions are currently necessary to facilitate arbitrage for these orders.

b. Presentation of Portfolio Holdings Disclosure

Rule 6c-11 will require an ETF to disclose standardized information regarding each portfolio holding.[249] The rule, however, will not require this information to be presented and contain information in the manner prescribed within Article 12 of Regulation S-X as proposed.[250] In response to concerns and suggestions of commenters, we have modified this condition to require ETFs to disclose a limited set of information for each portfolio holding.[251]

Commenters on this aspect of the proposal agreed that there currently is little consistency in the presentation of holdings information by ETFs,[252] and generally agreed this disclosure should be standardized.[253] Several commenters, however, stated that the specific presentation standard included in the proposed rule (*i.e.,* Article 12 of Regulation S-X) is not an appropriate framework for daily portfolio

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249 Rule 6c-11(c)(1)(i). As proposed, the term "portfolio holdings" is defined to mean an ETF's securities, assets, or other positions. *See* rule 6c-11(a)(1). As a result, ETFs relying on rule 6c-11 are required to disclose securities, their cash holdings, as well as holdings that are not securities or assets, including short positions or written options. For example, an ETF will have to disclose that it entered into a written call option, under which it would sacrifice potential gains that would result from the price of the reference asset increasing above the price at which the call may be exercised (*i.e.* the strike price). Unless the ETF discloses the presence of these and similar liabilities, authorized participants and other investors may not be able to fully evaluate the portfolio's exposure. We did not receive any comments on this definition.

250 *See* 2018 ETF Proposing Release, *supra* footnote 7, at nn.220 – 221 (noting that a staff review of ETF websites found little consistency in how portfolio holdings information was presented, particularly with respect to derivatives, which could lead to investor confusion).

251 *See infra* footnotes 256 – 259 and accompanying text.

252 *See*, *e.g.,* Cary Comment Letter; ETF.com Comment Letter.

253 *See*, *e.g.,* BlackRock Comment Letter; BNY Mellon Comment Letter; Fidelity Comment Letter.

holdings disclosures by ETFs.[254] Commenters asserted that certain of the Article 12 requirements are overly burdensome for daily disclosure or unnecessary to achieve the Commission's goal of facilitating effective arbitrage.[255]

Some commenters recommended alternative approaches. Several commenters, for example, suggested using disclosure requirements based on the generic listing standards for actively managed ETFs.[256] One of these commenters stated that using the generic listing standards would provide "more streamlined portfolio holdings disclosure that includes a subset of the items required by Article 12 that is most

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254 *See*, *e.g.,* Fidelity Comment Letter; ICI Comment Letter. The proposed Article 12 presentation requirements would have required an ETF to include the name of issuer and title of issue (as prescribed within the S-X schedules including any related footnotes on the description columns), balance held at close of period, number of shares, principal amount of bonds, and value of each item at close of period for the ETF's investments in securities, securities sold short, and other investments. For derivatives, Article 12 would require disclosure that includes the description (as prescribed within the S-X schedules including any related footnotes), number of contracts, value, expiration date (as applicable), unrealized appreciation/depreciation (as applicable), and amount and description of currency to be purchased and to be sold (as applicable). *See* 17 CFR 210.12-12; 210.12-12A; 210.12-13; 210.12-13A; 210.12-13B; 210.12-13C; and 210.12-13D.

255 *See*, *e.g.,* WisdomTree Comment Letter (explaining that Article 12 requires detailed categorization of investments by investment type, industry, and country or geographic region and *also* requires identification of fair valued and non-income producing securities); SIFMA AMG Comment Letter I (stating that information such as appreciation and depreciation for derivatives, as required under Article 12, would be difficult and impractical to calculate and disseminate on a daily basis); Comment Letter of Franklin Resources, Inc. (Oct. 1, 2018) ("Franklin Templeton Comment Letter") (noting that certain data required under Article 12 is updated only on a quarterly basis and would not be easily accessible on a daily basis); BlackRock Comment Letter; ICI Comment Letter.

256 *See*, *e.g.,* BlackRock Comment Letter; Fidelity Comment Letter; Eaton Vance Comment Letter. *See also* ICI Comment Letter (noting that standardizing "the presentation formats based on exchange listing requirements would obviate the need for two separate schedules, a costly and largely redundant exercise with no additional benefit"). The listing exchanges' current generic listing standards for actively managed ETFs require disclosure of ticker symbol; CUSIP or other identifier; description of the holding; identity of the asset upon which the derivative is based; strike price for any options; quantity of each security or other asset held as measured by (i) par value, (ii) notional value, (iii) number of shares, (iv) number of contracts, and (v) number of units; maturity date; coupon rate; effective date; market value; and percentage weight of the holding in the portfolio. *See, e.g.,* NYSE Arca Rule 8.600-E(c)(2); Nasdaq Rule 5735(c)(2); Cboe BZX Rule 14.11(i)(3)(B).

relevant and useful for investors."[257] Other commenters stated that the Commission should consider a more limited set of requirements, such as: (i) the name of the security; (ii) the size of the position; (iii) the percentage exposure to such security; and (iv) the security's value.[258] Some commenters also recommended that, in addition to website disclosure, rule 6c-11 require ETFs to file portfolio holdings information in a central public location, such as EDGAR.[259]

We proposed the Article 12 framework because ETFs are already required to comply with Article 12 for periodic financial reporting purposes and therefore we believed that it would provide an efficient way to standardize daily portfolio holdings disclosure. After considering comments, however, we believe that a more streamlined requirement will provide standardized portfolio holdings disclosure in a more efficient, less costly, and less burdensome format, while still providing market participants with relevant information. Accordingly, rule 6c-11 will require an ETF to post a subset of the information required by the listing exchanges' current generic listing standards for actively managed ETFs. Rule 6c-11 will require ETFs to disclose the following information for each portfolio holding on a daily basis: (1) ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the portfolio.[260] We believe that this framework will provide market participants with the information necessary to support an effective arbitrage mechanism and eliminate potential investor confusion due to a lack of standardization.

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257 *See* BlackRock Comment Letter.

258 *See*, *e.g.,* WisdomTree Comment Letter. *See also* CSIM Comment Letter (suggesting that Commission adopt an ETF holdings disclosure requirement similar to what money market funds report on fund websites); Cary Comment Letter (recommending disclosure of the portfolio holding's ticker symbol and weighting in the portfolio as minimum requirements); Comment Letter of ICE Data Services, Intercontinental Exchange (Oct. 1, 2018) ("IDS Comment Letter") (stating that Commission should consider a standardized nomenclature for ETFs' description of derivative holdings).

259 *See*, *e.g.,* Reagan Comment Letter. *See also* Morningstar Comment Letter (recommending that the Commission *also* require ETFs to disclose the information and other website disclosure requirements in structured format for analysis and comparison purposes); FIMSAC Comment Letter (recommending the rule require ETFs to file certain website disclosures on EDGAR or another public, centralized database).

260 Article 12 of Regulation S-X *also* generally requires disclosure of these items, but does not require a ticker, CUSIP, or other identifier for a holding. *See, e.g.,* 17 CFR 210.12-12, 210.12-12A (requiring disclosure of name of issuer and title of issue). We believe that such identifiers can allow market participants to efficiently identify the asset or security held, and thus we included this requirement, which is required under the current generic listing standards for actively managed ETFs.

As commenters suggested, to arbitrage an ETF's holdings, market participants generally must be able to identify the security or asset held, the quantity held, and percentage weighting of the holding in the ETF's portfolio.[261] To enable market participants to identify the investment held, we are requiring the ETF to disclose the ticker, CUSIP or other identifier (where applicable) of the holding, and to provide a description of the holding. Because certain investments may not have been assigned a common securities identifier, we are requiring the ETF to provide a brief description of the investment to allow an investor to effectively hedge the ETF.[262] For example, ETFs holding debt securities should include the security's name, maturity date, coupon rate, and effective date, where applicable, to assist investors in identifying the specific security held.[263] To indicate the quantity of a security or other asset held, the ETF generally should use the measure typically associated with quantifying that class of security, such as number of shares for equity securities, par value for debt securities, number of units for securities, such as UITs, that are measured in units, and dollar value for cash. With respect to derivatives, the ETF generally should provide both the notional value of the derivative and number of contracts, as well as a general description of the investment, which should include the type of derivative (*i.e.,* swap, option, forward). ETFs also may want to consider several of the other reporting fields in Form N-PORT, for example, depending on the type of investment the ETF holds, in order to provide investors with the necessary information.

We continue to believe that the ETF's website is the most effective location for the disclosure of portfolio holdings information. By posting the portfolio information on its website, free of charge, the ETF makes the information available to a broad range of investors, including retail investors, and other market participants.[264] We further believe, and commenters agreed, that requiring ETFs to file their portfolio holdings information on EDGAR would impose additional costs on ETFs that are not justified in light of other available disclosure methods.[265] Moreover, the purpose of

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261 *See, e.g.,* WisdomTree Comment Letter.

262 *See, e.g.,* Investment Company Reporting Modernization Adopting Release, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] ("Reporting Modernization Adopting Release"), at section II.A.4.g.i. (discussing use of unique securities identifiers for portfolio holdings and observing that some holdings lack such identifiers).

263 Based on our experience with structured portfolio reporting, such as Form N-PORT, we believe that this information will provide a sufficient amount of data for a market participant to understand the payment profile of the investment and therefore arbitrage the ETF's portfolio holdings. *See id.*, at section II.A.4.g.ii.

264 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.271 and accompanying text (discussing advantages of website posting over use of National Securities Clearing Corporation ("NSCC") portfolio composition file).

265 *See, e.g.,* Invesco Comment Letter (stating that additional dissemination requirements, such as EDGAR, would be costly).

this requirement is to allow ETF investors to understand and potentially arbitrage the ETF's holdings. We therefore do not believe that requiring ETFs to file daily portfolio holding disclosure on EDGAR or other centralized location in order to provide potentially greater comparability across ETFs is justified in light of current market practices and the additional costs associated with such a requirement.[266] In addition, other documents, such as reports on Form N-PORT or Form N-CEN, registration statements on Form N-1A, and consolidated structured datasets derived from those submissions, provide centralized, structured information, including information about portfolio holdings, that can be analyzed and compared across ETFs, albeit on a less frequent basis.[267]

c. *Portfolio Holdings that Will Form the Basis for the ETF's NAV Calculation*

As proposed, rule 6c-11 will require the portfolio holdings that form the basis for the ETF's NAV calculation to be the ETF's portfolio holdings as of the close of business on the prior business day.[268] Changes in an ETF's holdings of portfolio securities would therefore be reflected on a T+1 basis. We did not receive any comments on this proposed condition, which is consistent with current ETF practices. We continue to believe that requiring an ETF to disclose the portfolio that will form the basis for the next NAV calculation at the beginning of the business day will help to facilitate the efficient functioning of the arbitrage process while protecting against potential front-running of the ETF's trades.

Accordingly, rule 6c-11 will not require ETFs to disclose intraday changes in portfolio holdings because these changes would not affect the portfolio composition serving as a basis for NAV calculation until the next business day.[269] We continue to believe that the selective disclosure of nonpublic information regarding intraday changes in portfolio holdings (or any advance disclosure of portfolio trades) could result in the front-running of an ETF's trades, causing the ETF to pay more to obtain a security.[270] We have stated that registered investment companies' compliance policies and

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266 As stated above, however, we encourage ETFs to consider whether there are technological means, such as including portfolio holdings information in a machine-readable format, to make these disclosures more accessible. *See supra* footnote 225.

267 *See*, *e.g.,* Part C of Form N-PORT.

268 *See* rule 6c-11(c)(1)(i). *See also* 2018 Proposing Release, *supra* footnote 7, at nn.210-211 and accompanying text.

269 *See* 2018 ETF Proposing Release, *supra* footnote 7, at note 222 and accompanying text.

270 We *also* requested comment in the proposal on whether we should amend Regulation FD to apply to ETFs. Regulation FD prohibits the selective disclosure of material information by publicly traded companies and other issuers. *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.228. We received two comments stating that ETFs should be subject to Regulation FD. *See* Eaton

procedures required by rule 38a-1 under the Act should address potential misuses of nonpublic information, including the disclosure to third parties of material information about a fund's portfolio, its trading strategies, or pending transactions, and the purchase or sale of fund shares by advisory personnel based on material, nonpublic information about the fund's portfolio.[271] ETFs also are required to describe their policies and procedures on portfolio security disclosure in the Statement of Additional Information and post such policies and procedures on their websites.[272]

5. Baskets

As proposed, rule 6c-11 will require an ETF relying on the rule to adopt and implement written policies and procedures governing the construction of baskets and the process that the ETF will use for the acceptance of baskets.[273] In addition, as proposed, the rule will provide an ETF with flexibility to use "custom baskets" if the ETF has adopted written policies and procedures that: (i) set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders, including the process for any revisions to, or deviations from, those parameters; and (ii) specify the titles or roles of employees of the ETF's investment adviser who are required to review each custom basket for compliance with those parameters ("custom basket policies and procedures").[274]

Vance Comment Letter; Jane Street Comment Letter. However, we are not amending Regulation FD at this time in order to further explore certain aspects of applying Regulation FD to ETFs, which unlike other entities subject to this regulation, are continuously offered.

271 Rule 38a-1 Adopting Release, *supra* footnote 133. Pursuant to rule 6c-11, ETFs are required to disclose portfolio holdings information with greater frequency than other open-end funds, which are generally required to publicly disclose holdings on a quarterly basis. However, we have previously noted that a fund or investment adviser that discloses the fund's portfolio securities may only do so consistent with the antifraud provisions of the federal securities laws and the adviser's fiduciary duties. *See* Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release No. 26418 (Apr. 20, 2004) [69 FR 22299 (Apr. 23, 2004)] ("Disclosure of Portfolio Holdings Release"), at section II.C. Moreover, divulging nonpublic portfolio holdings to selected third parties is permissible only when the fund has legitimate business purposes for doing so and the recipients are subject to a duty of confidentiality, including a duty not to trade on the nonpublic information. *Id.*

272 *See* Items 9(d) and 16(f) of Form N-1A; *see also* Disclosure of Portfolio Holdings Release, *supra* footnote 271, at section II.C.

273 *See* rule 6c-11(c)(3). The rule will define "basket" to mean the securities, assets or other positions in exchange for which an ETF issues (or in return for which it redeems) creation units. *See* rule 6c-11(a)(1).

274 *See* rule 6c-11(c)(3); *see also infra* footnote 298 and accompanying text.

a. Basket Policies and Procedures

When an ETF uses in-kind creations and redemptions, the composition of the basket is an important aspect of the efficient functioning of the arbitrage mechanism. Basket composition affects the costs of assembling and delivering the baskets exchanged for creation units as well as the costs of liquidating basket securities when redeeming creation units.[275] Basket composition also is important to ETF portfolio management, as each in-kind creation or redemption increases or decreases positions in the ETF's portfolio, and allows portfolio managers to add or remove certain portfolio holdings. This can be an efficient way for a portfolio manager to execute changes in the ETF's portfolio because the manager can make the changes without incurring the additional expenses of trades in the market. When an ETF does not have flexibility to manage basket composition, however, undesired changes to the portfolio may result, such as the loss of desirable bonds when paying redemptions in kind.

The exemptive relief relating to baskets evolved over time. Early orders for ETFs organized as open-end funds included few explicit restrictions on baskets, and these orders did not expressly limit ETFs' baskets to a pro rata representation of the ETF's portfolio holdings.[276]

Since approximately 2006, however, our orders placed tighter restrictions on an open-end ETF's composition of baskets.[277] These orders expressly require that an ETF's basket generally correspond pro rata to its portfolio holdings, while identifying certain limited circumstances under which an ETF may use a non-pro rata basket.[278]

The requirement that baskets correspond pro rata to the ETF's portfolio holdings, and the increasingly limited exceptions to the pro rata requirement, were designed to address the risk that an authorized participant could take advantage of its relationship

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275 For example, the number of positions included in a basket, as well as the difficulty and cost of trading those positions, will affect the cost of basket transactions.

276 *See* WEBs Index Fund, Inc.,*et al.*, Investment Company Act Release Nos. 23860 (June 7, 1999) [64 FR 31658 (June 11, 1999)] (notice) and 23890 (July 6, 1999) (order) and related application. Our earliest ETF orders for ETFs organized as UITs provide that in-kind purchases of creation units were to be made using a basket of securities substantially similar to the composition and weighting of the ETF's underlying index. Given the unmanaged nature of the UIT structure, a UIT ETF's basket generally reflected a pro rata representation of the ETF's portfolio. *See* SPDR, *supra* footnote 51.

277 *See, e.g.,* 2006 WisdomTree Investments, *supra* footnote 200.

278 *See id.*; *see also* 2018 ETF Proposing Release, *supra* footnote 7, at nn. 238 – 242 and accompanying text (describing the circumstances when a basket could deviate from a pro rata representation of the ETF's portfolio under recent exemptive orders).

with the ETF and pressure the ETF to construct a basket that favors an authorized participant to the detriment of the ETF's shareholders. For example, because ETFs rely on authorized participants to maintain the secondary market by promoting an effective arbitrage mechanism, an authorized participant holding less liquid or less desirable securities potentially could pressure an ETF into accepting those securities in its basket in exchange for liquid ETF shares (*i.e.,* dumping). An authorized participant also could pressure the ETF into including in its basket certain desirable securities in exchange for ETF shares tendered for redemption (*i.e.,* cherry-picking). In either case, the ETF's other investors would be disadvantaged and would be left holding shares of an ETF with a less liquid or less desirable portfolio of securities.[279]

Based on our experience with ETFs, however, we believe there are many circumstances, in addition to the specific circumstances enumerated in our orders, where allowing basket assets to differ from a pro rata representation or allowing the use of different baskets could benefit the ETF and its shareholders. For instance, ETFs without basket flexibility typically are required to include a greater number of individual securities within their basket when transacting in kind, making it more difficult and costly for authorized participants and other market participants to assemble or liquidate baskets. This could result in wider bid-ask spreads and potentially less efficient arbitrage. In such circumstances, these ETFs may be at a competitive disadvantage to ETFs with greater flexibility. As a result, these differing conditions and requirements for basket composition in our exemptive orders may have created a disadvantage for newer ETFs that are subject to our later, more stringent restrictions on baskets.

Moreover, certain exceptions to a pro rata basket requirement may help ETFs operate more efficiently. For example, ETFs, particularly fixed-income ETFs, that do not have basket flexibility may satisfy redemption requests entirely in cash in order to avoid losing hard-to-find securities and to preserve the ETF's ability to achieve its investment objectives.[280] ETFs that meet redemptions in cash may maintain larger cash positions to meet redemption obligations, potentially resulting in cash drag on the ETF's performance. The use of cash baskets also may be less tax-efficient than using in-kind baskets to satisfy redemptions, and may result in additional transaction costs for the purchase and sale of portfolio holdings.[281]

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279 These abuses *also* could occur when a liquidity provider or other market participant engages in primary market transactions with the ETF by using an authorized participant as an agent.

280 Many ETFs, including fixed-income ETFs, are permitted under their exemptive orders to satisfy redemptions entirely in cash where the ETF holds thinly traded securities, among other circumstances. *See, e.g.*, Pacific Investment Management Company LLCP, et al., Investment Company Act Release Nos. 28723 (May 11, 2009) [74 FR 22772 (May 14, 2009)] (notice) and 28752 (June 1, 2009) (order) and related application.

281 In-kind redemptions allow ETFs to avoid taxable events and certain transaction costs that arise when selling securities for cash within the ETF. *See, e.g.,* Prudential Investments LLC, et al., Investment Company Act Release Nos. 32351 (Nov. 1, 2016) (notice) [81 FR 78228 (Nov. 7, 2016)] and 32374

We therefore proposed to provide additional basket flexibility, subject to conditions designed to address concerns regarding the potential risk of overreaching. Specifically we proposed to require ETFs to adopt: (i) policies and procedures governing the construction of baskets and the process that would be used for the acceptance of baskets generally; and (ii) heightened process requirements for ETFs using custom baskets, including policies and procedures specifically covering the use of custom baskets.[282]

Commenters generally supported requiring ETFs to adopt policies and procedures governing the construction of baskets.[283] One commenter stated, for example, that this requirement is consistent with other investment and portfolio management processes that require guidelines, oversight and recordkeeping.[284] Commenters also generally supported our proposal to permit ETFs relying on the rule to use custom baskets provided they adopt certain heightened process requirements.[285] These commenters agreed that providing ETFs with the flexibility to use custom baskets potentially could benefit ETF investors through more effective arbitrage and more efficient portfolio management.[286] One commenter provided the results of an analysis it performed indicating that fixed-income ETFs with basket flexibility had narrower bid-ask spreads, had lower tracking differentials (*i.e.,* the difference between the ETF's daily return and the daily return of its benchmark), and traded at smaller discounts than fixed-income ETFs without basket flexibility.[287]

One commenter, however, asserted that the rule should not afford custom basket flexibility to all ETFs relying on it.[288] Rather, this commenter opined that the rule should require fixed-income ETFs to make in-kind, pro rata redemptions upon

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(Nov. 30, 2016) (order) and related application (stating that cash redemptions may result in adverse tax consequences and higher transaction costs, such as brokerage costs, than in-kind redemptions). Additionally, based upon Form N-CEN data through September 5, 2019, the median transaction fee charged to an authorized participant for the use of an in-kind basket to satisfy a redemption was approximately $350.00, while the median transaction fee for the use of a basket that was partially or fully composed of cash was approximately $375.00, when charged on a per-creation-unit basis.

282 *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.5.a.

283 *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter I.

284 *See* SIFMA AMG Comment Letter I.

285 *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter; Invesco Comment Letter; BNY Mellon Comment Letter; IDC Comment Letter; Fidelity Comment Letter.

286 *See, e.g.,* BlackRock Comment Letter.

287 *See* ICI Comment Letter. *See also infra* footnotes 573 – 574 and accompanying text.

288 *See* Bluefin Comment Letter.

shareholder request (with limited substitutions for holdings that cannot be settled or transferred) because, under certain market conditions, custom baskets can lead to greater price volatility and dislocation from NAV for these ETFs.

Some commenters, although generally supporting custom basket flexibility and the proposed heightened process requirements, requested that we modify or clarify certain aspects of the proposed condition.[289] For example, one commenter did not support requiring "detailed parameters" for the construction and acceptance of custom baskets, stating that the rule should permit ETF sponsors to develop broad policies and procedures to cover the wide range of circumstances that may arise relating to custom baskets.[290] Another commenter stated that the Commission should explicitly set forth the appropriate considerations for custom basket policies and procedures, such as periodic monitoring and testing and oversight of the custom basket process.[291] This commenter also stated that the Commission should clarify that an ETF has discretion to tailor its custom basket policies and procedures to address different risks, considerations, and requirements for different types of custom baskets, particularly those involving cash substitutions.

We are adopting the basket conditions under rule 6 c-11 as proposed. Rule 6c-11 therefore will require an ETF to adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets as proposed.[292] These policies and procedures must cover the methodology that the ETF will use to construct baskets. For example, the policies and procedures should detail the circumstances under which the basket may omit positions that are not operationally feasible to transfer in kind. The policies and procedures also should detail when the ETF would use representative sampling of its portfolio to create its basket, and how the ETF would sample in those circumstances. The policies and procedures also should detail how the ETF would replicate changes in the ETF's portfolio holdings as a result of the rebalancing or reconstitution of the ETF's underlying securities market index, if applicable. We believe this policies and procedures requirement will protect against overreaching and other abusive practices in circumstances where an ETF uses a basket that does not reflect a pro rata slice of the ETF's portfolio holdings, but does not meet the definition of custom basket.

Rule 6c-11 also will require the policies and procedures to (i) set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders, including the process for any revisions to, or deviations from, those parameters; and (ii) specify the titles or roles of the

289 *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter; Invesco Comment Letter; BNY Mellon Comment Letter; IDC Comment Letter; Fidelity Comment Letter; Dechert Comment Letter.

290 *See* Invesco Comment Letter.

291 *See* BlackRock Comment Letter.

292 *See* rule 6c-11(c)(3).

employees of the ETF's investment adviser who are required to review each custom basket for compliance with those parameters.[293] We continue to believe that an ETF and its shareholders may benefit from custom baskets and that the heightened process requirements for custom baskets in rule 6c-11 serve to protect the ETF and its shareholders from the risks that custom baskets may present.

Effective custom basket policies and procedures should provide specific parameters regarding the methodology and process that the ETF would use to construct or accept each custom basket. They also should describe the ETF's approach for testing compliance with the custom basket policies and procedures and assessing (including through back testing or other periodic reviews) whether the parameters continue to result in custom baskets that are in the best interests of the ETF and its shareholders. An ETF should consistently apply the custom basket policies and procedures and must establish a process that the ETF will adhere to if it wishes to make any revisions to, or deviate from, the parameters. In addition, an ETF's custom basket policies and procedures should include reasonable controls designed to prevent inappropriate differential treatment among authorized participants.

We do not believe that the requirement for "detailed parameters" would prevent an ETF sponsor from developing policies and procedures to cover the wide range of circumstances that may arise relating to custom baskets.[294] ETFs may tailor their custom basket policies and procedures to address different risks and requirements for different types of custom baskets. For example, an ETF could develop tailored procedures when it uses cash substitutions that differ from the procedures it uses when substituting securities and other positions. An ETF's custom basket policies and procedures also could address the differing considerations for custom baskets depending on the direction of the trade (*i.e.,* whether the custom basket is being used for a creation or a redemption).[295] This condition provides ETFs with flexibility to cover operational circumstances that make the inclusion of certain portfolio securities and other positions in a basket operationally difficult (or impossible), while facilitating portfolio management changes in a cost- and tax-efficient manner.

Although one commenter opined that fixed-income ETFs present unique concerns, we believe that requiring fixed-income ETFs to establish detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders will address the risks associated with custom baskets. As discussed above, we also believe that fixed-income ETFs (and their shareholders) may experience the most pronounced benefits from basket flexibility.[296] As a result, all ETFs that comply with the conditions in rule 6c-11 will have basket flexibility.

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293 Rule 6c-11(c)(3)(i) and (ii).

294 *See* Invesco Comment Letter.

295 *See* BlackRock Comment Letter.

296 *See supra* footnotes 280-281 and accompanying text and footnote 287 and accompanying text.

One commenter stated that the Commission should confirm that the "best interests of the ETF and its shareholders" standard included in rule 6c-11(c)(3)(i) includes the ETF's shareholders generally rather than individually, on the basis that the adviser to an ETF owes a fiduciary duty only to the ETF, and that ETFs cannot evaluate the interests of individual shareholders.[297] The "best interests of the ETF and its shareholders" in this context is not intended to apply to each ETF shareholder individually, but rather to the ETF's shareholders generally. This formulation is consistent with other Commission rules.[298]

As proposed, rule 6c-11 also will require an ETF, as part of its custom basket policies and procedures, to specify the titles or roles of employees of the ETF's investment adviser who are required to review each custom basket for compliance with the parameters set forth in those policies and procedures. Several commenters did not support this requirement as proposed.[299] One of these commenters stated that the rule should require ETFs to identify only the employees that are responsible for approving custom baskets that deviate from the parameters set forth in the policies and procedures.[300] Another commenter stated that the review requirement is overly prescriptive and could cause operational challenges when an ETF is sub-advised.[301]

In addition, several commenters did not support the statement in the 2018 ETF Proposing Release that an ETF may want to consider whether employees outside of portfolio management should review the components of custom baskets before approving a creation or redemption.[302] Commenters stated that approval of custom baskets is a typical portfolio management function, and that requiring non-investment personnel to review custom baskets before approving a creation or redemption would be impractical, burdensome, and would detract from the flexibility custom baskets provide.[303] One commenter requested that the Commission

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297 *See* SIFMA AMG Comment Letter I.

298 *See, e.g.,* 17 CFR 270.12b-1 (rule 12b-1 under the Act) (providing that fund board may approve distribution plan under rule 12b-1 only if, among other things, the board concludes "that there is a reasonable likelihood that the plan will benefit the company and its shareholders"); 17 CFR 270.2a-7 (rule 2a-7 under the Act) (providing that board of a money market fund, in order to use certain share price calculation methods, must determine "that it is in the best interests of the fund and its shareholders" to maintain a stable net asset value per share).

299 *See, e.g.,* SIFMA AMG Comment Letter I; WisdomTree Comment Letter I.

300 *See* SIFMA AMG Comment Letter I.

301 *See* WisdomTree Comment Letter.

302 *See, e.g.,* Dechert Comment Letter; Fidelity Comment Letter; JPMAM Comment Letter; SIFMA AMG Comment Letter I; Invesco Comment Letter; CSIM Comment Letter; SSGA Comment Letter I.

303 *See, e.g.,* Dechert Comment Letter; Fidelity Comment Letter; JPMAM Comment Letter; Invesco Comment Letter; CSIM Comment Letter.

clarify that the requirement to approve custom baskets applies only to employees with discretionary or direct supervisory authority over custom baskets, and not to employees responsible for governance, back-testing, or periodic reviews.[304]

We continue to believe that the ETF's investment adviser is in the best position to design and administer the custom basket policies and procedures and to establish parameters that are in the best interests of the ETF and its shareholders.[305] We also believe that the adviser is in the best position to determine which employee (or employees) are responsible for determining whether an ETF's custom baskets comply with the custom basket policies and procedures depending on its own structure, strategy, and other relevant circumstances (including whether the ETF is sub-advised). The ETF's adviser (and personnel) are familiar with the ETF's portfolio holdings and are able to assess whether the process and methodology used to construct or accept a custom basket is in the best interests of the ETF and its shareholders and whether a particular custom basket complies with the parameters set forth in the custom basket policies and procedures. We believe that these requirements will allow an ETF to establish a tailored framework for the use of custom baskets, while also requiring the ETF to put into place safeguards against abusive practices related to basket composition.

To the extent that a particular ETF's investment adviser determines that its portfolio management employees are the appropriate employees to be responsible for compliance with the custom basket policies and procedures, we believe that the requirements of rule 38a-1 under the Act provide appropriate safeguards to address possible conflicts of interest that could arise from such an arrangement. For example, ETFs currently are required by rule 38a-1 under the Act to adopt, implement, and periodically review written policies and procedures reasonably designed to prevent violations of the federal securities laws.[306] An ETF's compliance

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304 *See* BlackRock Comment Letter.

305 An investment adviser has a fiduciary duty to act in the best interests of a fund it advises. *See* section 36(a) under the Act. *See also, e.g.,* Rosenfeld v. Black, 445 F.2d 1337 (2d Cir. 1971); Brown v. Bullock, 194 F. Supp. 207, 229, 234 (S.D.N.Y.), aff'd, 294 F.2d 415 (2d Cir. 1961); In re Provident Management Corp., Securities Act Release No. 5155 (Dec. 1, 1970), at text accompanying n.12; Rule 38a-1 Adopting Release, *supra* footnote 64, at n.68. *See also supra* footnote 64 (discussing certain other obligations for registered investment advisers).

306 *See* Rule 38a-1 Adopting Release, *supra* footnote 133. Among other things, rule 38a-1 requires a fund's chief compliance officer to provide a written report to the fund's board of directors, no less frequently than annually, that addresses, among other things, the operation of the fund's compliance policies and procedures and any material changes made to those policies and procedures since the date of the last report and any material changes to the policies and procedures recommended as a result of the annual review of the policies and procedures. *See* rule 38a-1(a)(4)(iii)(A).

policies and procedures should be appropriately tailored to reflect its particular compliance risks. An ETF's basket policies and procedures (including its custom basket policies and procedures), therefore, should be covered by the ETF's compliance program and other requirements under rule 38a-1.[307] For example, an ETF would be required to preserve the basket policies and procedures pursuant to the requirements of rule 38a-1(d)(1). Also, we believe that the ETF's board of directors' oversight of the ETF's compliance policies and procedures, as well as their general oversight of the ETF, would provide an additional layer of protection for an ETF's use of custom baskets.[308]

b. Definition of Custom Baskets

As proposed, rule 6c-11 will define "custom baskets" to include two categories of baskets. First, a basket containing a non-representative selection of the ETF's portfolio holdings would constitute a custom basket.[309] These types of custom baskets include, but are not limited to, baskets that do not reflect: (i) a pro rata representation of the ETF's portfolio holdings; (ii) a representative sampling of the ETF's portfolio holdings; or (iii) changes due to a rebalancing or reconstitution of the ETF's securities market index, if applicable.[310]

Second, if different baskets are used in transactions on the same business day, each basket after the initial basket would constitute a custom basket. For example, if an ETF exchanges a basket with either the same or another authorized participant that reflects a representative sampling that differs from the initial basket, that basket (and any such subsequent baskets) would be a custom basket.[311] Similarly, if an ETF substitutes cash in lieu of a portion of basket assets for a single authorized participant, that basket would be a custom basket.

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307 The compliance policies and procedures could require, for example, the ETF's chief compliance officer or other compliance professionals to conduct a post hoc, periodic review of a sample of custom baskets used by the ETF.

308 Several commenters expressed support for the description in the 2018 ETF Proposing Release of the oversight role of ETF boards, including with respect to custom basket policies and procedures. *See* ETF.com Comment Letter; IDC Comment Letter; Nasdaq Comment Letter.

309 Rule 6c-11(a)(1).

310 A basket that is a pro rata representation of the ETF's portfolio holdings, except for minor deviations when it is not operationally feasible to include a particular instrument within the basket, generally would not be considered a "custom basket" except to the extent different baskets are used in transactions on the same business day.

311 When making the best interest determination for such custom baskets, the ETF should consider how this change in sampling affects the ETF's portfolio.

We received a number of comments on the proposed definition of custom basket. Several commenters asserted that baskets including cash substitutions should not be subject to the heightened policies and procedures requirement for custom baskets, and thus should be excluded from the definition of custom baskets.[312] These commenters asserted that baskets with cash substitutions do not raise the same concerns about conflicts or overreach as securities substitutions.[313] Commenters also contended that the use of cash substitutions as part of standard (*i.e.,* non-custom) baskets is a routine portfolio management matter that is necessary for the efficient operation of ETFs.[314] One commenter suggested several technical changes to the proposed definition of custom basket in rule 6c-11 to treat cash substitutions as part of a non-custom, pro rata basket under certain enumerated circumstances.[315]

After consideration of these comments, we are adopting the definition of "custom basket" as proposed. While we generally agree with commenters that cash substitutions may not raise the same concerns as securities substitutions, an ETF's use of cash substitutions may raise concerns regarding the potential for an authorized participant to overreach, particularly in connection with redemptions. For example, during periods of market stress, an authorized participant may demand cash from the ETF instead of less liquid securities in exchange for ETF shares, impacting the liquidity of the ETF's portfolio and the ability of the ETF to satisfy additional cash redemption requests from authorized participants.[316]

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312 *See, e.g.,* ICI Comment Letter; BlackRock Comment Letter; Fidelity Comment Letter; Dechert Comment Letter; SIFMA AMG Comment Letter I; SSGA Comment Letter I.

313 *See, e.g.,* Fidelity Comment Letter ("Purchasing or redeeming using a cash basket does not create opportunities for 'cherry picking,' 'dumping' or other abuses … and therefore does not give rise to the risk of overreaching that the proposed custom basket policies and procedures were designed to prevent."); ICI Comment Letter; BlackRock Comment Letter; SIFMA AMG Comment Letter I; JPMAM Comment Letter.

314 *See, e.g.,* SIFMA AMG Comment Letter I (asserting that "the use of cash is driven by restrictions applicable to authorized participants, restrictions on in-kind transactions in certain markets, or authorized participants' inability to access individual securities."); JPMAM Comment Letter. *See also* CSIM Comment Letter (recommending that the standard basket policies and procedures, rather than the custom basket policies and procedures, cover cash substitutions).

315 *See* BlackRock Comment Letter (recommending that we deem a basket to be pro rata if it: (1) substitutes cash for odd lot positions or as a result of minimum trade sizes; (2) substitutes cash due to security specific restrictions, such as corporate actions or regulatory reasons; (3) substitutes cash for positions or other instruments that cannot be delivered in-kind (e.g., derivatives, to-be-announced (or "TBA") transactions); or (4) is otherwise representative of the ETF).

316 *See* generally LRM Adopting Release, *supra* footnote 122.

We also considered excluding certain types of cash substitutions from the definition of custom baskets where authorized participant overreach is unlikely, consistent with the approach taken in our recent exemptive orders.[317] However, we are concerned that such an approach may fail to effectively capture all circumstances in which an ETF may substitute cash. We believe that the policies and procedures requirements for custom baskets will provide ETFs with sufficient flexibility to design custom basket policies and procedures that are tailored to address the different risks that cash substitutions and securities substitutions may present. An ETF could, for example, design custom basket policies and procedures with more streamlined requirements for certain cash substitutions that present lower risks.[318]

c. *Basket Publication Requirement*

Proposed rule 6c-11 would have required an ETF to post information regarding one basket that it would exchange for orders to purchase or redeem creation units to be priced based on the ETF's next calculation of NAV per share (a "published basket") on its website each business day.[319] This proposed disclosure requirement was designed to: (i) facilitate arbitrage by providing authorized participants and other market participants with timely information regarding the contents of a basket that the ETF will accept each day; and (ii) allow market participants that do not have access to an ETF's daily portfolio composition file to compare the ETF's basket with its portfolio holdings, assist in building intraday hedges, and estimate the cash balancing amount. After considering comments, however, the Commission is not including a basket publication requirement in rule 6c-11.

Commenters generally did not support requiring disclosure of a published basket on the ETF's website.[320] For example, one commenter asserted that the proposed published basket was "speculative," and had little value, particularly for certain types of fixed-income ETFs.[321] Several commenters contended that the contents of an ETF's basket are irrelevant for secondary market investors and publication of an ETF's basket could result in confusion, particularly if the basket is mistaken for

317 For example, authorized participant overreach is unlikely where the ETF substitutes cash for odd lot positions or as a result of minimum trade sizes.

318 *See* BlackRock Comment Letter.

319 *See* proposed rule 6c-11(c)(1)(i).

320 *See, e.g.,* SIFMA AMG Comment Letter I; Invesco Comment Letter I; Nasdaq Comment Letter; CSIM Comment Letter.

321 *See, e.g.,* SIFMA AMG Comment Letter I; *see also* CSIM Comment Letter ("CSIM does not believe that disclosure of one standard basket for orders to create or redeem creation units on an ETF's website would be useful disclosure to either individual investors or authorized participants as proposed.").

portfolio holdings information.[322] Other commenters stated that the publication requirement could delay the process by which the ETF and an authorized participant negotiate the contents of a custom creation or redemption basket.[323] Another commenter stated that we should require an ETF to provide its published basket through the NSCC, rather than through its website, because the market participants that would use the published basket currently are able to access it either directly through the NSCC or through intermediaries.[324]

After considering these comments, the Commission is not including in rule 6c-11 a requirement that an ETF post information regarding one published basket that it would exchange for orders to purchase or redeem creation units. We proposed this condition, in part, because we were concerned that certain market participants that needed access to basket information for arbitrage purposes would not have access to ETF portfolio composition files.[325] However, we understand from commenters that market participants that use basket information, including those seeking to hedge exposure to an ETF, currently have access to this information through the NSCC, an intermediary, or the ETF itself. We are, however, requiring ETFs to provide daily website disclosure of portfolio holdings, which we believe will provide market participants with the necessary tools to determine if an arbitrage opportunity exists and to hedge the ETF's portfolio.[326] As a result, we believe that the publication of a single published basket would provide little additional value to market participants assessing the existence of arbitrage opportunities. We also agree with commenters' concerns that some investors may confuse the published basket information with an ETF's portfolio holdings information.

We requested comment on whether we should require an ETF to publish certain information regarding each basket used by the ETF to ameliorate some of the limitations associated with publication of a single basket each day and to serve as an additional check against overreaching by authorized participants.[327] However, commenters stated that such a requirement would be costly to implement and unnecessarily burdensome, particularly because basket composition information is

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322 *See, e.g.,* CSIM Comment Letter; ICI Comment Letter. One commenter *also* noted that the proposed amendments to Form N-1A eliminated other disclosure that were relevant only to authorized participants and potentially confusing to secondary market investors. *See* ICI Comment Letter.

323 *See, e.g.,* Invesco Comment Letter; Nasdaq Comment Letter.

324 *See* OppenheimerFunds Comment Letter.

325 *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.5.b.

326 *See* rule 6c-11(c)(1); *see also* 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.4. (stating that without the ability to hedge, market makers may widen spreads or be reluctant to make markets because doing so may require taking on greater market risk than the firm is willing to bear).

327 *See* 2018 ETF Proposing Release, *supra* footnote 7, text following nn.269 and 272.

not used by secondary market investors.[328] In addition, commenters asserted that publication of each basket could raise the risk that market participants front-run trades in basket securities or attempt to replicate authorized participants' or other market makers' trading strategies, particularly for those ETFs that have more frequent primary market transactions.[329] Rule 6c-11 as adopted instead will require ETFs to maintain certain information regarding each basket exchanged with an authorized participant.[330] We believe that this record keeping requirement is a more efficient way to ensure compliance with the rule, while mitigating concerns regarding potential overreaching by authorized participants.

6. Website Disclosure

There has been a significant increase in the use of the internet as a tool for disseminating information, and many investors obtain information regarding ETFs on ETF websites.[331] Rule 6c-11 therefore will require ETFs to disclose certain information on their websites as a condition to the rule.[332] The website disclosure requirements are designed to provide investors with key metrics to evaluate their investment and trading decisions in a format that is easily accessible and frequently updated.

Specifically, under rule 6c-11 the following information must be disclosed publicly and prominently on the ETF's website:[333]

- NAV per share, market price, and premium or discount, each as of the end of the prior business day;
- A table and chart showing the number of days the ETF's shares traded at a premium or discount during the most recently completed calendar year and calendar quarters of the current year;[334]

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328 *See, e.g.,* ICI Comment Letter; SSGA Comment Letter I; Vanguard Comment Letter.

329 *See, e.g.,* ICI Comment Letter; SSGA Comment Letter I; SIFMA Comment Letter; Vanguard Comment Letter (*also* opining that publication of each custom basket could confuse investors); but *see* Morningstar Comment Letter (advocating for disclosure of all baskets in a structured format).

330 *See infra* section II.D.

331 *See, e.g.,* Reporting Modernization Adopting Release *supra* footnote 262.

332 Rule 6c-11(c)(1).

333 *See* rule 6c-11(c)(1); *see also supra* footnote 225.

334 This requirement is similar to a current requirement in Item 11(g)(2) of Form N-1A, which requires disclosed percentages to be rounded to the nearest hundredth of one percent. *See* Current Instruction 2 to Item 11(g)(2) of Form N-1A. ETFs may similarly round percentages disclosed in response to this provision of rule 6c-11.

- For ETFs whose premium or discount was greater than 2% for more than seven consecutive trading days, disclosure that the premium or discount was greater than 2%, along with a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount; and
- Median bid-ask spread over the most recent thirty calendar days.

a. Disclosure of Prior Business Day's NAV, Market Price, and Premium or Discount

As proposed, rule 6c-11 will require an ETF to post on its website the ETF's current NAV per share, market price, and premium or discount, each as of the end of the prior business day.[335] This disclosure provides investors with a "snapshot" view of the difference between an ETF's NAV per share and market price on a daily basis.

Commenters generally supported this requirement, observing that the investors should have easy access to the required information.[336] Some commenters, however, questioned the benefits of the premium or discount disclosure requirement. One such commenter stated that premium and discount disclosures do not provide the same benefit to shareholders as NAV per share and market price.[337] Another commenter, while not objecting to the posting of daily premiums or discounts, opined that emphasizing this information would be unnecessary and — to the extent that a discount might be understood by prospective investors as a bargain — potentially misleading.[338]

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335 Rule 6c-11(c)(1)(ii); 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.6. Proposed rule 6c-11 would have required this information "as of the prior business day." Proposed rule 6c-11(c)(1)(ii). For clarity, the final rule will specify that the information be provided "as of the end of the prior business day." Rule 6c-11(c)(1)(ii). This is consistent with our existing exemptive orders.

336 *See* ETF.com Comment Letter; ICI Comment Letter (stating that the commenter does "not object to" the requirement); NYSE Comment Letter (stating that the website disclosure requirements in rule 6c-11 "sufficiently address Commission concerns about investors' better understanding trading costs"); Virtu Comment Letter; CSIM Comment Letter.

337 *See* Invesco Comment Letter.

338 *See* SSGA Comment Letter I ("Similarly, investors may choose not to buy ETF shares because of a premium, when in fact the NAV is based on stale prices from an earlier close."). One commenter recommended that we *also* require footnote disclosure when premium or discount information is known to include inaccurate data due to exchange-hours overlap issues (*i.e.,* when the ETF does not trade contemporaneously with its underlying holdings). *See* ETF.com Comment Letter. Rule 6c-11 as adopted will not require additional footnote disclosure in these circumstances because a majority of ETFs do

We continue to believe that daily website disclosure of NAV per share and market price will promote transparency and alert investors to the relationship between NAV per share and market price. We also believe that this information will help investors better understand the risk that an ETF's market price may be higher or lower than the ETF's NAV per share and compare this information across ETFs. Daily premium/discount disclosures also will provide investors with useful information regarding ETFs that frequently trade at a premium or discount to NAV per share.[339] We believe that ETF investors use this information today.[340]

These disclosures are consistent with our exemptive orders except that rule 6c-11 includes a definition of "market price" that differs from the definition applicable to those orders. Rule 6c-11 defines "market price" as: (A) the official closing price of an ETF share; or (B) if it more accurately reflects the market value of an ETF share at the time as of which the ETF calculates current NAV per share, the price that is the midpoint of the national best bid and national best offer ("NBBO") as of that time.[341]

One commenter addressed our proposed definition of "market price" and asserted that the rule should permit ETFs to use the midpoint of the NBBO without evaluating whether it more accurately reflects the market value of the

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not have this type of timing issue and the recommended disclosure may not capture other circumstances where an ETF's premium or discount reflects inaccurate data. ETFs may include this context alongside the premium/discount disclosures on their websites as applicable.

339 Some ETFs have frequent deviations between closing market price and NAV per share. These ETFs typically hold non-U.S. securities and trade during hours when the markets for their non-U.S. holdings are closed, allowing the trading price of ETF shares to reflect expected changes in the next opening price of the non-U.S. holdings (*i.e.,* to help "discover" the price of the holdings). ETFs *also* may have greater premiums and discounts to the extent that there are greater transaction costs associated with assembling baskets. In addition, an ETF with less liquid portfolio holdings *also* may show a deviation between closing market price and NAV per share, and an ETF with a less efficient arbitrage mechanism may frequently show this type of end of day deviation.

340 One commenter suggested that investors are more likely to look for information on the website of the entity with which they interact, such as a broker-dealer. *See* JPMAM Comment Letter. However, we believe that ETF issuers, as the entities that are the subject of this rule's relief, should provide investors with this information to assist those shareholders who visit the ETF's website in the first instance. Moreover, another commenter stated that smaller investors rely predominantly on website disclosures for their investment analysis. *See* ETF.com Comment Letter.

341 *See* rule 6c-11(a)(1).

ETF's shares.[342] We continue to believe, however, that using the "official closing price" provides a more precise measurement of an ETF's market price than other alternatives, including during disruptive market events.[343] Requiring use of the midpoint of the NBBO only if it more accurately reflects market value also provides an appropriate degree of flexibility to an ETF when its closing price may be stale or otherwise does not reflect the ETF share's market value, while at the same time providing a consistent and verifiable methodology for how ETFs determine market price.[344] Therefore, we have determined to adopt the definition of "market price" for purposes of this website disclosure requirement as proposed.

b. Disclosure of Table and Line Graphs of the ETF's Premiums and Discounts

As proposed, rule 6c-11 will require an ETF to post on its website both a table and line graph showing the ETF's premiums and discounts for the most recently completed calendar year and the most recently completed calendar quarters of the current year.[345] For new ETFs that do not yet have this information, the rule will require the ETF to post this information for the life of the fund.[346] We believe that presenting the data as both a table and a line graph will provide investors with useful information in formats that are easy to view and understand, depending on

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342 *See* WisdomTree Comment Letter. An ETF uses the market price of an ETF share in calculating premiums and discounts. *See* rule 6c-11(a)(1) (defining "premium or discount" to mean the positive or negative difference between the market price of an ETF share and the ETF's current NAV per share, expressed as a percentage of the ETF's current NAV per share).

343 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.281 and accompanying text. We believe that using the "official closing price" is a better measure than, for example, only the last price at which ETF shares traded on their principal U.S. trading market during a regular trading session, particularly in situations where the last trade of the day was not reflective of the actual market price (*e.g.,* due to an erroneous order). Exchanges have detailed rules regarding the determination of the official closing price of a security.

344 Use of the midpoint of the NBBO, for example, mitigates the potential for gaming practices that could inaccurately minimize a deviation between market price and NAV per share when showing premiums and discounts. Because security information processors calculate NBBO continuously during the trading day, NBBO has the benefit of being a verifiable third-party quote.

345 Rule 6c-11(c)(1)(iii)–(iv).

346 For example, an ETF that has been in existence for 4 months should provide this disclosure for its first quarter of operations.

the investor's preference.[347] This disclosure is similar to current requirements that allow an ETF to omit certain premium/discount disclosures from its prospectus and annual report if the ETF posts on its website a table showing the number of trading days the ETF traded at a premium and the number of days it traded at a discount.[348]

Commenters were generally supportive of this requirement.[349] However, some commenters recommended that the rule require only one of the two presentations.[350] We recognize, as commenters observed, that the same information underlies both presentations. However, each presentation highlights different information, as illustrated in Figure 1 and Table 1 below. The tabular disclosure shows investors how often the ETF traded at a premium or discount. The graphic disclosure shows investors the degree of those deviations, particularly during periods of market stress, and could assist some investors with understanding how the arbitrage mechanism performs for an ETF under various market conditions.[351] Different audiences also may find one presentation more effective.[352] Therefore, we continue to believe that the rule should require both disclosures, and are adopting this aspect of the rule as proposed.

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347 While past performance cannot predict how an ETF will trade in the future, it is important that investors, and particularly retail investors, understand that certain classes of ETFs could have a larger and more persistent deviation from NAV, which could result in a higher cost to investors and a potential drag on returns.

348 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.300 and accompanying text; *see also infra* section II.H.2.c. (discussing the elimination of this requirement in Form N-1A for funds relying on rule 6c-11).

349 *See, e.g.,* JPMAM Comment Letter; ETF.com Comment Letter; ICI Comment Letter (does not object to requirements).

350 John Hancock Comment Letter (recommending elimination of the proposed line graph requirement as it would result in disclosure duplicative of the table); WisdomTree Comment Letter (stating the line graph requirement would be adequate and that the required table would be too detailed).

351 For example, two ETFs may have traded at a discount for the same number of days. One ETF's daily deviations could have been small with little effect on investors trading on those days, whereas the other ETF could have had significant discounts. These distinctions would not be apparent based on the required tabular disclosure, but would be observable with the graphic disclosure.

352 Another commenter recommended that we require ETFs to provide a separate line graph showing an ETF's market price and NAV per share over the most recently completed calendar year and quarters. *See* JPMAM Comment Letter. While we agree that this context could be informative, we believe that the rule as proposed appropriately balances the usefulness of the line graph disclosure with the costs of preparation. Of course, ETFs may include this context alongside the required disclosures on their websites, so long as the information is not misleading.

FIGURE 1: SAMPLE PREMIUM AND DISCOUNT LINE GRAPH

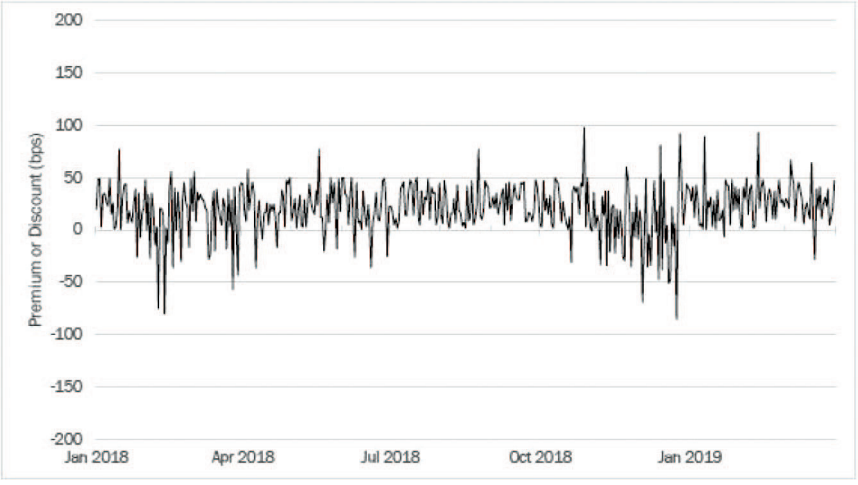

TABLE 1: SAMPLE PREMIUM AND DISCOUNT TABLE

	Calendar Year 2018	First Quarter of 2019
Days traded at premium	202	59
Days traded at discount	47	2

The rule will require historical premium/discount information for the most recently completed calendar year and the most recently completed calendar quarters of the current year as proposed. Some commenters recommended that we require ETFs to update this information on a daily basis or require ETFs to present intra-day premiums or discounts in certain circumstances.[353] However, after considering the usefulness of timely information for investors and other data users and the costs of more frequent collection and publication of the information, we continue to believe the rule should require disclosure of this information only on a quarterly basis. First, this period is consistent with existing prospectus disclosure requirements, and we believe the time period will allow investors to readily observe the extent and frequency of deviations from NAV per share in a graphic format. Second, as discussed above, although the trailing historical data is subject to a less frequent quarterly updating requirement, the current premium or discount is required to be disclosed daily.

353 *See* CFA Comment Letter; Eaton Vance Comment Letter; Comment Letter of Hagens Berman (Oct. 1, 2018) ("Hagens Berman Comment Letter"). ("[T]he new rule should require disclosure of the gross discount spreads that have reoccurred during times of high volatility or lack of liquidity.").

c. Disclosure of ETF Premiums or Discounts Greater than 2%

As proposed, rule 6c-11 will require an ETF whose premium or discount was greater than 2% for more than seven consecutive trading days to post that information on its website,[354] along with a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount.[355] We continue to believe that disclosure of such periods will promote transparency about the significance and persistence of deviations between market price and NAV per share, and may help investors to make more informed investment decisions.[356]

One commenter supported this requirement, stating that daily premium and discount information is an important metric for investors.[357] This commenter stated that its internal metrics suggest that it would be unusual for ETFs to trigger the proposed disclosure requirement, and therefore the disclosure "would not be burdensome" for ETFs. Other commenters, however, opposed the proposed requirement, expressing concern that ETFs holding certain asset classes are more likely to trigger the requirement than others, and that disclosure by ETFs that frequently trigger the requirement could become inappropriately repetitive.[358]

We recognize that this disclosure requirement may affect certain categories of ETFs more than others. An ETF that invests in foreign securities, for example, may be more likely to experience a persistent deviation between market price and NAV per share given that many foreign markets are closed during the U.S. trading day. Such deviations may be pronounced if the market on which the ETF's underlying securities trade is closed for an extended period of time. We believe that this information could help to inform investors about the nature of these ETFs and the potential for frequent deviations.

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354 We have modified the proposed rule text to further clarify that an ETF must post a statement that the ETF's premium or discount, as applicable, was greater than 2% — and not only the factors reasonably believed to have materially contributed to the premium or discount. *See* rule 6c-11(c)(1)(vi).

355 Rule 6c-11(c)(1)(vi). The rule will require ETFs to post this information on their websites on the trading day immediately following the day on which the ETF's premium or discount triggered this provision (*i.e.,* on the trading day immediately following the eighth consecutive trading day on which the ETF had a premium or discount greater than 2%) and maintain it on their websites for at least one year following the first day it was posted.

356 2018 ETF Proposing Release, *supra* footnote 7, at text preceding n.307 (stating that the proposed information *also* may provide the market (and the Commission) with information regarding the efficiency of an ETF's arbitrage mechanism).

357 *See* Invesco Comment Letter.

358 *See, e.g.,* ICI Comment Letter; Nasdaq Comment Letter; WisdomTree Comment Letter.

However, we believe this requirement will affect a broader range of ETFs than just those investing in certain foreign markets. For example, we estimate that, out of a total 2,046 ETFs, 11 alternative ETFs, 20 international equity ETFs, 2 sector equity ETFs, 1 taxable bond ETF, and 15 U.S. equity ETFs would have triggered the 2% premium or discount disclosure requirement in 2018.[359] In addition, during the period from 2008 to 2018, we estimate that the percentage of ETFs that would have triggered the reporting requirement at least once varied from 1.5% to 10%.[360] Even if certain ETFs make the disclosure more frequently or predictably than others because of this variation, we believe that the requirement will promote transparency regarding the significance and persistence of deviations between market price and NAV per share, and thus may permit investors to make more informed investment decisions. Moreover, we believe that this disclosure helps inform investors that certain types of ETFs are more likely to experience persistent premiums or discounts than others.

Other commenters expressed concern with the requirement that an ETF include a discussion of the factors that are reasonably believed to have contributed to the premium or discount.[361] These commenters stated that an ETF may have difficulty identifying these factors before it makes the required disclosure. Although the required information will be subjective in some cases, we believe that this requirement can provide secondary market investors with useful context for the disclosed deviations. For example, the identification of factors that are reasonably believed to contribute to the premium or discount at that time may inform ETF investors and other market participants about factors potentially contributing to the premium or discount, even if additional contributing factors may later be identified. Such disclosed factors might include, for example, that many of an ETF's portfolio securities are traded on foreign markets that are closed during the U.S. trading day or that the markets on which the ETF's underlying securities are traded were closed due to extended holidays or for other reasons. Because the requirement to disclose these factors will continue to apply while the premium or discount persists, the disclosure may change and become better developed over time as the ETF refines its analysis of what it reasonably believes is causing the persistent premium or discount. As a result, such a disclosure also could inform ETF investors and other market participants about the premium's or discount's persistence.

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359 These figures are based on Bloomberg and Morningstar data for calendar year 2018 and estimate the number of ETFs with at least one instance that would have triggered the 2% premium or discount reporting requirement. As discussed in detail below, on a percentage basis, we estimate that 0.3% of taxable bond ETFs, 0.6% of sector equity ETFs, 3.1% of U.S. equity ETFs, 4.2% of international equity ETFs, and 4.8% of alternative ETFs would have triggered this disclosure requirement in 2018.

360 *See infra* footnote 597 and accompanying text.

361 *See* ICI Comment Letter; SSGA Comment Letter I.

Another commenter recommended that we shorten the time an ETF is required to maintain the disclosure on its website (to, *e.g.,* 45 days), asserting that the required information is likely to be most useful when it is most recent and grows less important over time.[362] Rule 6c-11, however, will require ETFs to maintain the disclosure on their website for at least one year following the first day it was posted to help investors identify ETFs that historically have had persistent deviations between market price and NAV per share. Additionally, although we are requiring maintenance of this disclosure for at least one year, the requirement to post the information will continue to apply as the premium or discount persists — that is, the one-year maintenance requirements will not obviate the need for an ETF to post more current information if otherwise required.[363] Thus, the continued availability of the posted information over the required one-year period will not substitute for or prevent more current and timely disclosure.

Finally, some commenters expressed concerns with the 2% threshold.[364] For example, one commenter recommended a materiality standard instead of a 2% threshold.[365] Another commenter recommended raising the threshold to 5 or 10% and shortening the period over which it is measured.[366] As discussed above, in the Commission's experience, the deviation between the market price of ETFs and NAV per share, averaged across broad categories of ETF investment strategies and over time periods of several months, has been relatively small.[367] We therefore believe that limiting this disclosure to ETFs that have a premium or discount of greater than 2% for more than seven consecutive trading days will serve to highlight potentially unusual circumstances of an ETF with a persistent premium or discount. In Table 2 below, we summarize the effect that different variations on the proposed threshold recommended by the commenter would have had on the number of ETFs that would have triggered the requirement in 2018.

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362 CSIM Comment Letter.

363 Rule 6c-11(c)(1)(vi).

364 *See* John Hancock Comment Letter; Nasdaq Comment Letter; WisdomTree Comment Letter (asserting that the proposed threshold was "arbitrary").

365 *See* John Hancock Comment Letter.

366 *See* Nasdaq Comment Letter.

367 *See supra* footnote 359 and accompanying text; 2018 ETF Proposing Release, *supra* footnote 7, at nn.119 – 120, 307 and accompanying text (discussing the relatively small size of historic deviations between ETF market prices and NAV per share in the context of calibrating the threshold).

TABLE 2: NUMBER OF ETFs THAT WOULD HAVE TRIGGERED THE REQUIREMENT IN 2018

	3-Day Period			7-Day Period		
Category	**2%**	**5%**	**10%**	**2%**	**5%**	**10%**
Allocation	2					
Alternative	15	2		11		
Commodities						
International Equity	48	4		20	1	
Municipal Bond						
Sector Equity	10	1		2	1	
Taxable Bond	3			1		
U.S. Equity	29	5		15	3	
Total	**107**	**12**	**None**	**49**	**5**	**None**

As shown above, a 10% threshold would not have required any ETFs to provide this information in 2018, and a 5% threshold, even over just a three-day period, would have only required disclosure by 12 ETFs. After considering the commenter's recommended modifications to the threshold, we believe that the proposed threshold of 2% over more than seven consecutive trading days will more effectively highlight those patterns of sustained premiums or discounts that will be informative to investors than will the recommended alternatives. We also believe that in this circumstance the objective 2% threshold will result in more consistent application of the disclosure requirement than would a more subjective materiality standard. Furthermore, deviations that do not meet the objective 2% threshold, but that would be material to an investment decision, must be disclosed.[368]

d. Median Bid-Ask Spread

Rule 6c-11 will require daily website disclosure of the ETF's median bid-ask spread calculated over the most recent 30-day period.[369] The bid-ask spread information is designed to inform investors that they may bear bid-ask spread costs when trading ETFs on the secondary market, which ultimately could impact the overall cost of the

368 *See* rule 10b-5 under the Exchange Act [17 CFR 240.10b-5]; *see also* section 34(b) of the Act [15 USC 80a-33].

369 Rule 6c-11(c)(1)(v). In calculating the median bid-ask spread, an ETF would be required to: (i) identify the ETF's NBBO as of the end of each 10 second interval during each trading day of the last 30 calendar days; (ii) divide the difference between each such bid and offer by the midpoint of the NBBO; and (iii) identify the median of those values.

investment. We have modified this requirement from our proposal, which would have required an ETF to disclose the median bid-ask spread for the ETF's most recent fiscal year on its website and in its prospectus.[370]

Comments on the proposed website disclosure of an ETF's bid-ask spread were mixed. Many commenters opposed this requirement, asserting that the proposed disclosures would require ETFs to bear costs and liability for data collected by third parties,[371] and that other sources (*e.g.,* financial intermediaries, the Commission) were in a better position to provide bid-ask spread information.[372] Some commenters noted that the bid-ask spread information may be misleading to investors if the historical information is not representative of current execution costs or if the bid-ask spread information is overemphasized.[373] Others expressed concern that there is no uniform method for computing bid-ask spread, which could make bid-ask spreads difficult to compare across different investment options.[374] Still others supported it as an alternative to the parallel proposed prospectus disclosure requirements.[375] For example, some commenters stated that providing more recent bid-ask spread data on an ETF's website alongside other ETF trading data would give investors more useful and timely information.[376]

Commenters also expressed concern about potential liability under section 11 of the Securities Act for bid-ask spread data included in the prospectus if an investor's actual bid-ask spread costs differ materially from the bid-ask spread disclosed in the prospectus.[377]

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370 Although we proposed these bid-ask spread disclosure requirements as amendments to Forms N-1A and N-8B-2, rule 6c-11 will require ETFs relying on it to provide median bid-ask spread disclosure on its website as a condition to the rule. Our amendments to Form N-1A will provide an ETF that does not rely on rule 6c-11 with the option of providing the information required by rule 6c-11 on its website or the median bid-ask spread over the ETF's most recent fiscal year in its prospectus. *See infra* section II.H.2.b.

371 *See, e.g.,* BNY Mellon Comment Letter; John Hancock Comment Letter.

372 *See, e.g.,* IDC Comment Letter; Invesco Comment Letter; SSGA Comment Letter I.

373 *See, e.g.,* John Hancock Comment Letter; CSIM Comment Letter.

374 *See,* e.g., IDC Comment Letter; John Hancock Comment Letter.

375 *See, e.g.,* Fidelity Comment Letter (expressing support for website disclosure with a rolling 30-day median calculation methodology); Dechert Comment Letter; Thomson Hine Comment Letter.

376 *See, e.g.,* OppenheimerFunds Comment Letter; SIFMA AMG Comment Letter I.

377 *See, e.g.,* ABA Comment Letter; CSIM Comment Letter; Dechert Comment Letter; 15 U.S.C. 77k.

While we recognize the costs for ETFs to collect and publish this bid-ask spread data, we believe that quantitative information regarding median bid-ask spreads will provide ETF investors with greater understanding of the costs associated with investing in ETFs. This will help investors make more informed investment decisions. We acknowledge that historical bid-ask spread data may reflect differences that result from varying methods of computing bid-ask spread. However, we have modified the proposal in several respects, such as using NBBO for computing the bid-ask spread, to make the computation more uniform. We therefore do not believe that the variance will be large enough to outweigh the importance of giving investors a greater understanding of these potential trading costs. We similarly understand that bid-ask spread may not reflect an individual investor's actual spread, as an individual's spread may depend on the execution strategies employed by an intermediary (such as mid-point pricing), the size of a particular order, or other factors. We nonetheless believe that the bid-ask spread is a helpful tool for investors making better informed trading decisions and that website disclosure can provide that information in a format that is easily accessible and relied upon by investors.

Based on comments we received, however, we are modifying certain of the bid-ask spread requirements to make the disclosure more cost-effective for ETFs, while maintaining or enhancing the utility for investors. First, the rule will require an ETF to disclose its median bid-ask spread only on its website, instead of requiring disclosure both on an ETF's website and in its prospectus as proposed.[378] ETFs will present the median bid-ask spread disclosure alongside other ETF-specific disclosures, such as premium and discount and market price, which should mitigate some commenters' concerns relating to the overemphasis of bid-ask spread data.

Second, some commenters suggested shortening the look-back period for calculating the bid-ask spread metric, such as to a 30- or 45-day rolling period.[379] One commenter noted that a shorter look-back period may show a more representative spread level, particularly for a newly launched ETF, as spreads are likely to tighten as the ETF matures.[380] Several commenters also suggested that the Commission require ETFs to provide a time-weighted average bid-ask spread rather than the proposed median bid-ask spread.[381] These commenters stated that a time-weighted average is

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378 See infra section II.H.3. (discussing our determination not to adopt certain prospectus disclosure requirements that we proposed).

379 *See, e.g.,* BlackRock Comment Letter (30-day period); BNY Mellon Comment Letter (30-day period); Cboe Comment Letter (45-day period); ETF.com Comment Letter (45-day period).

380 *See* BlackRock Comment Letter (providing an example showing an ETF that saw its spread improve from 35 basis points at inception in January 2016 to 4.03 basis points in July 2018, and observing that its median bid-ask spread over the prior fiscal year ending July 31, 2018 was 6.34 basis points, while its median bid-ask spread over the prior month was 4.03 basis points).

381 *See, e.g.,* Fidelity Comment Letter; JPMAM Comment Letter.

more helpful for investors because it represents a "typical" bid-ask spread. We agree that a bid-ask spread metric based on the more recent inputs from the last 30 days may provide a better representation of the costs that an investor may incur when trading ETF shares. Accordingly, we are shortening the look-back period for calculating the bid-ask spread from the most recent fiscal year to the most recent 30-day period on a rolling basis.[382] We think the 30-day look-back period strikes an appropriate balance between reflecting only very short term fluctuations and reflecting information that is no longer representative of current execution costs. We do not think it is necessary to require a time-weighted average rather than the proposed median, however, because rule 6c-11 requires an ETF to determine the median by first identifying the exchange-traded fund's national best bid and national best offer as of the end of each 10 second interval during each trading day. This methodology (and the resulting number of data points) has the same effect as time-weighting. In addition, requiring an ETF to disclose the median of bid-ask spreads is less likely to give disproportionate effect to outlier values than a time-weighted average.

Finally, we are modifying the proposal to require that an ETF use the NBBO in calculating median bid-ask spreads.[383] While the proposal did not specify that the NBBO must be used, after considering comments recommending more uniformity regarding bid-ask spread disclosures,[384] we believe that requiring ETFs to use the NBBO when calculating the median will increase consistency and comparability of the resulting disclosure across ETFs.[385] In addition, we believe that requiring use of NBBO will help to reduce costs associated with obtaining the required information, because the NBBO also is an input to the market price disclosure requirement.

We also proposed related amendments to Form N-1A that would have required an ETF to provide: (i) examples in the ETF's prospectus showing how bid-ask spreads impact the return on a hypothetical investment for both buy-and-hold and frequent traders; and (ii) an interactive calculator in a clear and prominent format on the ETF's website that would allow an investor to customize the hypothetical bid-ask spread calculations to its specific investing situation.[386] These requirements were designed to allow secondary market investors to see the impact that bid-ask spreads can have on the investor's trading expenses and ultimately the return on investment.

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382 Rule 6c-11(c)(1)(v).

383 Rule 6c-11(c)(1)(v)(A)–(B).

384 *See supra* footnote 374 and accompanying text.

385 The NBBO also is used in the definition of market price in rule 6c-11. Rule 6c-11(a)(1); *see also supra* section II.C.6.a. Requiring NBBO is likely to result in more uniform and comparable calculations across funds.

386 *See* proposed amendment to Item 3 of Form N-1A. The proposed spread costs example would demonstrate the hypothetical impact of the ETF's bid-ask spread for one $10,000 "round-trip" trade (*i.e.,* one buy and sell transaction) and, to illustrate that more frequent trading can significantly increase costs, it would demonstrate the costs associated with 25 $10,000 round-trip trades (50 total trades). 2018 ETF Proposing Release, *supra* footnote 7, at section II.H.2.

Commenters generally opposed requiring bid-ask spread examples in the summary prospectus or summary section. For example, some commenters expressed concerns regarding the costs of obtaining the underlying bid-ask spread data from third parties.[387] Some commenters also noted that the historical bid-ask spread data, which ETFs would use to calculate the examples, is not representative of current trading costs and could mislead investors if disclosures overemphasize this information.[388] Other commenters suggested alternatives to the proposed examples such as using hypothetical brokerage commissions and bid-ask spreads, rather than using actual historical bid-ask spreads.[389] However one commenter supported this aspect of the proposal, stating that it would yield "relevant and helpful" information.[390]

Many commenters raised similar concerns regarding the proposed interactive calculator, including that varying data sources and calculation methodologies may result in an inconsistent investor experience across ETFs.[391] Other commenters noted that the interactive calculator was limited to bid-ask spread data, which placed undue emphasis on spreads as a component of an ETF investor's trading costs.[392] Commenters also noted that the proposed requirement may result in additional vendor and licensing costs.[393]

After considering comments, we are not adopting the proposed bid-ask spread examples or interactive calculator requirements. We are instead requiring ETFs relying on rule 6c-11 to provide more recent bid-ask spread information on their website. We believe that streamlining the required bid-ask spread disclosures will

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387 *See, e.g.,* BNY Mellon Comment Letter; ICI Comment Letter; John Hancock Comment Letter; OppenheimerFunds Comment Letter.

388 *See, e.g.,* Vanguard Comment Letter (noting that in the second quarter of 2018, Vanguard's retail brokerage clients paid less than 5% of the bid-ask spread when trading Vanguard ETFs with an effective spread/quoted spread of 1.89%, and approximately 97% of those market orders were executed inside the NBBO, with 94% of those orders at midpoint or better). *See also* ABA Comment Letter; BlackRock Comment Letter; CSIM Comment Letter.

389 *See, e.g.,* SIFMA AMG Comment Letter II.

390 *See* FIMSAC Comment Letter.

391 Fidelity Comment Letter; Invesco Comment Letter; SIFMA Comment Letter I; Vanguard Comment Letter.

392 *See, e.g.,* Vanguard Comment Letter. *See also* Eaton Vance Comment Letter (recommending replacing the proposed interactive calculator with new requirements for website trading information).

393 *See,* e.g.; ICI Comment Letter; JPMAM Comment Letter. *See also* WisdomTree Comment Letter (stating that broker-dealers are better suited to provide the information required by the proposed interactive calculator).

mitigate commenters' concerns that investors may fail to understand the relevance of the bid-ask spread information or the potential impact of bid-ask spreads on their specific trading situations. We are also persuaded by commenters that an interactive calculator focused solely on bid-ask spread costs may overemphasize those costs and thereby obscure the effect of other costs of investing in ETFs.

7. Marketing

As proposed, rule 6c-11 will not include certain requirements related to ETF marketing, which were included in our exemptive orders. Specifically, rule 6c-11 will not require an ETF to: (i) identify itself in its sales literature as an ETF that does not sell or redeem individual shares, and (ii) explain that investors may purchase or sell individual ETF shares through a broker via a national securities exchange.[394] Our exemptive orders included a condition requiring this information to help prevent investors, particularly retail investors, from confusing ETFs with mutual funds, at a time when ETFs were not a well-known investment product.

The comments on this aspect of the proposal were mixed. Commenters who supported the proposal generally agreed that the market has developed a familiarity with ETFs and that retail investors generally understand that, unlike mutual funds, individual ETF shares may be purchased and sold only on secondary markets.[395] One commenter disagreed, asserting that many investors do not understand the distinctions between ETFs and mutual funds.[396] This commenter suggested that the rule require an ETF to include a statement in its sales literature noting that buyers of ETF shares may pay more than the shares' current value and that sellers of ETF shares may receive less than current value. Another commenter noted that requiring this type of disclosure in ETF sales literature would help put investors on notice that the ETF pricing mechanism works differently than that of mutual funds.[397]

We continue to believe that ETF investors have grown familiar with ETFs and the fundamental distinctions between ETFs and mutual funds, and that this disclosure is now unnecessary. The disclosure requirements we are adopting also should provide ETF investors, including retail investors, with useful information regarding the exchange-traded nature of ETFs and ETF pricing, including the potential for market price to deviate from NAV per share.[398]

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394 *See* 2018 ETF Proposing Release, *supra* footnote 7.

395 *See*, *e.g.,* Invesco Comment Letter; ICI Comment Letter.

396 Eaton Vance Comment Letter.

397 CFA Comment Letter.

398 The website disclosure requirements are described in section II.C.6 and the amendments to Form N-1A are described in section II.H.

8. ETF and ETP Nomenclature

We requested comment on whether the Commission should address possible investor confusion arising from the nomenclature that has developed for identifying ETPs, including confusion between ETFs and other types of ETPs that are not registered under the Act.[399] We asked, for example, whether the Commission should consider proposing to require a naming convention or other identification scheme to assist investors in distinguishing ETFs from other ETPs in a future rulemaking. We also asked whether we could address investor confusion by restricting certain sales practices, such as by proposing restrictions on how intermediaries communicate with retail investors about ETPs unless they disclose certain information designed to clearly differentiate ETPs that are not subject to the Act from ETFs that are registered investment companies.

Several commenters generally supported a classification system for ETPs to assist investors in distinguishing among these different products.[400] One commenter stated that leveraged/inverse ETFs, commodity pools, and exchange-traded notes have differences that investors should understand prior to making investment decisions.[401] Commenters expressed varying views, however, regarding which types of ETPs should call themselves ETFs under an ETP classification system. One commenter asserted that the Commission should permit only ETFs that fall squarely within proposed rule 6c-11 to call themselves ETFs.[402] Two commenters provided examples of comprehensive classification systems for ETPs that would not permit "exchange-traded notes," "exchange-traded commodities," or "exchange-traded instruments" (including leveraged/inverse ETFs) to refer to themselves as ETFs.[403] One commenter opined that the Commission should not preclude leveraged/inverse ETFs from calling themselves ETFs, as that would "confuse investors and muddle both the existing regulatory framework applicable to ETFs and fund naming conventions."[404] Another commenter asserted that UITs and other ETFs that fall outside the scope of the rule should nonetheless be permitted to call themselves ETFs.[405]

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399 *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.C.7. *See also supra* footnote 16 (describing differences between ETFs and other types of ETPs, such as exchange-traded notes and commodity pools).

400 *See, e.g.,* BlackRock Comment Letter; Invesco Comment Letter; Cboe Comment Letter; FIMSAC Comment Letter; Hu and Morely Comment Letter (incorporating article by comment letter's authors suggesting that ETFs can be categorized into three groups, "Investment Company ETFs," "Commodity Pool ETFs," and "Operating Company ETFs," based on the applicable regulatory framework, but not suggesting a related nomenclature system).

401 *See* Invesco Comment Letter. *See also* BlackRock Comment Letter.

402 *See* Invesco Comment Letter.

403 *See* BlackRock Comment Letter; FIMSAC Comment Letter.

404 *See* ProShares Comment Letter.

405 *See* SIFMA AMG Comment Letter I.

One commenter asserted that Commission action relating to ETP naming is premature at the present time.[406] This commenter encouraged ETF market participants to engage in a dialogue "around refining existing ETP disclosures, adding new elements as useful to investors, and developing an industry-led standard ETP disclosure approach beneficial to investors and all market participants."

We agree that these issues need to be examined and discussed in more depth before the implementation of an ETP naming system. We will continue to consider the comments we received and, if appropriate, will take steps to address investor confusion relating to ETF and ETP nomenclature. At present, we believe that the term "ETF" is generally associated with ETPs regulated under the Investment Company Act. Leveraged/inverse ETFs, for example, are regulated under the Act and are structurally and operationally similar to ETFs that will rely on rule 6c-11. As a result, we do not believe it is appropriate to require leveraged/inverse ETFs to use a naming convention that does not include the term "ETF." Similarly, because UIT ETFs are subject to a substantially similar regulatory regime as ETFs structured as open-end funds (and subject to similar regulatory safeguards), we do not find it appropriate to require UIT ETFs to utilize a naming convention that does not include the term "ETF." We encourage ETP market participants to continue engaging with their investors, with each other, and with the Commission on these issues.

D. Recordkeeping

We are adopting, as proposed, an express requirement that ETFs relying on rule 6c-11 preserve and maintain copies of all written agreements between an authorized participant and the ETF (or one of the ETF's service providers) that allow the authorized participant to purchase or redeem creation units ("authorized participant agreements").[407] One commenter supported this aspect of the proposal.[408] Another commenter, however, stated that this requirement is unnecessary because ETFs already generally implement robust recordkeeping programs pursuant to their policies and procedures.[409]

After considering these comments, we believe it is appropriate for rule 6c-11 to specifically require that ETFs preserve and maintain authorized participant agreements. Authorized participants play a central role in the proper functioning of the ETF marketplace and authorized participant agreements are critical to understanding the relationship between an authorized participant and an ETF. Requiring the preservation of authorized participant agreements is designed to provide our examination staff with a basis to determine whether the relationship

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406 *See* Comment Letter of State Street Global Advisors (Feb. 4, 2019).

407 *See* rule 6c-11(d)(1). For example, an authorized participant and the ETF's principal underwriter may enter into the authorized participant agreement.

408 *See* ICI Comment Letter.

409 *See* Invesco Comment Letter.

between the ETF and the authorized participant is in compliance with the requirements of rule 6c-11 and other provisions of the Act and rules thereunder, based on the specific terms of their written agreement. While we believe that most ETFs are currently preserving copies of their written authorized participant agreements pursuant to our current recordkeeping rules, for avoidance of doubt, we believe it is appropriate to expressly require that ETFs relying on rule 6c-11 preserve and maintain copies of all such agreements.

We also are adopting, largely as proposed, a requirement that ETFs maintain information regarding the baskets exchanged with authorized participants. Rule 6c-11 will require an ETF to maintain records setting forth the following information for each basket exchanged with an authorized participant: (i) ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units;[410] (ii) if applicable, an identification of the basket as a "custom basket" and a record stating that the custom basket complies with the ETF's custom basket policies and procedures; (iii) cash balancing amounts (if any); and (iv) the identity of the authorized participant conducting the transaction.[411]

Commenters generally supported requiring ETFs to maintain records regarding baskets.[412] One commenter stated that clear, auditable records would help Commission staff monitor custom basket usage and its impact on the ETF arbitrage process.[413] Another agreed that the records would provide Commission staff with a basis to understand how baskets are being used by ETFs and to evaluate compliance with the rule and other requirements.[414] As noted above, one commenter stated that it is unnecessary for the rule to contain any recordkeeping provisions.[415]

After considering these comments, we believe that requiring ETFs to maintain records regarding each basket exchanged with authorized participants will provide our examination staff with a basis to understand how baskets are being used by ETFs, particularly with respect to custom baskets. In order to provide our examination staff with detailed information regarding basket composition, however, we have modified rule 6c-11 to require the ticker symbol, CUSIP or other identifier, description of

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410 As discussed below, proposed rule 6c-11 would have required ETFs to maintain the "names and quantities of the positions composing the basket" exchanged for creation units and did not require additional information about the ticker symbol, CUSIP or other identifier, or a description of the holding. *See* proposed rule 6c-11(d)(2).

411 *See* rule 6c-11(d)(2).

412 *See* ICI Comment Letter; Nasdaq Comment Letter; SIFMA AMG Comment Letter I.

413 *See* SIFMA AMG Comment Letter I.

414 *See* ICI Comment Letter.

415 *See* Invesco Comment Letter.

holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units as part of the basket records, instead of the name and quantities of each position as proposed.[416] We believe that this additional information will better enable our examination staff to evaluate compliance with the rule and other applicable provisions of the federal securities laws. Moreover, we do not believe that requiring ETFs to maintain detailed information regarding basket composition will create operational challenges or unduly burden ETFs because rule 6c-11 already requires ETFs to disclose the same information for each portfolio holding as part of the portfolio transparency requirements.[417]

As proposed, the rule will require ETFs to maintain these records for at least five years, the first two years in an easily accessible place. The retention period is consistent with the period provided in rules 22e-4 and 38a-1(d) under the Act. Funds currently have compliance program-related recordkeeping procedures in place that incorporate this type of retention period and we believe consistency with that period will minimize any compliance burdens to ETFs subject to rule 6c-11. The commenter that addressed this aspect of the recordkeeping requirement supported the proposed retention period.[418]

E. Share Class ETFs

As proposed, rule 6c-11 does not provide relief from sections 18(f)(1) or 18(i) of the Act or expand the scope of 17 CFR 270.18 f-3 (rule 18 f-3) (the multiple class rule).[419] Sections 18(f) and (i) of the Act were intended, in large part, to protect investors from certain abuses associated with complex investment company capital

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416 *See* proposed rule 6c-11(d)(2).

417 This modification aligns the rule's recordkeeping requirements in paragraph (d) with the information the ETF must already collect and disclose as part of the portfolio transparency requirements. Proposed rule 6c-11 would have required an ETF to post on its website information regarding a published basket at the beginning of each business day and to present the description, amount, value and unrealized gain/loss in the manner prescribed by Article 12 of Regulation S-X for each basket asset. As discussed above, we are not adopting a basket publication requirement as part of rule 6c-11, and therefore the rule does not set forth recordkeeping requirements relating to the proposed basket publication requirement. *See supra* section II.C.5.c.

418 *See* Invesco Comment Letter (agreeing with the five-year retention timeline despite generally objecting to the rule's recordkeeping requirements).

419 *See* 15 U.S.C. 80a – 18(f)(1) and (i). Section 18(f)(1) of the Act generally prohibits a registered open-end company from issuing a class of "senior security," which is defined in section 18(g) to include any stock of a class having priority over any other class as to distribution of assets or payment of dividends. *See* 15 U.S.C. 80a – 18(g). Section 18(i) of the Act provides that all shares of stock issued by a registered management company must have equal voting rights.

structures, including conflicts of interest among a fund's share classes.[420] These provisions also were designed to address certain inequitable and discriminatory shareholder voting provisions that were associated with many investment company securities before the enactment of the Act.[421] Rule 18 f-3 created a limited exception from sections 18(f)(1) and 18(i) for certain funds but requires, among other things, that each share class of a fund have the same rights and obligations as each other class.[422] An ETF cannot rely on rule 18f-3 to operate as a share class within a fund, however, because the rights and obligations of the ETF shareholders would differ from those of investors in the fund's mutual fund share classes.[423] Therefore, absent any separate relief from sections 18(f)(1) or 18(i) of the Act, an ETF structured as a share class of a fund that issues multiple classes of shares representing interests in the same portfolio cannot operate in reliance on rule 6c-11.

We recognize that the Commission has previously granted ETFs exemptive relief from the provisions of section 18 of the Act in the past, subject to various conditions.[424] However, relief from section 18 raises policy considerations that are different from those we are seeking to address in this rule. For example, an ETF share class that transacts with authorized participants on an in-kind basis and

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420 *See* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares, Investment Company Act Release No. 19955 (Dec. 15, 1993) [58 FR 68074 (Dec. 23, 1993)] (proposing release), at nn.20 and 21 and accompanying text.

421 *See id.*

422 *See* 17 CFR 270.18f–3(a)(4); Exemption for Open-End Management Companies Issuing Multiple Classes of Shares, Investment Company Act Release No. 20915 (Feb. 23, 1995) [60 FR 11876 (Mar. 2, 1995)] (adopting release) ("Multiple Class Adopting Release"), at n.8 and accompanying text.

423 For example, ETF shares would be redeemable only in creation units, while the investors in the fund's mutual fund share classes would be individually redeemable. Similarly, ETF shares are tradeable on the secondary market, whereas mutual fund shares classes would not be traded.

424 *See* Vanguard Index Funds, et al., Investment Company Act Release Nos. 24680 (Oct. 6, 2000) [65 FR 61005 (Oct. 13, 2000)] (notice) and 24789 (Dec. 12, 2000) (order) and related application; Vanguard Index Funds, et al., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) [68 FR 68430 (Dec. 8, 2003)] (notice) and 26317 (Dec. 29, 2003) (order) and related application; Vanguard International Equity Index Funds, et al., Investment Company Act Release Nos. 26246 (Nov. 3, 2003) [68 FR 63135 (Nov. 7, 2003)] (notice) and 26281 (Dec. 1, 2003) (order) and related application; Vanguard Bond Index Funds, et. al., Investment Company Act Release Nos. 27750 (Mar. 9, 2007) [72 FR 12227 (Mar. 15, 2007)] (notice) and 27773 (Apr. 25, 2007) (order) and related application (collectively, the "Vanguard orders").

a mutual fund share class that transacts with shareholders on a cash basis may give rise to differing costs to the portfolio. As a result, while certain of these costs may result from the features of one share class or another, all shareholders would generally bear these portfolio costs.[425]

Three commenters stated that it was unnecessary for rule 6c-11 to provide relief for share class ETFs.[426] One commenter, a sponsor of share class ETFs, stated that it is unnecessary for the rule to encompass share class ETFs because it is currently uncommon for ETF issuers to seek the exemptive relief necessary for such ETFs.[427] Another stated that our proposed treatment is appropriate given the nuances associated with those products,[428] and the third similarly indicated that share class ETFs present issues that would be more appropriately addressed through means other than rule 6c-11.[429]

Two other commenters, however, opined that rule 6c-11 (or a separate future rule) should provide relief for share class ETFs in order to create a more level ETF playing field.[430] Additional commenters echoed the importance of leveling the ETF playing field without specifically addressing share class ETFs.[431] Another commenter urged the Commission to explore granting relief from the relevant provisions of section 18 broadly to the fund industry.[432]

Leveling the ETF playing field is a goal for rule 6c-11, and we acknowledge that our approach will result in there being a segment of ETF assets that are unable to rely on the rule. At the same time, we continue to believe that share class ETFs raise policy considerations that are different from those we seek to address in the rule. With such concerns unresolved, we do not believe it is appropriate to broadly grant relief

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425 These costs can include brokerage and other costs associated with buying and selling portfolio securities in response to mutual fund share class cash inflows and outflows, cash drag associated with holding the cash necessary to satisfy mutual fund share class redemptions, and distributable capital gains associated with portfolio transactions.

426 *See* Vanguard Comment Letter; Invesco Comment Letter; SSGA Comment Letter I.

427 *See* Vanguard Comment Letter.

428 *See* Invesco Comment Letter.

429 *See* SSGA Comment Letter I.

430 *See* BNY Mellon Comment Letter; OppenheimerFunds Comment Letter.

431 *See* ETF.com Comment Letter (stating that the disclosure requirements of any final rule should apply to all ETFs, regardless of whether the ETFs rely on the final rule); Invesco Comment Letter (indicating that the Commission should generally abstain from regulatory actions that allow only certain market participants to benefit from innovation).

432 *See* MFDF Comment Letter.

from sections 18(f)(1) and 18(i) of the Act for share class ETFs at this time. Share class ETFs are structurally and operationally different from the other types of ETFs within the scope of rule 6c-11.[433] We therefore continue to believe it is appropriate for share class ETFs to request relief from sections 18(f)(1) and 18(i) of the Act through our exemptive application process, and for the Commission to continue to assess all relevant policy considerations in the context of the facts and circumstances of each particular applicant. We are not rescinding exemptive relief previously granted to share class ETFs.

We also are adopting amendments to Form N-1A that will require share class ETFs to provide certain additional disclosures regarding ETF trading costs. As discussed in more detail below in section II.H., these disclosure amendments are designed to help ensure consistent disclosures to investors between ETFs relying on proposed rule 6c-11 and share class ETFs operating pursuant to individualized exemptive relief. The rule and form amendments require all ETFs that are subject to the Investment Company Act to provide similar disclosures in order to help investors compare products.

F. Master-Feeder ETFs

Many of our recent ETF orders allow ETFs to operate as feeder funds in a master-feeder structure.[434] In general, an ETF that operates as a feeder fund in a master-feeder structure functions like any other ETF. An authorized participant deposits a basket with the ETF and receives a creation unit of ETF shares in return for those assets. Conversely, an authorized participant that redeems a creation unit of ETF shares receives a basket from the ETF. In a master-feeder arrangement, however, the feeder ETF then also enters into a corresponding transaction with its master fund. The ETF may use the basket assets it receives from an authorized participant to purchase additional shares of the master fund, or it may redeem shares of the master fund in order to obtain basket assets and satisfy a redemption request.

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433 For example, when an ETF is structured as a share class of an open-end fund, the open-end fund has other share classes representing interests in the same portfolio. These interests (and the cash flows associated with the other share classes) can impact the fund's portfolio. In addition, share class ETFs do not provide daily portfolio transparency. *See* Vanguard orders, *supra* footnote 424.

434 *See, e.g.,* T. Rowe Price Associates, Inc., et al., Investment Company Act Release Nos. 30299 (Dec. 7, 2012) [77 FR 74237 (Dec. 13, 2012)] (notice) and 30336 (Jan. 2, 2013) (order) and related application; SSgA Funds Management, Inc., et al., Investment Company Act Release Nos. 29499 (Nov. 17, 2010) [75 FR 71753 (Nov. 24, 2010)] (notice) and 29524 (Dec. 13, 2010) (order) and related application ("SSgA").

Because the feeder ETF may, in the course of these transactions, temporarily hold the basket assets, it would not be able to rely on section 12(d)(1)(E) of the Act, which requires that a feeder fund hold no investment securities other than securities of the master fund.[435] To accommodate the unique operational characteristics of these ETFs, our recent exemptive orders have allowed a feeder ETF to rely on section 12(d)(1)(E) without complying with section 12(d)(1)(E)(ii) of the Act to the extent that the ETF temporarily holds investment securities other than the master fund's shares for use as basket assets. These orders also provided the feeder ETF and its master fund with relief from sections 17(a)(1) and 17(a)(2) of the Act, with regard to the deposit by the feeder ETF with the master fund and the receipt by the feeder ETF from the master fund of basket assets in connection with the issuance or redemption of creation units,[436] and section 22(e) of the Act if the feeder ETF includes a foreign security in its basket assets and a foreign holiday (or a series of consecutive holidays) prevents timely delivery of the foreign security.[437]

The exemptive orders we have granted to master-feeder ETFs, however, do not include relief from section 18 under the Act inasmuch as investment by several feeder funds or by mutual fund and ETF feeder funds in the same class of securities issued by a master fund generally does not involve a senior security subject to section 18. We are concerned, as discussed above, that if an ETF feeder fund transacts with a master fund on an in-kind basis, but non-ETF feeder funds transact with the master fund on a cash basis, all feeder fund shareholders would bear costs associated with the cash transactions.[438] Due to these concerns, and the lack of market interest in this structure, we proposed to rescind the master-feeder relief granted to ETFs that did not rely on the relief as of the date of the proposal (June 28, 2018). We also proposed to grandfather existing master-feeder arrangements involving ETF feeder funds, but prevent the formation of new ones, by amending relevant exemptive orders.

One commenter stated that it did not object to preventing the formation of new master-feeder arrangements and rescinding master-feeder relief (with the exception of master-feeder relief that funds actively relied on as of the date of the Proposing

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435 Section 12(d)(1) of the Act limits the ability of a fund to invest substantially in shares of another fund. *See* sections 12(d)(1)(A)–(C) of the Act. Section 12(d)(1)(E) of the Act allows an investment company to invest all of its assets in one other fund so that the acquiring fund is, in effect, a conduit through which investors may access the acquired fund. *See* section 12(d)(1)(E)(ii) of the Act.

436 Relief from the affiliated transaction prohibitions in sections 17(a)(1) and 17(a)(2) of the Act is necessary because these sections would otherwise prohibit the feeder ETF and its master fund from selling to or buying from each other the basket assets in exchange for securities of the master fund. *See* 15 U.S.C. 80a-17(a)(1)–(2).

437 *See* 15 U.S.C. 80a-22(e) (generally requiring the satisfaction of redemptions within seven days). *See also supra* section II.B.4.

438 *See supra* footnote 425 and accompanying text.

Release).[439] Other commenters, however, indicated that the rule should provide relief for master-feeder structures[440] or that the Commission should not rescind existing master-feeder relief.[441] Some of these commenters indicated that failing to provide relief for master-feeder structures would cause an uneven playing field among ETFs but did not address the concerns discussed above.[442]

Other commenters set forth potential methods for mitigating such concerns. For example, one commenter indicated that the Commission could address its concerns regarding potential cross-subsidization by requiring master funds to impose certain transaction fees,[443] while another indicated that the Commission should address these concerns by requiring each feeder fund in a master-feeder structure to transact with the master fund consistently (*i.e.,* only in cash or only in kind).[444] An additional commenter suggested that an ETF's board should evaluate whether a master-feeder structure's overall benefits outweigh its overall costs in order to address these concerns.[445] Another commenter indicated that it has already invested resources exploring various approaches to an ETF master-feeder structure, including models that it believed would address the Commission's concerns.[446]

As discussed in the context of share class ETFs, leveling the ETF playing field is a goal for rule 6c-11, and we acknowledge that our approach will result in there being a segment of ETF assets that are unable to rely on the rule. Like share class ETFs, however, we continue to believe that master-feeder funds raise policy considerations that are different from those we seek to address in the rule and are structurally and operationally distinct from other ETFs within the scope of rule 6c-11. We do not believe it is appropriate to broadly grant exemptive relief for master-feeder funds. Instead, we continue to believe that the Commission should consider the special concerns presented by ETFs in master-feeder structures in the context of the facts and circumstances of each particular applicant through individualized exemptive applications. The Commission's exemptive relief process is well-suited for applicants to set forth novel methods of mitigating the Commission's concerns, such as the methods suggested above. The process allows applicants to experiment with many

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439 *See* ICI Comment Letter.

440 *See* ETF.com Comment Letter; BNY Mellon Comment Letter; Dechert Comment Letter.

441 *See* Fidelity Comment Letter; Eaton Vance Comment Letter.

442 *See* ETF.com Comment Letter; BNY Mellon Comment Letter.

443 *See* Eaton Vance Comment Letter.

444 *See* Fidelity Comment Letter.

445 *See* Dechert Comment Letter. This commenter *also* opposed excluding exemptive relief for master-feeder structures based on a lack of market interest because the ETF industry is dynamic and interest in master-feeder structures may develop in the future. *Id.*

446 *See* Fidelity Comment Letter.

different approaches, and may eventually assist the Commission in identifying a particular solution that is appropriate for a broader rule. Any ETF that is exploring a particular approach is free to bring its methodology forward in an exemptive application, which should help mitigate commenters' concerns about future changes in the ETF industry and resources already committed to such research. As proposed, therefore, we will rescind the master-feeder relief granted to ETFs that did not rely on the relief as of the date of the proposal (June 28, 2018).[447]

Only one fund complex had established as of June 28, 2018 master-feeder arrangements involving ETF feeder funds, and each arrangement involves an ETF as the sole feeder fund. We understand that all but one of the complex's original ETF feeder funds has discontinued its use of a master-feeder structure.[448] Because this arrangement involves only one ETF feeder fund for its master fund, we do not believe it will raise the policy concerns discussed above without new, additional feeders, and therefore do not believe it is necessary to require this structure to change its existing investment practices by rescinding the relief.[449] Instead, as proposed, we are amending this fund complex's existing exemptive orders to prevent the complex from forming new master-feeder ETFs.[450]

G. Effect of Rule 6c-11 on Prior Orders

As proposed, we have determined to exercise our authority under the Act to amend and rescind the exemptive relief we have issued to ETFs that will be permitted to operate in reliance on rule 6c-11.[451] Accordingly, one year following the effective date of rule 6c-11, we will rescind those portions of our prior ETF exemptive orders that grant relief related to the formation and operation of an

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447 One commenter indicated that this date provided an insufficient notice period for ETFs interested in pursuing the master-feeder structure and recommended "a sunset provision of at least 3 years from the effective date of the final rule to allow ETFs that have been developing this structure sufficient time to test and implement it." *See id.* Exemptive orders for existing ETF master-feeder structures that rely on the relief will not be rescinded, however, and ETFs interested in pursuing a master-feeder structure in the future may apply for individualized exemptive relief. We therefore believe that such a 3-year sunset provision is unnecessary.

448 *See, e.g.,* SSGA Active Trust Prospectus (Oct. 31, 2017), available at https://www.sec.gov/Archives/edgar/data/1516212/000119312518313788/d635918d497.htm.

449 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.342 (noting that rescinding the relief for existing master-feeder ETFs would require them to change the manner in which they invest).

450 The amendment to the exemptive order will expressly provide that the complex cannot create new master-feeder structures as of June 28, 2018.

451 *See* section 38(a) of the Act, 15 U.S.C. 80a – 37(a).

ETF, including master-feeder relief except as described in section II.F. We will not rescind the exemptive orders of UIT ETFs, leveraged/inverse ETFs, share class ETFs, or non-transparent ETFs. We also are not rescinding the relief we have provided to ETFs from section 12(d)(1) and sections 17(a)(1) and (a)(2) under the Act related to fund of funds arrangements involving ETFs as discussed below.

Commenters generally supported the rescission of the exemptive relief granted to ETFs that fall within the scope of rule 6c-11,[452] while permitting ETFs that could not rely on rule 6c-11 to continue to rely on their individual exemptive orders.[453] One commenter stated that rescission of these orders will further the Commission's regulatory goal to create a consistent, transparent, and efficient regulatory framework for ETFs.[454]

After reviewing comments, we continue to believe that rescinding ETF exemptive relief in connection with rule 6c-11 will result in a consistent, transparent, and efficient framework for ETFs that operate in reliance on rule 6c-11, as those ETFs would no longer be subject to differing and sometimes inconsistent provisions of their exemptive relief. Moreover, investment companies that seek to operate an ETF under conditions that differ from those in rule 6c-11 are able to request exemptive relief from the Commission.

In addition, approximately 200 of our current ETF exemptive orders automatically expire on the effective date of any Commission rule that provides relief permitting the operation of ETFs.[455] We have determined, as proposed, to amend those orders to provide that the ETF relief contained therein will terminate one year following the effective date of rule 6c-11 to allow time for these ETFs to make any adjustments necessary to rely on rule 6c-11.

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452 *See, e.g.,* ABA Comment Letter; ICI Comment Letter.

453 *See, e.g.,* ICI Comment Letter; Eaton Vance Comment Letter. In addition, one commenter stated that, because the commenter has designed its ETFs around the basket flexibility afforded by its exemptive orders, it would oppose the rescission of prior orders if the final rule limits ETFs' ability to use custom baskets. *See* Invesco Comment Letter. As discussed above, rule 6c-11 will permit an ETF to use custom baskets if it meets certain conditions. *See supra* section II.C.5.b.

454 *See* ABA Comment Letter. One commenter, a sponsor of ETMFs as well as ETFs, requested that the Commission amend the terms and conditions relating to custom baskets in the ETMF orders to correspond to the treatment of custom baskets in rule 6c-11. *See* Eaton Vance Comment Letter. We believe this request is beyond the scope of the proposal. However, the commenter may seek to amend its order as part of the exemptive application process.

455 *See* 2018 ETF Proposing Release, *supra* footnote 7, at n.348 and accompanying text (noting that the Commission began including a condition in its exemptive orders in 2008 stating that the relief permitting the operation of ETFs would expire on the effective date of any Commission rule that provides relief permitting the operation of ETFs).

We continue to believe that the one-year period for the termination of our ETF exemptive relief is sufficient to give ETFs that are operating under exemptive orders time to bring their operations into conformity with the requirements of rule 6c-11. We did not receive any comments on this aspect of the proposal. We also did not receive any comments stating that the need to comply with the requirements of rule 6c-11, as opposed to their exemptive relief, would significantly negatively affect the operations of existing ETFs.

Finally, we did not propose to rescind the fund of funds exemptive relief included in our ETF exemptive orders.[456] This relief permits an ETF to create fund of funds structures, subject to certain conditions set forth in the ETF's exemptive application, designed to prevent the abuses that led Congress to enact section 12(d)(1), including abuses associated with undue influence and control by acquiring fund shareholders, the payment of duplicative or excessive fees, and the creation of complex structures. The conditions for fund of funds relief for ETFs are substantially similar across our exemptive orders.

Commenters generally agreed that we should not rescind the fund of funds exemptive relief, but asserted that the Commission should include fund of funds relief in a final rule or provide such relief through other means.[457] Some commenters stated that because fund of funds relief is part of standard ETF exemptive orders, the Commission also should permit new ETFs to rely on the terms and conditions of fund of funds relief previously granted to existing ETFs.[458] These commenters stated that failing to provide this relief would frustrate the Commission's purpose of allowing new ETFs to enter the market without obtaining an exemptive order from the Commission.

In December 2018, we proposed new rule 12d1-4 under the Act to streamline and enhance the regulatory framework applicable to fund of funds arrangements for registered investment companies, including ETFs.[459] In connection with that proposed rule, we also proposed to rescind our exemptive orders granting relief to

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456 *See id.* at n.344 and accompanying text.

457 *See, e.g.,* Dechert Comment Letter; ABA Comment Letter; MFDF Comment Letter; SSGA Comment Letter; WisdomTree Comment Letter; OppenheimerFunds Comment Letter. Commenters *also* suggested that the Commission should permit funds relying on sections 3(c)(l) and 3(c)(7) under the Act to be acquiring funds under any future fund of funds relief. *See* Dechert Comment Letter; OppenheimerFunds Comment Letter. While the subject matter of these comments falls outside the scope of the proposal of rule 6c-11, this issue is addressed as part of the proposed fund of funds rules. *See* FOF Proposing Release, *supra* footnote 40.

458 *See, e.g.,* ABA Comment Letter; Dechert Comment Letter.

459 *See* FOF Proposing Release, *supra* footnote 40, at nn.236 – 237 and accompanying text.

certain fund of funds arrangements, including the relief from sections 12(d)(1)(A) and (B) that, as discussed above, has been included in our ETF exemptive orders. The Commission has not yet acted upon this proposal and is not rescinding the fund of funds relief in existing exemptive orders in connection with this rulemaking.

We agree with commenters, however, that new entrants to the ETF market would be at disadvantage to existing ETFs without fund of funds relief. Accordingly, ETFs relying on rule 6c-11 that do not have exemptive relief from sections 12(d)(1)(A) and (B) and section 17(a)(1) and (2) of the Act may enter into fund of funds arrangements as set forth in our recent ETF exemptive orders, provided that they satisfy the terms and conditions for fund of funds relief in those orders.[460] This relief will be available only until the effective date of a new Commission rule permitting registered funds to acquire the securities of other registered funds in excess of the limits in section 12(d)(1), including rule 12d1-4 if adopted.[461]

H. Amendments to Form N-1A

We are adopting several amendments to Form N-1A, the registration form used by open-end funds to register under the Act and to offer their securities under the Securities Act, that are designed to provide ETF investors with additional information regarding ETF trading and associated costs. Commenters generally

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460 *See* Salt Financial, *supra* footnote 247. Our exemptive orders permitting ETFs to enter into fund of funds arrangements include relief from section 17(a) of the Act. Section 17(a) would prohibit an ETF that is an acquiring fund that holds 5% or more of an acquired fund's securities from making any additional investments in the acquired fund. In addition, fund of funds arrangements involving funds that are part of the same group of investment companies or that have the same investment adviser (or affiliated investment advisers) implicate section 17(a), regardless of whether an acquiring fund exceeds the 5% threshold. Furthermore, where an ETF is an acquired fund, section 17(a) would prohibit the delivery or deposit of basket assets on an in-kind basis by an affiliated fund (that is, by exchanging certain assets from the ETF's portfolio, rather than in cash). *See* FOF Proposing Release, *supra* footnote 40, at nn.60 – 64 and accompanying text. The relief we are providing from section 17(a) does not extend beyond the scope of the relief we have provided in our exemptive orders to ETFs. We are providing the relief from sections 12(d)(1)(A) and (B) and section 17(a) in accordance with our authority under sections 6(c), 12(d)(1)(J), and 17(b) of the Act. *See* 15 U.S.C. 80a-6(c), 15 U.S.C. 80a-12(d)(1)(J), and 15 U.S.C. 80a-17(b).

461 For the reasons discussed above, we find that this relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. *See* 15 U.S.C. 80a-6(c). We similarly find that such an exemption is consistent with the public interest and the protection of investors. *See* 15 U.S.C. 80a-12(d)(1)(J).

supported providing additional information to investors regarding ETF trading, but many suggested specific modifications to the proposals.[462] After considering these comments, we are adopting the following amendments to Form N-1A:

- Adding the term "selling" to current narrative disclosure requirements to clarify that the fees and expenses reflected in the expense table may be higher for investors if they buy, hold, and sell shares of the fund (*Item 3*);
- Streamlined narrative disclosures relating to ETF trading costs, including bid-ask spreads (*Item 6*);
- Requiring ETFs that do not rely on rule 6c-11 to disclose median bid-ask spread information on their websites or in their prospectus (*Item 6)*;
- Excluding ETFs that provide premium/discount disclosures in accordance with rule 6c-11 from the premium and discount disclosure requirements in Form N-1A (*Items 11 and 27*); and
- Eliminating disclosures relating to creation unit size and disclosures applying only to ETFs with creation unit sizes of less than 25,000 shares (*Items 3, 6, 11 and 27*).

1. Fee Disclosures for Mutual Funds and ETFs (Item 3)

As proposed, we are adopting a narrative disclosure that will specify that the fees and expenses reflected in the Item 3 expense table also may be higher for investors if they sell shares of the fund.[463] Currently, this item requires disclosure indicating only that the table describes fees and expenses investors may pay if they buy

462 We *also* received a comment requesting that we confirm the applicability of the civil liability provisions in sections 11 and 12 of the Securities Act to investors that purchase ETF shares on the secondary markets. *See* Hagens Berman Comment Letter. This rulemaking is intended to codify existing relief for ETFs relating to the formation and operation of ETFs under the Investment Company Act. Accordingly, the applicability of those Securities Act provisions is beyond the scope of this rulemaking.

463 Item 3 of Form N-1A (requiring, for example, disclosure of sales loads, exchange fees, maximum account fees, and redemption fees that funds charge directly to shareholders). We *also* are amending Instruction 1(e) of Item 3, as proposed, to eliminate: (i) the requirement that ETFs modify the narrative explanation for the fee table to state that investors may pay brokerage commissions on their purchase and sale of ETF shares, which are not reflected in the example; and (ii) the instruction to exclude fees charged for the purchase and redemption of the fund's creation units if the fund issues or redeems shares in creation units of not less than 25,000 shares. Thus, as proposed, an ETF may exclude from the fee table any fees charged for the purchase and redemption of the Fund's creation units regardless of the number of shares. *See also* Instruction 1(e)(ii) to Item 27(d)(1) (adopting the same modification for the expense example in an ETF's annual and semi-annual reports).

and hold shares of the fund. However, both mutual funds and ETF investors also may incur expenses other than redemption fees when selling fund shares.[464] We are therefore amending this disclosure to specify that investors may pay the fees and expenses described in Item 3 if they buy, hold, and sell shares of the fund.[465] Commenters who addressed this proposed change supported it because it will help investors better understand that they may incur costs in addition to those in the fee table.[466]

We also are adopting, as proposed, a requirement to include a statement that investors may be subject to other fees not reflected in the table, such as brokerage commissions and fees to financial intermediaries.[467] Commenters who addressed this proposed requirement supported it.[468] We continue to believe this is an appropriate disclosure for both ETFs and mutual funds, as investors in ETFs and mutual funds alike may incur brokerage commissions and fees to financial intermediaries.

2. Disclosures Regarding ETF Trading and Associated Costs (Item 6)

We are adopting amendments to Item 6 of Form N-1A that: (i) will require an ETF to provide narrative disclosure identifying specific costs associated with buying and selling ETF shares and directing investors to its website for additional information; and (ii) allow an ETF that is not subject to rule 6c-11 the option to provide disclosure regarding the ETF's median bid-ask spread on its website or in its prospectus.[469] These form amendments differ in several respects from our proposal, which would have required an ETF to disclose information regarding how ETF shares trade and the associated costs, including information regarding bid-ask spreads, as part of the fund's fee table disclosure.

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464 For example, an investor may incur a back-end sales load when selling a mutual fund share. Likewise, an investor may bear costs associated with bid-ask spreads when selling ETF shares.

465 *See* Item 3 of Form N-1A.

466 *See, e.g.,* CSIM Comment Letter; FIMSAC Comment Letter; IDC Comment Letter.

467 Item 3 of Form N-1A.

468 *See, e.g.,* IDC Comment Letter; Invesco Comment Letter.

469 Rule 6c-11 will require an ETF to disclose its median bid-ask spread for the last thirty calendar days on its website as a condition to the rule. Rule 6c-11(c)(1)(v). We *also* are amending the definition of "Exchange-Traded Fund" in Form N-1A to add a specific reference to rule 6c-11. *See* General Instruction A of Form N-1A (defining "exchange-traded fund" as a fund or class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order granted by the Commission or in reliance on rule 6c-11 under the Act). We are adopting this definition as proposed.

a. Narrative Disclosures

Secondary market investors in ETF shares are subject to trading costs when purchasing and selling ETF shares that ETFs are not currently required to disclose in their prospectuses. Trading costs, like all costs and expenses, affect investors' returns on their investment.[470] In addition, some investors use ETFs more heavily as trading vehicles compared to mutual funds and may thus incur substantial trading costs. We believe that investors could overlook these costs and that additional disclosure would help them better understand these costs when purchasing or selling ETF shares.

As a result, we proposed to require ETFs to include a series of questions and answers — or Q&As — in Item 3 that would have provided investors with narrative disclosure regarding ETF trading and associated costs, as well as quantitative disclosures regarding bid-ask spreads.[471] Although many commenters supported providing information regarding trading costs to investors, commenters raised concerns regarding the quantitative aspects of the bid-ask spread disclosures.[472] In addition, comments on the proposed Q&A format were mixed. Some commenters supported the format, stating that it provided a user-friendly method for identifying certain costs.[473] Many others expressed concerns that this format would significantly lengthen the summary prospectus, potentially resulting in less investor-friendly

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470 *See* SEC Office of Investor Education and Advocacy, Investor Bulletin: How Fees and Expenses Affect Your Investment Portfolio (Feb. 2014), available at https://www.sec.gov/investor/alerts/ib_fees_expenses.pdf, at 2 ("As with any fee, transaction fees will reduce the overall amount of your investment portfolio."); *see also* Andrea Coombes, Calculating the Costs of an ETF, The Wall Street Journal (Oct. 23, 2012), available at https://www.wsj.com/articles/SB10000872396390444024204578044293008576204.

471 We *also* proposed to move certain disclosure regarding the purchase of ETF shares from Item 6 to Item 3, consolidating relevant disclosures regarding the fees and trading costs that an ETF investor may bear in one place. 2018 ETF Proposing Release, *supra* footnote 7, at text accompanying nn.391 – 394.

472 *See also supra* section II.C.6.d. (discussing median bid-ask spread disclosure requirements in rule 6c-11 and our determination not to adopt amendments that would have required an ETF to provide: (i) hypothetical examples in its prospectus of how the bid-ask spread impacts return on investment; and (ii) an interactive calculator on its website to allow investors the ability to customize those hypothetical calculations).

473 *See, e.g.,* CFA Institute Comment Letter; FIMSAC Comment Letter.

formats or increased printing costs.[474] Some commenters asserted that the proposed Q&A format may be more appropriate for inclusion in the statutory prospectus rather than the summary prospectus.[475]

We continue to believe that investors could overlook certain trading costs when buying or selling ETF shares and that additional disclosure will help them better understand these costs. However, we agree with commenters that the extent of trading cost disclosures we proposed to require in Item 3 could obscure other key information regarding other fees and expenses and potentially give bid-ask spread disclosures undue prominence. We also agree that ETFs and their investors may benefit from flexibility in the manner of presenting the required information, especially if the proposed format would unduly distract from other key information. We therefore are permitting ETFs to use formats other than Q&As to present this information.[476] In addition, we are moving the narrative disclosures regarding trading costs to Item 6 of Form N-1A, which provides investors with information regarding the purchase and sale of fund shares to avoid overemphasizing these costs.

We also are streamlining several of the narrative disclosure requirements we proposed. First, we are adopting a requirement that the ETF's summary prospectus or summary section cross-reference the ETF's website.[477] Rule 6c-11 will require

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474 *See, e.g.,* CSIM Comment Letter (stating the that proposed format would require ETFs to rethink the presentation of the summary); Fidelity Comment Letter (stating that the proposed format would subsume other more important information and that concise narrative disclosure would be preferable); Vanguard Comment Letter (stating the sponsors should be permitted to determine how best to present this information).

475 BlackRock Comment Letter; CSIM Comment Letter.

476 *See* Item 6(c) of Form N-1A. An ETF must provide the required information using plain English principles under rule 421(d) under the Securities Act. *See* General Instructions to Form N-1A. The applicable standards provide ETFs and other funds with flexibility, for example, in determining whether to use headings in a question-and-answer format. Enhanced Disclosure and New Prospectus Delivery Option for Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546, 4549 n.39 (Jan. 26, 2009)] ("Summary Prospectus Adopting Release").

477 Item 6(c)(4) of Form N-1A. The form amendments permit an ETF to combine the information required by this website cross-reference requirement into the information required by Item 1(b)(1) of Form N-1A and 17 CFR 230.498(b)(1)(v) (rule 498(b)(1)(v)) in order to avoid duplicative references to the ETF's website. Instruction 4 to Item 6 of Form N-1A (referring to the website cross-reference disclosure requirements in the summary prospectus cover page and the statutory prospectus back cover page). However, by requiring a cross-reference to the ETF's website, the Commission does not intend for such information to be incorporated by reference into the prospectus.

daily website disclosure of several items, including the NAV per share, market price, premium or discount, and bid-ask spread information. Form N-1A also will permit ETFs to omit certain information from their registration statements if they satisfy certain of the rule's website disclosure conditions.[478] This disclosure will inform investors how to access this information.

Commenters did not specifically address this proposed requirement. However, in general, commenters expressed support for website disclosure requirements, including as a substitute for certain registration statement disclosure requirements.[479] We believe a cross-reference in Form N-1A to the required website disclosures will enable investors to receive timely and granular information that could assist with making an investment decision and are therefore adopting the requirement substantially as proposed in Item 6.

We also are adopting a requirement to provide narrative disclosure regarding bid-ask spreads.[480] As noted above, commenters generally did not address the substance of the disclosures, but raised concerns regarding the length of the disclosures. One commenter, however, asserted that the proposed requirement to disclose certain additional costs associated with buying and selling ETF shares would be redundant of information required by Item 3.[481]

We continue to believe that narrative bid-ask spread disclosure will inform investors regarding the potential impact of spread costs and provide investors with additional context to understand that the costs attributable to the bid-ask spread may increase or decrease when certain market conditions exist or certain factors are present. However, streamlining this disclosure to provide investors with key information regarding bid-ask spreads will both aid investor understanding and eliminate some of the length associated with the proposed disclosure requirement. Accordingly,

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478 *See, e.g.,* Instruction 1 to Item 6 of Form N-1A. Item 11(g) currently requires an ETF to provide a website address in its prospectus if the ETF omits the historical premium/discount information from the prospectus and includes this information on its website instead. As a result, many ETFs already include a website address in their prospectus.

479 *See, e.g.,* SIFMA AMG Comment Letter I; Fidelity Comment Letter.

480 Our proposal would have required an ETF to: (i) describe the bid-ask spread as the difference between the highest price a buyer is willing to pay to purchase shares of the ETF (bid) and the lowest price a seller is willing to accept for shares of the ETF (ask); (ii) explain that the bid-ask spread can change throughout the day due to the supply of or demand for ETF shares, the quantity of shares traded, and the time of day the trade is executed, among other factors; and (iii) identify a set of specific costs, including bid-ask spreads, associated with buying and selling ETF shares. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.H.2.

481 *See* ABA Comment Letter.

our amendments to Form N-1 A will require an ETF to state that an investor may incur costs attributable to the difference between the highest price a buyer is willing to pay to purchase shares of the ETF (bid) and the lowest price a seller is willing to accept for shares of the ETF (ask) when buying or selling shares in the secondary market ("the bid-ask spread").[482] This information, combined with the website cross-reference requirement, will direct ETF investors to website disclosures regarding median bid-ask spreads.

Finally, Item 6 will continue to require ETFs to disclose: (i) that individual shares may only be purchased and sold on secondary markets through a broker-dealer; and (ii) the price of ETF shares is based on market price, and since ETFs trade at market prices rather than at net asset value, shares may trade at a price greater than net asset value (premium) or less than net asset value (discount).[483]

b. Median Bid-Ask Spread Requirement

Rule 6c-11 will require an ETF to provide website disclosure of median bid-ask spreads.[484] We believe that this disclosure will provide ETF investors with greater understanding of the costs associated with investing in ETFs. In order to provide similar disclosures to investors in ETFs that are outside the scope of rule 6c-11, we are adopting amendments to Form N-1A requiring the disclosure of median bid-ask spreads.

We proposed amendments to Form N-1A that would have required all open-end ETFs to disclose quantitative information about bid-ask spreads, both in an ETF's prospectus and on its website.[485] As discussed above, some commenters expressed concerns with these requirements, and we have made several modifications to mitigate those concerns while maintaining or enhancing the usefulness of the required disclosures. Those modifications include not adopting the proposed requirement for hypothetical bid-ask spread examples in the ETF's prospectus and interactive calculator, and instead only requiring ETFs relying on rule 6c-11 to provide disclosure of median bid-ask spread on their website.[486]

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482 *See* Item 6(c)(3) of Form N-1A.

483 Item 6(c) of Form N-1A. We proposed to move this disclosure to Item 3 to consolidate background information relating to ETF trading in one place. 2018 ETF Proposing Release, *supra* footnote 7, at section II.H.3. However, we are not adopting the proposed amendments to Item 3 and instead adding additional disclosures regarding ETF trading costs to Item 6. As proposed, amended Item 6 *also* will replace the current reference to "national securities exchange" with "secondary markets" because ETFs can also be bought and sold over the counter.

484 *See* rule 6(c)(1)(v).

485 *See* 2018 ETF Proposing Release, *supra* footnote 7, at sections II.H.2.b and II.I.

486 *See supra* section II.C.6.d.

However, we continue to believe that all ETF investors should receive key information about bid-ask spread costs, and appreciate that ETFs that are not relying on rule 6c-11 may want the flexibility to provide more timely bid-ask spread information on their websites.[487] We are therefore amending Form N-1A to require an ETF that is not subject to rule 6c-11 to: (i) provide the ETF's median bid-ask spread for its most recent fiscal year in its prospectus; or (ii) comply with the bid-ask spread website disclosure requirements in rule 6c-11(c)(1)(v).[488] We believe that this disclosure requirement will provide all ETF investors with quantitative bid-ask spread information, while providing ETFs not subject to rule 6c-11 with the flexibility to provide either website or prospectus disclosure.[489] This requirement also is consistent with our current approach to the disclosure of premiums and discounts in Form N-1A and, based on our experience with that disclosure, we believe most ETFs will opt to post bid-ask spread information on their websites as some ETFs do today on a voluntary basis.[490]

Although rule 6c-11 contemplates more current website disclosure for ETFs relying on rule 6c-11, we are adopting a lookback period of the ETF's most recent fiscal year for the prospectus bid-ask spread disclosure requirement. We are adopting this period for consistency with other disclosures in Form N-1A and to avoid establishing a requirement that would require more frequent updating of an ETF's prospectus. ETFs that opt to provide this information on their website, however, will provide median bid-ask spread information for the most recent thirty-day period on a rolling basis. Finally, newly launched ETFs subject to this prospectus requirement with less than a year of trading data will be required to provide a brief statement to the effect that the ETF does not have sufficient trading history to report trading information and related costs as proposed.[491]

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487 *See infra* section II.I. (discussing similar changes for Form N-8B-2).

488 *See* Item 6(c)(5) of Form N-1A (requiring disclosure of the median bid-ask spread for the ETF's most recent fiscal year in the summary prospectus or summary section of the prospectus); Instruction 1 to Item 6(c)(5) of Form N-1A (permitting an ETF to omit the information required if the ETF satisfies the requirements of paragraph (c)(1)(v) of rule 6c-11). As with the parallel website disclosure requirement, we are modifying the proposed methodology to clarify that the observations must be based on trades on the primary listing exchange and that the observations should be as of the end of each ten-second interval. Instruction 2 to Item 6(c)(5) of Form N-1A. We *also* are making similar amendments to Form N-8B-2 in order to extend this requirement to UIT ETFs. *See infra* section II.I

489 Item 6(c)(5) of Form N-1A. *See* 2018 ETF Proposing Release, *supra* footnote 7, at section II.H.2.b.

490 *See* Items 11(g)(2) and 27(b)(7)(iv) of Form N-1A.

491 Instruction 1 to Item 6(c) of Form N-1A. Newly launched ETFs *see*king to satisfy the requirements of paragraph (c)(1)(v) of the rule should provide median bid-ask spread information for the most recent thirty-day period once the ETF has more than 30-days of trading data.information.

c. Historical Premium and Discount Disclosures (Items 11 and 27)

Rule 6c-11 will require ETFs to provide certain disclosures regarding premiums and discounts on their websites.[492] We believe premium/discount disclosure will help investors better understand that an ETF's market price may be higher or lower than the ETF's NAV per share and will provide investors with useful information regarding ETFs that frequently trade at a premium or discount to NAV. We are adopting amendments to Form N-1A that will exclude only those ETFs that provide premium/discount disclosures in accordance with rule 6c-11 from the premium and discount disclosure requirements in Form N-1A.

We proposed to eliminate existing disclosure requirements regarding premiums and discounts in Form N-1A since rule 6c-11 would require an ETF to provide more timely information on its website.[493] One commenter supported this amendment, stating that information relevant to premiums and discounts is already disclosed on a timely basis on ETF websites and therefore a duplicative registration statement requirement is not necessary.[494] Another commenter, however, stated that the Commission should apply disclosure requirements to all ETFs, including those that cannot rely on rule 6c-11, so that all ETF investors receive the same information.[495]

After considering comments, we are eliminating the premium and discount requirements in Items 11(g)(2) and 27(b)(7)(iv) for ETFs relying on rule 6c-11.[496] However, ETFs not relying on rule 6c-11 must include premium and discount information in both the prospectus and annual report unless they choose to comply with the website disclosure requirements in rule 6c-11(c)(1)(ii)–(iv) and (c)(1)(vi).[497] We agree that all ETF investors should receive similar premium/discount disclosure, regardless of the form of exemptive relief.

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492 *See* rule 6c-11(c)(1).

493 Item 11(g)(2) of Form N-1A currently requires an ETF to provide a table showing the number of days the market price of the ETF's shares was greater than the ETF's NAV per share for certain time periods. Item 27(b)(7)(iv) of Form N-1A requires an ETF to include a table with premium/discount information in its annual reports for the five most recently completed fiscal years. ETFs currently are permitted to omit both disclosures by providing on their websites the premium/discount information required by Item 11(g)(2).

494 *See* Invesco Comment Letter.

495 *See* ETF.com Comment Letter.

496 Item 11(g)(2) of Form N-1A; Item 27(b)(7) of Form N-1A.

497 Items 11(g)(2) and 27(g)(2) of Form N-1A.

We acknowledge that the premium and discount disclosure requirements under rule 6c-11 are broader than what was required under Form N-1A.[498] However, to ensure consistency of website disclosure across ETFs, we are amending Form N-1A to require that if an ETF not relying on rule 6c-11 chooses to disclose the premium and discount disclosures on its website to satisfy the Form N-1A requirement, it must conform with the requirements in rule 6c-11.[499] Nonetheless, consistent with our experience with the current Form N-1A requirement, we believe that most ETFs not relying on rule 6c-11 will choose to comply with the website disclosure requirements in rule 6c-11.

3. Eliminated Disclosures

We are adopting the removal of certain disclosure requirements from Form N-1A relating to ETFs. We are removing the requirement that an ETF specify the number of shares it will issue or redeem in exchange for the deposit or delivery of basket assets.[500] The number of shares the ETF issues or redeems in exchange for the deposit or delivery of baskets is largely duplicative of information provided in reports on Form N-CEN.[501] Commenters did not address this aspect of the proposal, and we are adopting it as proposed.

We also are eliminating several disclosure requirements in Items 6 and 11 that applied only to ETFs that issue or redeem shares in creation units of less than 25,000 shares.[502] When we adopted these requirements, we reasoned that

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498 Unlike current Form N-1A, rule 6c-11 will require disclosure of a line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year and disclosure regarding persistent premium or discount of greater than 2%, in addition to a table showing premiums and discounts, in order to omit the premium/discount disclosures in the ETF's prospectus and annual report.

499 We also are retaining the definition of the term "Market Price" in Form N-1A and amending it to reference the market price definition in rule 6c-11 as a result of the premium/discount disclosure requirements in the form. *See* General Instruction A to Form N-1A. Harmonizing the definition of market price in Form N-1A and rule 6c-11 will reduce regulatory confusion and will result in a more uniform methodology for calculating premiums and discounts for ETFs that provide premium/discount disclosure in accordance with rule 6c-11 and ETFs that provide premium/discount disclosures in their prospectuses and annual reports pursuant to these disclosure requirements. *See id.*; rule 6c-11(a)(1). We are making similar amendments to Form N-8B-2 in order to extend the premium/discount disclosure requirements to UIT ETFs. *See infra* section II.I.

500 Item 6(c)(i) of current Form N-1A.

501 *See* Item E.3.a of Form N-CEN.

502 Item 6(c)(ii) currently requires ETFs issuing shares in creation units of less than 25,000 to disclose the information required by Items 6(a) and (b). Items 6(a) and (b) require funds to: (i) disclose the minimum initial or subsequent

individual investors may be more likely to indirectly transact in creation units through authorized participants if the creation unit size was less than 25,000 shares.[503] Based on staff experience, however, we believe that these disclosures are unnecessary as retail investors generally do not engage in primary transactions through authorized participants and the current flow of information about the purchase and redemption process is robust.[504] One commenter supported eliminating these disclosure requirements, and we are eliminating these requirements as proposed.[505]

I. Amendments to Form N-8B-2

Form N-8B-2 is the registration form under the Investment Company Act for UITs that are currently issuing securities, and it is used for registration of ETFs organized as UITs.[506] Because Form S-6 requires UIT prospectuses to include disclosure required by specified provisions of Form N-8B-2, the disclosure requirements of Form N-8B-2 also apply to prospectuses on Form S-6. We are adopting several amendments to Form N-8B-2 that will mirror requirements we are adopting in Form N-1A.

Although we are not including UIT ETFs within the scope of rule 6c-11, we believe that it is important for investors to receive consistent disclosures for ETF investments, regardless of the ETF's form of organization. Secondary market investors in UIT ETFs, like other ETFs, are subject to trading costs that unit holders could overlook. We believe that additional disclosure will help investors better understand the total costs of investing in a UIT ETF. We therefore proposed to amend Form N-8B-2 to require UIT ETFs to provide the same disclosures regarding ETF trading and the associated costs as ETFs organized as open-end funds would disclose on Form N-1A.

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investment requirements; (ii) disclose that the shares are redeemable; and (iii) describe the procedures for redeeming shares. Item 11(g)(1) currently provides that an ETF may omit information required by Items 11(a)(2), (b) and (c) if the ETF issues or redeems shares in creation units of not less than 25,000 shares each. Item 11(a) requires a fund to disclose when calculations of NAV are made and that the price at which a purchase or redemption is effected is based on the next calculation of NAV after the order is placed. Items 11(b) and (c) require a fund to describe the procedures used when purchasing and redeeming the fund's shares.

503 Summary Prospectus Adopting Release, *supra* footnote 476.

504 We believe the parties who purchase or redeem shares from the ETF directly would either have the knowledge necessary to do so without additional procedural disclosure or the ability to request such information.

505 *See* Invesco Comment Letter.

506 While open-end funds register with the Commission on Form N-1A, UITs must register on two forms: Form S-6, which is used for registering the offering of the UITs' units under the Securities Act, and Form N-8B-2, which is used for registration under the Investment Company Act. Form S-6, which must be filed with the Commission every 16 months, requires certain content, mainly by reference to the disclosure requirements in Form N-8B-2.

Commenters that addressed this proposed provision generally supported these changes,[507] and we are amending Form N-8B-2 to mirror the amendments to Form N-1A with the modifications discussed above.[508] As with other ETFs that are not within the scope of rule 6c-11, these amendments will give UIT ETFs the option to forego certain disclosures relating to bid-ask spreads and premiums and discounts provided that the ETF conforms with rule 6c-11's corresponding website disclosure requirements.[509]

Below, Table 3 summarizes the amendments to Form N-8B-2 and the corresponding requirements in Form N-1A.

TABLE 3

DISCLOSURE TOPIC	FORM N-1A ETF DISCLOSURE REQUIREMENT	CORRESPONDING FORM N-8B-2 DISCLOSURE REQUIREMENT
Definitions for Exchange-Traded Fund and Market Price	General Instructions Part A	General Instructions *Definitions*[510]
Information Concerning Fees and Costs	Item 3. Risk/Return Summary: Fee Table	Item 1.13(h)
Information Concerning Purchase and Sale of Fund Shares	Item 6(c). Purchase and Sale of Fund Shares	Item 1.13(i)
Table Showing Premium and Discount Information	Item 11(g)(2)	Item 1.13(j)

507 *See* ICI Comment Letter (supporting mirroring proposed disclosure changes in Form N-1A, subject to comments regarding the amendments to Form N-1A).

508 Items I.13(h) and (i) of Form N-8B-2. *See also supra* section II.H. (describing the ETF trading information and related costs disclosure requirements).

509 Although UIT ETFs currently are not subject to website disclosure requirements regarding trading costs or other information, UIT ETFs generally disclose information regarding market price, NAV per share, premium and discounts, and spreads on their websites today.

510 The definition of the term "exchange-traded fund" in Form N-1A covers ETFs organized as open-end funds and includes ETFs relying on either exemptive orders or rule 6c-11 to operate. Form N-8B-2, on the other hand, is for UITs, which cannot rely on rule 6c-11 to operate. Accordingly, the definition of "exchange-traded fund" in Form N-8B-2 omits the reference to rule 6c-11.

J. Amendments to Form N-CEN

Form N-CEN is a structured form that requires registered funds to provide census-type information to the Commission on an annual basis.[511] As proposed, we are adopting a new requirement that will collect specific information on which ETFs are relying on rule 6c-11.[512] We believe that this requirement will allow us to better monitor reliance on rule 6c-11 and assist us with our accounting, auditing, and oversight functions, including compliance with the Paperwork Reduction Act.[513]

We also are changing the definition of "authorized participant" in Form N-CEN to conform the definition with rule 6c-11 by deleting a specific reference to an authorized participant's participation in DTC.[514] In addition to reducing regulatory confusion by harmonizing the definition of "authorized participant" with rule 6c-11, this change also will obviate the need for future amendments if additional clearing agencies become registered with the Commission.[515] Commenters that addressed the proposed amendments to Form N-CEN expressed support, and we have determined to adopt the amendments as proposed.

K. Technical and Conforming Amendments to Form N-1A, Form N-8B-2, Form N-CSR, Form N-PORT, and Regulation S-X

In October 2016, the Commission adopted new rules and forms and amended other rules and forms under the Investment Company Act to modernize the reporting and disclosure of information by registered investment companies.[516] In February 2019, the Commission adopted an interim final rule that amended

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511 *See* Reporting Modernization Adopting Release, *supra* footnote 262.

512 Item C.7.k of Form N-CEN. Item C.7 of Form N-CEN requires management companies to report whether they relied on certain rules under the Investment Company Act during the reporting period. In addition, Item C.3.a.i of Form N-CEN already requires funds to report if they are an ETF.

513 *See* Reporting Modernization Adopting Release, *supra* footnote 262.

514 Item E.2 of Form N-CEN.

515 As proposed, the amendments to Form N-CEN will define the term "authorized participant" as "a member or participant of a clearing agency registered with the Commission, which has a written agreement with the Exchange-Traded Fund or Exchange-Traded Managed Fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units." *See* Instruction to Item E.2 of Form N-CEN.

516 *See* Reporting Modernization Adopting Release, *supra* footnote 262.

the timing requirements for filing reports on Form N-PORT.[517] We are making the following technical corrections as a result of these rulemakings, as well as correcting certain other outdated citations and instructions:

- Correcting footnote 1 of 17 CFR 210.12-14 (rule 12-14 of Regulation S-X) by replacing a reference to Column E with a reference to Column F.[518]
- Amending General Instruction B.4.(a) of Form N-1A to update outdated citation references to 17 CFR 230.400 through 230.498 (Regulation C) by replacing references to 17 CFR 230.497 (rule 497) with references to rule 498.[519]
- Amending General Instruction B.4.(d) of Form N-1A to update outdated citation references to 17 CFR 232.10 through 232.903 (Regulation S-T) by replacing references to rule 903 with references to rule 501.[520]
- Amending Instruction 4(b) to Item 13 of Form N-1A by deleting outdated instructions regarding changes in methodology for determining the ratio of expenses to average net assets.[521]
- Amending Form N-1A to require money market funds to state in their annual and semi-annual reports that: (i) their monthly portfolio holdings are available on Form N-MFP; (ii) the money market fund's reports on Form N-MFP are available on the Commission's website; and (iii) the money market fund makes portfolio holdings information available to shareholders on its website.[522] This amendment will reflect the fact that money market funds report monthly portfolio holdings on Form N-MFP rather than reporting portfolio holdings for the first and third fiscal quarters on Form N-PORT.
- Amending Form N-CSR to correct references to item numbers in General Instruction D and in the instruction to Item 13.[523]

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517 *See* Amendments to the Timing Requirements for Filing Reports on Form N-PORT, Investment Company Act Release No. 33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)] ("Interim Final Rule Release").

518 *See* rule 12-14, note 1.

519 *See* General Instruction B.4.(a) of Form N-1A.

520 *See* General Instruction B.4.(d) of Form N-1A.

521 *See* Instruction 4(b) to Item 13.

522 *See* Instruction to Item 27(d)(3) of Form N-1A.

523 *See* General Instruction D to Form N-CSR and Item 13 of Instruction 13 of Form N-CSR.

- Amending General Instruction F (Public Availability) of Form N-PORT to read "With the exception of the non-public information discussed below, the information reported on Form N-PORT for the third month of each Fund's fiscal quarter will be made publicly available upon filing."[524] This amendment will reflect the Commission's action making quarter-end reports on Form N-PORT public immediately upon filing, with the exception of the non-public fields identified in General Instruction F.[525]

- Withdrawing Instruction 23 of Reporting Modernization Adopting Release, which would have amended 17 CFR 232.401 (rule 401 of Regulation S-T) to remove references to Form N-Q.[526] The amendment is no longer necessary because rule 401 was rescinded by a subsequent rulemaking.[527]

- Amending Item IX of Form N-8B-2 to clarify the required designation of exhibits and the use of incorporation by reference in order to conform to similar instructions in other Investment Company forms.[528]

[…]

524 *See* Instruction F to Form N-PORT.

525 *See* Interim Final Rule Release, *supra* footnote 517, at n.35 and accompanying text.

526 *See* Reporting Modernization Adopting Release, *supra* footnote 262; *see also* 17 CFR 232.401.

527 *See* Inline XBRL Filing of Tagged Data, Investment Company Act Release No. 33139 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)].

528 *See, e.g.,* Item 28 of Form N-1A.; Item 26 of Form N-6.

SEC RELEASE EXTRACT FROM THE DERIVATIVES RULE

6. Amendments to Rule 6c-11 under the Investment Company Act and Proposed Rescission of Exemptive Relief for Leveraged/Inverse ETFs

We are amending rule 6c-11 to include leveraged/inverse ETFs within the scope of that rule, provided that they comply with the applicable provisions of rule 18f-4. Rule 6c-11 permits ETFs that satisfy certain conditions to operate without obtaining an exemptive order from the Commission.[613] As discussed in the Proposing Release, rule 6c-11 includes a provision excluding leveraged/inverse ETFs from the scope of ETFs that may rely on that rule.[614] Leveraged/inverse ETFs, therefore, currently rely on their Commission exemptive orders. In adopting rule 6c-11, the Commission stated that the particular section 18 concerns raised by leveraged/inverse ETFs' use of derivatives distinguish those funds from the other ETFs permitted to rely on that rule, and that those section 18 concerns would be more appropriately addressed in a rulemaking addressing the use of derivatives by funds more broadly.[615] The Commission further stated that leveraged/inverse ETFs are similar in structure and operation to the other types of ETFs that are within the scope of rule 6c-11.[616]

The Commission proposed to amend rule 6c-11 to remove the provision excluding leveraged/inverse ETFs from the scope of ETFs that may rely on that rule. Two commenters expressed support for the proposal.[617] One commenter, however, stated that the Commission should not do so without first implementing a system for the categorization and identification of exchange-traded products ("ETPs").[618] The Commission has previously addressed the implementation of an ETP naming system in the ETFs Adopting Release, and, as stated in that release, we encourage ETP market participants to continue engaging with their investors, with each other, and with the Commission on these issues.[619]

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613 *See* ETFs Adopting Release, supra footnote 76.

614 *See* rule 6c-11(c)(4).

615 *See* ETFs Adopting Release, supra footnote 76, at nn.72-75 and accompanying text.

616 *See* id. at text following n.86. In addition, one sponsor of leveraged/inverse ETFs has stated that its ETFs would prefer to rely on rule 6c-11 over their exemptive orders and that leveraged/inverse ETFs would be able to comply with rule 6c-11 because they are structured and operated in the same manner as other ETFs that fall within the scope of that rule. See id. at n.83 and accompanying text.

617 *See*, e.g., Direxion Comment Letter; ProShares Comment Letter.

618 *See* BlackRock Comment Letter.

619 ETFs Adopting Release, supra footnote 76, at n.406 and accompanying and following paragraphs.

Because leveraged/inverse ETFs are similar in structure and operation to the other types of ETFs that are within the scope of rule 6c-11, we believe it is appropriate to permit leveraged/inverse funds to rely on rule 6c-11 when they satisfy the applicable conditions in rule 18f-4 as adopted. In addition, to provide greater clarity to investors and the market regarding the conditions we are placing on leveraged/inverse ETFs under rules 18f-4 and 6c-11, we are amending rule 6c-11 to require a leveraged/inverse ETF to comply with the applicable provisions of rule 18f-4 to operate as an ETF under rule 6c-11.[620]

Because the amendments to rule 6c-11 will permit a leveraged/inverse ETF to rely on that rule rather than its exemptive order, we are rescinding the exemptive orders the Commission has previously issued to leveraged/inverse ETFs, as proposed.[621] We believe that amending rule 6c-11 and rescinding these exemptive orders will help promote a more level playing field and greater competition by allowing any sponsor to form and launch a leveraged/inverse ETF whose target multiple is equal to or less than 200% of its reference portfolio, subject to the conditions in rules 6c-11 and 18f-4. We are rescinding the exemptive orders provided to leveraged/inverse ETFs on the compliance date for rule 18f-4, in eighteen months.[622] We believe that providing an eighteen-month period for existing leveraged/inverse ETFs also will provide time for them to prepare to comply with rule 6c-11 rather than their exemptive orders, and will provide the staff with time to conduct its review of leveraged/inverse and other complex products, as discussed above, and to provide a recommendation to the Commission.[622]

[…]

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620 In addition, in 2019 the Commission issued an order granting an exemption from certain provisions of the Exchange Act and the rules thereunder to broker-dealers and certain other persons, as applicable, that engage in certain transactions with ETFs relying on rule 6c-11, subject to certain conditions. See Order Granting a Conditional Exemption from Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10; 15c1-5; 15c1-6; and 14e-5 for Certain Exchange Traded Funds, Exchange Act Release No. 87110 (Sept. 25, 2019) [84 FR 57089 (Oct. 24, 2019)] ("ETF Exchange Act Order"). These exemptions will apply to transactions in the securities of leveraged/inverse ETFs that rely on rule 6c-11, provided the conditions of the ETF Exchange Act Order are satisfied.

621 We did not receive any comments directly supporting or opposing our proposal to rescind the Commission exemptive orders to leveraged/inverse ETFs.

622 *See* infra section II.L.

623 *See* ETFs Adopting Release, supra footnote 76, at text following n.451.

In connection with the adoption of the ETF Rule, the SEC adopted Disclosure Amendments to Form N-1A (the registration form used by open-end funds), designed to provide ETF investors with additional information regarding ETF trading and associated costs. The Disclosure Amendments:

- Add narrative disclosure to clarify that the fees and expenses reflected in the expense table may be higher for investors if they buy, hold and sell shares of an ETF (Item 3)
- Include narrative disclosures relating to ETF trading costs, including bid-ask spreads (Item 6)
- Require all ETFs to disclose median bid-ask spread information on their websites or in their prospectus (Item 6)
- Exclude ETFs that provide premium/discount disclosures on their websites in accordance with Rule 6c-11 from the premium and discount disclosure requirements in Form N-1A (Items 11 and 27)
- Eliminate disclosure related to creation unit size.

These Disclosure Amendments are bolded, bracketed and indicated by the lead in "ETF Rule Disclosure Amendment:". Additionally, and as in prior editions, we have bolded the provisions of Form-N-1A that are unique to ETFs.

This is a reference copy of Form N-1A. You may not send a completed printout of this form to the SEC to satisfy a filing obligation. You can only satisfy an SEC filing obligation by submitting the information required by this form to the SEC in electronic format online at https://www.edgarfiling.sec.gov.

OMB APPROVAL
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Estimated average burden hours per response 278.6

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-1A

Check appropriate box or boxes

☐ REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

☐ Pre-Effective Amendment No.

☐ Post-Effective Amendment No.

and/or

☐ REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

☐ Amendment No.

Registrant Exact Name as Specified in Charter

Address of Principal Executive Offices (Number, Street, City, State, Zip Code)

Registrant's Telephone Number, including Area Code

Name and Address (Number, Street, City, State, Zip Code) of Agent for Service

Approximate Date of Proposed Public Offering

It is proposed that this filing will become effective (check appropriate box):

☐ immediately upon filing pursuant to paragraph (b)

☐ on (date) pursuant to paragraph (b)

☐ 60 days after filing pursuant to paragraph (a)

☐ on (date) pursuant to paragraph (a)

☐ 75 days after filing pursuant to paragraph (a)(2)

☐ on (date) pursuant to paragraph (a)(2) of rule 485

If appropriate, check the following box:

☐ This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" and "Title of Securities Being Registered" only where securities are being registered under the Securities Act of 1933.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 2052 (1/22)

Form N-1A is to be used by open-end management investment companies, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933. The Commission has designed Form N-1A to provide investors with information that will assist them in making a decision about investing in an investment company eligible to use the Form. The Commission also may use the information provided on Form N-1A in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N-1A, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N-1A unless the Form displays a currently valid Office of Management and Budget (OMB) control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

CONTENTS OF FORM N-1A

GENERAL INSTRUCTIONS

A. Definitions

References to sections and rules in this Form N-1A are to the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N-1A have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N-1A, the terms set out below have the following meanings:

"Class" means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f-3 [17 CFR 270.18f-3] or under an order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) [15 U.S.C. 80a-18(f), 18(g), and 18(i)].

[ETF Rule Disclosure Amendment: "Exchange-Traded Fund" means a Fund or Class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order granted by the Commission or in reliance on rule 6c-11 [17 CFR 270.6c-11] under the Investment Company Act.]

"Fund" means the Registrant or a separate Series of the Registrant. When an item of Form N-1A specifically applies to Registrant or a Series, those terms will be used.

[ETF Rule Disclosure Amendment: "Market Price" has the same meaning as in rule 6c-11 [17 CFR 270.6c-11] under the Investment Company Act.]

"Master-Feeder Fund" means a two-tiered arrangement in which one or more Funds (each a "Feeder Fund") holds shares of a single Fund (the "Master Fund") in accordance with section 12(d)(1)(E) [15 U.S.C. 80a-12(d)(1)(E)].

"Money Market Fund" means a registered open-end management investment company, or series thereof, that is regulated as a money market fund pursuant to rule 2a-7 [17 CFR 270.2a-7] under the Investment Company Act of 1940.

"Multiple Class Fund" means a Fund that has more than one Class.

"Registrant" means an open-end management investment company registered under the Investment Company Act.

"SAI" means the Statement of Additional Information required by Part B of this Form.

"Securities Act" means the Securities Act of 1933 [15 U.S.C. 77a et seq.].

"Securities Exchange Act" means the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

"Series" means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f-2(a) [17 CFR 270.18f-2(a)].

B. Filing and Use of Form N-1A

1. What is Form N-1A used for?

Form N-1A is used by Funds, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to file:

(a) An initial registration statement under the Investment company Act and amendments to the registration statement, including amendments required by rule 8b-16 [17 CFR 270.8b-16];

(b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or

(c) Any combination of the filings in paragraph (a) or (b).

2. What is included in the registration statement?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.

(b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, 4 and 13), B, and C (except Items 28(e) and (i) – (k)), and the required signatures.

3. What are the fees for Form N-1A?

No registration fees are required with the filing of Form N-1A to register as an investment company under the Investment Company Act or to register securities under the Securities Act. See section 24(f) [15 U.S.C. 80a-24(f)] and related rule 24f-2 [17 CFR 270.24f-2].

4. What rules apply to the filing of a registration statement on Form N-1A?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act [17 CFR 230.400 - 230.497] apply to the filing of Form N-1A. Specific requirements concerning Funds appear in rules 480 - 485 and 495 - 498 of Regulation C.

(b) For registration statements and amendments filed only under the Investment Company Act, the general provisions in rules 8b-1 - 8b-32 [17 CFR 270.8b-1 - 270.8b-32] apply to the filing of Form N-1A.

(c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N-1A. The information required by Items 2 through 8 must be provided in plain English under rule 421(d) under the Securities Act.

(d) Regulation S-T [17 CFR 232.10 - 232.501] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").

C. Preparation of the Registration Statement

1. Administration of the Form N-1A requirements

(a) The requirements of Form N-1A are intended to promote effective communication between the Fund and prospective investors. A Fund's prospectus should clearly disclose the fundamental characteristics and investment risks of the Fund, using concise, straightforward, and easy to understand language. A Fund should use document design techniques that promote effective communication. The prospectus should emphasize the Fund's overall investment approach and strategy.

(b) The prospectus disclosure requirements in Form N-1A are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Fund by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting the Fund with other funds.

(c) Responses to the Items in Form N-1A should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Fund. The prospectus should avoid: including lengthy legal and technical discussions; simply restating legal or regulatory requirements to which Funds generally are subject; and disproportionately emphasizing possible investments or activities of the Fund that are not a significant part of the Fund's investment operations. Brevity is especially important in describing the practices or aspects of the Fund's operations that do not differ materially from those of other investment companies. Avoid excessive detail, technical or legal terminology, and complex language. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for many investors to understand and detract from its usefulness.

(d) The requirements for prospectuses included in Form N-1A will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N-1A.

2. Form N-1A is divided into three parts

(a) Part A. Part A includes the information required in a Fund's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Fund in a way that will help investors to make informed decisions about whether to purchase the Fund's shares described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI or shareholder reports. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.

(b) Part B. Part B includes the information required in a Fund's SAI. The purpose of the SAI is to provide additional information about the Fund that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Fund an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Fund believes may be of interest to some investors. The Fund should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.

(c) Part C. Part C includes other information required in a Fund's registration statement.

3. Additional Matters

(a) Organization of Information. Organize the information in the prospectus and SAI to make it easy for investors to understand. Notwithstanding rule 421(a) under the Securities Act regarding the order of information required in a prospectus, disclose the information required by Items 2 through 8 in numerical order at the front of the prospectus. Do not precede these Items with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act. Information that is included in response to Items 2 through 8 need not be repeated elsewhere in the prospectus. Disclose the information required by Item 12 (Distribution Arrangements) in one place in the prospectus.

(b) Other Information. A Fund may include, except in response to Items 2 through 8, information in the prospectus or the SAI that is not otherwise required. For example, a Fund may include charts, graphs,

or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. Items 2 through 8 may not include disclosure other than that required or permitted by those Items.

(c) Use of Form N-1A by More Than One Registrant, Series, or Class. Form N-1A may be used by one or more Registrants, Series, or Classes.

(i) When disclosure is provided for more than one Fund or Class, the disclosure should be presented in a format designed to communicate the information effectively. Except as required by paragraph (c)(ii) for Items 2 through 8, Funds may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Funds or Classes. Funds are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Funds or Classes.

(ii) Paragraph (a) requires Funds to disclose the information required by Items 2 through 8 in numerical order at the front of the prospectus and not to precede Items 2 through 8 with other information. Except as permitted by paragraph (c)(iii), a prospectus that contains information about more than one Fund must present all of the information required by Items 2 through 8 for each Fund sequentially and may not integrate the information for more than one Fund together. That is, a prospectus must present all of the information for a particular Fund that is required by Items 2 through 8 together, followed by all of the information for each additional Fund, and may not, for example, present all of the Item 2 (Risk/Return Summary: Investment Objectives/Goals) information for several Funds followed by all of the Item 3 (Risk/Return Summary: Fee Table) information for several Funds. If a prospectus contains information about multiple Funds, clearly identify the name of the relevant Fund at the beginning of the information for the Fund that is required by Items 2 through 8. A Multiple Class Fund may present the information required by Items 2 through 8 separately for each Class or may integrate the information for multiple Classes, although the order of the information must be as prescribed in Items 2 through 8. For example, the prospectus may present all of the Item 2 (Risk/Return Summary: Investment Objectives/Goals) information for several Classes followed by all of the Item 3 (Risk/Return Summary: Fee Table) information for

the Classes, or may present Items 2 and 3 for each of several Classes sequentially. Other presentations of multiple Class information also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 through 8 in a standard order at the beginning of the prospectus. For a Multiple Class Fund, clearly identify the relevant Classes at the beginning of the Items 2 through 8 information for those Classes.

(iii) A prospectus that contains information about more than one Fund may integrate the information required by any of Items 6 through 8 for all of the Funds together, provided that the information contained in any Item that is integrated is identical for all Funds covered in the prospectus. If the information required by any of Items 6 through 8 is integrated pursuant to this paragraph, the integrated information should be presented immediately following the separate presentations of Item 2 through 8 information for individual Funds. In addition, include a statement containing the following information in each Fund's separate presentation of Item 2 through 8 information, in the location where the integrated information is omitted: "For important information about [purchase and sale of fund shares], [tax information], and [financial intermediary compensation], please turn to [identify section heading and page number of prospectus].

(d) Modified Prospectuses for Certain Funds.

(i) A Fund may modify or omit, if inapplicable, the information required by Items 6, 11(b)-(d) and 12(a)(2)-(5) for funds used as investment options for:

(A) a defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k));

(B) a tax-deferred arrangement under sections 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) and 457); and

(C) a variable contract as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)), if covered in a separate account prospectus.

(ii) A Fund that uses a modified prospectus under Instruction (d)(i) may:

(A) alter the legend required on the back cover page by Item 1(b)(1) to state, as applicable, that the prospectus is intended for use in connection with a defined contribution plan, tax-deferred arrangement, or variable contract; and

(B) modify other disclosure in the prospectus consistent with offering the Fund as a specific investment option for a defined contribution plan, tax-deferred arrangement, or variable contract.

(iii) A Fund may omit the information required by Items 4(b)(2)(iii)(B) and (C) and 4(b)(2)(iv) if the Fund's prospectus will be used exclusively to offer Fund shares as investment options for one or more of the following:

(A) a defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), a tax-deferred arrangement under section 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) or 457), a variable contract as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)), or a similar plan or arrangement pursuant to which an investor is not taxed on his or her investment in the Fund until the investment is sold; or

(B) persons that are not subject to the federal income tax imposed under section 1 of the Internal Revenue Code (26 U.S.C. 1), or any successor to that section.

(iv) A Fund that omits information under Instruction (d)(iii) may alter the legend required on the back cover page by Item 1(b)(1) to state, as applicable, that the prospectus is intended for use in connection with a defined contribution plan, tax-deferred arrangement, variable contract, or similar plan or arrangement, or persons described in Instruction (d)(iii)(B).

(e) Dates. Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

(f) Sales Literature. A Fund may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.

(g) Interactive Data File.

(i) An Interactive Data File (§232.11 of this chapter) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S-T (§232.405 of this chapter) for any registration statement or post-effective amendment thereto on Form N-1A that includes or amends information provided in response to Items 2, 3, or 4.

(A) Except as required by paragraph (g)(i)(B), the Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

(B) In the case of a post-effective amendment to a registration statement filed pursuant to paragraphs (b)(1)(i), (ii), (v), or (vii) of rule 485 under the Securities Act [17 CFR 230.485(b)], the Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which the Interactive Data Filing relates that is submitted on or before the date the post-effective amendment that contains the related information becomes effective.

(ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S-T for any form of prospectus filed pursuant to paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2, 3, or 4 that varies from the registration statement. The Interactive Data File must be submitted with the filing made pursuant to rule 497.

(iii) The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual, and in such a manner that will permit the information for each Series and, for any information that does not relate to all of the Classes in a filing, each Class of the Fund to be separately identified.

D. Incorporation by Reference

1. Specific rules for incorporation by reference in Form N-1A

(a) A Fund may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Fund may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

(c) A Fund may incorporate by reference into the SAI or its response to Part C, information that Parts B and C require to be included in the Fund's registration statement.

2. General Requirements

   All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S-T [17 CFR 232.303] (specific requirements for electronically filed documents); and rule 0-4 [17 CFR 270.0-4] (additional rules on incorporation by reference for Funds).

Part A — INFORMATION REQUIRED IN A PROSPECTUS

Item 1. Front and Back Cover Pages

(a) Front Cover Page. Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside front cover page of the prospectus:

(1) The Fund's name and the Class or Classes, if any, to which the prospectus relates.

(2) The exchange ticker symbol of the Fund's shares or, if the prospectus relates to one or more Classes of the Fund's shares, adjacent to each such Class, the exchange ticker symbol of such Class of the Fund's shares. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

(3) The date of the prospectus.

(4) The statement required by rule 481(b)(1) under the Securities Act.

Instruction. A Fund may include on the front cover page a statement of its investment objectives, a brief (e.g., one sentence) description of its operations, or any additional information, subject to the requirement set out in General Instruction c.3(b).

(b) Back Cover Page. Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Fund, and a statement to the following effect:

Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders. In the Fund's annual report, you will find a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during its last fiscal year.

Explain that the SAI and the Fund's annual and semi-annual reports are available, without charge, upon request, and explain how shareholders in the Fund may make inquiries to the Fund. Provide a toll-free (or collect) telephone number for investors to call: to request the SAI; to request the Fund's annual report; to request the Fund's semi-annual report; to request other information about the Fund; and to make shareholder inquiries. Also, state whether the Fund makes available its SAI and annual and semi-annual reports, free of charge, on or through the Fund's Web site at a specified Internet address. If the Fund does not make its SAI and shareholder reports available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have an Internet Web site).

Instructions

1. A Fund may indicate, if applicable, that the SAI, annual and semi-annual reports, and other information are available by email request.

2. A Fund may indicate, if applicable, that the SAI and other information are available from a financial intermediary (such as a broker-dealer or bank) through which shares of the Fund may be purchased or sold.

3. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the SAI, the annual report, or the semi-annual report, the Fund (or financial intermediary) must send the requested document within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

4. A Fund that has not yet been required to deliver an annual or semi-annual report to shareholders under rule 30e-1 [17 CFR 270.30e-1] may omit the statements required by this paragraph regarding the reports.

5. A Money Market Fund may omit the sentence indicating that a reader will find in the Fund's annual report a discussion of the market conditions and investment strategies that significantly affect the Fund's performance during its last fiscal year.

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Fund will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Fund may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) State that reports and other information about the Fund are available on the EDGAR Database on the Commission's Internet site at http://www.sec.gov, and that copies of this information may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov.

(4) The Fund's Investment Company Act file number on the bottom of the back cover page in type size smaller than that generally used in the prospectus (e.g., 8-point modern type).

Item 2. Risk/Return Summary: Investment Objectives/Goals

Disclose the Fund's investment objectives or goals. A Fund also may identify its type or category (e.g., that it is a Money Market Fund or a balanced fund).

Item 3. Risk/Return Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act, after Item 2:

Fees and Expenses of the Fund

[ETF Rule Disclosure Amendment: This table describes the fees and expenses that you may pay if you buy, hold, and sell shares of the Fund. You may pay other fees, such as brokerage commissions and other fees to financial intermediaries, which are not reflected in the tables and examples below. You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least $[ ] in [name of fund family] funds. More information about these and other discounts is available from your financial intermediary and in [identify section heading and page number] of the Fund's prospectus and [identify section heading and page number] of the Fund's statement of additional information.]

Shareholder Fees (fees paid directly from your investment)

Maximum Sales Charge (Load) Imposed on Purchases (as a percentage of offering price)	_____%
Maximum Deferred Sales Charge (Load) (as a percentage of)	_____%
Maximum Sales Charge (Load) Imposed on Reinvested Dividends [and other Distributions] (as a percentage of_____)	_____%
Redemption Fee (as a percentage of amount redeemed, if applicable)	_____%
Exchange Fee	_____%
Maximum Account Fee	_____%

Annual Fund Operating Expenses (expenses that you pay each year as a percentage of the value of your investment)

Management Fees	_____%
Distribution [and/or Service] (12b-1) Fees	_____%
Other Expenses	_____%
_____	_____%
_____	_____%
_____	_____%
Total Annual Fund Operating Expenses	_____%

Example

This Example is intended to help you compare the cost of investing in the Fund with the cost of investing in other mutual funds. The Example assumes that you invest

$10,000 in the Fund for the time periods indicated and then redeem all of your shares at the end of those periods. The Example also assumes that your investment has a 5% return each year and that the Fund's operating expenses remain the same.

	1 year	3 years	5 years	10 years
Although your actual costs may be higher or lower, based on these assumptions your costs would be:.	$	$	$	$

	1 year	3 years	5 years	10 years
You would pay the following expenses if you did not redeem your shares:	$	$	$	$

The Example does not reflect sales charges (loads) on reinvested dividends [and other distributions]. If these sales charges (loads) were included, your costs would be higher.

Portfolio Turnover

The Fund pays transaction costs, such as commissions, when it buys and sells securities (or "turns over" its portfolio). A higher portfolio turnover rate may indicate higher transaction costs and may result in higher taxes when Fund shares are held in a taxable account. These costs, which are not reflected in annual fund operating expenses or in the example, affect the Fund's performance. During the most recent fiscal year, the Fund's portfolio turnover rate was _____% of the average value of its portfolio.

Instructions

1. *General*

   (a) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

   (b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown. The narrative explanation regarding sales charge discounts is only required by a Fund that offers such discounts and should specify the minimum level of investment required to qualify for a discount as disclosed in the table required by Item 12(a)(1).

   (c) Include the caption "Maximum Account Fees" only if the Fund charges these fees. A Fund may omit other captions if the Fund does not charge the fees or expenses covered by the captions.

   (d) (i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in a single fee table using the

captions provided. In a footnote to the fee table, state that the table and Example reflect the expenses of both the Feeder and Master Funds.

(ii) If the prospectus offers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate response for each Class or Feeder Fund.

[ETF Rule Disclosure Amendment:

(e) If the Fund is an Exchange-Traded Fund, exclude any fees charged for the purchase and redemption of the Fund's creation units.]

2. Shareholder Fees

(a) (i) "Maximum Deferred Sales Charge (Load)" includes the maximum total deferred sales charge (load) payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 12(a), except that, for a sales charge (load) based on net asset value at the time of purchase, show the sales charge (load) as a percentage of the offering price at the time of purchase. A Fund may include in a footnote to the table, if applicable, a tabular presentation showing the amount of deferred sales charges (loads) over time or a narrative explanation of the sales charges (loads) (e.g., _____% in the first year after purchase, declining to _____% in the _____ year and eliminated thereafter).

(ii) If more than one type of sales charge (load) is imposed (e.g., a deferred sales charge (load) and a front-end sales charge (load)), the first caption in the table should read "Maximum Sales Charge (Load)" and show the maximum cumulative percentage. Show the percentage amounts and the terms of each sales charge (load) comprising that figure on separate lines below.

(iii) If a sales charge (load) is imposed on shares purchased with reinvested capital gains distributions or returns of capital, include the bracketed words in the third caption.

(b) "Redemption Fee" includes a fee charged for any redemption of the Fund's shares, but does not include a deferred sales charge (load) imposed upon redemption, and, if the Fund is a Money Market Fund, does not include a liquidity fee imposed upon the sale of Fund shares in accordance with rule 2a-7(c)(2).

(c) "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Fund to another fund. The Fund may include in a footnote to the table, if applicable, a tabular presentation of the range of exchange fees or a narrative explanation of the fees.

(d) "Maximum Account Fees." Disclose account fees that may be charged to a typical investor in the Fund; fees that apply to only a limited number of shareholders based on their particular circumstances need not be disclosed. Include a caption describing the maximum account fee (e.g., "Maximum Account Maintenance Fee" or "Maximum Cash Management Fee"). State the maximum annual account fee as either a fixed dollar amount or a percentage of assets. Include in a parenthetical to the caption the basis on which any percentage is calculated. If an account fee is charged only to accounts that do not meet a certain threshold (e.g., accounts under $5,000), the Fund may include the threshold in a parenthetical to the caption or footnote to the table. The Fund may include an explanation of any non-recurring account fee in a parenthetical to the caption or in a footnote to the table.

3. Annual Fund Operating Expenses

(a) "Management Fees" include investment advisory fees (including any fees based on the Fund's performance), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates that are not included as "Other Expenses."

(b) Distribution [and/or Service] (12b-1) Fees" include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b-1 [17 CFR 270.12b-1]. Under an appropriate caption or a subcaption of "Other Expenses," disclose the amount of any distribution or similar expenses deducted from the Fund's assets other than pursuant to a rule 12b-1 plan.

(c) (i) "Other Expenses" include all expenses not otherwise disclosed in the table that are deducted from the Fund's assets or charged to all shareholder accounts. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6-07 of Regulation S-X [17 CFR 210.6-07]).

(ii) "Other Expenses" do not include extraordinary expenses. "Extraordinary expenses" refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred that materially

affected the Fund's "Other Expenses," disclose in a footnote to the table what "Other Expenses" would have been had the extraordinary expenses been included.

(iii) The Fund may subdivide this caption into no more than three subcaptions that identify the largest expense or expenses comprising "Other Expenses," but must include a total of all "Other Expenses." Alternatively, the Fund may include the components of "Other Expenses" in a parenthetical to the caption.

(d) (i) Base the percentages of "Annual Fund Operating Expenses" on amounts incurred during the Fund's most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If the Fund has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Annual Fund Operating Expenses."

(ii) If there have been any changes in "Annual Fund Operating Expenses" that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in "Annual Fund Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in "Annual Fund Operating Expenses" does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(e) If there are expense reimbursement or fee waiver arrangements that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement, a Fund may add two captions to the table: one caption showing the amount of the expense reimbursement or fee waiver, and a second caption showing the Fund's net expenses after subtracting the fee reimbursement or expense waiver from the total fund operating expenses. The Fund should place these additional captions directly below the "Total Annual Fund Operating Expenses" caption of the table and should use appropriate descriptive captions, such as "Fee Waiver [and/or Expense Reimbursement]" and "Total Annual Fund Operating Expenses After Fee Waiver [and/or Expense Reimbursement]," respectively. If the Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, including the expected termination date, and briefly describe who can terminate the arrangement and under what circumstances.

(f) (i) If the Fund (unless it is a Feeder Fund) invests in shares of one or more Acquired Funds, add a subcaption to the "Annual Fund Operating Expenses" portion of the table directly above the subcaption titled "Total Annual Fund Operating Expenses." Title the additional subcaption: "Acquired Fund Fees and Expenses." Disclose in the subcaption fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds. For purposes of this item, an "Acquired Fund" means any company in which the Fund invests or has invested during the relevant fiscal period that (A) is an investment company or (B) would be an investment company under section 3(a) of the Investment Company Act (15 U.S.C. 80a-3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a-3(c)(1) and 80a-3(c)(7)). If a Fund uses another term in response to other requirements of this Form to refer to Acquired Funds, it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Fund, the Fund may include these fees and expenses under the subcaption "Other Expenses" in lieu of this disclosure requirement.

(ii) Determine the "Acquired Fund Fees and Expenses" according to the following formula:

$$AFFE = \frac{[(F_1/FY) * AI_1 * D_1] + [(F_2/FY) * AI2 * D_2] + [(F_3/FY) * AI_3 * D_3] + \text{Transaction Fees} + \text{Incentive Allocations}}{\text{Average Net Assets of the Registrant}}$$

Where:

AFFE	=	Acquired Fund fees and expenses;
F1, F2, F3,…	=	Total annual operating expense ratio for each Acquired Fund;
FY	=	Number of days in the relevant fiscal year;
AI1, AI2, AI3,…	=	Average invested balance in each Acquired Fund;
D1, D2, D3,…	=	Number of days invested in each Acquired Fund;
"Transaction Fees"	=	The total amount of sales loads, redemption fees, or other transaction fees paid by the Fund in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year.
"Incentive Allocations"	=	Any allocation of capital from the Acquiring Fund to the adviser of the Acquired Fund (or its affiliate based on a percentage of the Acquiring Fund's income, capital gains and/or appreciation in the Acquired Fund.

(iii) Calculate the average net assets of the Fund for the most recent fiscal year, as provided in Item 13(a) (see Instruction 4 to Item 13(a)).

(iv) The total annual operating expense ratio used for purposes of this calculation (F1) is the annualized ratio of operating expenses to average net assets for the Acquired Fund's most recent fiscal period as disclosed in the Acquired Fund's most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Fund. For purposes of this Instruction: (i) Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions resulting from fee waivers or reimbursements by the Acquired Funds' investment advisers or sponsors; and (ii) Acquired Fund expenses do not include expenses (i.e., performance fees) that are incurred solely upon the realization and/or distribution of a gain. If an Acquired Fund has no operating history, include in the Acquired Funds' expenses any fees payable to the Acquired Fund's investment adviser or its affiliates stated in the Acquired Fund's registration statement, offering memorandum or other similar communication without giving effect to any performance.

(v) To determine the average invested balance (AI1) the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Fund (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year end). Divide the numerator by the number of measurement points included in the calculation of the numerator (i.e., if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(vi) A New Fund should base the Acquired Fund fees and expenses on assumptions as to the specific Acquired Funds in which the New Fund expects to invest. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

(vii) The Fund may clarify in a footnote to the fee table that the Total Annual Fund Operating Expenses under Item 3 do not correlate to the

ratio of expenses to average net assets given in response to Item 13, which reflects the operating expenses of the Fund and does not include Acquired Fund fees and expenses.

4. Example

(a) Assume that the percentage amounts listed under "Total Annual Fund Operating Expenses" remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect any expense reimbursement or fee waiver arrangements that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement. An adjustment to reflect any expense reimbursement or fee waiver arrangement may be reflect only in the period(s) for which the expense reimbursement or fee waiver arrangement is expected to continue.

(b) For any breakpoint in any fee, assume that the amount of the Fund's assets remains constant as of the level at the end of the most recently completed fiscal year.

(c) Assume reinvestment of all dividends and distributions.

(d) Reflect recurring and non-recurring fees charged to all investors other than any exchange fees or any sales charges (loads) on shares purchased with reinvested dividends or other distributions. If sales charges (loads) are imposed on reinvested dividends or other distributions, include the narrative explanation following the Example and include the bracketed words when sales charges (loads) are charged on reinvested capital gains distributions or returns of capital. Reflect any shareholder account fees collected by more than one Fund by dividing the total amount of the fees collected during the most recent fiscal year for all Funds whose shareholders are subject to the fees by the total average net assets of the Funds. Add the resulting percentage to "Annual Fund Operating Expenses" and assume that it remains the same in each of the 1-, 3-, 5-, and 10-year periods. A Fund that charges account fees based on a minimum account requirement exceeding $10,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(e) Reflect any deferred sales charge (load) by assuming redemption of the entire account at the end of the year in which the sales charge (load) is due. In the case of a deferred sales charge (load) that is based on the Fund's net asset value at the time of payment, assume that the net asset value at the end of each year includes the 5% annual return for that and each preceding year.

(f) Include the second 1-, 3-, 5-, and 10-year periods and related narrative explanation only if a sales charge (load) or other fee is charged upon redemption.

5. *Portfolio Turnover.* Disclose the portfolio turnover rate provided in response to Item 13(a) for the most recent fiscal year (or for such shorter period as the Fund has been in operation). Disclose the period for which the information is provided if less than a full fiscal year. A Fund that is a Money Market Fund may omit the portfolio turnover information required by this Item.

6. *New Funds.* For purposes of this Item, a "New Fund" is a Fund that does not include in Form N-1A financial statements reporting operating results or that includes financial statements for the Fund's initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Funds.

(a) Base the percentages expressed in "Annual Fund Operating Expenses" on payments that will be made, but include in expenses, amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of "Other Expenses." Disclose in a footnote to the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

(b) Complete only the 1- and 3-year period portions of the Example and estimate any shareholder account fees collected.

Item 4. Risk/Return Summary: Investments, Risks, and Performance

Include the following information, in plain English under rule 421(d) under the Securities Act, in the order and subject matter indicated:

(a) Principal Investment Strategies of the Fund.

Based on the information given in response to Item 9(b), summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries.

(b) Principal Risks of Investing in the Fund.

(1) Narrative Risk Disclosure.

(i) Based on the information given in response to Item 9(c), summarize the principal risks of investing in the Fund, including the risks to which the Fund's portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, and total return. Unless the Fund is a Money Market Fund, disclose that loss of money is a risk of investing in the Fund.

Instruction. A Fund may, in responding to this Item, describe the types of investors for whom the Fund is intended or the types of investment goals that may be consistent with an investment in the Fund.

(ii) (A) If the Fund is a Money Market Fund that is not a government Money Market Fund, as defined in §270.2a–7(a)(16) or a retail Money Market Fund, as defined in § 270.2a–7(a)(25), include the following statement:

You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(B) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a–7(a)(16), or a retail Money Market Fund, as defined in § 270.2a–7(a)(25), and that is subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter (or is not subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a–7(c)(2)(iii) of this chapter, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii)), include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(C) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a–7(a)(16), that is not subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a–7(c)(2)(iii) of this chapter, and

that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii), include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Instruction. If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has contractually committed to provide financial support to the Fund, and the term of the agreement will extend for at least one year following the effective date of the Fund's registration statement, the statement specified in Item 4(b)(1)(ii)(A), Item 4(b)(1)(ii)(B), or Item 4(b)(1)(ii)(C) may omit the last sentence ("The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time."). For purposes of this Instruction, the term "financial support" includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; however, the term "financial support" excludes any routine waiver of fees or reimbursement of fund expenses, routine inter-fund lending, routine inter-fund purchases of fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.

(iii) If the Fund is advised by or sold through an insured depository institution, state that:

An investment in the Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

Instruction. A Money Market Fund that is advised by or sold through an insured depository institution should combine the disclosure required by Items 4(b)(1)(ii) and (iii) in a single statement.

(iv) If applicable, state that the Fund is non-diversified, describe the effect of non-diversification (e.g., disclose that, compared with other funds, the Fund may invest a greater percentage of its assets in a particular issuer), and summarize the risks of investing in a non-diversified fund.

(2) Risk/Return Bar Chart and Table.

(i) Include the bar chart and table required by paragraphs (b)(2)(ii) and (iii) of this section. Provide a brief explanation of how the information illustrates the variability of the Fund's returns (e.g., by stating that the information provides some indication of the risks of investing in the Fund by showing changes in the Fund's performance from year to year and by showing how the Fund's average annual returns for 1, 5, and 10 years compare with those of a broad measure of market performance). Provide a statement to the effect that the Fund's past performance (before and after taxes) is not necessarily an indication of how the Fund will perform in the future. If applicable, include a statement explaining that updated performance information is available and providing a Web site address and/or toll-free (or collect) telephone number where the updated information may be obtained.

(ii) If the Fund has annual returns for at least one calendar year, provide a bar chart showing the Fund's annual total returns for each of the last 10 calendar years (or for the life of the Fund if less than 10 years), but only for periods subsequent to the effective date of the Fund's registration statement. Present the corresponding numerical return adjacent to each bar. If the Fund's fiscal year is other than a calendar year, include the year-to-date return information as of the end of the most recent quarter in a footnote to the bar chart. Following the bar chart, disclose the Fund's highest and lowest return for a quarter during the 10 years or other period of the bar chart. If swing pricing policies and procedures were applied during any of the periods, include a general description of the effects of swing pricing on the Fund's annual total returns for the applicable period(s) presented in a footnote to the bar chart.

(iii) If the Fund has annual returns for at least one calendar year, provide a table showing the Fund's (A) average annual total return; (B) average annual total return (after taxes on distributions); and (C) average annual total return (after taxes on distributions and redemption). A Money Market Fund should show only the returns described in clause (A) of the preceding sentence. All returns should be shown for 1-, 5-, and 10-calendar year periods ending on the date of the most recently completed calendar year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's

registration statement. The table also should show the returns of an appropriate broad-based securities market index as defined in Instruction 5 to Item 27(b) (7) for the same periods. A Fund that has been in existence for more than 10 years also may include returns for the life of the Fund. A Money Market Fund may provide the Fund's 7-day yield ending on the date of the most recent calendar year or disclose a toll-free (or collect) telephone number that investors can use to obtain the Fund's current 7-day yield. For a Fund (other than a Money Market Fund or a Fund described in General Instruction C.3.(d)(iii)), provide the information in the following table with the specified captions:

AVERAGE ANNUAL TOTAL RETURNS

(For the periods ended December 31, _____)

	1 year	5 years (or Life of Fund)	10 years (or Life of Fund)
Return Before Taxes	_____%	_____%	_____%
Return After Taxes on Distributions	_____%	_____%	_____%
Return After Taxes on Distributions and Sale of Fund Shares.	_____%	_____%	_____%
Index (*reflects no deduction for [fees, expenses, or taxes]*).	_____%	_____%	_____%

(iv) Adjacent to the table required by paragraph 4(b)(2)(iii), provide a brief explanation that:

(A) After-tax returns are calculated using the historical highest individual federal marginal income tax rates and do not reflect the impact of state and local taxes;

(B) Actual after-tax returns depend on an investor's tax situation and may differ from those shown, and after-tax returns shown are not relevant to investors who hold their Fund shares through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts;

(C) If the Fund is a Multiple Class Fund that offers more than one Class in the prospectus, after-tax returns are shown for only one Class and after-tax returns for other Classes will vary; and

(D) If average annual total return (after taxes on distributions and redemption) is higher than average annual total return, the reason for this result may be explained.

(E) If swing pricing policies and procedures were applied during any of the periods, include a general description of the effects of swing pricing on the Fund's average annual total returns for the applicable period(s) presented.

Instructions

1. Bar Chart.

(a) Provide annual total returns beginning with the earliest calendar year. Calculate annual returns using the Instructions to Item 13(a), except that the calculations should be based on calendar years. If a Fund's shares are sold subject to a sales load or account fees, state that sales loads or account fees are not reflected in the bar chart and that, if these amounts were reflected, returns would be less than those shown.

(b) For a Fund that provides annual total returns for only one calendar year or for a Fund that does not include the bar chart because it does not have annual returns for a full calendar year, modify, as appropriate, the narrative explanation required by paragraph (b)(2)(i) (e.g., by stating that the information gives some indication of the risks of an investment in the Fund by comparing the Fund's performance with a broad measure of market performance).

2. Table.

(a) Calculate a Money Market Fund's 7-day yield under Item 26(a); the Fund's average annual total return under Item 26(b)(1); and the Fund's average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) under Items 26(b)(2) and (3), respectively.

(b) A Fund may include, in addition to the required broad-based securities market index, information for one or more other indexes as permitted by Instruction 6 to Item 27(b)(7). If an additional index is included, disclose information about the additional index in the narrative explanation accompanying the bar chart and table (e.g., by stating that the information shows how the Fund's performance compares with the returns of an index of funds with similar investment objectives).

(c) If the Fund selects an index that is different from the index used in a table for the immediately preceding period, explain the reason(s) for the selection of a different index and provide information for both the newly selected and the former index.

(d) A Fund (other than a Money Market Fund) may include the Fund's yield calculated under Item 26(b)(2). Any Fund may include its tax-equivalent yield calculated under Item 26. If a Fund's yield is included, provide a toll-free (or collect) telephone number that investors can use to obtain current yield information.

(e) Returns required by paragraphs 4(b)(2)(iii)(A), (B), and (C) for a Fund or Series must be adjacent to one another and appear in that order. The returns for a broad-based securities market index, as required by paragraph 4(b)(2)(iii), must precede or follow all of the returns for a Fund or Series rather than be interspersed with the returns of the Fund or Series.

3. Multiple Class Funds.

(a) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2), provide annual total returns in the bar chart for only one of those Classes. The Fund can select which Class to include (e.g., the oldest Class, the Class with the greatest net assets) if the Fund:

(i) Selects the Class with 10 or more years of annual returns if other Classes have fewer than 10 years of annual returns;

(ii) Selects the Class with the longest period of annual returns when the Classes all have fewer than 10 years of returns; and

(iii) If the Fund provides annual total returns in the bar chart for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the bar chart the reasons for the selection of a different Class.

(b) When a Multiple Class Fund offers a new Class in a prospectus and separately presents information for the new Class in response to Item 4(b)(2), include the bar chart with annual total returns for any other existing Class for the first year that the Class is offered. Explain in a footnote that the returns are for a Class that is not presented that would have substantially similar annual returns because the shares are invested in the same portfolio of securities and the annual returns would differ only to the extent that the Classes do not have the same expenses. Include return information for the other Class reflected in the bar chart in the performance table.

(c) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2):

(i) Provide the returns required by paragraph 4(b)(2)(iii)(A) of this Item for each of the Classes;

(ii) Provide the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item for only one of those Classes. The Fund may select the Class for which it provides the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item, provided that the Fund:

(A) Selects a Class that has been offered for use as an investment option for accounts other than those described in General Instruction C.3.(d)(iii)(A);

(B) Selects a Class described in paragraph (c)(ii)(A) of this Instruction with 10 or more years of annual returns if other Classes described in paragraph (c)(ii)(A) of this Instruction have fewer than 10 years of annual returns;

(C) Selects the Class described in paragraph (c)(ii)(A) of this Instruction with the longest period of annual returns if the Classes described in paragraph (c)(ii)(A) of this Instruction all have fewer than 10 years of returns; and

(D) If the Fund provides the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the table the reasons for the selection of a different Class;

(iii) The returns required by paragraphs 4(b)(2)(iii)(A), (B), and (C) of this Item for the Class described in paragraph (c)(ii) of this Instruction should be adjacent and should not be interspersed with the returns of other Classes; and

(iv) All returns shown should be identified by Class.

(d) If a Multiple Class Fund offers a Class in the prospectus that converts into another Class after a stated period, compute average annual total returns in the table by using the returns of the other Class for the period after conversion.

4. *Change in Investment Adviser.* If the Fund has not had the same investment adviser during the last 10 calendar years, the Fund may begin the bar chart and the performance information in the table on the date that the current adviser began to provide advisory services to the Fund subject to the conditions in Instruction 11 of Item 27(b)(7).

Item 5. Management

(a) *Investment Adviser(s).* Provide the name of each investment adviser of the Fund, including sub-advisers.

Instructions

1. A Fund need not identify a sub-adviser whose sole responsibility for the Fund is limited to day-to-day management of the Fund's holdings of cash and cash equivalent instruments, unless the Fund is a Money Market Fund or other Fund with a principal investment strategy of regularly holding cash and cash equivalent instruments.

2. A Fund having three or more sub-advisers, each of which manages a portion of the Fund's portfolio, need not identify each such sub-adviser, except that the Fund must identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the Fund's net assets. For purposes of this paragraph, a significant portion of a Fund's net assets generally will be deemed to be 30% or more of the Fund's net assets.

(b) *Portfolio Manager(s).* State the name, title, and length of service of the person or persons employed by or associated with the Fund or an investment adviser of the Fund who are primarily responsible for the day-to-day management of the Fund's portfolio ("Portfolio Manager").

Instructions

1. This requirement does not apply to a Money Market Fund.

2. If a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, information in response to this Item is required for each member of such committee, team, or other group. If more than five persons are jointly and primarily responsible for the day-to-day management of the Fund's portfolio, the Fund need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Fund's portfolio.

Item 6. Purchase and Sale of Fund Shares

(a) *Purchase of Fund Shares.* Disclose the Fund's minimum initial or subsequent investment requirements.

(b) *Sale of Fund Shares.* Also disclose that the Fund's shares are redeemable and briefly identify the procedures for redeeming shares (e.g., on any business day by written request, telephone, or wire transfer).

[ETF Rule Disclosure Amendment:

(c) *Exchange-Traded Funds*. If the Fund is an Exchange-Traded Fund, the Fund may omit the information required by paragraphs (a) and (b) of this Item and must disclose:

(1) That Individual Fund shares may only be bought and sold in the secondary market through a broker or dealer at a market price;

(2) That because ETF shares trade at market prices rather than net asset value, shares may trade at a price greater than net asset value (premium) or less than net asset value (discount);

(3) That an investor may incur costs attributable to the difference between the highest price a buyer is willing to pay to purchase shares of the Fund (bid) and the lowest price a seller is willing to accept for shares of the Fund (ask) when buying or selling shares in the secondary market (the "bid-ask spread");

(4) If applicable, how to access recent information, including information on the Fund's net asset value, Market Price, premiums and discounts, and bid-ask spreads, on the Exchange-Traded Fund's website; and

(5) The median bid-ask spread for the Fund's most recent fiscal year.

Instructions

1. A Fund may omit the information required by paragraph (c)(5) of this Item if it satisfies the requirements of paragraph (c)(1)(v) of Rule 6c-11 [17 CFR 270.6c-11(c)(1)(v)] under the Investment Company Act.

2. An Exchange-Traded Fund that had its initial listing on a national securities exchange at or before the beginning of the most recently completed fiscal year must include the median bid-ask spread for the Fund's most recent fiscal year. For an Exchange-Traded Fund that had an initial listing after the beginning of the most recently completed fiscal year, explain that the Exchange-Traded Fund did not have a sufficient trading history to report trading information and related costs. Information should be based on the most recently completed fiscal year end.

3. Bid-Ask Spread (Median). Calculate the median bid-ask spread by dividing the difference between the national best bid and national best offer by the mid-point of the national best bid and national best offer as of the end of each ten-second interval throughout each trading day of the Exchange-Traded Fund's most recent fiscal year. Once the bid-ask spread for each ten-second interval throughout the fiscal year is determined, sort the spreads from

lowest to highest. If there is an odd number of spread intervals, then the median is the middle number. If there is an even number of spread intervals, then the median is the average between the two middle numbers. Express the spread as a percentage, rounded to the nearest hundredth percent.

4. A Fund may combine the information required by Item 6(c)(4) into the information required by Item 1(b)(1) and Rule 498(b)(1)(v) [17 CFR 230.498(b)(1)(v)] under the Securities Act.]

(d) If the Fund uses swing pricing, explain the Fund's use of swing pricing; including what swing pricing is, the circumstances under which the Fund will use it, the effects of swing pricing on the Fund and investors, and provide the upper limit it has set on the swing factor. With respect to any portion of a Fund's assets that is invested in one or more open-end management investment companies that are registered under the Investment Company Act, the Fund shall include a statement that the Fund's net asset value is calculated based upon the net asset values of the registered open-end management companies in which the Fund invests, and, if applicable, state that the prospectuses for those companies explain the circumstances under which they will use swing pricing and the effects of using swing pricing.

Item 7. Tax Information

State, as applicable, that the Fund intends to make distributions that may be taxed as ordinary income or capital gains or that the Fund intends to distribute tax-exempt income. For a Fund that holds itself out as investing in securities generating tax-exempt income, provide, as applicable, a general statement to the effect that a portion of the Fund's distributions may be subject to federal income tax.

Item 8. Financial Intermediary Compensation

Include the following statement. A Fund may modify the statement if the modified statement contains comparable information. A Fund may omit the statement if neither the Fund nor any of its related companies pay financial intermediaries for the sale of Fund shares or related services.

Payments to Broker-Dealers and Other Financial Intermediaries

If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may create a conflict of interest by influencing the broker-dealer or other intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's Web site for more information.

Item 9. Investment Objectives, Principal Investment Strategies, Related Risks, and Disclosure of Portfolio Holdings

(a) *Investment Objectives.* State the Fund's investment objectives and, if applicable, state that those objectives may be changed without shareholder approval.

(b) *Implementation of Investment Objectives.* Describe how the Fund intends to achieve its investment objectives. In the discussion:

(1) Describe the Fund's principal investment strategies, including the particular type or types of securities in which the Fund principally invests or will invest.

Instructions

1. A strategy includes any policy, practice, or technique used by the Fund to achieve its investment objectives.

2. Whether a particular strategy, including a strategy to invest in a particular type of security, is a principal investment strategy depends on the strategy's anticipated importance in achieving the Fund's investment objectives, and how the strategy affects the Fund's potential risks and returns. In determining what is a principal investment strategy, consider, among other things, the amount of the Fund's assets expected to be committed to the strategy, the amount of the Fund's assets expected to be placed at risk by the strategy, and the likelihood of the Fund's losing some or all of those assets from implementing the strategy.

3. A negative strategy (e.g., a strategy not to invest in a particular type of security or not to borrow money) is not a principal investment strategy.

4. Disclose any policy to concentrate in securities of issuers in a particular industry or group of industries (i.e., investing more than 25% of a Fund's net assets in a particular industry or group of industries).

5. Disclose any other policy specified in Item 16(c)(1) that is a principal investment strategy of the Fund.

6. Disclose, if applicable, that the Fund may, from time to time, take temporary defensive positions that are inconsistent with the Fund's principal investment strategies in attempting to respond to adverse market, economic, political, or other conditions. Also disclose the effect of taking such a temporary defensive position (e.g., that the Fund may not achieve its investment objective).

7. Disclose whether the Fund (if not a Money Market Fund) may engage in active and frequent trading of portfolio securities to achieve its principal investment strategies. If so, explain the tax consequences to shareholders of increased portfolio turnover, and how the tax consequences of, or trading costs associated with, a Fund's portfolio turnover may affect the Fund's performance.

(2) Explain in general terms how the Fund's adviser decides which securities to buy and sell (e.g., for an equity fund, discuss, if applicable, whether the Fund emphasizes value or growth or blends the two approaches).

(c) *Risks*. Disclose the principal risks of investing in the Fund, including the risks to which the Fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, or total return.

(d) *Portfolio Holdings*. State that a description of the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities is available (i) in the Fund's SAI; and (ii) on the Fund's website, if applicable.

Item 10. Management, Organization, and Capital Structure

(a) Management.

(1) Investment Adviser.

(i) Provide the name and address of each investment adviser of the Fund, including sub advisers. Describe the investment adviser's experience as an investment adviser and the advisory services that it provides to the Fund.

(ii) Describe the compensation of each investment adviser of the Fund as follows:

(A) If the Fund has operated for a full fiscal year, state the aggregate fee paid to the adviser for the most recent fiscal year as a percentage of average net assets. If the Fund has not operated for a full fiscal year, state what the adviser's fee is as a percentage of average net assets, including any breakpoints.

(B) If the adviser's fee is not based on a percentage of average net assets (e.g., the adviser receives a performance-based fee), describe the basis of the adviser's compensation.

(iii) Include a statement, adjacent to the disclosure required by paragraph (a)(1)(ii) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Fund is available in the Fund's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.

Instructions

1. If the Fund changed advisers during the fiscal year, describe the compensation and the dates of service for each adviser.

2. Explain any changes in the basis of computing the adviser's compensation during the fiscal year.

3. If a Fund has more than one investment adviser, disclose the aggregate fee paid to all of the advisers, rather than the fees paid to each adviser, in response to this Item.

(2) *Portfolio Manager*. For each Portfolio Manager identified in response to Item 5(b), state the Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Fund. If a Portfolio Manager is a member of a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund that is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, provide a brief description of the person's role on the committee, team, or other group (e.g., lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Fund's portfolio.

(3) *Legal Proceedings*. Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Fund or the Fund's investment adviser or principal underwriter is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any legal proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Fund or the ability of the investment adviser or principal underwriter to perform its contract with the Fund.

(b) *Capital Stock*. Disclose any unique or unusual restrictions on the right freely to retain or dispose of the Fund's shares or material obligations or potential liabilities associated with holding the Fund's shares (not including investment risks) that may expose investors to significant risks.

Item 11. Shareholder Information

[ETF Rule Disclosure Amendment:

(a) *Pricing of Fund Shares*. Describe the procedures for pricing the Fund's shares, including:

(1) An explanation that the price of Fund shares is based on the Fund's net asset value and the method used to value Fund shares (market price, fair value, or amortized cost); except that if the Fund is an Exchange-Traded Fund, an explanation that the price of Fund shares is based on a market price.]

Instruction. A Fund (other than a Money Market Fund) must provide a brief explanation of the circumstances under which it will use fair value pricing and the effects of using fair value pricing. With respect to any portion of a Fund's assets that are invested in one or more open-end management investment companies that are registered under the Investment Company Act, the Fund may briefly explain that the Fund's net asset value is calculated based upon the net asset values of the registered open-end management investment companies in which the Fund invests, and that the prospectuses for these companies explain the circumstances under which those companies will use fair value pricing and the effects of using fair value pricing.

(2) A statement as to when calculations of net asset value are made and that the price at which a purchase or redemption is effected is based on the next calculation of net asset value after the order is placed.

(3) A statement identifying in a general manner any national holidays when shares will not be priced and specifying any additional local or regional holidays when the Fund shares will not be priced.

Instructions

1. In responding to this Item, a Fund may use a list of specific days or any other means that effectively communicates the information (e.g., explaining that shares will not be priced on the days on which the New York Stock Exchange is closed for trading).

2. If the Fund has portfolio securities that are primarily listed on foreign exchanges that trade on weekends or other days when the Fund does not price its shares, disclose that the net asset value of the Fund's shares may change on days when shareholders will not be able to purchase or redeem the Fund's shares.

(b) *Purchase of Fund Shares*. Describe the procedures for purchasing the Fund's shares.

(c) *Redemption of Fund Shares.* Describe the procedures for redeeming the Fund's shares, including:

(1) Any restrictions on redemptions.

(2) Any redemption charges, including how these charges will be collected and under what circumstances the charges will be waived.

(3) Any procedure that a shareholder can use to sell the Fund's shares to the Fund or its underwriter through a broker-dealer, noting any charges that may be imposed for such service.

Instruction. The specific fees paid through the broker-dealer for such service need not be disclosed.

(4) The circumstances, if any, under which the Fund may redeem shares automatically without action by the shareholder in accounts below a certain number or value of shares.

(5) The circumstances, if any, under which the Fund may delay honoring a request for redemption for a certain time after a shareholder's investment (e.g., whether a Fund does not process redemptions until clearance of the check for the initial investment).

(6) Any restrictions on, or costs associated with, transferring shares held in street name accounts.

(7) The number of days following receipt of shareholder redemption requests in which the fund typically expects to pay out redemption proceeds to redeeming shareholders. If the number of days differs by method of payment (e.g., check, wire, automated clearing house), then disclose the typical number of days or estimated range of days that the fund expects it will take to pay out redemptions proceeds for each method used.

(8) The methods that the fund typically expects to use to meet redemption requests, and whether those methods are used regularly, or only in stressed market conditions (e.g., sales of portfolio assets, holdings of cash or cash equivalents, lines of credit, interfund lending, and/or ability to redeem in kind).

(d) *Dividends and Distributions*. Describe the Fund's policy with respect to dividends and distributions, including any options that shareholders may have as to the receipt of dividends and distributions.

(e) *Frequent Purchases and Redemptions of Fund Shares*.

(1) Describe the risks, if any, that frequent purchases and redemptions of Fund shares by Fund shareholders may present for other shareholders of the Fund.

(2) State whether or not the Fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of Fund shares by Fund shareholders.

(3) If the Fund's board of directors has not adopted any such policies and procedures, provide a statement of the specific basis for the view of the board that it is appropriate for the Fund not to have such policies and procedures.

(4) If the Fund's board of directors has adopted any such policies and procedures, describe those policies and procedures, including:

(i) Whether or not the Fund discourages frequent purchases and redemptions of Fund shares by Fund shareholders;

(ii) Whether or not the Fund accommodates frequent purchases and redemptions of Fund shares by Fund shareholders; and

(iii) Any policies and procedures of the Fund for deterring frequent purchases and redemptions of Fund shares by Fund shareholders, including any restrictions imposed by the Fund to prevent or minimize frequent purchases and redemptions. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances, including whether each of these restrictions applies to trades that occur through omnibus accounts at intermediaries, such as investment advisers, broker-dealers, transfer agents, third party administrators, and insurance companies. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(A) Any restrictions on the volume or number of purchases, redemptions, or exchanges that a shareholder may make within a given time period;

(B) Any exchange fee or redemption fee;

(C) Any costs or administrative or other fees or charges that are imposed on shareholders deemed to be engaged in frequent purchases and redemptions of Fund shares, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(D) Any minimum holding period that is imposed before an investor may make exchanges into another Fund;

(E) Any restrictions imposed on exchange or purchase requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(F) Any right of the Fund to reject, limit, delay, or impose other conditions on exchanges or purchases or to close or otherwise limit accounts based on a history of frequent purchases and redemptions of Fund shares, including the circumstances under which such right will be exercised.

(5) If applicable, include a statement, adjacent to the disclosure required by paragraphs (e)(1) through (e)(4) of this Item, that the SAI includes a description of all arrangements with any person to permit frequent purchases and redemptions of Fund shares.

(f) *Tax Consequences*.

(1) Describe the tax consequences to shareholders of buying, holding, exchanging and selling the Fund's shares, including, as applicable, that:

(i) The Fund intends to make distributions that may be taxed as ordinary income and capital gains (which may be taxable at different rates depending on the length of time the Fund holds its assets). If the Fund expects that its distributions, as a result of its investment objectives or strategies, will consist primarily of ordinary income or capital gains, provide disclosure to that effect.

(ii) The Fund's distributions, whether received in cash or reinvested in additional shares of the Fund, may be subject to federal income tax.

(iii) An exchange of the Fund's shares for shares of another fund will be treated as a sale of the Fund's shares and any gain on the transaction may be subject to federal income tax.

(2) For a Fund that holds itself out as investing in securities generating tax-exempt income:

(i) Modify the disclosure required by paragraph (f)(1) to reflect that the Fund intends to distribute tax-exempt income.

(ii) Also disclose, as applicable, that:

(A) The Fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax;

(B) Income exempt from federal tax may be subject to state and local income tax; and

(C) Any capital gains distributed by the Fund may be taxable.

(3) If the Fund does not expect to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code [I.R.C. 851 et seq.], explain the tax consequences. If the Fund expects to pay an excise tax under the Internal Revenue Code [I.R.C. 4982] with respect to its distributions, explain the tax consequences.

[ETF Rule Disclosure Amendment:

(g) *Exchange-Traded Funds*. If the Fund is an Exchange-Traded Fund:

(1) The Fund may omit from the prospectus the information required by Items 11(a)(2), (b), and (c).

(2) Provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (*i.e.,* premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii) – (iv) and (c)(1)(vi) of Rule 6c-11 [17 CFR 270.6c-11(c)(1)(ii) – (iv) and (c)(1)(vi)] under the Investment Company Act.]

Instruction

1. Provide the information in tabular form.

2. Express the information as a percentage of the net asset value of the Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.

3. Adjacent to the table, provide a brief explanation that: shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.

4. Include a statement that the data presented represents past performance and cannot be used to predict future results.]

Item 12. Distribution Arrangements

(a) *Sales Loads*.

(1) Describe any sales loads, including deferred sales loads, applied to purchases of the Fund's shares. Include in a table any front-end sales load (and each breakpoint in the sales load, if any) as a percentage of both the offering price and the net amount invested.

Instructions

1. If the Fund's shares are sold subject to a front-end sales load, explain that the term "offering price" includes the front-end sales load.

2. Disclose, if applicable, that sales loads are imposed on shares, or amounts representing shares, that are purchased with reinvested dividends or other distributions.

3. Discuss, if applicable, how deferred sales loads are imposed and calculated, including:

   (a) Whether the specified percentage of the sales load is based on the offering price, or the lesser of the offering price or net asset value at the time the sales load is paid.

   (b) The amount of the sales load as a percentage of both the offering price and the net amount invested.

   (c) A description of how the sales load is calculated (e.g., in the case of a partial redemption, whether or not the sales load is calculated as if shares or amounts representing shares not subject to a sales load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased).

   (d) If applicable, the method of paying an installment sales load (e.g., by withholding of dividend payments, involuntary redemptions, or separate billing of a shareholder's account).

(2) Unless disclosed in response to paragraph (a)(1), briefly describe any arrangements that result in breakpoints in, or elimination of, sales loads (e.g., letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of investors). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested. If applicable, state that additional information concerning sales load breakpoints is available in the Fund's SAI.

Instructions

1. The description, pursuant to paragraph (a)(1) or (a)(2) of this Item 12, of arrangements that result in breakpoints in, or elimination of, sales loads must include a brief summary of shareholder eligibility requirements, including a description or list of the types of accounts (e.g., retirement accounts, accounts held at other financial intermediaries), account holders (e.g., immediate family members, family trust accounts, solely-controlled business accounts), and fund holdings (e.g., funds held within the same fund complex) that may be aggregated for purposes of determining eligibility for sales load breakpoints.

2. The description pursuant to paragraph (a)(2) of this Item 12 need not contain any information required by Items 17(d) and 23(b).

(3) Describe, if applicable, the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints, including

the circumstances in which and the classes of individuals to whom each method applies. Methods that should be described, if applicable, include historical cost, net amount invested, and offering price.

(4) (i) State, if applicable, that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for a shareholder to inform the Fund or his or her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated to meet sales load breakpoints. Describe any information or records, such as account statements, that it may be necessary for a shareholder to provide to the Fund or his or her financial intermediary in order to verify his or her eligibility for a breakpoint discount. This description must include, if applicable:

(A) Information or records regarding shares of the Fund or other funds held in all accounts (e.g., retirement accounts) of the shareholder at the financial intermediary;

(B) Information or records regarding shares of the Fund or other funds held in any account of the shareholder at another financial intermediary; and

(C) Information or records regarding shares of the Fund or other funds held at any financial intermediary by related parties of the shareholder, such as members of the same family or household.

(ii) If the Fund permits eligibility for breakpoints to be determined based on historical cost, state that a shareholder should retain any records necessary to substantiate historical costs because the Fund, its transfer agent, and financial intermediaries may not maintain this information.

(5) State whether the Fund makes available free of charge, on or through the Fund's Web site at a specified Internet address, and in a clear and prominent format, the information required by paragraphs (a)(1) through (a)(4) and Item 23(a), including whether the Web site includes hyper links that facilitate access to the information. If the Fund does not make the information required by paragraphs (a)(1) through (a)(4) and Item 23(a) available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have an Internet Web site).

Instruction. All information required by paragraph (a) of this Item 12 must be adjacent to the table required by paragraph (a)(1) of this Item 12; must be presented in a clear, concise, and understandable manner; and must include tables, schedules, and charts as expressly required by paragraph (a)(1) of this Item 12 or where doing so would facilitate understanding.

(b) *Rule 12b-1 Fees*. If the Fund has adopted a plan under rule 12b-1, state the amount of the distribution fee payable under the plan and provide disclosure to the following effect:

(1) The Fund has adopted a plan under rule 12b-1 that allows the Fund to pay distribution fees for the sale and distribution of its shares; and

(2) Because these fees are paid out of the Fund's assets on an on-going basis, over time these fees will increase the cost of your investment and may cost you more than paying other types of sales charges.

Instruction. If the Fund pays service fees under its rule 12b-1 plan, modify this disclosure to reflect the payment of these fees (e.g., by indicating that the Fund pays distribution and other fees for the sale of its shares and for services provided to shareholders). For purposes of this paragraph, service fees have the same meaning given that term under rule 2830(b)(9) of the NASD Conduct Rules [NASD Manual (CCH) 4622].

(c) *Multiple Class and Master-Feeder Funds*.

(1) Describe the main features of the structure of the Multiple Class Fund or Master-Feeder Fund.

(2) If more than one Class of a Multiple Class Fund is offered in the prospectus, provide the information required by paragraphs (a) and (b) for each of those Classes.

(3) If a Multiple Class Fund offers in the prospectus shares that provide for mandatory or automatic conversions or exchanges from one Class to another Class, provide the information required by paragraphs (a) and (b) for both the shares offered and the Class into which the shares may be converted or exchanged.

(4) If a Feeder Fund has the ability to change the Master Fund in which it invests, describe briefly the circumstances under which the Feeder Fund can do so.

Instruction. A Feeder Fund that does not have the authority to change its Master Fund need not disclose the possibility and consequences of its no longer investing in the Master Fund.

Item 13. Financial Highlights Information

(a) Provide the following information for the Fund, or for the Fund and its subsidiaries, audited for at least the latest 5 years and consolidated as required in Regulation S-X [17 CFR 210].

Financial Highlights

The financial highlights table is intended to help you understand the Fund's financial performance for the past 5 years [or, if shorter, the period of the Fund's operations]. Certain information reflects financial results for a single Fund share. The total returns in the table represent the rate that an investor would have earned [or lost] on an investment in the Fund (assuming reinvestment of all dividends and distributions). This information has been audited by _____, whose report, along with the Fund's financial statements, are included in [the SAI or annual report], which is available upon request.

Net Asset Value, Beginning of Period
Income From Investment Operations
Net Investment Income
Net Gains or Losses on Securities (both realized and unrealized)
Total From Investment Operations
Less Distributions
Dividends (from net investment income)
Distributions (from capital gains) Returns of Capital
Total Distributions
Capital Adjustments Due to Swing Pricing

Net Asset Value, End of Period

Net Asset Value, Adjusted Pursuant to Swing Pricing, End of Period

Total Return
Ratios/Supplemental Data
Net Assets, End of Period
Ratio of Expenses to Average Net Assets
Ratio of Net Income to Average Net Assets

Portfolio Turnover Rate

Instructions

1. *General.*

   (a) Present the information in comparative columnar form for each of the last 5 fiscal years of the Fund (or for such shorter period as the Fund has been in operation), but only for periods subsequent to the effective date of the Fund's registration statement. Also present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. When a period in the table is for less than a full fiscal year, a Fund may annualize ratios in the table and disclose that the ratios are annualized in a note to the table.

(b) List per share amounts at least to the nearest cent. If the offering price is expressed in tenths of a cent or more, then state the amounts in the table in tenths of a cent. Present the information using a consistent number of decimal places.

(c) Include the narrative explanation before the financial information. A Fund may modify the explanation if the explanation contains comparable information to that shown.

2. *Per Share Operating Performance*.

(a) Derive net investment income data by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) per share may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods of computing net investment income may be acceptable. Provide an explanation in a note to the table of any other method used to compute net investment income.

(b) The amount shown at the Net Gains or Losses on Securities caption is the balancing figure derived from the other amounts in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of the Fund's shares in relation to fluctuating market values for the portfolio.

(c) For any distributions made from sources other than net investment income and capital gains, state the per share amounts separately at the Returns of Capital caption and note the nature of the distributions.

(d) The amount shown at the Capital Adjustments Due to Swing Pricing caption should include the per share impact of any amounts retained by the Fund pursuant to its swing pricing policies and procedures, if applicable.

(e) The amount shown at the Net Asset Value, as Adjusted Pursuant to Swing Pricing, End of Period caption should be the Fund's net asset value per share as adjusted pursuant to its swing pricing policies and procedures on the last day of the reporting period, if applicable.

3. *Total Return*.

(a) Assume an initial investment made at the net asset value calculated on the last business day before the first day of each period shown.

(b) Do not reflect sales loads or account fees in the initial investment, but, if sales loads or account fees are imposed, note that they are not reflected in total return.

(c) Reflect any sales load assessed upon reinvestment of dividends or distributions.

(d) Assume a redemption at the price calculated on the last business day of each period shown.

(e) For a period less than a full fiscal year, state the total return for the period and disclose that total return is not annualized in a note to the table.

4. *Ratios/Supplemental Data*.

(a) Calculate "average net assets" based on the value of the net assets determined no less frequently than the end of each month.

(b) Calculate the Ratio of Expenses to Average Net Assets using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal period, including increases resulting from complying with paragraph 2(g) of rule 6-07 of Regulation S-X and reductions resulting from complying with paragraphs 2(a) and (f) of rule 6-07 regarding fee waivers and reimbursements.

(c) A Fund that is a Money Market Fund may omit the Portfolio Turnover Rate.

(d) Calculate the Portfolio Turnover Rate as follows:

(i) Divide the lesser of amounts of purchases or sales of portfolio securities for the fiscal year by the monthly average of the value of the portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding 11 months and dividing the sum by 13.

(ii) Exclude from both the numerator and the denominator amounts relating to all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. Include all long-term securities, including long-term U.S. Government securities. Purchases include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights and warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

(iii) If the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares during the fiscal year in a purchase-of-assets transaction, exclude the value of securities acquired from purchases and securities sold from sales to realign the Fund's portfolio. Adjust the denominator of the portfolio turnover computation to reflect these excluded purchases and sales and disclose them in a footnote.

(iv) Include in purchases and sales any short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of the portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of the portfolio securities sold during the period.

(e) A Fund may incorporate by reference the Financial Highlights Information from a report to shareholders under rule 30e-1 into the prospectus in response to this Item if the Fund delivers the shareholder report with the prospectus or, if the report has been previously delivered (e.g., to a current shareholder), the Fund includes the statement required by Item 1(b)(1).

Part B — INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

Item 14. Cover Page and Table of Contents

(a) *Front Cover Page. Include the following information on the outside front cover page of the SAI:*

(1) The Fund's name and the Class or Classes, if any, to which the SAI relates. If the Fund is a Series, also provide the Registrant's name.

(2) The exchange ticker symbol of the Fund's securities or, if the SAI relates to one or more Classes of the Fund's securities, adjacent to each such class, the exchange ticker symbol of such Class of the Fund's securities. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

(3) A statement or statements:

(i) That the SAI is not a prospectus;

(ii) How the prospectus may be obtained; and

(iii) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI unless the information has been previously delivered in a shareholder report (e.g., to a current shareholder), and the Fund states that the shareholder report is available, without charge, upon request. Provide a toll-free (or collect) telephone number to call to request the report.

(4) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents. Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.*

Item 15. Fund History

(a) Provide the date and form of organization of the Fund and the name of the state or other jurisdiction in which the Fund is organized.

(b) If the Fund has engaged in a business other than that of an investment company during the past 5 years, state the nature of the other business and give the approximate date on which the Fund commenced business as an investment company. If the Fund's name was changed during that period, state its former name and the approximate date on which it was changed. Briefly describe the nature and results of any change in the Fund's business or name that occurred in connection with any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment or succession.

Item 16. Description of the Fund and Its Investments and Risks

(a) *Classification. State that the Fund is an open-end, management investment company and indicate, if applicable, that the Fund is diversified.*

(b) *Investment Strategies and Risks. Describe any investment strategies, including a strategy to invest in a particular type of security, used by an investment adviser of the Fund in managing the Fund that are not principal strategies and the risks of those strategies.*

(c) *Fund Policies.*

(1) Describe the Fund's policy with respect to each of the following:

(i) Issuing senior securities;

(ii) Borrowing money, including the purpose for which the proceeds will be used;

(iii) Underwriting securities of other issuers;

(iv) Concentrating investments in a particular industry or group of industries;

(v) Purchasing or selling real estate or commodities;

(vi) Making loans; and

(vii) Any other policy that the Fund deems fundamental or that may not be changed without shareholder approval, including, if applicable, the Fund's investment objectives.

Instruction. If the Fund reserves freedom of action with respect to any practice specified in paragraph (c)(1), state the maximum percentage of assets to be devoted to the practice and disclose the risks of the practice.

(2) State whether shareholder approval is necessary to change any policy specified in paragraph (c)(1). If so, describe the vote required to obtain this approval.

(d) *Temporary Defensive Position.* Disclose, if applicable, the types of investments that a Fund may make while assuming a temporary defensive position described in response to Item 9(b).

(e) *Portfolio Turnover.* Explain any significant variation in the Fund's portfolio turnover rates over the two most recently completed fiscal years or any anticipated variation in the portfolio turnover rate from that reported for the last fiscal year in response to Item 13.

Instruction. This paragraph does not apply to a Money Market Fund.

(f) *Disclosure of Portfolio Holdings*

(1) Describe the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities to any person, including:

(i) How the policies and procedures apply to disclosure to different categories of persons, including individual investors, institutional investors, intermediaries that distribute the Fund's shares, third-party service providers, rating and ranking organizations, and affiliated persons of the Fund;

(ii) Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

(iii) The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;

(iv) Any policies and procedures with respect to the receipt of compensation or other consideration by the Fund, its investment adviser, or any other party in connection with the disclosure of information about portfolio securities;

(v) The individuals or categories of individuals who may authorize disclosure of the Fund's portfolio securities (e.g., executive officers of the Fund);

(vi) The procedures that the Fund uses to ensure that disclosure of information about portfolio securities is in the best interests of Fund shareholders, including procedures to address conflicts between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other; and

(vii) The manner in which the board of directors exercises oversight of disclosure of the Fund's portfolio securities.

Instruction. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, with respect to the disclosure of the Fund's portfolio securities to any person.

(2) Describe any ongoing arrangements to make available information about the Fund's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements.

Describe any compensation or other consideration received by the Fund, its investment adviser, or any other party in connection with each such arrangement, and provide the information described by paragraphs (f)(1)(ii), (iii), and (v) of this Item with respect to such arrangements.

Instructions

1. The consideration required to be disclosed by Item 16(f)(2) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

2. The Fund is not required to describe an ongoing arrangement to make available information about the Fund's portfolio securities pursuant to this Item, if, not later than the time that the Fund makes the portfolio securities information available to any person pursuant to the arrangement, the Fund discloses the information in a publicly available filing with the Commission that is required to include the information.

3. The Fund is not required to describe an ongoing arrangement to make available information about the Fund's portfolio securities pursuant to this Item if:

   (a) the Fund makes the portfolio securities information available to any person pursuant to the arrangement no earlier than the day next following the day on which the Fund makes the information available on its website in the manner specified in its prospectus pursuant to paragraph (b); and

   (b) the Fund has disclosed in its current prospectus that the portfolio securities information will be available on its website, including (1) the nature of the information that will be available, including both the date as of which the information will be current (e.g., month-end) and the scope of the information (e.g., complete portfolio holdings, Fund's largest 20 holdings); (2) the date when the information will first become available and the period for which the information will remain available, which shall end no earlier than the date on which the Fund files its Form N-CSR or Form N-PORT for the last month of the Fund's first or third fiscal quarters with the Commission for the period that includes the date as of which the website information is current; and (3) the location on the Fund's website where either the information or a prominent hyper link (or series of prominent hyper links) to the information will be available."

(g) *Money Market Fund Material Events.* If the Fund is a Money Market Fund (except any Money Market Fund that is not subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a–7(c)

(2)(iii) of this chapter, and has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii)) disclose, as applicable, the following events:

(1) Imposition of Liquidity Fees and Temporary Suspensions of Fund Redemptions.

(i) During the last 10 years, any occasion on which the Fund has invested less than ten percent of its total assets in weekly liquid assets (as provided in § 270.2a–7(c)(2)(ii)), and with respect to each such occasion, whether the Fund's board of directors determined to impose a liquidity fee pursuant to § 270.2a–7(c)(2)(ii) and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a–7(c)(2)(i).

(ii) During the last 10 years, any occasion on which the Fund has invested less than thirty percent, but more than ten percent, of its total assets in weekly liquid assets (as provided in § 270.2a–7(c)(2)(i)) and the Fund's board of directors has determined to impose a liquidity fee pursuant to § 270.2a–7(c)(2)(i) and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a–7(c)(2)(i).

Instructions

1. With respect to each such occasion, disclose: the dates and length of time for which the Fund invested less than ten percent (or thirty percent, as applicable) of its total assets in weekly liquid assets; the dates and length of time for which the Fund's board of directors determined to impose a liquidity fee pursuant to § 270.2a–7(c)(2)(i) or § 270.2a–7(c)(2)(ii), and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a–7(c)(2)(i); and the size of any liquidity fee imposed pursuant to § 270.2a–7(c)(2)(i) or § 270.2a–7(c)(2)(ii).

2. The disclosure required by Item 16(g)(1) should incorporate, as appropriate, any information that the Fund is required to report to the Commission on Items E.1, E.2, E.3, E.4, F.1, F.2, and G.1 of Form N–CR [17 CFR 274.222].

3. The disclosure required by Item 16(g)(1) should conclude with the following statement: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N–CR and to file this form with the Securities and Exchange Commission. Any Form N–CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."

(2) *Financial Support Provided to Money Market Funds.* During the last 10 years, any occasion on which an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, provided any form of financial support to the Fund, including a description of the nature of support, person providing support, brief description of the relationship between the person providing support and the Fund, date

support provided, amount of support, security supported (if applicable), and the value of security supported on date support was initiated (if applicable).

Instructions

1. The term "financial support" includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio; excluding, however, any routine waiver of fees or reimbursement of Fund expenses, routine inter-fund lending, routine inter-fund purchases of Fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio.

2. If during the last 10 years, the Fund has participated in one or more mergers with another investment company (a "merging investment company"), provide the information required by Item 16(g)(2) with respect to any merging investment company as well as with respect to the Fund; for purposes of this Instruction, the term "merger" means a merger, consolidation, or purchase or sale of substantially all of the assets between the Fund and a merging investment company. If the person or entity that previously provided financial support to a merging investment company is not currently an affiliated person, promoter, or principal underwriter of the Fund, the Fund need not provide the information required by Item 16(g)(2) with respect to that merging investment company.

3. The disclosure required by Item 16(g)(2) should incorporate, as appropriate, any information that the Fund is required to report to the Commission on Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7 of Form N–CR [17 CFR 274.222].

4. The disclosure required by Item 16(g)(2) should conclude with the following statement: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N–CR and to file this form with the Securities and Exchange Commission. Any Form N–CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."

Item 17. Management of the Fund Instructions

1. For purposes of this Item 17, the terms below have the following meanings:

   (a) The term "family of investment companies" means any two or more registered investment companies that:

      (1) Share the same investment adviser or principal underwriter; and

      (2) Hold themselves out to investors as related companies for purposes of investment and investor services.

(b) The term "fund complex" means two or more registered investment companies that:

(1) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(2) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

(c) The term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

(d) The term "officer" means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Fund separately from the information for directors who are not interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

(a) Management Information.

(1) Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age	Position(s) Held with Fund	Term of Office and Length of Time Served	Principal Occupation(s) During Past 5 Years	Number of Portfolios in Fund Complex Overseen by Director	Other Directorships Held by Director

Instructions

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Fund, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Securities Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(2) For each individual listed in column (1) of the table required by paragraph (a)(1) of this Item 17, except for any director who is not an interested person of the Fund, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

Instruction

When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(3) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction

Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(b) Leadership Structure and Board of Directors.

(1) Briefly describe the leadership structure of the Fund's board, including the responsibilities of the board of directors with respect to the Fund's management and whether the chairman of the board is an interested

person of the Fund. If the chairman of the board is an interested person of the Fund, disclose whether the Fund has a lead independent director and what specific role the lead independent director plays in the leadership of the Fund. This disclosure should indicate why the Fund has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Fund. In addition, disclose the extent of the board's role in the risk oversight of the Fund, such as how the board administers its oversight function and the effect that this has on the board's leadership structure.

(2) Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(3) (i) Unless disclosed in the table required by paragraph (a)(1) of this Item 17, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Fund, or immediate family member of the director, during the two most recently completed calendar years with:

(A) The Fund;

(B) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(C) An investment adviser, principal underwriter, or affiliated person of the Fund; or

(D) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

(ii) Unless disclosed in the table required by paragraph (a)(1) of this Item 17 or in response to paragraph (b)(3) of this Item 17, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Securities Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships were held.

Instruction. When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(4) For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Fund; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Fund.

(1)	(2)	(3)
Name of Director	Dollar Range of Equity Securities in the Fund	Aggregate Dollar Range of Equity Securities in All Registered Investment Companies Overseen by Director in Family of Investment Companies

Instructions

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.16a-1(a)(2)).

3. If the SAI covers more than one Fund or Series, disclose in column (2) the dollar range of equity securities beneficially owned by a director in each Fund or Series overseen by the director.

4. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $1 – $10,000, $10,001 – $50,000, $50,001 – $100,000, or over $100,000.

(5) For each director who is not an interested person of the Fund, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director	Company	Title of Class	Value of Securities	Percent of Class

Instructions

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a "beneficial owner" of a security if he is a "beneficial owner" under either rule 13d-3 or rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.13d-3 or 240.16a-1(a)(2)).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company's relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

(6) Unless disclosed in response to paragraph (b)(5) of this Item 17, describe any direct or indirect interest, the value of which exceeds $120,000, of each director who is not an interested person of the Fund, or immediate family member of the director, during the two most recently completed calendar years, in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instructions

1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $120,000.

(7) Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Fund, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $120,000 and to which any of the following persons was a party:

(i) The Fund;

(ii) An officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(v) An investment adviser or principal underwriter of the Fund;

(vi) An officer of an investment adviser or principal underwriter of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instructions

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed "material" within the meaning of paragraph (b)(7) of this Item 17 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the Class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 unless the director is accorded special treatment.

(8) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $120,000, of any director who is not an interested person of the Fund, or immediate family member of the director, that existed at any time during the two most recently completed calendar years with any of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17;

(ii) Provision of legal services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(8)(i) through (b)(8)(iii) of this Item 17.

Instructions

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $120,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph (b)(8)(i) of this Item 17, the following may be excluded:

   A. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

   B. Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 unless the director is accorded special treatment.

(9) If an officer of an investment adviser or principal underwriter of the Fund, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Fund who is not an interested person of the Fund, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

   (i) The company;

   (ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph (b)(9)(ii) of this Item 17 holds or held office and the office held; and

(iv) The director of the Fund or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

(10) For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Fund at the time that the disclosure is made, in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

(c) *Compensation*. For all directors of the Fund and for all members of any advisory board who receive compensation from the Fund, and for each of the three highest paid officers or any affiliated person of the Fund who received aggregate compensation from the Fund for the most recently completed fiscal year exceeding $60,000 ("Compensated Persons"):

(1) Provide the information required by the following table:

COMPENSATION TABLE

(1)	(2)	(3)	(4)	(5)
Name of Person, Position	Aggregate Compensation From Fund	Pension or Retirement Benefits Accrued As Part of Funds Expenses	Estimated Annual Benefits Upon Retirement	Total Compensation From Fund and Fund Complex Paid to Directors

Instructions

1. For column (1), indicate, as necessary, the capacity in which the remuneration is received. For Compensated Persons who are directors of the Fund, compensation is amounts received for service as a director.

2. If the Registrant has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the

Internal Revenue Code [26 U.S.C. 401(k)] or otherwise for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant, any of its subsidiaries, or other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(2) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement, other than fee arrangements disclosed in paragraph (c)(1), under which the Compensated Persons are or may be compensated for services provided, including amounts paid, if any, to the compensated Person under these arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payment under the plan, and whether the payment of benefits is secured or funded by the Fund.

(d) *Sales Loads.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads for directors and other affiliated persons of the Fund. Identify each class of individuals and transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested of the Fund's shares. Explain, as applicable, the reasons for the difference in the price at which securities are offered generally to the public, and the prices at which securities are offered to directors and other affiliated persons of the Fund.

(e) *Codes of Ethics.* Provide a brief statement disclosing whether the Fund and its investment adviser and principal underwriter have adopted codes of ethics

under rule 17j-1 of the Investment Company Act [17 CFR 270.17j-1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Fund.

Instruction: A Fund that is not required to adopt a code of ethics under rule 17j-1 of the Investment Company Act is not required to respond to this item

(f) *Proxy Voting Policies.* Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's website at a specified Internet address; or both; and (2) on the Commission's website at http://www.sec.gov.

Instructions

1. A Fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Fund discloses that the Fund's proxy voting record is available on or through its website, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of Rule 30b1-4 (17 CFR 270.30b1-4) and discloses that the Fund's proxy voting record is available on or through its website.

Item 18. Control Persons and Principal Holders of Securities

Provide the following information as of a specified date no more than 30 days prior to the date of filing the registration statement or an amendment.

(a) *Control Persons.* State the name and address of each person who controls the Fund and explain the effect of that control on the voting rights of other security holders. For each control person, state the percentage of the Fund's voting securities owned or any other basis of control. If the control person is a company, give the jurisdiction under the laws of which it is organized. List all parents of the control person.

Instruction. For purposes of this paragraph, "control" means (i) the beneficial ownership, either directly or through one or more controlled companies, of more than 25% of the voting securities of a company; (ii) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (iii) an adjudication under section 2(a)(9), which has become final, that control exists.

(b) *Principal Holders.* State the name, address, and percentage of ownership of each person who owns of record or is known by the Fund to own beneficially 5% or more of any Class of the Fund's outstanding equity securities.

Instructions

1. Calculate the percentages based on the amount of securities outstanding.

2. If securities are being registered under or in connection with a plan of acquisition, reorganization, readjustment or succession, indicate, as far as practicable, the ownership that would result from consummation of the plan based on present holdings and commitments.

3. Indicate whether the securities are owned of record, beneficially, or both. Show the respective percentage owned in each manner.

(c) *Management Ownership.* State the percentage of the Fund's equity securities owned by all officers, directors, and members of any advisory board of the Fund as a group. If the amount owned by directors and officers as a group is less than 1% of the Class, provide a statement to that effect.

Item 19. Investment Advisory and Other Services

(a) *Investment Advisers.* Disclose the following information with respect to each investment adviser:

(1) The name of any person who controls the adviser, the basis of the person's control, and the general nature of the person's business. Also disclose, if material, the business history of any organization that controls the adviser.

(2) The name of any affiliated person of the Fund who also is an affiliated person of the adviser, and a list of all capacities in which the person is affiliated with the Fund and with the adviser.

Instruction. If an affiliated person of the Fund alone or together with others controls the adviser, state that fact. It is not necessary to provide the amount or percentage of the outstanding voting securities owned by the controlling person.

(3) The method of calculating the advisory fee payable by the Fund including:

(i) The total dollar amounts that the Fund paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years;

(ii) If applicable, any credits that reduced the advisory fee for any of the last three fiscal years; and

(iii) Any expense limitation provision.

Instructions

1. If the advisory fee payable by the Fund varies depending on the Fund's investment performance in relation to a standard, describe the standard along with a fee schedule in tabular form. The Fund may include examples showing the fees that the adviser would earn at various levels of performance as long as the examples include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State separately each type of credit or offset.

3. When a Fund is subject to more than one expense limitation provision, describe only the most restrictive provision.

4. For a Registrant with more than one Series, or a Multiple Class Fund, describe the methods of allocation and payment of advisory fees for each Series or Class.

(b) *Principal Underwriter.* State the name and principal business address of any principal underwriter for the Fund. Disclose, if applicable, that an affiliated person of the Fund is an affiliated person of the principal underwriter and identify the affiliated person.

(c) *Services Provided by Each Investment Adviser and Fund Expenses Paid by Third Parties.*

(1) Describe all services performed for or on behalf of the Fund supplied or paid for wholly or in substantial part by each investment adviser.

(2) Describe all fees, expenses, and costs of the Fund that are to be paid by persons other than an investment adviser or the Fund, and identify those persons.

(d) *Service Agreements.* Summarize the substantive provisions of any other management-related service contract that may be of interest to a purchaser of the Fund's shares, under which services are provided to the Fund, indicating the parties to the contract, and the total dollars paid and by whom for the past three years.

Instructions

1. The term "management-related service contract" includes any contract with the Fund to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Fund, but does not include the following:

   (a) Any contract with the Fund to provide investment advice;

   (b) Any agreement with the Fund to perform as custodian, transfer agent, or dividend-paying agent for the Fund; and

   (c) Any contract with the Fund for outside legal or auditing services, or contract for personal employment entered into with the Fund in the ordinary course of business.

2. No information need be given in response to this paragraph with respect to the service of mailing proxies or periodic reports to the Fund's shareholders.

3. In summarizing the substantive provisions of any management-related service contract, include the following:

   (a) The name of the person providing the service;

   (b) The direct or indirect relationships, if any, of the person with the Fund, an investment adviser of the Fund or the Fund's principal underwriter; and

   (c) The nature of the services provided, and the basis of the compensation paid for the services for the last three fiscal years.

(e) *Other Investment Advice.* If any person (other than a director, officer, member of an advisory board, employee, or investment adviser of the Fund), through any understanding, whether formal or informal, regularly advises the Fund or the Fund's investment adviser with respect to the Fund's investing in, purchasing, or selling securities or other property, or has the authority to determine what securities or other property should be purchased or sold by the Fund, and receives direct or indirect remuneration, provide the following information:

   (1) The person's name;

(2) A description of the nature of the arrangement, and the advice or information provided; and

(3) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Fund's portfolio securities) paid for the advice or information, and a statement as to how the remuneration was paid and by whom it was paid for the last three fiscal years.

Instruction. Do not include information for the following:

1. Persons who advised the investment adviser or the Fund solely through uniform publications distributed to subscribers;

2. Persons who provided the investment adviser or the Fund with only statistical and other factual information, advice about economic factors and trends, or advice as to occasional transactions in specific securities, but without generally advising about the purchase or sale of securities by the Fund;

3. A company that is excluded from the definition of "investment adviser" of an investment company under section 2(a)(20) (iii) [15 U.S.C. 80a-2(a)(20)(iii)];

4. Any person the character and amount of whose compensation for these services must be approved by a court; or

5. Other persons as the Commission has by rule or order determined not to be an "investment adviser" of an investment company.

(f) *Dealer Reallowances.* Disclose any front-end sales load reallowed to dealers as a percentage of the offering price of the Fund's shares.

(g) *Rule 12b-1 Plans.* If the Fund has adopted a plan under rule 12b-1, describe the material aspects of the plan, and any agreements relating to the implementation of the plan, including:

(1) A list of the principal types of activities for which payments are or will be made, including the dollar amount and the manner in which amounts paid by the Fund under the plan during the last fiscal year were spent on:

(i) Advertising;

(ii) Printing and mailing of prospectuses to other than current shareholders;

(iii) Compensation to underwriters;

(iv) Compensation to broker-dealers;

(v) Compensation to sales personnel;

(vi) Interest, carrying, or other financing charges; and

(vii) Other (specify).

(2) The relationship between amounts paid to the distributor and the expenses that it incurs (e.g., whether the plan reimburses the distributor only for expenses incurred or compensates the distributor regardless of its expenses).

(3) The amount of any unreimbursed expenses incurred under the plan in a previous year and carried over to future years, in dollars and as a percentage of the Fund's net assets on the last day of the previous year.

(4) Whether the Fund participates in any joint distribution activities with another Series or investment company. If so, disclose, if applicable, that fees paid under the Fund's rule 12b-1 plan may be used to finance the distribution of the shares of another Series or investment company, and state the method of allocating distribution costs (e.g., relative net asset size, number of shareholder accounts).

(5) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(i) Any interested person of the Fund; or

(ii) Any director of the Fund who is not an interested person of the Fund.

(6) The anticipated benefits to the Fund that may result from the plan.

(h) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (d), identify any person who provides significant administrative or business affairs management services for the Fund (e.g., an "administrator"), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Fund's transfer agent and the dividend-paying agent.

(3) State the name and principal business address of the Fund's custodian and independent public accountant and describe generally the services performed by each. If the Fund's portfolio securities are held by a person other than a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person or persons.

(4) If an affiliated person of the Fund, or an affiliated person of the affiliated person, acts as custodian, transfer agent, or dividend-paying agent for the Fund, describe the services that the person performs and the basis for remuneration.

(i) *Securities Lending.*

(1) Provide the following dollar amounts of income and fees/compensation related to the securities lending activities of each Series during its most recent fiscal year:

(i) Gross income from securities lending activities, including income from cash collateral reinvestment;

(ii) All fees and/or compensation for each of the following securities lending activities and related services: Any share of revenue generated by the securities lending program paid to the securities lending agent(s) ("revenue split"); fees paid for cash collateral management services (including fees deducted from a pooled cash collateral reinvestment vehicle) that are not included in the revenue split; administrative fees that are not included in the revenue split; fees for indemnification that are not included in the revenue split; rebates paid to borrowers; and any other fees relating to the securities lending program that are not included in the revenue split, including a description of those other fees;

(iii) The aggregate fees/compensation disclosed pursuant to paragraph (ii); and

(iv) Net income from securities lending activities (i.e., the dollar amount in paragraph (i) minus the dollar amount in paragraph (iii)).

Instruction. If a fee for a service is included in the revenue split, state that the fee is "included in the revenue split."

(2) Describe the services provided to the Series by the securities lending agent in the Series' most recent fiscal year.

Item 20. Portfolio Managers

(a) *Other Accounts Managed.* If a Portfolio Manager required to be identified in response to Item 5(b) is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

(1) The Portfolio Manager's name;

(2) The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(A) Registered investment companies;

(B) Other pooled investment vehicles; and

(C) Other accounts.

(3) For each of the categories in paragraph (a)(2) of this Item, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

(4) A description of any material conflicts of interest that may arise in connection with the Portfolio Manager's management of the Fund's investments, on the one hand, and the investments of the other accounts included in response to paragraph (a)(2) of this Item, on the other. This description would include, for example, material conflicts between the investment strategy of the Fund and the investment strategy of other accounts managed by the Portfolio Manager and material conflicts in allocation of investment opportunities between the Fund and other accounts managed by the Portfolio Manager.

Instructions

1. Provide the information required by this paragraph as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, include the account in responding to paragraph (a) of this Item.

(b) *Compensation.* Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager required to be identified in response to Item 5(b). For each type of compensation (e.g., salary, bonus, deferred compensation, retirement plans and arrangements), describe with specificity the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on Fund pre- or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the Fund's portfolio. For example, if compensation is based solely or in part on performance, identify any benchmark used to measure performance and state the length of the period over which performance is measured.

Instructions

1. Provide the information required by this paragraph as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. Group life, health, hospitalization, medical reimbursement, relocation, and pension and retirement plans and arrangements may be omitted, provided that they do not discriminate in scope, terms, or operation in favor of the Portfolio Manager or a group of employees that includes the Portfolio Manager and are available generally to all salaried employees. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Fund, the Fund's investment adviser, or any other source with respect to management of the Fund and any other accounts included in the response to paragraph (a)(2) of this Item. This description must clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the Fund and other accounts, e.g., if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Fund, this must be disclosed.

(c) *Ownership of Securities.* For each Portfolio Manager required to be identified in response to Item 5(b), state the dollar range of equity securities in the Fund beneficially owned by the Portfolio Manager using the following ranges: none, $1 – $10,000, $10,001 – $50,000, $50,001 – $100,000, $100,001 – $500,000, $500,001 – $1,000,000, or over $1,000,000.

Instructions

1. Provide the information required by this paragraph as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Specify the valuation date.

2. Determine "beneficial ownership" in accordance with rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.16a-1(a)(2)).

Item 21. Brokerage Allocation and Other Practices

(a) *Brokerage Transactions.* Describe how transactions in portfolio securities are affected, including a general statement about brokerage commissions, markups, and markdowns on principal transactions and the aggregate amount of any brokerage commissions paid by the Fund during its three most recent fiscal years. If, during either of the two years preceding the Fund's most recent fiscal year, the aggregate dollar amount of brokerage commissions paid by the Fund differed materially from the amount paid during the most recent fiscal year, state the reason(s) for the difference(s).

(b) Commissions.

(1) Identify, disclose the relationship, and state the aggregate dollar amount of brokerage commissions paid by the Fund during its three most recent fiscal years to any broker:

(i) That is an affiliated person of the Fund or an affiliated person of that person; or

(ii) An affiliated person of which is an affiliated person of the Fund, its investment adviser, or principal underwriter.

(2) For each broker identified in response to paragraph (b)(1), state:

(i) The percentage of the Fund's aggregate brokerage commissions paid to the broker during the most recent fiscal year; and

(ii) The percentage of the Fund's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

(3) State the reasons for any material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, a broker disclosed in response to paragraph (b)(1).

(c) *Brokerage Selection.* Describe how the Fund will select brokers to effect securities transactions for the Fund and how the Fund will evaluate the overall reasonableness of brokerage commissions paid, including the factors that the Fund will consider in making these determinations.

Instructions

1. If the Fund will consider the receipt of products or services other than brokerage or research services in selecting brokers, specify those products and services.

2. If the Fund will consider the receipt of research services in selecting brokers, identify the nature of those research services.

3. State whether persons acting on the Fund's behalf are authorized to pay a broker a higher brokerage commission than another broker might have charged for the same transaction in recognition of the value of (a) brokerage or (b) research services provided by the broker.

4. If applicable, explain that research services provided by brokers through which the Fund effects securities transactions may be used by the Fund's investment adviser in servicing all of its accounts and that not all of these services may be used by the adviser in connection with the Fund. If other policies or practices are applicable to the Fund with respect to the allocation of research services provided by brokers, explain those policies and practices.

(d) *Directed Brokerage.* If, during the last fiscal year, the Fund or its investment adviser, through an agreement or understanding with a broker, or otherwise through an internal allocation procedure, directed the Fund's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

(e) *Regular Broker-Dealers.* If the Fund has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b-1 [17 CFR 270.10 b-1] or of their parents, identify those brokers or dealers and state the value of the Fund's aggregate holdings of the securities of each issuer as of the close of the Fund's most recent fiscal year.

Instruction. The Fund need only disclose information about an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year.

Item 22. Capital Stock and Other Securities

(a) *Capital Stock.* For each Class of capital stock of the Fund, provide:

(1) The title of each Class; and

(2) A full discussion of the following provisions or characteristics of each Class, if applicable:

(i) Restrictions on the right freely to retain or dispose of the Fund's shares;

(ii) Material obligations or potential liabilities associated with owning the Fund's shares (not including investment risks);

(iii) Dividend rights;

(iv) Voting rights (including whether the rights of shareholders can be modified by other than a majority vote);

(v) Liquidation rights;

(vi) Preemptive rights;

(vii) Conversion rights;

(viii) Redemption provisions;

(ix) Sinking fund provisions; and

(x) Liability to further calls or to assessment by the Fund.

Instructions

1. If any Class described in response to this paragraph possesses cumulative voting rights, disclose the existence of those rights and explain the operation of cumulative voting.

2. If the rights evidenced by any Class described in response to this paragraph are materially limited or qualified by the rights of any other Class, explain those limitations or qualifications.

(b) *Other Securities.* Describe the rights of any authorized securities of the Fund other than capital stock. If the securities are subscription warrants or rights, state the title and amount of securities called for, and the period during which and the prices at which the warrants or rights are exercisable.

Item 23. Purchase, Redemption, and Pricing of Shares

(a) *Purchase of Shares.* To the extent that the prospectus does not do so, describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of shareholders.

(b) *Fund Reorganizations.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads in connection with the terms of a merger,

acquisition, or exchange offer made under a plan of reorganization. Identify each class of individuals to which the arrangements apply and state each different sales load available as a percentage of both the offering price and the net amount invested.

(c) *Offering Price.* Describe the method followed or to be followed by the Fund in determining the total offering price at which its shares may be offered to the public and the method(s) used to value the Fund's assets.

Instructions

1. Describe the valuation procedure(s) that the Fund uses in determining the net asset value and public offering price of its shares.

2. Explain how the excess of the offering price over the net amount invested is distributed among the Fund's principal underwriters or others and the basis for determining the total offering price.

3. Explain the reasons for any difference in the price at which securities are offered generally to the public, and the prices at which securities are offered for any class of transactions or to any class of individuals.

4. Unless provided as a continuation of the balance sheet in response to Item 27, include a specimen price-make-up sheet showing how the Fund calculates the total offering price per unit. Base the calculation on the value of the Fund's portfolio securities and other assets and its outstanding securities as of the date of the balance sheet filed by the Fund.

(d) *Redemption in Kind.* If the Fund has received an order of exemption from section 18(f) or has filed a notice of election under rule 18f-1 that has not been withdrawn, describe the nature, extent, and effect of the exemptive relief or notice.

(e) *Arrangements Permitting Frequent Purchases and Redemptions of Fund Shares.* Describe any arrangements with any person to permit frequent purchases and redemptions of Fund shares, including the identity of the persons permitted to engage in frequent purchases and redemptions pursuant to such arrangements, and any compensation or other consideration received by the Fund, its investment adviser, or any other party pursuant to such arrangements.

Instructions

1. The consideration required to be disclosed by Item 23(e) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

2. If the Fund has an arrangement to permit frequent purchases and redemptions by a group of individuals, such as the participants in a defined contribution

plan that meets the requirements for qualification under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), the Fund may identify the group rather than identifying each individual group member.

Item 24. Taxation of the Fund

(a) If applicable, state that the Fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code. Disclose the consequences to the Fund if it does not qualify under Subchapter M.

(b) Disclose any special or unusual tax aspects of the Fund, such as taxation resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Fund may be entitled.

Item 25. Underwriters

(a) *Distribution of Securities.* For each principal underwriter distributing securities of the Fund, state:

(1) The nature of the obligation to distribute the Fund's securities;

(2) Whether the offering is continuous; and

(3) The aggregate dollar amount of underwriting commissions and the amount retained by the principal underwriter for each of the Fund's last three fiscal years.

(b) *Compensation.* Provide the information required by the following table with respect to all commissions and other compensation received by each principal underwriter, who is an affiliated person of the Fund or an affiliated person of that affiliated person, directly or indirectly, from the Fund during the Fund's most recent fiscal year:

(1)	(2)	(3)	(4)	(5)
Name of Principal Underwriter	Net Underwriting Discounts and Commissions	Compensation on Redemptions and Repurchases	Brokerage Commissions	Other Compensation

Instruction

Disclose in a footnote to the table the type of services rendered in consideration for the compensation listed under column (5).

(c) *Other Payments.* With respect to any payments made by the Fund to an underwriter or dealer in the Fund's shares during the Fund's last fiscal year, disclose the name and address of the underwriter or dealer, the amount

paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Fund. Do not include information about:

(1) Payments made through deduction from the offering price at the time of sale of securities issued by the Fund;

(2) Payments representing the purchase price of portfolio securities acquired by the Fund;

(3) Commissions on any purchase or sale of portfolio securities by the Fund; or

(4) Payments for investment advisory services under an investment advisory contract.

Instructions

1. Do not include in response to this paragraph information provided in response to paragraph (b) or with respect to service fees under the Instruction to Item 12(b)(2). Do not include any payment for a service excluded by Instructions 1 and 2 to Item 19(d) or by Instruction 2 to Item 34.

2. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

Item 26. Calculation of Performance Data

(a) *Money Market Funds.* Yield quotation(s) for a Money Market Fund included in the prospectus should be calculated according to paragraphs (a)(1) – (4).

(1) *Yield Quotation*. Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(2) *Effective Yield Quotation*. Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from

shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

EFFECTIVE YIELD = $[(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1$.

(3) *Tax Equivalent Current Yield Quotation.* Calculate the Fund's tax equivalent current yield by dividing that portion of the Fund's yield (as calculated under paragraph (a)(1)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Tax Equivalent Effective Yield Quotation.* Calculate the Fund's tax equivalent effective yield by dividing that portion of the Fund's effective yield (as calculated under paragraph (a)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's effective yield that is not tax-exempt.

Instructions

1. When calculating yield or effective yield quotations, the calculation of net change in account value must include:

   (a) The value of additional shares purchased with dividends from the original share and dividends declared on both the original shares and additional shares; and

   (b) All fees, other than non-recurring account or sales charges, that are imposed on all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

2. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield. Exclude income other than investment income.

3. Disclose the amount or specific rate of any nonrecurring account or sales charges not included in the calculation of the yield.

4. If the Fund holds itself out as distributing income that is exempt from federal, state, or local income taxation, in calculating yield and effective yield (but not tax equivalent yield or tax equivalent effective yield), reduce the yield quoted by the effect of any income taxes on the shareholder receiving dividends, using the maximum rate for individual income taxation. For example, if the Fund holds itself out as distributing income exempt from federal taxation and the income

taxes of State A, but invests in some securities of State B, it must reduce its yield by the effect of state income taxes that must be paid by the residents of State A on that portion of the income attributable to the securities of State B.

(b) *Other Funds.* Performance information included in the prospectus should be calculated according to paragraphs (b)(1) – (6).

(1) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$$P(1+T)^n = ERV$$

Where:

P	=	a hypothetical initial payment of $1,000.
T	=	average annual total return.
n	=	number of years.
ERV	=	ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

Instructions

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

5. State the average annual total return quotation to the nearest hundredth of one percent.

6. Total return information in the prospectus need only be current to the end of the Fund's most recent fiscal year.

(2) Average Annual Total Return (After Taxes on Distributions) Quotation. For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return (after taxes on distributions) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending value, according to the following formula:

$$P(1+T)^n = ATV_D$$

Where:

P	=	a hypothetical initial payment of $1,000.
T	=	average annual total return.
n	=	number of years.
ATV_D	=	ending value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion), after taxes on fund distributions but not after taxes on redemption.

Instructions

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rates specified in Instruction 4 to each component of the distributions on the reinvestment date (e.g., ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portion of any distribution that would not result in federal

income tax on an individual, e.g., tax-exempt interest or non-taxable returns of capital. The effect of applicable tax credits, such as the foreign tax credit, should be taken into account in accordance with federal tax law.

4. Calculate the taxes due using the highest individual marginal federal income tax rates in effect on the reinvestment date. The rates used should correspond to the tax character of each component of the distributions (e.g., ordinary income rate for ordinary income distributions, short-term capital gain rate for short-term capital gain distributions, long-term capital gain rate for long-term capital gain distributions). Note that the required tax rates may vary over the measurement period. Disregard any potential tax liabilities other than federal tax liabilities (e.g., state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus. Assume that the redemption has no tax consequences.

7. State the average annual total return (after taxes on distributions) quotation to the nearest hundredth of one percent.

(3) *Average Annual Total Return (After Taxes on Distributions and Redemption) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return (after taxes on distributions and redemption) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending value, according to the following formula:

$$P(1+T)^n = ATV_{DR}$$

Where:

P	=	a hypothetical initial payment of $1,000.
T	=	average annual total return (after taxes on distributions and redemption).
n	=	number of years.
ATV_{DR}	=	ending value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods (or fractional portion), after taxes on fund distribution and redemption.

Instructions

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rates specified in Instruction 4 to each component of the distributions on the reinvestment date (e.g., ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portion of any distribution that would not result in federal income tax on an individual, e.g., tax-exempt interest or non-taxable returns of capital. The effect of applicable tax credits, such as the foreign tax credit, should be taken into account in accordance with federal tax law.

4. Calculate the taxes due using the highest individual marginal federal income tax rates in effect on the reinvestment date. The rates used should correspond to the tax character of each component of the distributions (e.g., ordinary income rate for ordinary income distributions, short-term capital gain rate for short-term capital gain distributions, long-term capital gain rate for long-term capital gain distributions). Note that the required tax rates may vary over the measurement period. Disregard any potential tax liabilities other than federal tax liabilities (e.g., state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional

taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

7. Determine the ending value by subtracting capital gains taxes resulting from the redemption and adding the tax benefit from capital losses resulting from the redemption.

   (a) Calculate the capital gain or loss upon redemption by subtracting the tax basis from the redemption proceeds (after deducting any nonrecurring charges as specified by Instruction 6).

   (b) The Fund should separately track the basis of shares acquired through the $1,000 initial investment and each subsequent purchase through reinvested distributions. In determining the basis for a reinvested distribution, include the distribution net of taxes assumed paid from the distribution, but not net of any sales loads imposed upon reinvestment. Tax basis should be adjusted for any distributions representing returns of capital and any other tax basis adjustments that would apply to an individual taxpayer, as permitted by applicable federal tax law.

   (c) The amount and character (e.g., short-term or long-term) of capital gain or loss upon redemption should be separately determined for shares acquired through the $1,000 initial investment and each subsequent purchase through reinvested distributions. The Fund should not assume that shares acquired through reinvestment of distributions have the same holding period as the initial $1,000 investment. The tax character should be determined by the length of the measurement period in the case of the initial $1,000 investment and the length of the period between reinvestment and the end of the measurement period in the case of reinvested distributions.

   (d) Calculate the capital gains taxes (or the benefit resulting from tax losses) using the highest federal individual capital gains tax rate for gains of the appropriate character in effect on the redemption date and in accordance with federal tax law applicable on the redemption date. For example, applicable federal tax law should be used to determine whether and how gains and losses from the sale of shares with different holding periods should be netted, as well as the tax character (e.g., short-term or long-term) of any resulting gains or losses. Assume that a shareholder

has sufficient capital gains of the same character from other investments to offset any capital losses from the redemption so that the taxpayer may deduct the capital losses in full.

8. State the average annual total return (after taxes on distributions and redemption) quotation to the nearest hundredth of one percent.

(4) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by dividing the net investment income per share earned during the period by the maximum offering price per share on the last day of the period, according to the following formula:

$$YIELD = 2[(\frac{a - b}{cd} + 1)^6 - 1]$$

Where:

a	=	dividends and interest earned during the period.
b	=	expenses accrued for the period (net of reimbursements).
c	=	the average daily number of shares outstanding during the period that were entitled to receive dividends.
d	=	the maximum offering price per share on the last day of the period.

Instructions

1. To calculate interest earned on debt obligations for purposes of "a" above:

(a) Calculate the yield to maturity of each obligation held by the Fund based on the market value of the obligation (including actual accrued interest) at the close of business on the last business day of each month or, with respect to obligations purchased during the month, the purchase price (plus actual accrued interest). The maturity of an obligation with a call provision(s) is the next call date on which the obligation reasonably may be expected to be called, or if none, the maturity date.

(b) Divide the yield to maturity by 360 and multiply the quotient by the market value of the obligation (including actual accrued interest) to determine the interest income on the obligation for each day of the subsequent month that the obligation is in the portfolio. Assume that each month has 30 days.

(c) Total the interest earned on all debt obligations and all dividends accrued on all equity securities during the 30-day (or one month) period. Although the period for calculating interest earned is based on calendar months, a 30-day yield may be calculated by aggregating the daily interest on the portfolio from portions of 2 months. In addition, a Fund may recalculate daily interest income on the portfolio more than once a month.

(d) For a tax-exempt obligation issued without original issue discount and having a current market discount, use the coupon rate of interest in lieu of the yield to maturity. For a tax-exempt obligation with original issue discount in which the discount is based on the current market value and exceeds the then-remaining portion of original issue discount (market discount), base the yield to maturity on the imputed rate of the original issue discount calculation. For a tax-exempt obligation with original issue discount, where the discount based on the current market value is less than the then-remaining portion of original issue discount (market premium), base the yield to maturity on the market value.

2. For discount and premium on mortgage or other receivables-backed obligations that are expected to be subject to monthly payments of principal and interest ("paydowns"):

   (a) Account for gain or loss attributable to actual monthly paydowns as an increase or decrease to interest income during the period; and

   (b) The Fund may elect:

      (i) To amortize the discount and premium on the remaining securities, based on the cost of the securities, to the weighted average maturity date, if the information is available, or to the remaining term of the securities, if the weighted average maturity date is not available; or

      (ii) Not to amortize the discount or premium on the remaining securities.

3. Solely for the purpose of calculating yield, recognize dividend income by accruing 1/360 of the stated dividend rate of the security each day that the security is in the portfolio.

4. Do not use equalization accounting in calculating yield.

5. Include expenses accrued under a plan adopted under rule 12b-1 in the expenses accrued for the period. Reimbursement accrued under the plan may reduce the accrued expenses, but only to the extent the reimbursement does not exceed expenses accrued for the period.

6. Include in the expenses accrued for the period all recurring fees that are charged to all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

7. If a broker-dealer or an affiliate of the broker-dealer (as defined in rule 1-02(b) of Regulation S-X [17 CFR 210.1- 02(b)]) has, in connection with directing the Fund's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Fund (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act [15 U.S.C. 78bb(e)]), add to

expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Fund had paid for the services directly in an arm's length transaction.

8. Undeclared earned income, calculated in accordance with generally accepted accounting principles, may be subtracted from the maximum offering price. Undeclared earned income is the net investment income that, at the end of the base period, has not been declared as a dividend, but is reasonably expected to be and is declared as a dividend shortly thereafter.

9. Disclose the amount or specific rate of any nonrecurring account or sales charges.

10. If, in connection with the sale of the Fund's shares, a deferred sales load payable in installments is imposed, the "maximum public offering price" includes the aggregate amount of the installments ("installment load amount").

(5) *Tax Equivalent Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's tax equivalent yield by dividing that portion of the Fund's yield (as calculated under paragraph (b)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(6) *Non-Standardized Performance Quotation.* A Fund may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

Item 27. Financial Statements

(a) *Registration Statement.* Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S-X. The specimen price-make-up sheet required by Instruction 4 to Item 23(c) may be provided as a continuation of the balance sheet specified by Regulation S-X.

Instructions

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S-X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3-18 of Regulation S-X [17 CFR 210.3-18], any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited)

necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

(b) *Annual Report.* Every annual report to shareholders required by rule 30e-1 must contain the following:

(1) *Financial Statements.* The audited financial statements required, and for the periods specified, by Regulation S-X.

Instructions

1. Schedule IX – Summary schedule of investments in securities of unaffiliated issuers [17 CFR 210.12-12B] may be included in the financial statements in lieu of Schedule I – Investments in securities of unaffiliated issuers [17 CFR 210.12-12] if:

(a) the Fund states in the report that the Fund's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's website, if applicable; and (iii) on the Commission's website at http://www.sec.gov; and (b) whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of Schedule I – Investments in securities of unaffiliated issuers within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

2. In the case of a Money Market Fund, Schedule I – Investments in securities of unaffiliated issuers [17 CFR 210.12-12B] may be omitted from its financial statements, provided that: (a) the Fund states in the report that the Fund's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's website, if applicable; and (iii) on the Commission's website at http:// www.sec.gov; and (b) whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of Schedule I – Investments in securities of unaffiliated issuers within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

(2) *Condensed Financial Information.* The condensed financial information required by Item 13(a) with at least the most recent fiscal year audited.

(3) *Remuneration Paid to Directors, Officers, and Others.* Unless shown elsewhere in the report as part of the financial statements required by paragraph (b)(1), the aggregate remuneration paid by the Fund during the period covered by the report to:

(i) All directors and all members of any advisory board for regular compensation;

(ii) Each director and each member of an advisory board for special compensation;

(iii) All officers; and

(iv) Each person of whom any officer or director of the Fund is an affiliated person.

(4) *Changes in and Disagreements with Accountants.* The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S-K [17 CFR 229.304].

(5) *Management Information.* The management information required by Item 17(a)(1).

(6) *Availability of Additional Information about Fund Directors.* A statement that the SAI includes additional information about Fund directors and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

(7) *Management's Discussion of Fund Performance.* Disclose the following information unless the Fund is a Money Market Fund:

(i) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

(ii) (A) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(B) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to

the effective date of the Fund's registration statement. Average annual total returns should be computed in accordance with Item 26(b)(1). Include a statement accompanying the graph and table to the effect that past performance does not predict future performance and that the graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares.

Instructions

1. *Line Graph Computation*.

   (a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

   (b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

   (c) Calculate the final account value by assuming the account was closed and redemption was at the price last calculated on the last business day of the most recent fiscal year.

   (d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. *Sales Load*. Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (i.e., assume that the maximum sales load, and other charges deducted from payments, is deducted from the initial $10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would apply for a complete redemption that received the price last calculated on the last business day of the most recent fiscal year. For any other deferred sales load, assume that the deduction is in the amount(s) and at the time(s) that the sales load actually would have been deducted.

3. *Dividends and Distributions*. Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

4. *Account Fees*. Reflect recurring fees that are charged to all accounts.

   (a) For any account fees that vary with the size of the account, assume a $10,000 account size.

   (b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Appropriate Index*. For purposes of this Item, an "appropriate broad-based securities market index" is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

6. *Additional Indexes*. A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (e.g., the Consumer Price Index), so long as the comparison is not misleading.

7. *Change in Index*. If the Fund uses an index that is different from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

8. *Other Periods*. The line graph may cover earlier fiscal years and may compare the ending values of interim periods (e.g., monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

9. *Scale*. The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

10. *New Funds*. A New Fund (as defined in Instruction 6 to Item 3) is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N-1A (or the annual report) contains audited financial statements covering a period of at least 6 months.

11. *Change in Investment Adviser*. If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in "control" of the previous adviser under section 2(a) (9) [15 U.S.C. 80a-2(a)(9)];

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(iii) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

[ETF Rule Disclosure Amendment:

(iv) Provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (i.e., premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii) – (iv) and (c)(1)(vi) of Rule 6c-11 [17 CFR 270.6c-11(c)(1)(ii) – (iv) and (c)(1)(vi)] under the Investment Company Act.

Instructions

1. Provide the information in tabular form.

2. Express the information as a percentage of the net asset value of the Exchange-Traded Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.

3. Adjacent to the table, provide a brief explanation that: shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.

4. Include a statement that the data presented represents past performance and cannot be used to predict future results.]

(c) *Semi-Annual Report.* Every semi-annual report to shareholders required by rule 30e-1 must contain the following, which need not be audited:

(1) *Financial Statements.* The financial statements required by Regulation S-X for the period commencing either with:

(i) The beginning of the Fund's fiscal year (or date of organization, if newly organized); or

(ii) A date not later than the date after the close of the period included in the last report under rule 30e-1 and the most recent preceding fiscal year.

Instruction

Instructions 1 and 2 to Item 27(b)(1) also apply to this Item 27(c)(1).

(2) *Condensed Financial Information.* The condensed financial information required by Item 13(a), for the period of the report as specified by paragraph (c)(1), and the most recent preceding fiscal year.

(3) *Remuneration Paid to Directors, Officers, and Others.* Unless shown elsewhere in the report as part of the financial statements required by paragraph (c)(1), the aggregate remuneration paid by the Fund during the period covered by the report to the persons specified under paragraph (b)(3).

(4) *Changes in and Disagreements with Accountants.* The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S-K [17 CFR 229.304].

(d) Annual and Semi-Annual Reports. Every annual and semi-annual report to shareholders required by rule 30e-1 must contain the following:

(1) Expense Example. The following information regarding expenses for the period:

Example

As a shareholder of the Fund, you incur two types of costs: (1) transaction costs, including sales charges (loads) on purchase payments, reinvested dividends, or other distributions; redemption fees; and exchange fees; and (2) ongoing costs, including management fees; distribution [and/or service] (12b-1) fees; and other Fund expenses. This Example is intended to help you understand your ongoing costs (in dollars) of investing in the Fund and to compare these costs with the ongoing costs of investing in other mutual funds.

The Example is based on an investment of $1,000 invested at the beginning of the period and held for the entire period [insert dates].

Actual Expenses

The first line of the table below provides information about actual account values and actual expenses. You may use the information in this line, together with the amount you invested, to estimate the expenses that you paid over the period. Simply divide your account value by $1,000 (e.g., an $8,600 account value divided by $1,000 = 8.6), then multiply the result by the number in the first line under the heading entitled "Expenses Paid During Period" to estimate the expenses you paid

on your account during this period. [If the Fund charges any account fees or other recurring fees that are not included in the expenses shown in the table, for example, because they are not charged to all investors, disclose the amounts of these fees, describe the accounts that are charged these fees, and explain how an investor would use this information to estimate the total ongoing expenses paid over the period and the impact of these fees on ending account value.]

Hypothetical Example for Comparison Purposes

The second line of the table below provides information about hypothetical account values and hypothetical expenses based on the Fund's actual expense ratio and an assumed rate of return of 5% per year before expenses, which is not the Fund's actual return. The hypothetical account values and expenses may not be used to estimate the actual ending account balance or expenses you paid for the period. You may use this information to compare the ongoing costs of investing in the Fund and other funds. To do so, compare this 5% hypothetical example with the 5% hypothetical examples that appear in the shareholder reports of the other funds. [If the Fund charges any account fees or other recurring fees that are not included in the expenses shown in the table, for example, because they are not charged to all investors, disclose the amounts of these fees, describe the accounts that are charged these fees, and explain how an investor would use this information in making the foregoing comparison.]

Please note that the expenses shown in the table are meant to highlight your ongoing costs only and do not reflect any transactional costs, such as sales charges (loads), redemption fees, or exchange fees. Therefore, the second line of the table is useful in comparing ongoing costs only, and will not help you determine the relative total costs of owning different funds. In addition, if these transactional costs were included, your costs would have been higher.

	Beginning Account Value [Date]	Ending Account Value [Date]	Expenses Paid During Period* [Dates]
Actual.	$1,000		
Hypothetical (5% return before expenses).	$1,000		

* *Expenses are equal to the Fund's annualized expense ratio of [%], multiplied by the average account value over the period, multiplied by [number of days in most recent fiscal half-year/365 [or 366]] (to reflect the one-half year period).*

Instructions

1. *General.*

(a) Round all figures in the table to the nearest cent.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown, and is required to make any modifications necessary to reflect accurately the Fund's circumstances. A Fund may eliminate any parts of the narrative explanations that are inapplicable. For example, a Fund that does not charge loads need not include the statement that the Example does not reflect loads or that costs would be higher if loads were included.

(c) The Fund's expense ratio shown in the footnote to the table should be calculated in the manner required by Instruction 4(b) to Item 13(a) using the expenses for the Fund's most recent fiscal half-year (the Fund's second fiscal half-year in the case of an annual report). Express the expense ratio on an annualized basis.

(d) (i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund. In a footnote to the Example, state that the Example reflects the expenses of both the Feeder and Master Funds.

(ii) If the report covers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate Example for each Class or Feeder Fund.

(e) If the Fund is an Exchange-Traded Fund:

(i) Modify the narrative explanation to state that investors may pay brokerage commissions on their purchases and sales of Exchange-Traded Fund shares, which are not reflected in the example; and

[ETF Rule Disclosure Amendment:

(ii) Exclude any fees charged for the purchase and redemption of the Fund's creation units.]

2. *Computation.*

(a) (i) In determining the Fund's "actual expenses" for purposes of this example, include all expenses that are deducted from the Fund's assets or charged to all shareholder accounts, including "Management Fees," "Distribution [and/or Service] (12b-1) Fees," and "Other Expenses" as those terms are defined in Instruction 3 to Item 3 of this form as modified by Instructions 2(a)(ii) and (c)(i) to this

Item. Reflect recurring and non-recurring fees charged to all investors other than any exchange fees, sales charges (loads), or fees charged upon redemption of the Fund's shares. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6-07 of Regulation S-X [17 CFR 210.6-07]).

(ii) For purposes of this Item 27(d)(1), "Other Expenses" include extraordinary expenses. "Extraordinary expenses" refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred that materially affected the Fund's "Other Expenses," the Fund may disclose in a footnote to the Example what "actual expenses" would have been had the extraordinary expenses not been included.

(b) Assume reinvestment of all dividends and distributions.

(c) (i) Base the percentages of "actual expenses" on amounts incurred during the Fund's most recent fiscal half-year (the Fund's second fiscal half-year in the case of an annual report). "Actual expenses" should reflect actual expenses after expense reimbursement or fee waiver arrangements that reduced expenses during the most recent fiscal half-year.

(ii) If there have been any increases or decreases in Fund expenses that occurred during the Fund's most recent fiscal half-year (or that have occurred or are expected to occur during the current fiscal year) that would have materially affected the information in the Example had those changes been in place throughout the most recent fiscal half-year, restate in a footnote to the Example the expense information using the current fees as if they had been in effect throughout the entire most recent fiscal half-year. A change in Fund expenses does not include a decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(d) Reflect any shareholder account fees collected by more than one Fund by allocating the total amount of the fees collected during the Fund's most recent fiscal half-year (the Fund's second fiscal half-year in the case of an annual report) for all such Funds to each Fund in proportion to the relative average net assets of the Fund. A Fund that charges account fees based on a minimum account requirement exceeding $1,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(2) *Graphical Representation of Holdings.* One or more tables, charts, or graphs depicting the portfolio holdings of the Fund by reasonably identifiable categories (e.g., type of security, industry sector, geographic regions, credit quality, or maturity) showing the percentage of net asset value or total investments attributable to each. The categories and the basis of the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives. If the Fund depicts portfolio holdings according to the credit quality, it should include a description of how the credit quality of the holdings were determined, and if credit ratings, as defined in section 3(a)(60) of the Securities Exchange Act [15 U.S.C. 78(c)(a)(60)], assigned by a credit rating agency, as defined in section 3(a)(61) of the Securities Exchange Act [15 U.S.C. 78(c)(a)(61)], are used, explain how they were identified and selected. This description should be included near, or as part of, the graphical representation.

(3) *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) the Fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year as an exhibit to its reports on Form N-PORT; (ii) the Fund's Forms N-PORT are available on the Commission's Web site at http://www.sec.gov; and (iii) if the Fund makes the information on Form N-PORT available to shareholders on its Web site or upon request, a description of how the information may be obtained from the Fund."

Instruction

A Money Market Fund will omit the statement required by Item 27(d)(3) and instead provide a statement that (i) the Money Market Fund files its complete schedule of portfolio holdings with the Commission each month on Form N-MFP; (ii) the Money Market Fund's reports on Form N-MFP are available on the Commission's website at http://www.sec.gov; and (iii) the Money Market Fund makes portfolio holdings information available to shareholders on its website.

(4) *Statement Regarding Availability of Proxy Voting Policies and Procedures.* A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities

is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at http://www.sec.gov.

Instruction

When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 17(f) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(5) *Statement Regarding Availability of Proxy Voting Record.* A statement that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at http://www.sec.gov.

Instructions

1. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

2. If a Fund discloses that the Fund's proxy voting record is available on or through its website, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of rule 30b1-4 (17 CFR 270.30b1-4) and discloses that the Fund's proxy voting record is available on or through its website.

(6) *Board Approvals and Liquidity Reviews.*

(i) *Statement Regarding Basis for Approval of Investment Advisory Contract.* If the board of directors approved any investment advisory contract during the Fund's most recent fiscal half-year, discuss in

reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. Include the following in the discussion:

(A) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (e.g., pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(B) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

Instructions

1. Board approvals covered by this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by this Item include subadvisory contracts.

2. Conclusory statements or a list of factors will not be considered sufficient disclosure. Relate the factors to the specific circumstances of the Fund and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount

of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract.

3. If any factor enumerated in paragraph (d)(6)(i) of this Item is not relevant to the board's evaluation of an investment advisory contract, note this and explain the reasons why that factor is not relevant.

(ii) *Statement Regarding Liquidity Risk Management Program*. If the board of directors reviewed the Fund's liquidity risk management program pursuant to rule 22e-4(b)(2)(iii) of the Act [17 CFR 270.22e-4(b)(2)(iii)] during the Fund's most recent fiscal half-year, briefly discuss the operation and effectiveness of the Fund's liquidity risk management program over the past year.

Instruction

If the board reviews the liquidity risk management program more frequently than annually, a fund may choose to include the discussion of the program's operation and effectiveness over the past year in one of either the fund's annual or semi-annual reports, but does not need to include it in both reports.

Part C — OTHER INFORMATION

Item 28. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Articles of Incorporation*. The Fund's current articles of incorporation, charter, declaration of trust or corresponding instruments and any related amendment.

(b) *By-laws*. The Fund's current by-laws or corresponding instruments and any related amendment.

(c) *Instruments Defining Rights of Security Holders*. Instruments defining the rights of holders of the securities being registered, including the relevant portion of the Fund's articles of incorporation or by-laws.

(d) *Investment Advisory Contracts*. Investment advisory contracts relating to the management of the Fund's assets.

(e) *Underwriting Contracts*. Underwriting or distribution contracts between the Fund and a principal underwriter, and agreements between principal underwriters and dealers.

(f) *Bonus or Profit Sharing Contracts*. Bonus, profit sharing, pension, or similar contracts or arrangements in whole or in part for the benefit of the Fund's directors or officers in their official capacity. Describe in detail any plan not included in a formal document.

(g) *Custodian Agreements*. Custodian agreements and depository contracts under section 17(f) [15 U.S.C. 80a-17(f)] concerning the Fund's securities and similar investments, including the schedule of remuneration.

(h) *Other Material Contracts*. Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(i) *Legal Opinion*. An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued, fully paid, and nonassessable.

(j) *Other Opinions*. Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].

(k) *Omitted Financial Statements*. Financial statements omitted from Item 27.

(l) *Initial Capital Agreements*. Any agreements or understandings made in consideration for providing the initial capital between or among the Fund, the underwriter, adviser, promoter or initial shareholders and written assurances from promoters or initial shareholders that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(m) *Rule 12b-1 Plan*. Any plan entered into by the Fund under rule 12b-1 and any agreements with any person relating to the plan's implementation.

(n) *Rule 18f-3 Plan*. Any plan entered into by the Fund under rule 18f-3, any agreement with any person relating to the plan's implementation, and any amendment to the plan or an agreement.

(o) Reserved.

(p) *Codes of Ethics*. Any codes of ethics adopted under rule 17j-1 of the Investment Company Act [17 CFR 270.17j-1] and currently applicable to the Fund (i.e., the codes of the Fund and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Fund, state the reason (e.g., that the Fund is a Money Market Fund).

Instructions:

1. A Fund that is a Feeder Fund also must file a copy of all codes of ethics applicable to the Master Fund.

2. Schedules (or similar attachments) to the exhibits required by this Item are not required to be filed provided that they do not contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. Registrants need not prepare a separate list of omitted information if such information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. In addition, the registrant must provide a copy of any omitted schedule to the Commission or its staff upon request.

3. The registrant may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (*e.g.*, disclosure of bank account numbers, social security numbers, home addresses and similar information).

4. The registrant may redact provisions or terms of exhibits required to be filed by paragraph (h) of this Item if those provisions or terms are both (1) not material and (2) would likely cause competitive harm to the registrant if publicly disclosed. If it does so, the registrant should mark

the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both (1) not material and (2) would likely cause competitive harm to the registrant if publicly disclosed. The registrant also must indicate by brackets where the information is omitted from the filed version of the exhibit.

If requested by the Commission or its staff, the registrant must promptly provide an unredacted copy of the exhibit on a supplemental basis. The Commission staff also may request the registrant to provide its materiality and competitive harm analyses on a supplemental basis. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may request the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's materiality and competitive harm analyses. The registrant may request confidential treatment of the supplemental material pursuant to Rule 83 (§ 200.83 of this chapter) while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rules 418 (§ 230.418 of this chapter).

5. Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

Item 29. Persons Controlled by or Under Common Control with the Fund

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Fund. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions

1. Include the Fund in the list or diagram and show the relationship of each company to the Fund and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 30. Indemnification

State the general effect of any contract, arrangements or statute under which any director, officer, underwriter or affiliated person of the Fund is insured or indemnified against any liability incurred in their official capacity, other than insurance provided by any director, officer, affiliated person, or underwriter for their own protection.

Item 31. Business and Other Connections of Investment Adviser

Describe any other business, profession, vocation or employment of a substantial nature that each investment adviser, and each director, officer or partner of the adviser, is or has been engaged within the last two fiscal years for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

Instructions

1. Disclose the name and principal business address of any company for which a person listed above serves in the capacity of director, officer, employee, partner, or trustee, and the nature of the relationship.

2. The names of investment advisory clients need not be given in answering this Item.

Item 32. Principal Underwriters

(a) State the name of each investment company (other than the Fund) for which each principal underwriter currently distributing the Fund's securities also acts as a principal underwriter, depositor, or investment adviser.

(b) Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 25:

(1)	(2)	(3)
Name and Principal Business Address	Positions and Offices with Underwriter	Positions and Offices with Fund

(c) Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Fund during the last fiscal year by each principal underwriter who is not an affiliated person of the Fund or any affiliated person of an affiliated person:

(1)	(2)	(3)	(4)	(5)
Name of Principal Underwriter	Net Underwriting Discounts and Commissions	Compensation on Redemptions and Repurchases	Brokerage Commissions	Other Compensation

Instructions

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).

2. Instruction 1 to Item 25(c) also applies to this Item.

Item 33. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) [15 U.S.C. 80a-30(a)] and the rules under that section.

Instructions

1. The instructions to Item 20.4 of this form shall also apply to this item.

2. Information need not be provided for any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

3. A Fund may omit this information to the extent it is provided in its most recent report on Form N-CEN [17 CFR 274.101].

Item 34. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the Fund's last three fiscal years.

Instructions

1. The instructions to Item 19 also apply to this Item.

2. Exclude information about any service provided for payments totaling less than $5,000 during each of the last three fiscal years.

Item 35. Undertakings

In initial registration statements filed under the Securities Act, provide an undertaking to file an amendment to the registration statement with certified financial statements showing the initial capital received before accepting subscriptions from more than 25 persons if the Fund intends to raise its initial capital under section 14(a)(3) [15 U.S.C. 80a-14(a)(3)].

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933 and the Investment Company Act of 1940, the Fund (certifies that it meets all of the requirement for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the city of_____, and State of_____, on the_____day of_____,_____.

_____
Fund

By_____ _____
Signature Title

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

_____	_____	_____
Signature	Title	Date

The following section provides a summary of the various non-transparent actively managed ETF structures ("NTA ETFs") currently permitted by SEC exemptive orders issued under the Investment Company Act of 1940 ("1940 Act"). Unlike fully transparent ETFs that rely on the the ETF Rule, NTA ETFs do not disclose their portfolio holdings on a daily basis. Instead, they are permitted to disclose their portfolio holdings on the same schedule as mutual funds, which could be as infrequently as quarterly with a 60-day lag.

NTA ETFs utilize different methodologies to obscure their portfolio holdings, yet are designed to provide sufficient additional information to market participants to support the ETF arbitrage mechanism. The effectiveness of the arbitrage mechanism determines the closeness of the relationship between the market price of an NTA ETF's shares and its net asset value per share ("NAV"). Thus, NTA ETF sponsors seek to provide sufficiently robust additional information that market participants create new shares when market prices are at a premium to NAV and conversely, redeem shares when market prices are at a discount to NAV, thereby minimizing differences between market price and NAV.

Many of the NTA ETF structures described below may be licensed or otherwise used by third parties pursuant to negotiations with the original applicant and a 1940 Act exemptive order "short form" exemptive application. In a short form exemptive application, a would-be NTA ETF sponsor will represent that it will comply with the terms and conditions of the original relief, as summarized below but subject to future amendment.

To date, each NTA ETF structure described below relying on a proxy portfolio methodology has been amended to permit customization of baskets so that a creation or redemption basket may be comprised of securities that are not representative of pro rata slice of the NTA ETF's proxy portfolio. Further amendments to NTA ETF base exemptive relief are expected to broaden the asset classes currently permitted to NTA ETFs such that NTA ETFs would no longer be restricted to instruments that trade contemporaneously with the NTA ETF's shares.

The first summary pertains to the non-transparent active structure developed by Precidian Funds LLC, which uniquely relies on the dissemination of a verified intraday indicative value to support the arbitrage mechanism. The remainder of the summaries pertain to structures developed by the following ETF sponsors, which use what is variously referred to as a proxy portfolio, substitute portfolio or tracking basket to support the arbitrage mechanism:

- T. Rowe Price, Inc.
- NYSE Group, Inc. and Natixis Advisers, L.P.
- Fidelity Management & Research Company
- Blue Tractor Group, LLC; and
- Invesco Capital Management, LLC.

A. Precidian

The arbitrage mechanism contemplates each Fund providing a verified intraday indicative value ("VIIV"), calculated and disseminated every second throughout the trading day by each Fund's listing exchange during regular trading hours, through the facilities of the Consolidated Tape Association. The specific methodology for calculating the VIIV will be disclosed on the Fund's web site. The VIIV will be calculated to the nearest penny by dividing the "Intraday Fund Value" as of the time of the calculation by the number of total Shares outstanding. The Intraday Fund Value is the sum of the Fund's assets (e.g., the amount of cash and cash equivalents held in a Fund's portfolio, the current value of the securities positions in the Fund's portfolio, plus any accrued interest, and declared but unpaid dividends) minus all accrued liabilities. The portfolio used for calculating the VIIV will be the same portfolio used to calculate the Fund's NAV for that Business Day.

Each Fund will employ two separate calculation engines ("Calculation Engines"), a primary and a secondary, to provide two independently calculated sources of intraday indicative values ("IIVs") throughout each trading day, which must match and be verified (as discussed below) to become the published VIIV. All portfolio securities will be valued by the Calculation Engines throughout the trading day at the mid-point between the current national best bid and national best offer ("NBBO").

Each Fund will employ a "Pricing Verification Agent" to compare, and establish a computer-based protocol that will permit the Pricing Verification Agent to continuously compare, the two IIVs from the Calculation Engines on a real time basis. While the expectation is that the separately calculated IIVs will generally match, having dual streams of redundant data that must be compared by the Pricing Verification Agent will provide an additional check that the published VIIV is accurate.

The VIIV, when combined with the ability to create and redeem shares using a Creation Basket (see below) that is a pro rata slice of the Fund's portfolio holdings should, as with existing ETFs, ensure that the Shares will trade at a market price at or close to the NAV per Share of the Fund.

Each Fund will disclose a pro rata slice of its portfolio to "AP Representatives" each trading day ("Creation Basket"). Each AP Representative will be a registered broker-dealer that acts an agent of the Authorized Participant(s) with whom it has contracted to play such a role. In selecting entities to serve as AP Representatives, a Fund will obtain, both initially and each year thereafter, representations from the entity related to the confidentiality of the Fund's Creation Basket, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker, Section 15(g) of the Exchange Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

Authorized Participants will establish and maintain a "Confidential Account" with an AP Representative," through which the AP Representative will trade Creation Basket securities upon instructions from the Authorized Participant for the benefit of the Authorized Participant. Pursuant to a contract between them ("Confidential Account Agreement"), the AP Representative will be restricted from disclosing the Creation Basket to the Authorized Participant. In addition, the AP Representative will undertake an obligation not to use its knowledge about the Creation Basket for any purpose other than executing creations and redemptions for its AP(s). However, the Confidential Account will enable Authorized Participants to transact in the securities in Creation Baskets through their AP Representatives, without knowing the identity or weighting of those securities.

B. T. Rowe Price

The Proxy Portfolio is a basket of cash and securities that has at least an 80% overlap with the Fund's portfolio holdings (by weight) and is designed to closely track the daily performance of the Fund. The Proxy Portfolio could be a broad-based securities index (such as that identified in the Fund's prospectus for comparison purposes) or the Fund's last disclosed portfolio holdings. The Proxy Portfolio will be composed pursuant to Proxy Portfolio policies and procedures that are part of the Fund's Rule 38a-1 compliance program. In addition to the Proxy Portfolio, the Fund will publish daily on its website the following information:

- The percentage overlap between the Fund's portfolio and the Proxy Portfolio as of the close of business on the prior trading day ("Portfolio Overlap")
- The difference between the one-day performance of the Fund (at NAV) and the performance of the Proxy Portfolio for the last 250 trading days ("Daily Deviation")
- The largest Daily Deviation in basis points during the past year 99%, 95%, 90%, 75%, 50% 25%, 10%, 5% and 1% of trading days ("Empirical Percentiles"); and
- The standard deviation during the past three months of Daily Deviations (as a percentage difference) ("Tracking Error").

C. NYSE/Natixis

The Proxy Portfolio is a basket of cash and securities that is designed to closely track the daily performance of the Fund's then-current portfolio ("Actual Portfolio"). This is achieved by performing a "Factor Model" analysis of a Fund's Actual Portfolio. The Factor Model is comprised of three sets of factors or analytical metrics: market-based factors, fundamental factors, and industry/sector factors. Each Fund will have a universe of securities (the "Model Universe") that will be used to generate the Fund's Proxy Portfolio. The Model Universe will be comprised of securities that the Fund can purchase and will be a financial index or stated portfolio of securities from which Fund investments will be selected. The results of the Factor Model analysis of a Fund's Actual Portfolio are then applied to the Fund's Model Universe. The daily rebalanced Proxy Portfolio is then generated as a result of this Model Universe analysis with the Proxy Portfolio being a small sub-set of

the Model Universe. The Factor Model is applied to both the Actual Portfolio and the Model Universe to construct a Fund's Proxy Portfolio that performs in a manner substantially identical to the performance of its Actual Portfolio.

The Proxy Portfolio will be composed pursuant to Proxy Portfolio policies and procedures that are part of the Fund's Rule 38a-1 compliance program. In addition to the Proxy Portfolio, the Fund will publish daily on its website the following information:

- The percentage weight overlap between the holdings of the prior Business Day's Proxy Portfolio compared to the Actual Portfolio's holdings that formed the basis for the Fund's calculation of NAV at the end of the prior Business Day ("Portfolio Overlap"); and

- The standard deviation over the past three months of daily proxy spread (i.e., the difference, in percentage terms, between the Proxy Portfolio per share NAV and that of the Actual Portfolio at the end of the trading day) ("Tracking Error").

D. Fidelity

The Tracking Basket is a basket of securities and cash that is designed to closely track the daily performance of the Fund. The Tracking Basket is comprised of (1) select recently disclosed portfolio holdings ("Strategy Components"); (2) liquid U.S. ETFs that convey information about the types of instruments (that are not otherwise fully represented by the Strategy Components) in which the Fund invests ("Representative ETFs"); and (3) cash and cash equivalents. Representative ETFs will be limited to 50% of the Tracking Basket each day.

The Tracking Basket will be constructed utilizing a mathematical optimization process to minimize deviations in the daily returns of the Tracking Basket relative to the daily returns of the Fund. The proprietary optimization process mathematically seeks to minimize three key parameters that Applicants believe are important to the effectiveness of the Tracking Basket as a hedge: Tracking Error (i.e., the standard deviation over the past three months of the daily proxy spread (i.e., the difference, in percentage terms, between the Tracking Basket per share NAV and that of the Fund at the end of the trading day), turnover cost, and basket creation cost.

The Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings, but a new Tracking Basket may be generated as frequently as daily. In determining whether to rebalance the Tracking Basket, the Adviser will consider various factors, including liquidity of the securities in the Tracking Basket, Tracking Error, and the cost to create and trade the Tracking Basket. For example, if the Adviser determines that a new Tracking Basket may reduce the variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate.

The Tracking Basket will be composed pursuant to Tracking Basket policies and procedures that are part of the Fund's Rule 38a-1 compliance program.

In addition to the Tracking Basket, the Fund will publish daily on its website the percentage weight overlap between the holdings of the prior Business Day's Tracking Basket compared to the holdings of the Fund that formed the basis for the Fund's calculation of NAV at the end of the prior Business Day ("Tracking Basket Weight Overlap").

E. Blue Tractor

Each day a proprietary algorithmic process is applied to the Fund portfolio to generate a basket of securities and cash, the performance of which is designed to closely track the performance of the Fund's portfolio.

The Adviser will apply a proprietary algorithmic process (the Shielded Alpha℠ Solution) to the Fund's portfolio instruments on a daily basis to generate the Dynamic SSR℠ Portfolio. The Dynamic SSR℠ Portfolio construction process has four key elements:

- It will contain all of the names of the securities in the actual portfolio, and only the securities that are in the actual portfolio (and also could contain cash to represent the Fund's holdings of cash);
- It will have a minimum weightings overlap of 90% with the Fund's portfolio assets at the beginning of each trading day, with the precise percentage of aggregate overlap in weightings from 90% to 100% randomly generated each day and not disclosed;
- The potential deviation in the weightings of specific securities and cash positions in the Dynamic SSR℠ Portfolio from the weightings of those specific securities and cash positions in the actual portfolio as of the beginning of each trading day will be subject to a publicly disclosed maximum deviation (e.g., 2%) (the "Guardrail Amount"), which will ensure that no individual security in the Dynamic SSR℠ Portfolio will be overweighted or underweighted by more than the publicly disclosed percentage when compared to the actual weighting of each security within the Fund portfolio as of the beginning of each trading day; and
- After randomly determining the specific overlap amount for a given day, the algorithm will generate the weightings of the specific securities in the Dynamic SSR℠ Portfolio within the specified Guardrail Amount and with the goal of maximizing the correlation between the Dynamic SSR℠ Portfolio and the actual portfolio. The Tracking Error (the standard deviation over the past three months of the daily difference, in percentage terms, between the Dynamic SSR℠ Portfolio per share NAV and that of the Fund at the end of the trading day) is not expected to exceed 1%.

The Dynamic SSR℠ Portfolio will be composed pursuant to Dynamic SSR℠ Portfolio policies and procedures that are part of the Fund's Rule 38a-1 compliance program. In addition to the Dynamic SSR℠ Portfolio, the Fund will publish daily on its website the Guardrail Amount.

F. Invesco

The Substitute Basket is a basket of cash and securities that has between 70-95% overlap with the Fund's portfolio holdings (by weight) and is designed to closely track the daily performance of the Fund. The Substitute Basket will be composed pursuant to Substitute Basket policies and procedures that are part of the Fund's Rule 38a-1 compliance program.

The Substitute Basket will often include a significant percentage of the securities held in the Fund's portfolio, but will exclude certain securities held in the Fund's portfolio (or modify their weightings), such as those the Fund's portfolio managers are actively looking to purchase or sell, or securities, which if disclosure, could increase the risk of front-running or free-riding ("Protected Securities").

To further reduce market participants' risk and to provide intra-day price certainty, each Fund may strike and publish its NAV more than once during each Business Day at intervals determined by the Adviser. For example, a Fund may strike a NAV once during normal trading at 12:00pm ET ("Intra-Day NAV") and again at the close of trading at 4:00pm ET ("End of Day NAV").

In addition to the Substitute Basket, the Fund will publish daily on its website the following information:

- Per share for each Fund, the prior Business Day's Intra-Day NAV, End of Day NAV and the Closing Price or Bid/Ask Price of Shares, a calculation of the premium/discount of the Closing Price or Bid/Ask Price against the End of Day NAV and any other information on the website regarding premium/discounts that other ETFs registered under the 1940 Act may be required to provide;

- The percentage overlap between the Fund's portfolio and the Substitute Basket as of the close of business on the prior trading day ("Basket Overlap"); and

- The standard deviation over the past three months of the daily proxy spread (i.e., the difference, in percentage terms, between the Substitute Basket's per share NAV and that of the Fund at the end of the trading day) ("Tracking Error").

In connection with the adoption of the ETF Rule, the SEC issued a companion Exemptive Order, effective December 23, 2019, granting an exemption from compliance with Section 11(d)(1) of the Exchange Act and Rules 10b-10, 15c1-5, 15c1-6 and 14e-5 under the Exchange Act. The Exemptive Order provides these exemptions to broker-dealers and certain other persons who transact in the shares of ETFs that rely on the ETF Rule.

Reliance on the Exemptive Order is predicated on the applicable ETF meeting the diversification requirement applicable to a regulated investment company in Internal Revenue Code Sec. 851(b)(3)(B), 26 U.S.C. 851 (b)(3)(B) (excluding Rule 14e-5). In addition, with respect to the relief granted from Section 11(d) and each of Rules 10b-10, 15c1-5, 15c1-6 and 14e-5, reliance on the Exemptive Order also requires satisfaction of certain other conditions.

If available, the Exemptive Order obviates the need for broker-dealers and other market participants who transact in ETF shares to rely on the no-action and class relief letters listed under bullets 1 and 2 below. Accordingly, this Handbook does not include the text of those letters. We recognize, however, that certain ETFs will continue to rely on such letters and that investors in ETFs will continue to rely on the no-action relief from Sections 13(d) of the Exchange Act and 16(a) of the Securities Act of 1933 listed under bullet 3 below. Accordingly, we have provided citations to all such letters immediately below, followed by the text of the 2019 Exemptive Order for ETFs that rely on the ETF Rule.

A. Class Relief Letters

1. Class Relief for Index ETFs

a. Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Claire P. McGrath, Vice President and Special Counsel, American Stock Exchange, dated August 17, 2001

The 2001 Class Letter grants a variety of exemptive, interpretive and/or no-action relief for index-based ETFs that track domestic indexes of listed securities and that, among other things, as of each rebalance date, hold 20 or more different index securities where no one security represents more than 25% of total assets and that invest 75 – 85% of assets in securities that have had a minimum public float of $150 million and minimum average daily trading volume of $1 million over the last two months. For such ETFs, provided that they issue creation units of at least 50,000 shares worth at least $1 million, the 2001 Class Letter grants relief from Section 11(d)(1) and Rule 11d1-2 to permit ETF shares to be used for margin after being held for 30 days. It provides relief from Regulation M to permit broker-dealers involved in the distribution of a security that is a component of an ETF's underlying index to conduct certain transactions in ETF shares. The letter exempts ETF shares from the "tick" requirement of Rule 10a-1. With respect to confirmation statements, it provides relief from Rule 10b-10 to allow broker-dealers to deliver statements that do not list the index securities exchanged for (a creation unit of) ETF shares. Further, it exempts ETFs

from compliance with Rule 10b-17, recognizing that they are not able to provide notice of certain corporate actions (such as distributions) at least 10 days in advance. The letter provides relief from the tender offer rules for broker-dealers who are involved in a tender offer for an index security to permit them to conduct certain transactions in ETF shares.

Similarly, under Rules 15c1-5 and 15c1-6, the letter excuses broker-dealers, who have an interest in or are affiliated with an issuer whose securities are in the index underlying an ETF, from certain notice requirements.

b. Letter from James A. Brigagliano, Assistant Director, Division of Market regulation, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated January 3, 2005

The Reg SHO Class Letter allows broker-dealers, under certain circumstances, to mark short sales of ETF shares as "short" rather than "short exempt."

c. Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivatives Products Committee, dated November 21, 2005

The 2005 Class Letter expands the relief provided by the 2001 Class Letter in several respects. First, the 2005 Class Letter makes relief available to all "Qualifying ETFs" and defines such term to mean ETFs that hold 20 or more different index securities where no one security represents more than 25% of total assets and where all index securities are publicly available. The letter then provides relief to Qualifying ETFs from Rule 10b-10 to allow broker-dealers to deliver confirmation statements that do not list the index securities exchanged for (a creation unit of) ETF shares, and from Rules 15c1-5 and 15c1-6 to excuse broker-dealers, who have an interest in or are affiliated with an issuer whose securities are in the index underlying an ETF, from certain notice requirements. In addition, the 2005 Class Letter expands the relief from Section 11(d)(1) and Rule 11d1-2 to permit broker-dealers, whether or not an authorized participant in an ETF's shares, to extend credit (or margin) on the ETF shares, provided that the broker-dealer does not receive certain types of compensation for promoting such ETF shares.

d. Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Clifford Chance LLP, dated October 24, 2006

The Equity Class Letter grants a variety of exemptive, interpretive and/or no-action relief to (domestic or international) index ETFs that track indexes, all of the components of which are subject to last sale trade reporting, and that, among other things, as of each rebalance date, hold 20 or more different index securities where no one security represents more than 25% of total assets and that invest 50 – 70% of assets in securities that have had a minimum public float of $150 million and minimum average daily trading volume of $1 million over the last two months. For such ETFs,

provided that they issue creation units of at least 50,000 shares worth at least $1 million, the Equity Class Letter grants relief from Regulation M to permit broker-dealers involved in the distribution of a security that is a component of such an ETF's underlying index to conduct certain transactions in ETF shares. The letter also exempts such ETF shares from the "tick" requirement of Rule 10a-1 and allows broker-dealers, under certain circumstances, to mark short sales of such ETF shares as "short" rather than "short exempt." Further, the Equity Class Letter exempts ETFs from compliance with Rule 10b-17, recognizing that they are not able to provide notice of certain corporate actions (such as distributions) at least 10 days in advance. In addition, the letter provides relief from the tender offer rules for broker-dealers who are involved in a tender offer for an index security to permit them to conduct certain transactions in ETF shares.

e. Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Willkie Farr & Gallagher LLP, dated April 9, 2007

The Fixed Income Class Letter generally grants a variety of exemptive, interpretive and/or no-action relief to fixed income index ETFs, provided that they invest in at least 13 unaffiliated issuers and issue creation units of at least 50,000 shares worth at least $1 million. More specifically, the letter exempts all fixed income index ETF shares from the "tick" requirement of Rule 10a-1 and allows broker-dealers, under certain circumstances, to mark short sales of fixed income ETF shares as "short" rather than "short exempt." Further, the Fixed Income Class Letter exempts fixed income index ETFs from compliance with Rule 10b-17, recognizing that they are not able to provide notice of certain corporate actions (such as distributions) at least 10 days in advance. In addition, provided that no component of a fixed income index ETF's underlying index, except a U.S. Treasury security, represents more than 30% of the weight of the ETF and the five largest components do not represent more than 65% of the weight of the ETF, the letter grants relief from Regulation M to permit broker-dealers involved in the distribution of a security that is a component of the underlying index to conduct certain transactions in ETF shares.

f. Letter from Josephine J. Tao, Assistant Director, Division of Trading & Markets, to Domenick Pugliese, Paul Hastings Janofsky & Walker LLP, dated June 27, 2007

In the Combination Class Letter, the SEC Staff confirms that an ETF, which tracks an index that includes each of an equity and fixed income component, may rely on the Equity Class Letter with respect to the former and the Fixed Income Class Letter with respect to the latter, provided that the equity component meets the criteria established by the Equity Class Letter and the fixed income component meets the criteria established

by the Fixed Income Class Letter. In addition, the letter confirms that such "combination" index ETFs may invest in cash and money market instruments.

2. Class Relief for Transparent, Actively Managed ETFs

a. Frequently Asked Questions About Regulation M, Staff Legal Bulletin No. 9 (revised September 10, 2010)

SLB 9 sets forth the views of the Division of Market Regulation in response to questions raised about various provisions of Regulation M. With respect to ETFs, it provides guidance on three discrete questions. First, it confirms that the Rule 101(c)(4) exception is available to permit persons who may be deemed to be participating in a distribution of actively managed ETF shares to bid for and purchase such ETF shares during the distribution. Second, it confirms that the redemption of an actively managed ETF creation unit, and the receipt of securities in exchange therefor, by persons who may be deemed to be participating in a distribution of the ETF's shares does not constitute an "attempt to induce any person to bid for or purchase" a covered security during an applicable restricted period, provided that the redemption is not made for the purpose of creating actual, or apparent, trading volume in or affecting the price of either the ETF shares or the securities received in exchange therefor. Finally, SLB 9 confirms that the Rule 102(d)(4) exception is available to ETFs to permit redemptions of actively managed ETF shares. Among other things, certain of the relief is conditioned on the ETF portfolio being transparent so as to facilitate the ETF arbitrage mechanism, including "workable hedges," which result in a "close alignment" between the ETF's NAV and the market price of its shares.

b. Letter from Josephine J. Tao, Assistant Director, Division of Trading & Markets, to Richard F. Morris, Deputy General Counsel, WisdomTree Asset Management Inc., dated May 9, 2008

The Active Class Letter grants a variety of exemptive, interpretive and/or no-action relief to actively managed ETFs, provided that, among other things, they issue creation units of at least 50,000 shares and invest substantially all of their assets in non-convertible fixed income securities and U.S. or non-U.S. money market securities that are rated investment grade by one nationally recognized statistical rating organization. Further, no portfolio security held by such an ETF can represent more than 30% of its weight and the five largest holdings cannot represent more than 65% of its weight, in each case exclusive of U.S. government securities and sovereign debt). In addition, such an ETF must otherwise invest in a diversity of issuers, make its portfolio fully transparent on a daily basis and provide website disclosure of the premiums and discounts at which its shares have traded relative to net asset value. With respect to ETFs that meet the criteria set forth in the Active Class Letter, it exempts them from the "tick" requirement of Rule 10a-1 and allows such ETFs to be

treated as "Qualifying ETFs" within the meaning of the 2005 Class Letter. In this respect, the Active Class Letter provides such ETFs with relief from Section 11(d)(1) and Rule 11d1-2 to permit broker-dealers to extend margin on the shares after being held for 30 days, whether or not the broker-dealer is an authorized participant in the ETF's shares, provided that the broker-dealer does not receive certain types of compensation for promoting such ETF shares. With respect to confirmation statements, the Active Class Letter provides relief from Rule 10b-10 to allow broker-dealers to deliver statements that do not list the portfolio securities exchanged for (a creation unit of) ETF shares. Finally, under Rules 15c1-5 and 15c1-6, the letter excuses broker-dealers, who have an interest in or are affiliated with an issuer whose securities are in the ETF portfolio, from certain notice requirements.

c. Order Granting a Limited Exemption from Exchange Act Rule 10b-17 to Certain Actively Managed Exchange-Traded Funds Pursuant to Exchange Act Rule 10b-17(b)(2), Exchange Act Release No. 67215 (June 19, 2012)

The 10b-17 Class Order allows actively managed ETFs to give delayed notice of the existence and timing of a distribution, provided that the ETF provides such information to its listing exchange as soon as practicable before trading begins on the ex-dividend date, and in no event later than the time when the exchange last accepts information relating to distributions on the day before the ex-dividend date.

d. Letter from Joseph Furey, Acting Co-Chief Counsel, Division of Trading & Markets, to W. John McGuire, Morgan Lewis & Bockius LLP, dated June 16, 2011

Pursuant to this ETF of ETFs Class Letter, ETFs that invest in other ETFs (and other types of exchange-traded products ("ETPs")) are permitted to be treated as "Qualifying ETFs" within the meaning of the 2005 Class Letter, provided that each underlying ETF (and ETP) meets one of the class letters described above or is permitted to rely on individualized relief from the same provisions of the 1934 Act and further provided that the ETF of ETFs invests exclusively in such ETFs (and ETPs) and U.S. government securities and limits any other holdings to 20% or less of its total assets. To the extent that an ETF of ETFs qualifies to rely on the ETF of ETFs Class Letter, broker-dealers have relief from Section 11(d)(1) and Rule 11d1-2 and, therefore, may extend margin on its shares after they are held for 30 days, whether or not the broker-dealer is an authorized participant in the ETF's shares, provided that the broker-dealer does not receive certain types of compensation for promoting such ETF shares. Further, with respect to confirmation statements, under the ETF of ETFs Class Letter broker-dealers have relief from Rule 10b-10 and, therefore, may deliver confirmation statements that do not list the portfolio securities exchanged for (a creation unit of) ETF shares. Finally, under Rules 15c1-5 and 15c1-6,

the letter effectively excuses broker-dealers, who have an interest in or are affiliated with an issuer whose securities are in the ETF of ETFs' portfolio, from certain notice requirements.

B. Section 13(d) and Section 16(a) of the 1934 Act

a. Letter from James J. Maloney, Special Counsel, Division of Corporation Finance and Evan Geldzahler, Senior Counsel, Division of Investment Management, re PDR Services LLC, dated December 14, 1998

With respect to the shares of unit investment trusts, which operate as ETFs, the SEC Staff agreed not to recommend enforcement action against beneficial owners who do not file reports under Section 13(d) of the 1934 Act, provided that the ETF shares continue to trade at prices that do not "materially deviate" from the relevant trust's net asset value.

b. Letter from Anne M. Krauskopf, Special Counsel, Division of Corporation Finance and Evan Geldzahler, Senior Counsel, Division of Investment Management, re Select Sector SPDR Trust, dated May 6, 1999.

With respect to the shares of open-end management investment companies, which operate as ETFs, the SEC Staff agreed not to recommend enforcement action against beneficial owners who do not file reports under Section 16(a) of the 1934 Act, provided that the ETF shares continue to trade at prices that do not "materially deviate" from the relevant trust's net asset value.

C. Order Granting a Conditional Exemption from Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10, 15c1-5, 15c1-6, and 14e-5 for Certain Exchange Traded Funds

AGENCY: Securities and Exchange Commission

ACTION: Exemptive order

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is issuing an order granting an exemption from compliance with certain provisions of the Securities Exchange Act of 1934 ("Exchange Act") and the rules thereunder to broker-dealers and certain other persons engaging in certain transactions in securities of exchange-traded funds ("ETFs") relying on rule 6c-11 under the Investment Company Act of 1940 ("Investment Company Act").

EFFECTIVE DATE: This exemptive order is effective December 23, 2019.

[. . .]

I. Introduction

The Commission adopted rule 6c-11 under the Investment Company Act, which permits ETFs that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order from the Commission under the Investment Company Act.[1] Rule 6c-11 is designed to create a consistent, transparent, and efficient regulatory framework for ETFs and to facilitate greater competition and innovation among ETFs.

While the relief under rule 6c-11 is limited to exemptions under the Investment Company Act,[2] commenters on proposed rule 6c-11 also recommended that the Commission harmonize with rule 6c-11 certain Exchange Act relief that ETFs currently rely on in order to operate, including relief from section 11(d)(1) of

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1 Exchange Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019) ("Rule 6c-11 Adopting Release").

2 In the Rule 6c-11 Adopting Release, the Commission also provided an interpretation of certain other Exchange Act rules containing exemptions for transactions in redeemable securities issued by open-end companies and unit investment trusts as follows:

After considering comments, we believe that it is appropriate to make all ETFs, including those that do not rely on rule 6c-11, eligible for the redeemable securities exceptions in rules 101(c)(4) and 102(d)(4) of Regulation M and rule 10b-17(c) under the Exchange Act in connection with secondary market transactions in ETF shares and the creation or redemption of creation units and the exemption in rule 11d1-2 under the Exchange Act for a registered open-end investment company or unit investment trust.

the Exchange Act and Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5.[3] Commenters expressed concern that the conditions that have been associated with Exchange Act relief are duplicative or, in some cases, inconsistent with other requirements applicable to ETFs.[4]

The Commission agrees that such relief could further reduce regulatory complexity and administrative delay, and eliminate potential inconsistencies between rule 6c-11 and the related Exchange Act relief that ETFs have obtained to operate.[5] The Commission has considered the issues raised and believes that it is appropriate to grant relief from section 11(d)(1) and rules 10b-10, 15c1-5, 15c1-6, and 14e-5 because broker-dealers and certain other persons that engage in these transactions and satisfy the conditions below, as applicable, would not raise the issues or concerns that underlie those provisions. Accordingly, the Commission finds that it is necessary and appropriate in the public interest and consistent with the protection of investors to grant an exemption from section 11(d)(1) of the Exchange Act and Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5, to broker-dealers and certain other persons, as applicable, that engage in certain transactions with ETFs relying on rule 6c-11, subject to the conditions below.

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3 *See* Comment Letter of Blackrock, Inc. at 21 (Sept. 26, 2018) ("BlackRock Comment Letter"); Comment Letter of the Investment Company Institute at 32 (Sept. 21, 2018) ("ICI Comment Letter"); Comment Letter of Fidelity Management & Research Company at 12 (Sept. 28, 2018); Comment Letter of Dechert LLP at 8 (Sept. 28, 2018) ("Dechert Comment Letter"); Comment Letter of the Securities Industry and Financial Markets Association — Asset Management Group at 22 and 23 (Sept. 28, 2018) ("SIFMA AMG Comment Letter"); Comment Letter of Vanguard at 2 (Sept. 28, 2018); Comment Letter of WisdomTree Asset Management at 2 (Oct. 1, 2018); Comment Letter of the American Bar Association at 4 (Oct. 11, 2018); Comment Letter of John Hancock Investments at 5 (Oct. 1, 2018); and Comment Letter of Flow Traders US LLP at 2 (Oct. 1, 2018).

4 *See, e.g.,* BlackRock Comment Letter. *See also, e.g.,* ICI Comment Letter ("Currently, ETFs often must satisfy multiple and sometimes conflicting requirements from different divisions within the SEC."). Commenters also expressed concerns about delays in obtaining such additional relief. *See, e.g.,* SIFMA AMG Comment Letter I.

5 Although the exemption granted by this order applies only to transactions in securities of ETFs that meet certain requirements and conditions, the beneficiaries of the relief, other than the relief under Exchange Act rule 14e-5, are broker-dealers that engage in transactions subject to the relevant provisions of the Exchange Act and rules thereunder. The beneficiaries of the relief under Exchange Act rule 14e-5 are ETFs, the legal entity of which the ETF is a series, and authorized participants, as described below.

II. Background

An ETF issues shares that can be bought or sold throughout the day in the secondary market at a market-determined price. Like other investment companies, an ETF pools the assets of multiple investors and invests those assets according to its investment objective and principal investment strategies. Each share of an ETF represents an undivided interest in the underlying assets of the ETF. Similar to mutual funds, ETFs continuously offer their shares for sale.

Unlike mutual funds, however, ETFs do not sell or redeem individual shares. Instead, "authorized participants" that have contractual arrangements with the ETF, or one of its service providers, purchase and redeem ETF shares directly from the ETF in blocks called "creation units." [6] An authorized participant may act as a principal for its own account when purchasing or redeeming creation units from the ETF. Authorized participants also may act as agent for others, such as market makers, proprietary trading firms, hedge funds or other institutional investors, and receive fees for processing creation units on their behalf.[7] Market makers, proprietary trading firms, and hedge funds provide additional liquidity to the ETF market through their trading activity. Institutional investors may engage in primary market transactions with an ETF through an authorized participant as a way to efficiently hedge a portion of their portfolio or balance sheet or to gain exposure to a strategy or asset class.[8] Redemptions from ETFs are often made in kind (that is, by delivering certain assets from the ETF's portfolio), rather than in cash, thereby avoiding the need for the ETF to sell assets and potentially realize capital gains that are distributed to its shareholders. Similarly, ETF creations may be made in kind by delivering certain assets to the ETF's portfolio, rather than solely delivering cash.

An authorized participant that purchases a creation unit of ETF shares directly from the ETF deposits with the ETF a "basket" of securities and other assets identified by the ETF that day, and then receives the creation unit of ETF shares in return for those

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6 Rule 6c-11(a)(1) defines "authorized participant" as a member or participant of a clearing agency registered with the Commission, which has a written agreement with the ETF or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units. *See* Rule 6c-11 Adopting Release.

7 *See* David J. Abner, The ETF Handbook: How to Value and Trade Exchange Traded Funds, 2nd ed. (2016).

8 *Id*.

assets.[9] The basket is generally representative of the ETF's portfolio,[10] and together with a cash balancing amount, it is equal in value to the aggregate net asset value ("NAV") of the ETF shares in the creation unit.[11] After purchasing a creation unit, the authorized participant may hold the individual ETF shares, or sell some or all of them in secondary market transactions.[12] Investors then purchase individual ETF shares in the secondary market.

By this order, the Commission is seeking to reduce the complexities and burden that may otherwise be associated with the ETF creation and redemption process, subject to appropriate conditions intended to ensure investor protections.

III. Discussion of the Exemption

The Commission is granting a conditional exemption from Exchange Act section 11(d)(1) and Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5 as discussed further below. The exemption should help to simplify the offering and operating process for ETFs. The exemption will provide relief to broker-dealers from

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9 An ETF may impose fees in connection with the purchase or redemption of creation units that are intended to defray operational processing and brokerage costs to prevent possible shareholder dilution ("transaction fees").

10 The basket might not reflect a *pro rata* slice of an ETF's portfolio holdings. Subject to the terms of the applicable exemptive relief, an ETF may substitute other securities or cash in the basket for some (or all) of the ETF's portfolio holdings. Conditions related to flexibility in baskets have varied over time. *See* Rule 6c-11 Adopting Release, at section II.C.5.

11 An open-end fund is required by law to redeem its securities on demand from shareholders at a price approximating their proportionate share of the fund's NAV at the time of redemption. *See 15* U.S.C. 80a-22(d). 17 CFR 270.22c-1 ("rule 22c-1") generally requires that funds calculate their NAV per share at least once daily Monday through Friday. *See* rule 22c-1(b)(1). Today, most funds calculate NAV per share as of the time the major U.S. stock exchanges close (typically at 4:00 p.m. Eastern Time). Under rule 22c-1, an investor who submits an order before the 4:00 p.m. pricing time receives that day's price, and an investor who submits an order after the pricing time receives the next day's price. *See also* 17 CFR 270.2a-4 ("rule 2a-4") (defining "current net asset value").

12 ETFs register offerings of shares under the Securities Act of 1933 (the "Securities Act"), and list their shares for trading under the Exchange Act. Depending on the facts and circumstances, authorized participants that purchase a creation unit and sell the shares may be deemed to be participants in a distribution, which could render them statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. *See 15* U.S.C. 77b(a)(11) (defining the term "underwriter").

these provisions of the Exchange Act with respect to ETFs relying on rule 6c-11.[13] In order for a broker-dealer to rely on the relief, other than the relief from rule 14e-5, a transaction must involve an ETF that further satisfies the diversification requirement below. In addition, a broker-dealer relying on this relief must meet certain conditions specific to each applicable Exchange Act provision or rule. Finally, except as provided in Sections III.E.2 and III.F below, this relief does not apply to purchases or sales of ETF shares in the secondary market.[14]

The Commission is limiting relief under this exemption to transactions in securities issued by ETFs that rely on rule 6c-11 because the specific findings in support of the exemptive order are based, in part, on the conditions in rule 6c-11. The Commission believes that the portfolio and other transparency requirements in rule 6c-11, when combined with the conditions in this order, address the policy concerns underlying the relevant statutory provision and rules. For example, rule 6c-11 requires ETFs to disclose their portfolio holdings each day through their website. This portfolio transparency, along with the availability of information regarding ETFs through the National Securities Clearing Corporation ("NSCC"), other intermediaries, and the ETF itself, should provide customers engaging in creation or redemption transactions an opportunity to identify or inquire about potential conflicts of interest involving a component security a broker-dealer would otherwise be required to disclose. These requirements should also help customers determine if they should request that their broker-dealer provide any omitted information.

A. Reliance on Rule 6c-11

The exemption from Exchange Act section 11(d)(1) and Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5 is only available with respect to transactions involving securities of an ETF relying on rule 6c-11. The rule defines an ETF as a registered open-end management investment company that: (i) issues (and redeems) creation units to (and from) authorized participants in exchange for a basket

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13 Going forward, this exemptive order will provide exemptive relief from section 11(d)(1) and rules 10b-10, 15c1-5, 15c1-6, and 14e-5 in connection with transactions in securities issued by newly formed ETFs that rely on rule 6c-11. Commission staff will continue to consider requests with respect to the relevant Exchange Act provisions in connection with transactions in securities issued by newly formed ETFs that do not rely on rule 6c-11 or otherwise do not satisfy the conditions of this exemption.

14 As discussed below, this order provides an exemption from section 11(d)(1) for a Non-AP Broker-Dealer (defined below) that transacts in shares of an ETF that relies on rule 6c-11, exclusively in the secondary market, when it extends or maintains or arranges for the extension or maintenance of credit to or for customers on such ETF shares. This order also provides an exemption that allows certain specified "covered persons" with respect to a tender offer to engage in creation and redemption transactions with an ETF that relies on rule 6c-11 subject to certain conditions described below.

and a cash balancing amount (if any); and (ii) issues shares that are listed on a national securities exchange and traded at market-determined prices.[15] Among the requirements to rely on rule 6c-11 are:

1. The ETF is structured as an open-end management investment company;

2. The ETF discloses portfolio holdings each business day on its website before the opening of regular trading on the primary listing exchange of the ETF's shares in a standardized manner;

3. The ETF provides website disclosure of (i) the ETF's current NAV per share, market price, and premium or discount, each as of the end of the prior business day; (ii) a table showing the number of days the ETF's shares traded at a premium or discount during the most recently completed calendar year and calendar quarters of the current year; (iii) a line graph showing ETF premiums and discounts for the most recently completed year and calendar quarter of the current year; (iv) for ETFs whose premium or discount was greater than two percent for more than seven consecutive trading days, disclosure of this premium or discount, along with a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount; and (iv) the ETF's median bid-ask spread over the most recent thirty calendar days;

4. The ETF adopts and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets. If the ETF utilizes custom baskets, these policies and procedures must (i) set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interest of the ETF and its shareholders, including the process for any revisions to, or deviations from, those parameters; and (ii) specify the titles or roles of the employees of the ETF's investment adviser who are required to review each custom basket for compliance with those parameters; and

5. The ETF preserves and maintains copies of all written agreements between an authorized participant and the ETF (or one of the ETF's service providers) that allow the authorized participant to purchase or redeem creation units.

Consistent with our approach in Rule 6c-11, the exemption provided by this order will be available regardless of whether the ETF is actively managed[16] and without regard to the number of ETF shares in the ETF's creation or redemption baskets or the value of those creation and redemption baskets.[17]

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15 Rule 6c-11(a)(1). Under the rule, the term "basket" means the securities, assets, or other positions in exchange for which an ETF issues (or in return for which it redeems) creation units. *See id.* ETFs will therefore transact on an in-kind basis, on a cash basis, or both.

16 Rule 6c-11 Adopting Release, sec. II.A.2.

17 *Id.* at sec. II.C.1.

B. Minimum Diversification Requirement

The exemption provided by this order from Exchange Act section 11(d)(1) and Exchange Act rules 10b-10, 15c1-5, and 15c1-6 is available only with respect to transactions involving an ETF that meets the diversification requirement applicable to a regulated investment company in Internal Revenue Code ("IRC") Sec. 851(b)(3)(B), 26 U.S.C. 851(b)(3)(B) (the "IRC diversification requirement").[18] Diversification is a consideration with respect to each requirement from which the Commission is granting exemption in this order, except for rule 14e-5. Creation and redemption transactions in diversified ETFs involve the exchange of a basket that contains numerous securities, which in turn implicates disclosure requirements, as discussed below, under rules 10b-10, 15c1-5, and 15c1-6. At the same time, the composite nature of a diversified basket means that the securities of any one issuer will account for a relatively small share of the basket. Diversification thus should mitigate any conflicts that a broker-dealer would otherwise be required to disclose under rules 15c1-5 and 15c1-6, and minimize the incentive for a broker-dealer to seek to use an ETF to evade the new issue lending restriction in Exchange Act section 11(d)(1).[19]

Diversification, together with the conditions discussed below, forms the basis for the Commission's conclusion that relief from section 11(d)(1) and rules 10b-10, 15c1-5, and 15c1-6 is necessary and appropriate in the public interest and consistent with investor protection.

C. Exemption from Exchange Act Rule 10b-10

Exchange Act rule 10b-10 generally requires a broker or dealer that effects a securities transaction for a customer to send to the customer, at or before the completion of the transaction, a written notification ("confirmation") disclosing

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18 IRC Section 851(b)(3)(B) provides that a "regulated investment company" must have:

> not more than 25 percent of the value of its total assets is invested in — (i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, (ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary [of the Treasury], to be engaged in the same or similar trades or businesses or related trades or businesses, or (iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).

19 A commenter on proposed Rule 6c-11 also noted that ETFs generally must comply with the IRC diversification requirement, which imposes a practical limit on the concentration of an ETF's portfolio. Dechert Comment Letter at 12 – 13. The commenter stated that it would be impractical and inefficient for a broker-dealer to utilize an ETF as a mechanism for distribution of a particular security or for accumulating substantial positions in one or more of an ETF's underlying securities in a magnitude that would trigger disclosure. *Id.*

certain information, including among other items, the identity, price, and number of share or units (or principal amount) of the security purchased or sold by the customer. The confirmation requirement provides basic investor protections by conveying information that allows investors to verify the terms of their transactions; alerting investors to potential conflicts of interest with their broker-dealers; acting as a safeguard against fraud; and providing investors a means to evaluate the costs of their transactions and the quality of their broker-dealer's execution.[20] When an authorized participant that is a registered broker-dealer ("Broker-Dealer AP") engages in creation and redemption transactions for its customers, each tender or receipt of a component security as part of a basket is a purchase[21] or sale[22] of a security, and each purchase or sale requires confirmation pursuant to Exchange Act rule 10b-10.

The Commission is granting an exemption from Exchange Act rule 10b-10 that will allow a broker-dealer that is effecting an in-kind creation or redemption transaction on behalf of a customer to confirm the transaction without providing a contemporaneous statement of the identity, price or number of shares or units (or principal amount) of each component security tendered to or delivered by the ETF, subject to the following conditions:

1. Confirmation statements of issuance and redemption transactions in ETF shares will contain all of the information specified in paragraph (a) of rule 10b-10 other than identity, price, and number of shares or units (or principal amount) of each component security tendered or received by the customer in the transaction.

2. Any confirmation statement of an issuance or redemption transaction in ETF shares that omits the identity, price, or number of shares or units (or principal amount) of component securities will contain a statement that such omitted information will be provided to the customer upon request; and

3. All such requests will be fulfilled in a timely manner in accordance with paragraph (c) of rule 10b-10.

The requirement that confirmation statements include all of the information specified in paragraph (a) of rule 10b-10 other than the identity, price, and number of shares or units (or principal amount) of each component security tendered or received in the transaction preserves a customer's right to receive other important information from the confirmation about the terms of the customer's transaction at or before the completion of the transaction. The statement that the omitted information will be provided upon request informs the customer of the right to receive the omitted information. The requirement for a broker-dealer to fulfill

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20 Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612, 59613 (November 17, 1994).

21 Exchange Act Sec. 3(a)(13).

22 Exchange Act Sec. 3(a)(14).

such requests in a timely manner in accordance with paragraph (c) of rule 10b-10 clarifies that a broker-dealer must fulfill the request within a prescribed period *(i.e.,* within five business days of receipt of the request, or within 15 business days of a request pertaining to a transaction effected more than 30 days prior to the receipt of the request) so that customers can be assured that they receive the requested information in a timely manner.

The Commission also believes that, in general, information regarding ETFs is accessible through a variety of sources, including the NSCC, intermediaries and the ETFs themselves. The Commission believes that the conditions above will allow any customers who would like additional information regarding identity, price, or number of shares or units (or principal amount) to receive the information in a timely manner. This exemption reduces the burden that may otherwise be associated with creation and redemption transactions while preserving a customer's ability to access the omitted information upon request.

D. Exemption from Exchange Act Rules 15c1-5 and 15c1-6

Exchange Act rule 15c1-5 requires a broker-dealer effecting a transaction to disclose any control relationship with an issuer of a security that it purchases for or sells to a customer. Similarly, Rule 15c1-6 requires a broker-dealer to disclose its participation or interest in a primary or secondary distribution of a security that it purchases for or sells to a customer. The Commission is granting a conditional exemption from Exchange Act rules 15c1-5 and 15c1-6 that will allow a broker-dealer that is effecting an in-kind creation or redemption transaction on behalf of a customer to effect that transaction without providing disclosure regarding a control relationship with an issuer or participation in a distribution of a component security tendered to or delivered by the ETF.

As discussed above, the composite nature of diversified ETF portfolios and the relatively small proportionate share of any component security in a basket mean that any individual ETF portfolio security that would be subject to disclosure under rules 15c1-5 or 15c1-6 will be a small portion of the portfolio. This diversification should reduce the impact that any potential conflicts of interest involving a component security that a broker-dealer may have and mitigate the concern that a broker-dealer could use an ETF to avoid disclosure of a conflict of interest that would otherwise be required to be disclosed under rules 15c1-5 and 15c1-6.

Rule 6c-11 provides ETFs with flexibility to use custom baskets that contain a non-representative selection of the ETFs' portfolio securities.[23] To the extent the contents of custom creation or redemption baskets are negotiated between an authorized participant and the ETF, the customer, via the authorized participant,

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23 If different baskets are used in transactions on the same business day, each basket after the initial representative basket would constitute a custom basket. *See* Rule 6c-11 Adopting Release, sec. II.C.5.

should have visibility into the contents of the basket. This visibility should provide a customer seeking to engage in creation or redemption transactions an opportunity to identify or otherwise inquire about control relationships with the issuer or interest in a distribution of a component security that a broker-dealer would otherwise be required to disclose pursuant to these rules.

The exemption from rules 15c1-5 and 15c1-6 is subject to a further condition that requires the broker-dealer to provide any information to which a customer is entitled under rule 15c1-5 or 15c1-6 upon request and to fulfill such requests in a timely manner. The Commission believes that this condition will ensure that any customers who would like to access this information for any of the investor protections needs described above will be able to receive it.

Similar to rule 10b-10 above, the Commission believes that the general availability of information regarding ETFs through a variety of sources, including the NSCC, intermediaries and the ETFs themselves, supports this exemption. This access allows market participants that use basket information to obtain information regarding securities they will exchange in a creation or redemption transaction. The Commission believes that this information also should provide market participants seeking to engage in creation or redemption transactions an opportunity to identify or otherwise inquire about the control relationships or interest in a distribution that a broker-dealer would otherwise be required to disclose pursuant to these rules.

E. Exemption from Section 11(d)(1)

Exchange Act section 11(d)(1) generally prohibits a person that is both a broker and a dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, to or for a customer on any security (other than an exempted security) which was part of a distribution of a new issue of securities in which the broker-dealer participated. Because ETFs are in continuous distribution, broker-dealers effecting creation and redemption transactions on behalf of customers are participating in the distribution of new issue securities with respect to shares of ETFs, and thus are continuously subject to the restrictions of section 11(d)(1). Section 11(d)(1) issues arise both with Broker-Dealer APs and with broker-dealers who effect only secondary market transactions ("Non-AP Broker-Dealers").

1. Conditions for Broker-Dealer Authorized Participants

As noted in section II above, a Broker-Dealer AP is a registered broker-dealer that has entered into a contractual arrangement with an ETF or one of its service providers that allows the Broker-Dealer AP to place orders for the purchase or redemption of creation units, but Broker-Dealer APs are not compensated by ETFs in connection with the creation or redemption of ETF shares. Broker-Dealers may have different reasons for becoming authorized participants, including for their own proprietary trading, to facilitate customer trades, to hedge or otherwise manage their own risk, or to arbitrage differences between the ETF's market price and its NAV.

The Commission is granting an exemption from the new issue lending restriction in section 11(d)(1) for a Broker-Dealer AP that extends or maintains credit, or arranges for the extension or maintenance of credit, on ETF shares subject to the following two conditions:

1. Neither the Broker-Dealer AP, nor any natural person associated with such Broker-Dealer AP, directly or indirectly (including through any affiliate of such Broker-Dealer AP), receives from the "Fund Complex"[24] any payment, compensation, or other economic incentive to promote or sell the shares of the ETF to persons outside the fund complex, other than non-cash compensation currently permitted under Financial Industry and Regulatory Authority ("FINRA") rule 2341(1)(5)(A), (B), or (C) ("non-cash compensation").[25]

2. The Broker-Dealer AP does not extend, maintain or arrange for the extension or maintenance of credit to or for a customer on shares of the ETF before thirty days have passed from the date that the ETF's shares initially commence trading (except to the extent that such extension, maintenance, or arranging of credit is otherwise permitted pursuant to rule 11d1-1).

The exemption permits a Broker-Dealer AP to accept only limited forms of non-cash compensation that do not present broker-dealers with the types of potential conflicts of interest in their sale of securities that section 11(d)(1) addresses.[26] This

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[24] For purposes of this order, a "Fund Complex" is the issuer of the ETF shares, any other issuer of ETF shares that holds itself out to investors as a related company for purposes of investment or investor services; any investment adviser, distributor, sponsor, or depositor of any such issuer; or any "affiliated person" (as defined in the Investment Company Act section 2(a)(3)) of any such issuer or any such investment adviser, distributor, sponsor, or depositor.

[25] Non-cash compensation currently permitted under FINRA rule 2341(1)(5)(A), (B), or (C) is limited to:

(A) Gifts that do not exceed an annual amount per person fixed periodically by FINRA and are not preconditioned on achievement of a sales target;

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target; [and]

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, subject to certain conditions.

[26] *See* Exchange Act Release No. 21557 (Dec. 18, 1984), 49 FR 50172 at 50173-74 (Dec. 27, 1984) (available at: https://cdn.loc.gov/service/ll/fedreg/fr049/ fr049250/fr049250.pdf).

absence of any special compensation to distribute shares mitigates the potential conflicts of interest that section 11(d)(1) addresses. In addition, requiring a Broker-Dealer AP to wait thirty days before margining its customers' ETF shares is consistent with the section 11(d)(1) prohibition against a broker-dealer extending credit on securities that were part of a new issue, if the broker-dealer participated in the distribution of the new issue securities within the preceding thirty days. Thus, this condition ensures that Broker-Dealer APs do not use credit to induce customers to buy ETF shares for at least a 30-day period following launch of the ETF, similar to the prohibition against extending credit that applies to other types of new issue securities under section 11(d)(1).

2. Conditions for Non-AP Broker-Dealers

Many broker-dealers effect ETF securities transactions solely on the secondary market, whether for themselves or as agent for their customers. They do not enter contractual arrangements to effect creation or redemption transactions with the ETF or one of its service providers. Thus, these Non-AP Broker-Dealers have not undertaken to distribute ETF shares and generally do not receive any compensation for selling ETF shares, other than, in some cases, limited forms of non-cash compensation. Non-AP Broker-Dealers may reasonably be considered not to be participating in the distribution of new issue securities within the meaning of section 11(d)(1). However, to remove any ambiguity about the circumstances when Non-AP Broker-Dealers may offer margin on ETF securities the Commission is granting this exemption from section 11(d)(1).

The Commission believes this relief is appropriate because, as stated above, Non-AP Broker-Dealers do not engage in creation and redemption transactions with ETFs and, thus, may reasonably be considered not to be participating in the distribution of the ETFs' securities. In addition, this relief is subject to the condition that Non-AP Broker-Dealers do not (and their associated persons who are natural persons do not), directly or indirectly (including through any affiliate of such Non-AP Broker-Dealer), receive from the Fund Complex any payment, compensation or other economic incentive to promote or sell the shares of the ETF to persons outside the Fund Complex, other than non-cash compensation. For the foregoing reasons, the Commission believes it is necessary and appropriate and in the public interest and consistent with investor protection to grant this exemption.

F. Exemption from Rule 14e-5

Exchange Act rule 14e-5 prohibits "covered persons" from directly or indirectly purchasing or arranging to purchase any securities that are the subject of a tender offer ("subject securities")[27] or any securities that are immediately convertible into, exchangeable for, or exercisable for subject securities ("related securities")[28]

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27 Exchange Act rule 14e-5(c)(7).

28 Exchange Act rule 14e-5(c)(6).

except as part of such tender offer. The term "covered person" includes, among others, a dealer-manager of a tender offer and any person acting, directly or indirectly, in concert with other covered persons in connection with any purchase or arrangement to purchase any subject securities or any related securities.[29] Therefore, the prohibitions of rule 14e-5 may apply to authorized participants who are broker-dealers and acting as dealer-managers in tender offers, the ETF, and any legal entity of which the ETF is a series.

The Commission is granting a conditional exemption from rule 14e-5 to an ETF, the legal entity of which the ETF is a series, and authorized participants and any other persons who create and redeem shares of the ETF in creation units pursuant to contractual arrangements pertaining to such legal entity and the ETF, and who are covered persons with respect to a tender offer involving an ETF's component securities. The conditional exemption will allow such persons (i) to redeem ETF shares in creation unit sizes for a redemption basket that may include a subject security or related security, (ii) to engage in secondary market transactions with respect to the ETF shares after the first public announcement of the tender offer and during such tender offer given that such transactions could include, or be deemed to include, purchases of, or arrangements to purchase, subject securities or related securities, and (iii) make purchases of, or arrangements to purchase, subject securities or related securities in the secondary market for the purpose of transferring such securities to purchase one or more creation units of ETF shares. The exemption from rule 14e-5 is subject to the following conditions:

1. no purchases of subject securities or related securities made by broker-dealers acting as dealer-managers of a tender offer would be effected for the purpose of facilitating a tender offer;

2. if there is a change in the composition of a ETF's portfolio of component securities and a broker-dealer acting as a dealer-manager of a tender offer is unable to rely on the exception found in rule 14e-5(b)(5) for basket transactions because (i) the basket of subject securities or related securities contains fewer than 20 securities or (ii) the subject securities and related securities make up more than 5% of the value of the basket, then any purchases of an ETF component security by such dealer-manager during a tender offer will be effected for the purpose of adjusting a basket of securities in the ordinary course of its business and not for the purpose of facilitating a tender offer; and

3. except for the relief specifically granted herein, any broker-dealer acting as a dealer-manager of a tender offer will comply with rule 14e-5.

The Commission believes this exemption will facilitate the ability of authorized participants and others to engage in creation or redemption transactions between the public announcement of a tender offer and its expiration, thereby permitting the ETF to operate as intended for the benefit of its holders and as disclosed in publicly

29 Exchange Act rule 14e-5(c)(3).

filed documents. The conditions applicable to the relief will ensure that authorized participants and other recipients of the relief do not effect creation or redemption transactions during the relevant tender offer period in an effort to facilitate the tender offer. For the foregoing reasons, the Commission believes it is necessary and appropriate and in the public interest and consistent with investor protection to grant this exemption.

IV. Conclusion

In light of the above, and in accordance with Exchange Act Section 36, the Commission finds that conditionally exempting broker-dealers that engage in certain transactions in securities of ETFs that can rely on Investment Company Act rule 6c-11 from the requirements of section 11(d)(1) of the Exchange Act and Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5 necessary and appropriate in the public interest, and consistent with the protection of investors.

THEREFORE, IT IS HEREBY ORDERED, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A, B, and C above, that a broker or dealer is exempt from Exchange Act rule 10b-10 with respect to creation or redemption transactions on behalf of customers in securities issued by ETFs relying on Investment Company Act rule 6c-11.

IT IS FURTHER ORDERED, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A, B, and D above, that a broker or dealer is exempt from Exchange Act rule 15c1-5 with respect to creation or redemption transactions on behalf of customers in securities issued by ETFs relying on Investment Company Act rule 6c-11.

IT IS FURTHER ORDERED, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A, B, and D above, that a broker or dealer is exempt from Exchange Act rule 15c1-6 with respect to creation or redemption transactions on behalf of customers in securities issued by ETFs relying on Investment Company Act rule 6c-11.

IT IS FURTHER ORDERED, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A, B, and E.1. above, that an AP Broker-Dealer in a particular ETF relying on Investment Company Act rule 6c-11 is exempt from section 11(d)(1) of the Exchange Act with respect to the extension or maintenance of credit, or the arranging of the extension or maintenance of credit, on securities issued by such ETF.

IT IS FURTHER ORDERED, pursuant to section 36 of the Exchange Act, subject to the conditions described in Section III.A, B, and E.2 above, that a Non-AP Broker-Dealer that effects transactions in shares of an ETF relying on Investment Company Act rule 6c-11, exclusively in the secondary market, is exempt from section 11(d)(1) when it extends or maintains, or arranges for the extension or maintenance of credit to or for customers on such ETF shares.

IT IS FURTHER ORDERED, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III.A and F above, the ETF and other persons described in Section III.F are exempt from Exchange Act rule 14e-5 with respect to the transactions described in Section III.F above.

This exemption is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly section 10(b) of the Exchange Act and rule 10b-5 thereunder.

By the Commission.

Vanessa A. Countryman
Secretary

As exchange-listed securities, ETFs are required to comply with the rules of the national securities exchange on which their shares are listed. Among such exchange rules are "generic listing standards," with which an ETF may comply to list its shares without obtaining a bespoke listing rule approved by the SEC. The body of this chapter is comprised of extracts of the currently effective generic listing standards of Cboe BZX Exchange, Inc., Nasdaq Stock Market LLC and NYSE Arca, Inc., organized in alphabetical order by exchange.

Section A of this chapter extracts from the various exchanges' rules the generic listing standards for ETFs that operate in reliance on Rule 6c-11 under the 1940 Act (the "ETF Rule"). Those rules are Cboe BZX Exchange, Inc. Rule 14.11(*l*), Nasdaq Stock Market LLC Rule 5704, and NYSE Arca, Inc. Rule 5.2-E(j)(8).

Section B of this chapter extracts from the same exchanges' rules the generic listing standards for non-transparent actively managed ETFs that either utilize a proxy portfolio/tracking basket methodology or a verified intraday indicative value methodology. Those rules are Cboe BZX Exchange, Inc. Rules 14.11(k) and (m), Nasdaq Stock Market LLC Rules 5750 and 5760, and NYSE Arca, Inc. Rule 8.601-E and 8.900-E.

To provide guidance on the application of their rules to ETFs and other exchange-traded products, each exchange issues a compliance guide or similar document, which is available on-line at the following address:

The Cboe BZX Exchange, Inc.'s "ETP Listings Compliance Guidance" is available at: https://cdn.cboe.com/resources/listings/Cboe_BZX_Exchange_ETP_Listings_Compliance_Guide.pdf.

The Nasdaq Stock Market LLC's "Listing Guide: Exchange-Traded Products" is available at: https://listingcenter.nasdaq.com/assets/ETP_Listing_Guide.pdf

The NYSE Arca, Inc.'s Listed ETP Compliance Guidance and Rule Interpretations are available at:
https://www.nyse.com/regulation/rule-interpretations?market=NYSE%20 Arca%20 Equities and its "Listed ETP Compliance Guidance" is available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/2022_NYSE_Arca_Listed_ETP_Compliance_Guidance_Letter.pdf

A. Generic Listing Standards for Transparent ETFs

1. Cboe BZX Exchange Inc.

Rule 14.11 Other Securities

(a) Preamble to the Listing Requirements for Other Securities

This Rule contains the requirements for listing other securities on the Exchange, including Exchange Traded Funds, Portfolio Depository Receipts, Index Fund Shares, and various other types of securities, as set forth below (collectively, "Other Securities"). A Company with securities listed under this Rule 14.11 must provide the Exchange with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of Rule 14.11. The Exchange may submit a rule filing pursuant to Section 19(b) of the Act to permit the listing of a series of Other Securities that does not otherwise meet the respective standards set forth in this Rule 14.11. The Exchange may also be required to submit a rule filing pursuant to Section 19(b) of the Act to permit the listing of certain types of Other Securities, as provided in this Rule 14.11. In either case, any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values, and Verified Intraday Indicative Values (as applicable), or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities (collectively, "Continued Listing Representations") shall constitute continued listing requirements for the securities listed on the Exchange.

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(l) Exchange-Traded Fund Shares

1) Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, the shares of Exchange-Traded Funds ("ETF Shares") that meet the criteria of this Rule 14.11(l).

2) Applicability. This Rule 14.11(l) is applicable only to ETF Shares. Except to the extent inconsistent with this Rule 14.11(l), or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. ETF Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

A. Transactions in ETF Shares will occur throughout the Exchange's trading hours.

B. Minimum Price Variance. The minimum price variation for quoting and entry of orders in ETF Shares is $0.01.

C. Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for ETF Shares.

3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

A. ETF Shares. The term "ETF Shares" means shares of stock issued by an Exchange-Traded Fund.

B. Exchange-Traded Fund. The term "Exchange-Traded Fund" has the same meaning as the term "exchange-traded fund" as defined in Rule 6c-11 under the Investment Company Act of 1940.

C. Reporting Authority. The term "Reporting Authority" in respect of a particular series of ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of ETF Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with issuance of ETF Shares, or other information relating to the issuance, redemption or trading of ETF Shares. A series of ETF Shares may have more than one Reporting Authority, each having different functions.

4) Initial and Continued Listing. The Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 14.11(l) on an initial and continued listing basis.

A. The requirements of Rule 6c-11 must be satisfied by a series of ETF Shares on an initial and continued listing basis. Such securities must also satisfy the following criteria on an initial and, except for paragraph (i) below, continued, listing basis:

i. For each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange;

ii. If an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment

adviser to the investment company issuing an actively managed series of ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such ExchangeTraded Fund's portfolio; and

iii. Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

B. Continued Listing. Each series of ETF Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

i. Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of ETF Shares under any of the following circumstances:

a. if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940;

b. if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained;

c. if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or

d. if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

ii. Termination. Upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

5) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

6) A security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 14.11(c) or Rule 14.11(i), or pursuant to the approval of a proposed rule change or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this Rule 14.11(l) if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. At the time of listing of such security under this Rule 14.11(l), the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (b) of this Rule 14.11(l). Any requirements for listing as specified in Rule 14.11(c) or Rule 14.11(i), or an approval order or notice of effectiveness of a separate proposed rule change, that differ from the requirements of this Rule 14.11(l) will no longer be applicable to such security.

(Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt BZX Rule 14.11(l) Governing the Listing and Trading of Exchange-Traded Fund Shares (Release No. 34-88566; File No. SR-CboeBZX-2019-097)).

2. Nasdaq Stock Market LLC

5704. Exchange Traded Fund Shares

(a) Exchange Traded Fund Shares

(1) Definitions. For the purpose of this Rule 5704, the following terms shall have the meaning herein specified:

(A) Exchange Traded Funds. The term "Exchange Traded Fund" has the same meaning as the term "exchange-traded fund" has in Rule 6c-11 under the Investment Company Act of 1940.

(B) Exchange Traded Fund Share. The term "Exchange Traded Fund Share" has the same meaning as it has in Rule 6c-11 under the Investment Company Act of 1940.

(C) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Exchange Traded Fund Shares means Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange Traded Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Exchange Traded Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Exchange Traded Fund Shares must be designated by Nasdaq; the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(b) Nasdaq may approve a series of Exchange Traded Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 5704 on an initial and continued listing basis.

(1) Initial and Continued Listing. Each series of Exchange Traded Fund Shares must also satisfy the following criteria on an initial and continued listing (except for paragraph (A) below) basis:

(A) Initial Shares Outstanding. For each series of Exchange Traded Fund Shares, Nasdaq will establish a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Dissemination of Information. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.

(i) If the investment adviser to an Exchange Traded Fund is affiliated with a broker-dealer, such investment adviser shall erect and maintain a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to the underlying portfolio. Personnel who make decisions on the Exchange Traded Fund`s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange Traded Fund portfolio.

(ii) The Reporting Authority that provides the Exchange Traded Fund's portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

(iii) If the index underlying a series of Exchange Traded Fund Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser;

(iv) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(C) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Exchange Traded Fund Shares, as specified by Nasdaq. In addition, Nasdaq may designate a series of Exchange Traded Fund Shares for trading during a pre-market session beginning at 4:00 a.m. and/or a post-market session ending at 8:00 p.m.

(D) The minimum price variation for quoting and entry of orders in Exchange Traded Fund Shares is $0.01.

(2) Suspension of trading and removal. Nasdaq will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, a series of Exchange Traded Fund Shares under any of the following circumstances:

(A) if Nasdaq becomes aware that the series of Exchange Traded Fund Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940;

(B) if, following the initial twelve month period after commencement of trading on Nasdaq of a series of Exchange Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange Traded Fund Shares;

(C) if any of the other requirements set forth in this Rule 5704 are not continuously maintained; or

(D) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

(c) Surveillance Procedures. Nasdaq will implement and maintain written surveillance procedures for Exchange Traded Fund Shares.

(d) Termination. Upon termination of an Exchange Traded Fund, Nasdaq requires that each series of Exchange Traded Fund Shares issued in connection with such entity be removed from listing.

(e) Neither Nasdaq, the Reporting Authority, nor any agent of Nasdaq shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of a series of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of a series of Exchange Traded Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of a series of Exchange Traded Fund Shares, resulting from any negligent act or omission by Nasdaq, the Reporting Authority or any agent of Nasdaq, or any act, condition or cause beyond the reasonable control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(f) A security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5705(b) or Rule 5735(b)(1), or pursuant to an approval of a proposed rule change or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this Rule 5704 if such security is eligible to operate

in reliance on Rule 6c-11 under the Investment Company Act of 1940. At the time of listing of such security under this Rule 5704, the continued listing requirements applicable to such security will be those specified in paragraph (b) of this Rule 5704. Any requirements for listing as specified in Rule 5705(b) or 5735(b)(1), or an approval order or notice of effectiveness of a separate proposed rule change, that differ from the requirements of this Rule 5704 will no longer be applicable to such security.

Adopted April 3, 2020 (SR-NASDAQ-2019-090).

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3. NYSE Arca, Inc.

Rule 5.2-E(j)(8)

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Exchange-Traded Fund Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Exchange-Traded Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, Exchange rules will be applicable to the trading on the Exchange of such securities. Exchange-Traded Fund Shares are included within the definition of NMS Stock as defined in Rule 1.1.

(c) Definitions. The following are definitions for purposes of this Rule:

(1) "1940 Act" means the Investment Company Act of 1940, as amended.

(2) "Exchange-Traded Fund" has the same meaning as the term "exchange-traded fund" as defined in Rule 6c-11(a)(1) under the 1940 Act.

(3) "Exchange-Traded Fund Share" means a share of stock issued by an Exchange-Traded Fund.

(4) "Reporting Authority" means, in respect of a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value, the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange-Traded Fund Shares, the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. A series of Exchange- Traded Fund Shares may have more than one Reporting Authority, each having different functions.

(d) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Exchange-Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares; net asset value; or other information

relating to the purchase, redemption, or trading of Exchange-Traded Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(e) The Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Exchange Act. Each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c-11 under the 1940 Act and must satisfy the requirements of Rule 5.2-E(j)(8) upon initial listing and, except for subparagraph (1)(A) of Rule 5.2-E(j)(8)(e), on a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements.

(1) Initial and Continued Listing — Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c-11(c) under the 1940 Act on an initial and continued listing basis.

(A) Initial Shares Outstanding. For each series of Exchange-Traded Fund Shares, the Exchange will establish a minimum number of Exchange-Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(2) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares under any of the following circumstances:

(A) if the Exchange becomes aware that the investment company is no longer eligible to operate in reliance on Rule 6c-11;

(B) if the investment company no longer complies with the requirements set forth in Rule 5.2-E(j)(8);

(C) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares; or

(D) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(f) Transactions in Exchange-Traded Fund Shares will occur during the trading hours specified in Rule 7.34-E(a).

(g) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Exchange-Traded Fund Shares.

(h) Termination. Upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing.

Commentary:

.01 A security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under Rule 5.2-E(j)(8) if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2-E(j)(8). Any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2-E(j)(8) will no longer be applicable to such security.

.02 The following requirements shall be met by series of Exchange-Traded Fund Shares on an initial and continued listing basis:

(a) With respect to series of Exchange-Traded Fund Shares that are based on an index:

(1) If the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser.

(2) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable index.

Adopted: April 13, 2020 (NYSEArca-2019-81).

(*Notice of Filing of Proposed Rule Change to Establish Generic Listing Standards for Derivative Securities Products that are Permitted to Operate in Reliance on Rule 6c-11 under the Investment Company Act of 1940 (Release No. 34-87542; File No. SR-NYSEArca-2019-81*)

B. Generic Listing Standards for Non-Transparent Actively Managed ETFs

Each exchange has adopted rules to accommodate non-transparent actively managed ETFs that utilize either a proxy portfolio/tracking basket methodology or a verified intraday indicative value (commonly known as ActiveShares). In this Handbook each exchange's proxy portfolio/tracking basket rule precedes its ActiveShares rule, which may not be the same order in which such rules appear in the relevant exchanges' rules books. This order has been used here to provide consistency in presentation for our readers, who may wish to compare one exchange's rules to another's.

1. Cboe BZX Exchange, Inc.

Rule 14.11(m) Tracking Fund Shares

(1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Tracking Fund Shares that meet the criteria of this Rule.

(2) Applicability. This Rule is applicable only to Tracking Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Tracking Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(A) The Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Tracking Fund Shares.

(B) Transactions in Tracking Fund Shares will occur throughout the Exchange's trading hours.

(C) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Tracking Fund Shares is $0.01.

(D) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Tracking Fund Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Tracking Fund Shares.

(E) If the investment adviser to the Investment Company issuing Tracking Fund Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund

Portfolio, the Tracking Basket, and/or the Custom Basket or has access to nonpublic information regarding the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable, or changes thereto.

(F) Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Tracking Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Tracking Basket, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Tracking Basket, or Custom Basket, as applicable.

(3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(A) Tracking Fund Share. The term "Tracking Fund Share" means a security that: (i) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

(B) Fund Portfolio. The term "Fund Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

(C) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Tracking Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Tracking Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as

the official source for calculating and reporting information relating to such series, including, but not limited to, the Tracking Basket; the Fund Portfolio; the Custom Basket; the amount of any cash distribution to holders of Tracking Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Tracking Fund Shares. A series of Tracking Fund Shares may have more than one Reporting Authority, each having different functions.

(D) Normal Market Conditions. The term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

(E) Tracking Basket. The term "Tracking Basket" means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares. The website for each series of Tracking Fund Shares shall disclose the following information regarding the Tracking Basket as required under this Rule 14.11(m), to the extent applicable:

(i) Ticker symbol;

(ii) CUSIP or other identifier;

(iii) Description of holding;

(iv) Quantity of each security or other asset held; and

(v) Percentage weight of the holding in the portfolio.

(F) Custom Basket. For purposes of this Rule, the term "Custom Basket" means a portfolio of securities that is different from the Tracking Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares.

(4) Initial and Continued Listing. Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing. Each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:

(i) For each series, the Exchange will establish a minimum number of Tracking Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(ii) The Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that (a) the net asset value per share for the series will be calculated daily, (b) each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Tracking Basket, and the Fund Portfolio, and (c) the issuer and any person acting on behalf of the series of Tracking Fund Shares will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.

(iii) All Tracking Fund Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

(B) Continued Listing. Each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(i) Tracking Basket. The Tracking Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time.

(ii) Custom Basket. With respect to each Custom Basket utilized by a series of Tracking Fund Shares, each business day, before the opening of trading in Regular Trading Hours (as defined in Rule 1.5(w)), the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash.

(iii) Fund Portfolio. The Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time.

(iv) Suspension of trading or removal. The Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares pursuant to Rule 14.12 under any of the following circumstances:

(a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of Tracking Fund Shares for 30 or more consecutive trading days;

(b) if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time;

(c) if the Investment Company issuing the Tracking Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission staff under the Investment Company Act of 1940 to the Investment Company with respect to the series of Tracking Fund Shares;

(d) if any of the requirements set forth in this rule are not continuously maintained;

(e) if any of the applicable Continued Listing Representations for the issue of Tracking Fund Shares are not continuously met; or

(f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(v) Trading Halt.

(a) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(b) If the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

(vi) Termination. Upon termination of an Investment Company, the Exchange requires that Tracking Fund Shares issued in connection with such entity be removed from listing on the Exchange.

(vii) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

(5) Limitation of Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Tracking Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Tracking Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Tracking Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Rule 14.11 (k) Managed Portfolio Shares

(1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of this Rule.

(2) Applicability. This Rule is applicable only to Managed Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(A) The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Portfolio Shares.

(B) Transactions in Managed Portfolio Shares will occur throughout the Exchange's trading hours.

(C) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

(D) If the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

(E) Any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

(3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(A) Managed Portfolio Share. The term "Managed Portfolio Share" means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the

Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

(B) Verified Intraday Indicative Value. The term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours by the Reporting Authority.

(C) AP Representative. The term "AP Representative" means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

(D) Confidential Account. The term "Confidential Account" means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

(E) Creation Basket. The term "Creation Basket" means on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

(F) Creation Unit. The term "Creation Unit" means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

(G) Redemption Unit. The term "Redemption Unit" means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

(H) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value, the Verified Intraday Indicative Value, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

(I) Normal Market Conditions. The term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

(4) Initial and Continued Listing. Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:

(i) For each series, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(ii) The Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.

(iii) All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

(B) Continued Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(i) Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours, and will be disseminated to all market participants at the same time.

(ii) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio Shares under any of the following circumstances:

(a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days;

(b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 14.11(k)(4)(B)(iii)(b) and such interruption persists past the trading day in which it occurred or is no longer available;

(c) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 14.11(k)(4)(B)(iii)(b) and such issue persists past the trading day in which it occurred;

(d) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 14.11(k)(4)(B)(iii)(a), such issue persists past the trading day in which it occurred;

(e) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief

granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;

(f) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained;

(g) if any of the applicable Continued Listing Representations for the issue of Managed Portfolio Shares are not continuously met; or

(h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(iii) Trading Halt.

(a) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(b) If the Exchange becomes aware that: (i) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

(iv) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

(v) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

(5) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(6) Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Portfolio

Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares)."

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

2. Nasdaq Stock Market LLC

Rule 5750. Proxy Portfolio Shares

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Proxy Portfolio Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Proxy Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Proxy Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(1) The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Proxy Portfolio Shares.

(2) Transactions in Proxy Portfolio Shares will occur throughout the Exchange's trading hours.

(3) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Proxy Portfolio Shares is $0.01.

(4) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Proxy Portfolio Shares.

(5) If the investment adviser to the Investment Company issuing Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable, or has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto.

(6) Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Proxy Basket, or the Custom Basket, as applicable.

(c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) Proxy Portfolio Share. The term "Proxy Portfolio Share" means a security that: (A) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open- end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

(2) Fund Portfolio. The term "Fund Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

(3) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; Custom Basket; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to

the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

(4) Normal Market Conditions. The term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

(5) Proxy Basket. The term "Proxy Basket" means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Proxy Portfolio Shares. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under this Rule 5750, to the extent applicable:

(A) Ticker symbol;

(B) CUSIP or other identifier;

(C) Description of holding;

(D) Quantity of each security or other asset held; and

(E) Percentage weight of the holding in the portfolio.

(6) Custom Basket. For purposes of this rule, the term "Custom Basket" means a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares.

(d) Initial and Continued Listing. Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:

(1) Initial Listing. Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) For each series, the Exchange will establish a minimum number of Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) The Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that (i) the net asset value per share for the series will be calculated daily, (ii) each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Proxy Basket, and the Fund Portfolio, and (iii) the

issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.

(C) All Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

(2) Continued Listing. Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(A) Proxy Basket and Custom Basket. (i) The Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time. (ii) With respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in the regular market session, the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash.

(B) Fund Portfolio. The Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time.

(C) Suspension of trading or removal. The Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to Rule 5800 under any of the following circumstances:

(i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Proxy Portfolio Shares;

(ii) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time;

(iii) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission staff under the 1940 Act to the Investment Company with respect to the series of Proxy Portfolio Shares;

(iv) if any of the requirements set forth in this rule are not continuously maintained;

(v) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously met; or

(vi) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(D) Trading Halt.

(i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares inadvisable. These may include: a. the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or b. whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(ii) If the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable.

(E) Termination. Upon termination of an Investment Company, the Exchange requires that Proxy Portfolio Shares issued in connection with such entity be removed from listing on the Exchange.

(F) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

(e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open- end management investment company in connection with issuance of Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Proxy Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike;

accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

5760. Managed Portfolio Shares

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Managed Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(1) Nasdaq will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and Verified Intraday Indicative Values (as applicable); or (d) the applicability of Nasdaq listing rules specified in such proposals shall constitute continued listing standards.

(2) Transactions in Managed Portfolio Shares will occur throughout the Exchange's System Hours.

(3) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Managed Portfolio Shares is $0.01.

(4) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

(5) If the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has

access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

(6) Any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

(c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) Managed Portfolio Share. The term "Managed Portfolio Share" means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the SEC) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

(2) Verified Intraday Indicative Value. The term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Nasdaq's regular market session by the Reporting Authority.

(3) AP Representative. The term "AP Representative" means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

(4) Confidential Account. The term "Confidential Account" means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

(5) Creation Basket. The term "Creation Basket" means on any given business day the names and quantities of the specified instruments and/or an amount of cash that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments and/or an amount of cash that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

(6) Creation Unit. The term "Creation Unit" means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

(7) Redemption Unit. The term "Redemption Unit" means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

(8) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value, the Verified Intraday Indicative

Value, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

(9) Normal Market Conditions. The term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

(d) Initial and Continued Listing. Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:

(1) Initial Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:

(A) For each series, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) The Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.

(C) All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

(2) Continued Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(A) Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Nasdaq's regular market session, and will be disseminated to all market participants at the same time.

(B) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Rule 5800 Series, for a series of Managed Portfolio Shares, under any of the following circumstances:

(i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days;

(ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available;

(iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred;

(iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Nasdaq Rule 5760(d)(2)(C)(i), such issue persists past the trading day in which it occurred;

(v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;

(vi) if any of the continued listing requirements set forth in Nasdaq Rule 5760 are not continuously maintained;

(vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and Verified Intraday Indicative Values; or (d) the applicability of Nasdaq listing rules specified in such proposals; or

(viii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(C) Trading Halt.

(i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions

or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(ii) If the Exchange becomes aware that: (a) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

(D) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

(E) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

(e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood;

extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(f) Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that Members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares)."

A Member carrying an omnibus account for a non-Member broker-dealer is required to inform such non-Member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to Members under this rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

3. NYSE Arca, Inc.

Rule 8.601-E. Active Proxy Portfolio Shares

(a) The Exchange shall consider for trading, whether by listing or pursuant to unlisted trading privileges, Active Proxy Portfolio Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Active Proxy Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Active Proxy Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

1. Active Proxy Portfolio Shares. The term "Active Proxy Portfolio Share" means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an openend management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares , or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined net asset value ("NAV"); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

2. Actual Portfolio. The term "Actual Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.

3. Proxy Portfolio. The term "Proxy Portfolio" means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in

the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

i. Ticker symbol;

ii. CUSIP or other identifier;

iii. Description of holding;

iv. Quantity of each security or other asset held; and

v. Percentage weighting of the holding in the portfolio.

4. Custom Basket. For purposes of this rule, the term "Custom Basket" means a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares.

5. Reporting Authority. The term "Reporting Authority" in respect of a particular series of Active Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, NAV, the Actual Portfolio, Proxy Portfolio, Custom Basket, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares. A series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

6. Normal Market Conditions. The term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

(d) Initial and Continued Listing. Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following criteria:

1. Initial Listing. Each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following initial listing criteria:

A. For each series, the Exchange shall establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

B. The Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that (i) the NAV per share for the series shall be calculated daily, (ii) the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time, and (iii) the issuer and any person acting on behalf of the series of Active Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.

C. All Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

2. Continued Listing. Each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following continued listing criteria:

A. Actual Portfolio.

i. The Actual Portfolio shall be publicly disseminated within at least 60 days following the end of every fiscal quarter and shall be made publicly available to all market participants at the same time.

B. Proxy Portfolio and Custom Basket.

i. The Proxy Portfolio shall be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and shall be made available to all market participants at the same time.

ii. With respect to each Custom Basket utilized by a series of Active Proxy Portfolio Shares, each business day, before the opening of trading in the Core Trading Session (as defined in Rule 7.34-E (a)), the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

C. Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) for, a series of Active Proxy Portfolio Shares under any of the following circumstances:

i. if any of the continued listing requirements set forth in Rule 8.601-E are not continuously maintained;

ii. if either the Proxy Portfolio or Actual Portfolio is not made available to all market participants at the same time;

iii. if, following the initial twelve month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of such series of Active Proxy Portfolio Shares;

iv. if the Exchange is notified, or otherwise becomes aware, that the Investment Company has failed to file any filings required by the Commission or is not in compliance with the conditions of any currently applicable exemptive order or noaction relief granted by the Commission or Commission staff to the Investment Company with respect to a series of Active Proxy Portfolio Shares;

v. if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or

vi. if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

D. Trading Halt.

i. The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio, or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

ii. If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 7.18-E(d)(1).

iii. If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not made available to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time, as applicable.

E. Termination. Upon termination of an Investment Company, the Exchange requires that Active Proxy Portfolio Shares issued in connection with such entity be removed from Exchange listing.

F. Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus.

(e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the Investment Company in connection with issuance of Active Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Active Proxy Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Active Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Commentary:

.01 The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

.02 Transactions in Active Proxy Portfolio Shares shall occur during the trading hours specified in NYSE Arca Rule 7.34-E(a).

.03 Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares.

.04 If the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or has access to non-public information regarding the Investment Company's Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto.

.05 Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio, the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio, the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable.

Rule 8.900-E. Managed Portfolio Shares

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Managed Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(1) The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the

applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

(2) Transactions in Managed Portfolio Shares shall occur during the trading hours specified in NYSE Arca Rule 7.34-E(a).

(3) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

(4) If the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a brokerdealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

(5) Any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

(c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) Managed Portfolio Share. The term "Managed Portfolio Share" means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment

Company") organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

(2) Verified Intraday Indicative Value. The term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority.

(3) AP Representative. The term "AP Representative" means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

(4) Confidential Account. The term "Confidential Account" means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

(5) Creation Basket. The term "Creation Basket" means on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange

for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

(6) Creation Unit. The term "Creation Unit" means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

(7) Redemption Unit. The term "Redemption Unit" means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

(8) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), as the official source for calculating and reporting information relating to such series, including, but not limited to, the net asset value, the Verified Intraday Indicative Value, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

(9) Normal Market Conditions. The term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operations issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruptions or any similar intervening circumstance.

(d) Initial and Continued Listing. Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:

(1) Initial Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:

(A) For each series, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) The Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.

(C) All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

(2) Continued Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(A) Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the Core Trading Session, and will be disseminated to all market participants at the same time.

(B) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) for, a series of Managed Portfolio Shares under any of the following circumstances:

(i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares;

(ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 8.900-E(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available;

(iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900-E(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred;

(iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 8.900-E(d)(2)(C)(i), such issue persists past the trading day in which it occurred;

(v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;

(vi) if any of the continued listing requirements set forth in Rule 8.900-E are not continuously maintained;

(vii) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Portfolio Shares, are not continuously maintained; or

(viii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(C) Trading Halt.

(i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(ii) If the Exchange becomes aware that: (a) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or noaction relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will

halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

(D) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

(E) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

(e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open end management investment company in connection with issuance of Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(f) Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its ETP Holders regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that ETP Holders provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such a purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by

an ETP Holder to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares)."

An ETP Holder carrying an omnibus account for a non-ETP Holder broker-dealer is required to inform such non-ETP Holder that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Cryptocurrencies and other digital assets are of great interest to policymakers, regulators, investors, and the asset management industry. The congressional debate over the regulation of digital assets is still in its early stages; and on March 9, 2022, President Biden issued an Executive Order (the "Executive Order") setting forth a whole-of-government approach to the regulation of digital assets, and directing the U.S. government agencies, including the SEC, to take steps in furtherance of those priorities.[1]

Recognizing that there is more to come from Congress and, among others, the Department of Treasury that will significantly influence all of the financial services regulators' ultimate approach to digital assets, this Third Edition of the ETF Handbook seeks to summarize only the current regulatory response of the SEC with respect to exchange-traded products ("ETPs") having direct or "spot" exposures to cryptocurrencies and ETFs that obtain exposure to cryptocurrencies by investing in futures contracts thereon.

With respect to ETPs that would hold spot cryptocurrency positions, the SEC has consistently rejected proposed listing rules to permit them largely for two reasons:

- the exchange on which the proposed ETP would trade would not have surveillance-sharing agreements[2] with significant markets that host trading in Bitcoin or other cryptocurrency; and
- the underlying markets for Bitcoin or other cryptocurrency are not regulated, or not regulated in a manner comparable to a national securities or futures exchange.[3]

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1 Executive Order dated March 9, 2022 (https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/).

2 A surveillance-sharing agreement is an agreement between a commodity exchange operator and a self-regulatory organization that oversees that commodity exchange operator to share information about market trading activity, clearing activity, and customer identity. Moreover, under such agreements, parties to the agreement are reasonably able to access and produce requested information to each other, and no existing rules, laws or practices impede one party's capability of obtaining this information from or producing it to another party. *See, e.g.,* Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Exchange Act Release No. 34-83723, 83 Fed. Reg. 37,579, at 37,593 (Aug. 1, 2018), *https://www.gpo.gov/fdsys/pkg/FR-2018-08-01/pdf/2018-16427.pdf* (the "Winklevoss Bitcoin Trust SEC Decision").

3 *Id.* at 37,599.

In effect, the SEC's position has been that cryptocurrency pricing is unreliable because the underlying markets is unregulated (or, at least, not comparably regulated to national securities exchanges), opaque and susceptible to manipulation. As a result, the SEC has concluded, the pricing of the proposed ETP products may also be unreliable, creating risks of investor harm. On this logic, the SEC has declined to approve all proposed listing rules for cryptocurrency ETPs.

ETFs that sought to obtain Bitcoin exposures by investing in Bitcoin-related futures contracts, which are regulated by the Commodity Futures Trading Commission ("CFTC"), did not fare much better until October 2021.[4] At that time, the SEC did not take any action to prevent the registration and listing, under the ETF Rule and the generic listing standards discussed in Chapter V above, of the first ETFs providing exposure to Bitcoin-related futures contracts. More specifically, on October 19, 2021, the SEC oversaw the listing of the Proshares Bitcoin Strategy ETF (NYSE ARCA: BITO) (the "Proshares ETF") on a national securities exchange, and shortly thereafter did the same for the Valkyrie Bitcoin Strategy ETF (NASDAQ: BTF) and the VanEck Bitcoin Strategy ETF (Cboe BZX: XBTF).

The SEC apparently became comfortable with these Bitcoin futures-based ETFs due, among other things, to their being structured similarly to managed futures mutual funds and ETFs. In this respect, these ETFs hold at least 75 percent of their assets in fixed income securities and/or cash and money market type instruments and up to 25 percent in the shares of a wholly owned subsidiary treated as a controlled foreign corporation for U.S. federal income tax purposes ("CFC"). The CFC invests solely in Bitcoin futures traded on the Chicago Mercantile Exchange ("CME").[5] This structure, where the exposure to securities outweighs the actual (if

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4 Section 1a(9) of the Commodity Exchange Act defines "commodity" to include, among other things, "all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in." 7 U.S.C. § 1a(9). The resulting definition of a "commodity" is broad. See, e.g., Board of Trade of City of Chicago v. SEC, 677 F.2d 1137, 1142 (7th Cir. 1982). Noting that "the definition of a 'commodity' is broad," the CFTC has confirmed that "Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities." In the Matter of: Coinflip, Inc., d/b/a Derivabit, CFTC No. 15-29. Thus, while the CFTC does not directly regulate spot commodity markets, such as cryptocurrency markets, the CFTC does have jurisdiction over any futures contracts on them.

5 Thus, these ETFs offer a "total return" based on the return of the CFC's futures portfolio and the return on the ETF's fixed income portfolio. The limit of 25 percent of assets in the CFC allows the ETF to comply with tax transparency afforded to regulated investment companies (RICs) under sub-chapter M of the Internal Revenue Code. For purposes of the 1940 Act, both the fixed income securities and the shares of the CFC are "securities." As a result, the ETF is subject to 1940 Act regulation, even though the economic return from the ultimate Bitcoin exposure, particularly in a low interest rate environment, is likely to outweigh the fixed income return, perhaps by large multiples.

indirect) exposure to Bitcoin, causes the ETF to be an investment company under the Investment Company Act of 1940 ("1940 Act"), overseen by the SEC's Division of Investment Management ("IM") and able to rely on the ETF Rule. The applicability of the 1940 Act to these ETFs was a key consideration of the SEC in not objecting to their listing.[6]

ETPs offering spot exposures to Bitcoin are not subject to 1940 Act regulation because Bitcoin is not a security; and without a portfolio consisting predominately of securities, they cannot register under the 1940 Act.[7] From the SEC's perspective,

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6 See, e.g., Gary Gensler, Chairman, SEC, Remarks Before the Aspen Security Forum, (August 3, 2021) *(https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03)* (the "Aspen Remarks").

7 Registered investment companies currently cannot directly invest in cryptocurrencies such as Bitcoin and Ethereum, which are not securities. In 2018, the SEC staff expressed its position that it is inappropriate for registered funds to invest directly in cryptocurrency and related products and requested that any registration statements for funds with such investments as their primary objective be withdrawn or put on hold. *See* Inv. Co. Inst. and Sec. Industry and Fin. Markets Ass'n, SEC Staff Letter, (Jan. 18, 2018), *https://www.sec.gov/divisions/investment /noaction/2018/cryptocurrency-011818.htm* (the "Dalia Blass Letter"). The Dalia Blass Letter concluded:

> Until the [SEC's] questions [about the applicability of 1940 Act regulation to cryptocurrencies] can be addressed satisfactorily, we do not believe that it is appropriate for [registered] fund sponsors to initiate registration of funds that intend to invest substantially in cryptocurrency and related products, and we have asked sponsors that have registration statements filed for such products to withdraw them. In addition, we do not believe that such funds should utilize [Securities Act of 1933 rule 485], which allows post-effective amendments to previously effective registration statements for registration of a new series to go effective automatically. If a sponsor were to file a post-effective amendment under rule 485(a) to register a fund that invests substantially in cryptocurrency or related products, we would view that action unfavorably and would consider actions necessary or appropriate to protect Main Street investors, including recommending a stop order to the [SEC].

therefore, spot exposure ETPs will not offer investors the protections of the 1940 Act, including the protections provided by its governance requirements and conflict of interest prohibitions.[8] Which may explain why, just days after the SEC permitted the Proshares ETF to list, it declined to permit two Bitcoin ETPs to do the same.[9]

In the Denial Orders for these two ETPs, the SEC took the position that listing rules that permitted shares of ETPs with direct spot exposure to Bitcoin created potential for investor risk that was inconsistent with requirements under the Securities Exchange Act of 1934 (the "Exchange Act") that national securities exchange rules be "designed to prevent fraudulent and manipulative acts and practices" and "protect investors and the public interest."[10] For Bitcoin-based ETPs, the SEC concluded, as it had in denying each prior listing rule application for cryptocurrency ETPs, that a listing exchange can meet these requirements by "demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets[,]"[11] or, in the alternative, by establishing that the Bitcoin market "inherently possesses a unique resistance to manipulation beyond the protections that are utilized by

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8 Unlike the rigorous ongoing regulation to which ETFs are subjected by the 1940 Act and IM, ETPs are lightly regulated by the SEC's Division of Corporate Finance (Corp Fin), which solely reviews the adequacy of the ETPs registration statement and other periodic public filings. Both ETFs and ETPs, by virtue of their shares being exchange traded, are indirectly subjected to the regulation by the SEC's Division of Trading and Markets (TM). TM acts as a gatekeeper for all ETFs and ETPs securities exchange trading through its review and approval or denial of all proposed listing rules that would permit the listing and trading of ETF and ETP shares on the exchange. Each of IM, Corp Fin, and TM oversee different federal securities laws that have different public policy goals. For approval of listing rules, TM is charged with, among other things, ensuring that rules are designed to prevent fraudulent and manipulative acts and practices and generally protect investors and the public interest. *See* 15 U.S.C. § 78b.

9 Order Disapproving a Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity Based Trust Shares, Exchange Act Release No. 34-93559, 86 Fed. Reg. 64,539 (November 12, 2021) (the "VanEck Denial Order"); Order Disapproving a Proposed Rule Change to List and Trade Shares of the WisdomTree Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity Based Trust Shares, Exchange Act Release No. 34-93700, 86 Fed. Reg. 69,322 (December 1, 2021) (the "WisdomTree Denial Order", and, together with the VanEck Denial Order, the "Denial Orders"). Three days after it approved the listing of the VanEck Bitcoin Strategy ETF, the SEC issued the VanEck Denial Order.

10 Exchange Act § 6(b)(5).

11 VanEck Denial Order, 86 Fed. Reg. at 64,540; WisdomTree Denial Order, 86 Fed. Reg. at 69,322.

traditional commodity or securities markets[.]"[12] On the latter point, the SEC noted that "[s]uch resistance to fraud and manipulation must be novel and beyond those protections that exist in traditional commodities or securities markets."[13] In each of the Denial Orders, the SEC was unmoved by the exchange's arguments that the Bitcoin market broadly is inherently and uniquely resistant to manipulation.[14] Of particular import in light of Chairman Gensler's comments in August 2021, the SEC noted that, in contrast to Bitcoin futures markets, "[B]itcoin spot trading platforms are not required to register with the CFTC, and the CFTC does not set standards for, approve the rules of, examine, or otherwise regulate [B]itcoin spot markets[,]" and further that "US law 'does not provide for direct, comprehensive Federal oversight of underlying Bitcoin or virtual currency spot markets.'"[15]

Next, the SEC concluded that, notwithstanding that both the BZX (the national securities exchange proposing to list the ETPs) and the CME are members of the Intermarket Surveillance Group (ISG), and therefore the BZX is deemed to have a surveillance-sharing relationship with the CME, the CME is not a "market of significant size" for this purpose. Again, this point is identical to that made in each prior listing rule application denial for cryptocurrency ETPs. Whether a particular market is a "market of significant size" depends on whether:

1. There is a "reasonable likelihood that a person attempting to manipulate the ETP would have to trade on the CME bitcoin futures market to successfully manipulate the ETP[;]" and

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12 Id.

13 VanEck Denial Order, 86 Fed. Reg. at 64,542; WisdomTree Denial Order, 86 Fed. Reg. at 69,322. Other commenters have noted that the SEC has never explained what "unique resistance to manipulation" means, or what it means for such resistance to be "novel and beyond" currently existing protections. *See*, *e.g.*, Davis Polk & Wardwell, Comment Letter in Support of Notice of Filing of Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E (November 29, 2021) (the "Grayscale Letter"), *https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-9410842-262990.pdf*.

14 For example, in the WisdomTree Order, the SEC pointed to the facts that, among other items, the proposed ETP would purchase Bitcoin through spot platforms that are not regulated as national securities exchanges. WisdomTree Denial Order, 86 Fed. Reg. at 69,331. The SEC has remained consistent on this point in more recent listing rule denials. *See, e.g.*, Order Disapproving a Proposed Rule Change to List and Trade Shares of the Wise Origin Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Release No. 34-94080 (January 27, 2022) (*https://www.sec.gov/rules/sro/cboebzx/2022/34-94080.pdf*); and Order Disapproving a Proposed Rule Change to List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust under NYSE Arca Rule 8.201-E, Release No. 34-94006 (January 20, 2022) (*https://www.sec.gov/rules/sro/nysearca/2022/34-94006.pdf*).

15 WisdomTree Denial Order, 86 Fed. Reg. at 69,328.

2. It is unlikely that trading in the ETP would be the predominant influence on prices in that market."[16]

Regarding manipulation, the SEC concluded that the mere fact that trading volume and open interests in the CME Bitcoin futures market have increased over time do not, by themselves, demonstrate to a reasonable likelihood that a person attempting to manipulate the ETP could not do so except through the CME Bitcoin futures market. Moreover, the SEC found that the BZX failed to show that CME Bitcoin futures lead the CME Bitcoin spot market from a pricing perspective, which is central to understanding whether a potential manipulator would need to trade on the CME futures market to manipulate the spot market,[17] and also noted that it would be possible to trade on futures markets other than the CME. Regarding influence on prices, the SEC noted that there was no stated upper limit on the size of the proposed ETP's Bitcoin holdings, and that therefore it was possible that the ETP's trades could be a predominant influence on prices in that market, even though that would be highly unlikely given the sheer size of the CME Bitcoin futures market and the size of the underlying market for Bitcoins. In summary, the SEC remained then — and remains today — unmoved with respect to spot Bitcoin ETPs.

16 VanEck Denial Order, 86 Fed. Reg. at 64,540; WisdomTree Denial Order, 86 Fed. Reg. at 69,330.

17 VanEck Denial Order, 86 Fed. Reg. at 64,547; WisdomTree Denial Order, 86 Fed. Reg. at 69,331.

As with for all registered funds, the Financial Industry Regulatory Authority ("FINRA") oversees the advertising and marketing of ETFs. In this role, FINRA has issued the following guidance and letters.

A. FINRA Guidance

1. FINRA Regulatory and Compliance Alert — Exchange-Traded Fund Performance — Fall 2001

In this regulatory alert, FINRA provides guidance that ETFs must include in any performance advertising standardized performance quoted in both NAV and market price. Any performance returns must be shown for standardized periods based on NAV with equally prominent disclosure of performance returns based on market closing price for those time periods. The guidance also requires disclosure of the basis for each set of performance figures (e.g., "total returns are based on the market closing price of the ETF on date X"). The guidance further stated that any performance communications from ETFs structured as open-end funds are subject to the SEC Rule 482 standardized performance requirements.

B. FINRA Letters

1. Letter from Joseph E. Price, FINRA, to Bradley J. Swenson, Chief Compliance Officer, ALPS Distributors, Inc., dated April 22, 2013 ("ALPS Letter")

In this regulatory guidance letter, FINRA permits the use of pre-inception, or back-tested, index performance for exchange-traded products ("ETFs") in communications limited to "institutional investors" (as defined in Rule 2210(a)(4)). Back-tested performance data models the performance of an index as if it had existed prior to its inception date. Institutions that are financial intermediaries may not distribute such communications to retail investors. FINRA imposes a number of conditions on the use of such back-tested performance, including, but not limited to, that: it must be clearly labeled "For use with institutions only, not for use with retail investors;" it may only be used for an index created according to a pre-defined set of rules that cannot be altered, except under extraordinary circumstances; it may only be used to market passive, not active, ETFs; it must include an offer to provide the methodology for such performance; and it must show current calendar quarter-ended performance.

2. Letter from Joseph E. Price, FINRA, to Edward P. Macdonald, Hartford Funds Distributors, LLC, dated May 12, 2015 ("Hartford Letter")

In this regulatory guidance letter, FINRA permits the use of registered fund related performance in communications distributed solely to "institutional investors" (as defined in Rule 2210(a)(4)). FINRA defines "related performance information" as actual performance of all separate or private accounts or funds that have (1) substantially similar investment policies, objectives, and strategies,

and (2) are currently, or were previously, managed by the same adviser/sub-adviser that manages the relevant registered mutual fund. Distribution of such sales materials to retail investors is not permitted. FINRA had previously imposed a blanket prohibition on registered funds' use of related performance. Thus, the Hartford Letter provides an exception to such prohibition for the use of related performance for registered funds in institutional sales materials, subject to a lengthy list of conditions, including those noted above and that: the related performance will include all accounts and will be presented in a composite or a list (in which the investment performance of each account will be displayed with equal prominence); any institutional communication with related performance will be clearly labeled "for use with institutions only, not for use with retail investors"; any related performance will disclose performance information net of fees and expenses of related accounts, or net of a model fee that is the highest fee charged to any account managed in the strategy; if gross performance information is also provided, certain enumerated disclosures will be included; related performance will be clearly labeled as such, will contain clear disclosure of the applicable dates for the performance, and will be current as of the most recently-ended calendar quarter; a mutual fund in existence for more than one year will display its actual performance more prominently than the related performance; and institutional communications will disclose any material differences between the related performance funds or accounts and the relevant mutual fund. We note that the substance of many of these conditions track well-established SEC related performance guidance, which has historically permitted the use of registered fund related performance in registration statements, representing a partial harmonization of regulatory regimes.

Regulatory & Compliance Alert

A PUBLICATION OF NASD REGULATION, INC. *15.3* FALL 2001

Information To Help Members And Investors

In the aftermath of the tragic events of September 11, NASD's thoughts remain with the victims, their families, friends, and colleagues. As many of you may already be aware, we have issued communications for NASD members, investors, and others about a variety of pertinent topics, including important contact information, a notice about securities professionals called into active military duty, information about online regulatory reporting, and selected firm contact information for investors. We also have included an "Office Space Bulletin Board" where we post information about firms that have space to share and those firms seeking space in the New York area.

Continued on page 3

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Exchange-Traded Fund Performance

Exchange-traded funds (ETFs) are investment companies registered under the Investment Company Act of 1940 that offer shares that trade in the secondary market, including national securities exchanges. Currently, all ETFs invest in a portfolio of securities that closely tracks a specific index. Some ETFs are structured as open-end management investment companies and some are structured as unit investment trusts (UITs). Investors may purchase and redeem shares from the ETF only in large quantities (creation units), which are priced at the ETF's net asset value (NAV). Because ETFs are listed on exchanges, individual ETF shares can be bought and sold throughout the trading day at the current market price. Furthermore, ETF shares can be sold short and bought on margin.

As these products have grown in popularity, NASD member firms have sought to advertise ETF performance. NASD Regulation notes that performance communications used prior to prospectus delivery for ETFs structured as open-end management investment companies must comply with the standardized performance requirements set forth in SEC Rule 482 under the Securities Act of 1933.[1] Rule 482 requires performance communications to include one year, five-year, and ten-year average annualized total returns computed in accordance with a standard formula.[2] Under Rule 482, these standardized returns must be current to the most recently ended calendar quarter prior to submission of the communication for publication.

The formula for computing standardized returns is based on the fund's NAV as of the ending date of the performance period. Due to market action, ETF shares trading on an exchange may be available for purchase at a premium or discount to NAV. Consequently, communications that quote only NAV-based performance for an ETF may fail to provide the reader with a sound basis for evaluating the facts with respect to an investment in the ETF. NASD Conduct Rule 2210(d)(1)(A) requires NASD members' communications to provide such a sound basis and prohibits the omission of material information necessary to make a communication fair and not misleading.

Accordingly, NASD Regulation has taken the position that in addition to quoting standardized performance based on NAV, performance communications for ETFs must also include equally prominent disclosure of returns based on the closing market price of the shares for the same time periods as standardized returns.

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1 For communications that are preceded or accompanied by a prospectus, the same performance standards apply pursuant to SEC Rule 34b-1 under the Investment Company Act of 1940.

2 If a fund has been in existence for less than the required time periods, then standardized average annualized total returns for the period since the fund's inception must be shown.

Such data must be accompanied by disclosure of the basis for each set of figures (e.g., "these total returns are based on the closing market price of the ETF on [date]"). The NASD Regulation staff has discussed its position with the SEC staff, which concluded that this position is not inconsistent with the SEC's exemptive orders issued to ETFs that permit their operation.[3] With respect to ETFs that are structured as UITs, the standardized performance requirements of Rule 482 do not apply. Nevertheless, compliance with Rule 2210(d)(1)(A) would require performance communications for these ETFs that are based on NAV to reflect equally prominent performance based on the closing market price of the shares for the given time period, along with appropriate disclosure of the basis for such information.

Contact the Advertising/Investment Companies Regulation Department at (240) 386-4500 with any questions regarding ETF performance.

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[3] In recent exemptive orders issued to ETFs, the SEC has required the prospectuses and annual reports of ETFs to show cumulative total return and average annual total return based on both NAV and market price. See, e.g., In the Matter of Barclays Global Fund Advisors, SEC Investment Company Release No. 24451 (May 12, 2000).

Interpretive Letter to Bradley J. Swenson, ALPS Distributors, Inc.

Additional guidance regarding the use of pre-inception index performance in institutional communications

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April 22, 2013

Mr. Bradley J. Swenson
Chief Compliance Officer
ALPS Distributors, Inc.
1290 Broadway, Suite 1100
Denver, CO 80203

Re: Interpretive Guidance Regarding the Use of Pre-Inception Index Performance in Institutional Communications

Dear Mr. Swenson:

In your letter of April 19, 2013, you request interpretive guidance regarding the use of pre-inception index performance ("PIP") data in communications regarding certain exchange traded products ("ETPs") distributed solely to "institutional investors" as defined in FINRA Rule 2210(a)(4)[1], excluding financial intermediaries who intend to share the PIP data with persons other than institutional investors. ALPS Distributors, Inc. ("ADI") believes that PIP data is useful to institutional investors in analyzing ETPs and that such institutional investors should be able to understand the potential benefits and drawbacks of such information.

Your letter defines ETPs to comprise publicly traded securities structured as exchange traded notes, grantor trusts or registered investment companies. ADI markets passively-managed ETPs that are based on newly created indexes that have been developed according to pre-defined rules that cannot be altered except under extraordinary market, political or macroeconomic conditions. PIP data models the performance of such an index had it existed prior to the inception date of the index.

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1 Pursuant to FINRA Rule 2210(a)(4), the term "institutional investor" means any: person described in Rule 4512(c), regardless of whether that person has an account with the FINRA member; governmental entity or subdivision thereof; employee benefit plan that meets the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and has at least 100 participants, but does not include any participant of such a plan; qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 participants, but does not include any participant of such a plan; FINRA member or registered associated person of such a member; and person acting solely on behalf of any such institutional investor.

Background

Your letter states that:

- institutional investors have specifically requested that ADI provide them with PIP data because they find it useful in helping them make better investment decisions; and
- institutional investors typically use PIP data to help formulate proprietary investment strategies and that such entities have no economic incentive to distribute communications containing PIP data to non-institutions.

ADI proposes the use of PIP data in institutional communications only, as that term is defined in FINRA Rule 2210(a)(3), subject to the criteria set forth below:

1. Any piece of marketing material that includes PIP data would be clearly labeled "For use with institutions only, not for use with retail investors",
2. Any PIP data would be used only with respect to an Index created according to a pre-defined set of rules that cannot be altered except under extraordinary market, political or macroeconomic conditions;
3. PIP data will be used to market passively managed ETPs and would not be used to market actively managed ETPs, in which active changes to underlying securities are permitted by the methodology of the ETP;
4. Any piece of marketing material containing PIP data would include an offer to provide the rule set or methodology of the ETP index upon request and any electronic marketing material would include a hyperlink to such information;
5. The presentation of PIP data will reflect the deduction of fees and charges applicable to the ETP;
6. PIP data will reflect a period of time that includes multiple securities market environments, and at a minimum, ten years since the inception of the index;
7. PIP data will be current as of the most recently ended calendar quarter;
8. PIP data will be clearly labeled and presented separately from actual performance along with disclosure of the applicable dates for the PIP data and the dates for the actual ETP performance since inception;
9. For any ETP in existence for greater than one year, the use of PIP data will be accompanied by the prominent presentation of actual performance of the ETP since inception that reflects the deduction of fees and charges of the ETP;
10. PIP data will not be inconsistent with information in the prospectus but may be used regardless of whether the fund prospectus contains the data;

11. In addition to disclosures required to meet the content standards of Rule 2210(d) PIP data will be accompanied by the following disclosures:

    a. The ETP is a new product and any performance prior to the date of index inception is hypothetical;

    b. If the PIP data is produced by an index provider that is paid by the fund sponsor to produce the data, this arrangement and the identity of the index provider will be disclosed;

    c. The PIP data results are based on criteria applied retroactively with the benefit of hindsight and knowledge of factors that may have positively affected its performance, and cannot account for all financial risk that may affect the actual performance of the ETP;

    d. The actual performance of the ETP may vary significantly from the PIP data;

    e. Any known reasons why the PIP data would have differed from actual performance during the period shown. For instance, this may include assumptions regarding transaction costs, liquidity, or other market factors.

In addition, your letter represents that all marketing materials that contain PIP data shall comply with all other applicable FINRA rules and federal securities laws and be subject to the same supervisory and approval requirements that ADI applies to all other firm communications.

Your letter states that communications containing PIP data would be labeled clearly for use with institutions only. If the institutional investor is a financial intermediary, ADI will instruct the intermediary not to circulate communications containing PIP data to clients who are not institutional investors. ADI has no reason to believe these institutional investors have distributed or would distribute institutional communications in a manner inconsistent with FINRA requirements. If ADI becomes aware that an intended recipient has distributed materials containing PIP data to clients who are not institutional investors, ADI will cease distributing such materials to that recipient.

Discussion

FINRA Rule 2210 subjects institutional communications to certain content and supervision standards. In particular, institutional communications must be fair and balanced and must provide a sound basis for evaluating the facts in regard to any particular security. Institutional communications may not omit material information, include false, exaggerated, or misleading statements, or misstate material facts. A firm must establish written procedures for the review of institutional communications by a registered principal that are appropriate to the firm's business, size, structure, and customers. When those procedures do not require prior-to-use review, the firm must adopt training and surveillance procedures to ensure compliance with the rule.

FINRA staff believes that FINRA Rule 2210 permits the use of PIP data in institutional communications in the manner proposed in your letter. However, in applying the suitability standards for recommendations to institutional customers, a firm must be careful to not give excess weight to PIP data, and to the extent PIP data informs the firm's understanding of the security and its performance characteristics, the firm must consider the correlation between PIP data and actual performance for similar ETPs managed by the sponsor, investment adviser or index provider.

In determining whether or not to use PIP data with institutional investors, firms should consider:

A. The assumptions, rules and criteria used to create the PIP data, in sufficient detail as to permit the firm to clearly understand how the PIP data could be replicated, using readily-available market data;

B. The reputation of the entity that created the PIP data, and if the sponsor of the ETP paid for creation of the model, how any material conflicts of interest have been addressed or mitigated;

C. The conditions under which the PIP data may not be effective in predicting how the ETP may perform (e.g., very low or high interest rate environments);

D. The source of the data used to produce the PIP data;

E. The extent to which the PIP data has been tested under varying market conditions and scenarios, based on both an analysis of historical data and simulations or stress tests; and

F. Any reasons why the PIP data would have differed from actual performance of the ETP during the period shown (e.g., transaction costs, market liquidity).

While we do not object to the use of PIP data in institutional communications as discussed herein, this letter does not affect FINRA's long standing position that the presentation of hypothetical back tested performance in communications used with retail investors does not comply with FINRA Rule 2210(d).

The opinions expressed in this letter are staff opinions only and have not been reviewed or endorsed by the FINRA Board of Governors. This staff letter responds only to the issues raised, and does not address any other rule or interpretation of FINRA, or all the possible regulatory and legal issues involved.

If you have any questions regarding this letter, please contact me at (240) 386-4623, Tom Pappas at (240) 386-4553, or Amy Sochard at (240) 386-4508.

Sincerely,

Joseph E. Price
cc: Steven B. Price, Deputy Chief Compliance Officer, ALPS Distributors, Inc.

Interpretive Letter to Edward P. Macdonald, Hartford Funds Distributors, LLC

May 12, 2015

Edward P. Macdonald
Executive Vice President, Deputy General Counsel Hartford Funds Distributors, LLC
5 Radnor Corporate Center
100 Matsonford Road, Suite 300
Radnor, PA 19087

Re: Provision of Related Performance Information to Institutional Investors

Dear Mr. Macdonald:

In your letter of May 7, 2015, you request interpretive guidance on behalf of Hartford Funds Distributors, LLC ("Hartford Funds"), an underwriter and wholesale distributor of registered mutual funds, regarding the use of related performance information (as defined below) in communications that are distributed solely to institutional investors, as that term is defined in FINRA Rule 2210(a)(4). For purposes of this request, "Related Performance Information" means actual performance of all separate or private accounts or funds that have (i) substantially similar investment policies, objectives, and strategies, and (ii) are currently managed or were previously managed by the same adviser or sub-adviser that manages the registered mutual fund that is the subject of an institutional communication.

Background

You state that Hartford Funds markets registered mutual funds, on a wholesale basis, to financial intermediaries who qualify as "institutional investors" under FINRA Rule 2210(a)(4). These intermediaries include registered broker-dealers and investment advisers, who may sell or recommend Hartford Funds' funds to their customers. The registered broker-dealers assume related suitability and "know your customer" obligations for any such sales and recommendations. The financial intermediaries are responsible for conducting due diligence on the mutual funds that Hartford Funds sells and, in some cases, determining whether to include these funds on various types of platforms.

You state that, in addition to providing mutual fund offering materials, Hartford Funds provides financial intermediaries with written and electronic communications regarding the mutual funds, which assist these intermediaries in understanding the funds. As the marketplace for fund information has evolved, Hartford Funds increasingly is receiving requests from financial intermediaries for Related Performance Information.

You state that intermediaries request Related Performance Information to analyze and conduct due diligence on mutual funds, portfolio managers, accounts, or particular investment strategies, and to determine if funds and strategies are appropriate and suitable investments for their customers. You further state that, in cases where a mutual fund has no or only a limited performance history, Related Performance Information may be a particularly critical data point in evaluating the fund.

Hartford Funds proposes to use Related Performance Information only under the following conditions:

1. This performance information may be provided only if it is actual performance of all separate or private accounts or funds that have (i) substantially similar investment policies, objectives, and strategies, and (ii) are managed or were previously managed by the same adviser or sub-adviser that manages the registered mutual fund that is the subject of an institutional communication.

2. Hartford Funds will provide materials with Related Performance Information only to persons who qualify as "institutional investors" under FINRA Rule 2210(a)(4), excluding institutional investors who intend to share the Related Performance Information with persons other than institutional investors.

3. The presentation of Related Performance Information will include all accounts described in the first condition ("Related Accounts"). If there are multiple Related Accounts, the investment performance of such accounts will be presented in a composite or a list (in which the investment performance of each account will be displayed with equal prominence).

4. Any institutional communication with Related Performance Information will be clearly labeled "for use with institutions only, not for use with retail investors." Hartford Funds will instruct institutional investors who receive such materials not to provide them to current or prospective customers or others who are not institutional investors.

5. The presentation of Related Performance Information will disclose performance information that is net of fees and expenses of Related Accounts, or net of a model fee that is the highest fee charged to any account managed in the strategy. If gross performance information is also provided, the institutional communication will prominently disclose that (i) the performance information does not reflect the deduction of fees and expenses, (ii) different funds and accounts have different fees and expenses, and (iii) that the Related Performance Information would have been lower to the extent the related funds or accounts were subject to higher fees and expenses. The fees and expenses of the registered fund that is the subject of the institutional communication will be prominently disclosed and this fund's performance information will reflect all fees and expenses. If the fees and expenses are higher than the fees and expenses of the Related Accounts, that fact will be disclosed.

6. Related Performance Information will (i) include the performance of each Related Account, (ii) be for a period of at least one year and since the inception of the investment strategy, and (iii) be current as of the most recently-ended calendar quarter.

7. Related Performance Information will be clearly labeled as such and contain clear disclosure of the applicable dates for the performance.

8. For a mutual fund in existence for more than one year, its actual performance will be displayed more prominently than the Related Performance Information.

9. The institutional communications will disclose any material differences between the funds or accounts for which Related Performance Information is provided and the mutual fund that is the subject of the institutional communication.

10. All institutional communications that contain Related Performance Information shall comply with all other applicable FINRA rules and federal securities laws and be subject to the same supervisory requirements that Hartford Funds applies to all other firm communications.

Discussion

FINRA Rule 2210 subjects institutional communications to certain content and supervision standards. In particular, institutional communications must be fair and balanced and must provide a sound basis for evaluating the facts in regard to any particular security. Institutional communications may not omit material information, include false, exaggerated, or misleading statements, or misstate material facts. A firm must establish written procedures for the review of institutional communications by a registered principal that are appropriate to the firm's business, size, structure, and customers. When those procedures do not require prior-to-use review, the firm must adopt training and surveillance procedures to ensure compliance with the rule.

FINRA has taken the position in the past that the presentation of Related Performance Information in communications with the public, in some cases, may be inconsistent with the content standards of Rule 2210(d)(1).[ii] However, FINRA has also recognized that communications provided solely to institutional investors do not raise the same investor protection concerns as sales materials provided to retail investors,

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[ii] See, e.g., "Adviser Performance Prohibited in New Fund Advertising," NASD Regulatory & Compliance Alert (June 1992) p. 7. FINRA has permitted members, under appropriate conditions, to describe predecessor performance (concerning insurance company separate accounts, private investment companies or common trust funds) in their sales materials, consistent with the SEC staff's no-action letter issued to MassMutual Institutional Funds. See Notice to Members 97-47 (August 1997), footnote 2; see also MassMutual Institutional Funds, SEC staff no-action letter (September 28, 1995).

and FINRA has permitted member firms to provide certain related performance information to certain institutional investors, with appropriate safeguards. In particular, in 2003, FINRA stated that it would not object if a member firm included Related Performance Information in sales materials for private funds relying on Section 3(c)(7) of the Investment Company Act of 1940 ("ICA"), if the information was made available only to qualified purchasers, as defined in the ICA and the member firm complied with all other applicable standards in NASD Rule 2210.[iii]

FINRA staff believes that the same rationale used in the 2003 interpretive letter to conclude that it was consistent with the applicable standards of NASD Rule 2210 to include Related Performance Information in sales material for private funds relying on Section 3(c)(7) of the ICA applies in this context. Accordingly, FINRA staff believes that the use of Related Performance Information in institutional communications in the manner proposed in your letter is consistent with the applicable standards of FINRA Rule 2210. While we do not object to the use of Related Performance Information in institutional communications as discussed herein, this letter does not affect FINRA's longstanding position that the presentation of related performance information, other than the performance of a predecessor private account or fund as described above, in communications used with retail investors does not comply with FINRA Rule 2210(d).

The opinions expressed in this letter are staff opinions only and have not been reviewed or endorsed by the FINRA Board of Governors. This staff letter responds only to the issues raised, and does not address any other rule or interpretation of FINRA, or all the possible regulatory and legal issues involved.

If you have any questions regarding this letter, please contact me at (240) 386-4623, or Joe Savage at (240) 386-4534.

Sincerely,

Joseph E. Price

cc: Matthew Chambers, WilmerHale
Stephanie Nicolas, WilmerHale
Elizabeth Page, Vice President & Director
FINRA Boston District Office
Joseph P. Savage, FINRA

[iii] See Letter from Thomas M. Selman, Senior Vice President, NASD, to Yukako Kawata (Davis Polk & Wardwell) (Dec. 30, 2003), available at www.finra.org.

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