

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for Proposed
Rule 6c-11

A. JUSTIFICATION

1. Necessity for the Information Collection

Proposed new rule 6c-11 under the Investment Company Act of 1940 (17 CFR 270.6c-11) (the “Act”) would permit ETFs that satisfy certain conditions to operate without first obtaining an exemptive order from the Commission. The rule is designed to create a consistent, transparent, and efficient regulatory framework for such ETFs and facilitate greater competition and innovation among ETFs. The proposal attempts to eliminate historical distinctions and conditions that the Commission no longer believes are necessary and thus appropriately level the playing field for such ETFs that pursue the same or similar investment strategies. Proposed rule 6c-11 would require an ETF to disclose certain information on its website, to maintain certain records, and to adopt and implement written policies and procedures governing their constructions of baskets, as well as written policies and procedures that set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders. The proposed rule contains a “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).¹ The information collection is integral to the framework of proposed rule 6c-11 and therefore necessary to help

¹ 44 U.S.C. 3501 through 3521.

further the proposed rule's aforementioned goals. The information collection would also assist the Commission's examination staff in assessing ETFs' compliance with the conditions of proposed rule 6c-11.

2. Purpose and Use of the Information Collection

The collection of information under proposed rule 6c-11 is integral to the framework of proposed rule 6c-11 and therefore necessary to help further the proposed rule's goals of creating a consistent, transparent, and efficient regulatory framework for such ETFs and facilitating greater competition and innovation among ETFs. The information collection would also assist the Commission's examination staff in assessing ETFs' compliance with the conditions of proposed rule 6c-11. The respondents to proposed rule 6c-11 would be ETFs registered as open-end management investment companies other than ETFs within multiple-class funds or leveraged ETFs.

3. Consideration Given to Information Technology

Proposed rule 6c-11 does not require the reporting of any information or the filing of any documents with the Commission. The Electronic Signatures in Global and National Commerce Act² and conforming amendments to rules under the Investment Advisers Act of 1940 permit ETF advisers to maintain records electronically.

4. Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a

² P.L. 106-229, 114 Stat. 464 (June 30, 2000).

change in a rule. The information collection that would be required by rule proposed rule 6c-11 is not duplicated elsewhere.

5. Effect on Small Entities

The information collection requirements of proposed rule 6c-11 do not distinguish between small entities and other entities. We do not believe that exempting any subset of ETFs, including small entities, from proposed rule 6c-11 would permit the Commission to achieve its stated objectives.

Similarly, the Commission does not believe that it can establish simplified or consolidated compliance requirements for small entities under the proposed rule without compromising its objectives. The conditions necessary to rely on proposed rule 6c-11 are designed to provide investor protection benefits. These benefits should apply to investors in smaller funds as well as investors in larger funds.

Finally, the Commission believes that proposed rule 6c-11 appropriately uses a combination of performance and design standards. Proposed rule 6c-11 provides ETFs that satisfy the requirements of the rule with exemptions from certain provisions of the Act necessary for ETFs to operate. Because the provisions of the Act from which ETFs would be exempt provide important investor and market protections, the conditions of the proposed rule must be specifically designed to ensure that these investor and market protections are maintained. However, where the Commission believes that flexibility is beneficial, it proposed performance-based standards

that provide a regulatory framework, rather than prescriptive requirements, to give funds the opportunity to adopt policies and procedures tailored to their specific needs without raising investor or market protection concerns.

6. Consequences of Not Conducting Collection

The collection of information under proposed rule 6c-11 is integral to the framework of proposed rule 6c-11 and therefore necessary to help further the proposed rule's goals of creating a consistent, transparent, and efficient regulatory framework for such ETFs and facilitating greater competition and innovation among ETFs. Thus, not requiring this collection of information would be incompatible with the goals of proposed rule 6c-11.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Proposed rule 6c-11 requires ETFs to preserve and maintain copies of all written authorized participant agreements ETFs. Additionally, 6c-11 requires ETFs to maintain records setting forth the following information for each basket exchanged with an authorized participant: (i) the names and quantities of the positions composing the basket; (ii) 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 (if applicable); (iii) cash balancing amounts (if any); and (iv) the identity of the authorized participant conducting the transaction. ETFs would have to maintain these records for at least five years, the first two years in an easily accessible

place. Although this five-year period exceeds the three-year guideline for most kinds of records under 5 CFR 1320.5(d)(2), the Commission believes that this is warranted because the rule contributes to the effectiveness of the Commission's examination and inspection program. Because the period between examinations may be as long as five years, it is important that the Commission have access to records that cover the entire period between examinations.

8. Consultation Outside the Agency

Before adopting proposed rule 6c-11, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements. Moreover, the Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and information exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry.

9. Payment or Gift

No payment or gift to respondents was provided.

10. Confidentiality

Responses provided to the Commission in connection with staff examinations or investigations would be kept confidential subject to the provisions of applicable law. If information collected pursuant to proposed rule 6c-11 is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Estimate of Hour Burden

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Proposed rule 6c-11 would require an ETF to disclose certain information on its website, to maintain certain records, and to adopt and implement written policies and procedures governing their constructions of baskets, as well as written policies and procedures that set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders. These requirements are collections of information under the PRA.

The respondents to proposed rule 6c-11 would be ETFs registered as open-end management investment companies other than ETFs within multiple-class funds or leveraged ETFs. This collection would not be mandatory, but would be necessary for those ETFs seeking to operate without individual exemptive orders. We estimate

that 1,635 ETFs would likely rely on rule 6c-11. Information provided to the Commission in connection with staff examinations or investigations would be kept confidential subject to the provisions of applicable law.

Website Disclosures

Under the proposal, ETFs would be required to post on their websites: (i) the ETF's NAV per share, market price, and premium or discount; and (ii) historical information regarding premiums and discounts. In addition, proposed rule 6c-11 would require an ETF to disclose on its website, each business day, the portfolio holdings that will form the basis for each calculation of NAV per share, and information regarding a published basket that will apply to orders for the purchase or redemption of creation units each business day. As proposed, the rule would require that portfolio holdings and basket information be presented and contain information regarding description, amount, value and/or unrealized gain/loss (if applicable) in the manner prescribed within Article 12 of Regulation S-X. Additionally, the proposed rule would require an ETF to disclose on its website a tabular chart 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. For new ETFs that do not yet have this information, the proposed rule would require the ETF to post this information for the life of the fund.

Proposed rule 6c-11(c)(1)(v) also would require any ETF whose

premium or discount was greater than 2% for more than seven consecutive trading days to post that information on its website, along with a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount. Given the proposed threshold, we do not believe that many ETFs would be required to disclose this information on a routine basis. For purposes of this PRA, we assume that all ETFs will be required to make this disclosure only once in their lifetime. Therefore, we believe that this requirement will impose only initial costs and that there will be no ongoing costs associated with it.³

For purposes of the PRA analysis, we estimate that an ETF would incur a one-time average burden of 25 hours associated with updating the relevant website disclosures, at a time cost of \$7,697.50.⁴ Amortized over a 3-year period, the hour burden per ETF would be approximately 8.3 hours, at a time cost of \$2,565.80. Additionally, Commission staff estimates that an ETF each year would spend

³ For purposes of this analysis, we estimate that 1,635 ETFs would be required to make this disclosure at least once in their lifetime.

⁴ This estimate is based on the following calculations: (15 hours (for website development) x \$296.50 per hour (blended rate for a senior systems analyst (\$274) and senior programmer (\$319)) + (10 hours (for review of website disclosures) x \$325 (blended rate for a compliance manager (\$298) and a compliance attorney (\$352)) = \$7,697.50). The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 ("SIFMA Report").

approximately 5 hours of professional time to update the relevant webpage daily with this information, at a time cost of \$1,405.50.⁵ Accordingly, we estimate that the total burden for drafting, reviewing and uploading the website disclosures would be 21,745.50 hours,⁶ at a time cost of approximately \$6,493,075.50.⁷

Recordkeeping

The proposed rule requires that ETFs to preserve and maintain copies of all written authorized participant agreements. Additionally, we are proposing to require ETFs to maintain records setting forth the following information for each basket exchanged with an authorized participant: (i) the names and quantities of the positions composing the basket; (ii) 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 (if applicable); (iii) cash balancing amounts (if any); and (iv) the identity of the authorized participant conducting the transaction.

ETFs would have to maintain these records for at least five years,

⁵ This estimate is based on the following calculations: (2 hours (for website updates) x \$296.50 per hour (blended rate for a senior systems analyst (\$274) and senior programmer (\$319)) + (2.5 hours (for review of website disclosures) x \$325 (blended rate for a compliance manager (\$298) and a compliance attorney (\$352)) = \$1,405.50. See SIFMA Report, *supra* footnote 4.

⁶ This estimate is based on the following calculation: 13.3 hours x 1,635 ETFs = 21,745.50 hours.

⁷ This estimate is based on the following calculation: \$3,971.3 x 1,635 ETFs = \$6,493,075.50.

the first two years in an easily accessible place. We estimate that the burden would be 5 hours per ETF to retain these records, with 2.5 hours spent by a general clerk and 2.5 hours spent by a senior computer operator. We estimate a time cost per ETF of \$380.⁸ We estimate the total recordkeeping burden related to rule 6c-11 would be 8,175 hours, at an aggregate cost of \$621,300.⁹

Policies and Procedures

As proposed, rule 6c-11 would require ETFs relying on the proposed rule 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 basket assets. Additionally, to use custom baskets, an ETF would be required to adopt and implement written policies and procedures setting forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders. These policies and procedures also may include a periodic review requirement in order to ensure that the ETF's custom basket procedures are being consistently followed. Finally, such an ETF would be required to maintain records detailing the composition of each custom basket.

For purposes of this PRA analysis, we estimate that an ETF would

⁸ This estimate is based on the following calculations: 2.5 hours x \$60 (hourly rate for a general clerk) = \$150; 2.5 hours x \$92 (hour rate for a senior computer operator) = \$230. \$150 + \$230 = \$380. See SIFMA Report, *supra* footnote 4.

⁹ We estimate that 1,635 ETFs would be required to maintain these records.

incur a one-time average burden of 6 hours associated with setting up the process for documenting the construction and acceptance of baskets. Additionally, we estimate that all ETFs relying on the rule will use custom baskets to some extent. An ETF utilizing custom baskets would also incur a one-time average burden of 20 hours associated with documenting and adopting the custom basket policies and procedures. Amortized over a 3-year period, this would be an annual burden per ETF of about 2 hours for documenting the construction and acceptance of baskets and an annual burden per ETF of about 6.7 hours for the custom basket policies and procedures. Accordingly, we estimate that a total burden for initial documentation and review of both the process for documenting the construction and acceptance of baskets as well as an ETF's custom basket policies and procedures would be 42,510 hours,¹⁰ at a time cost of \$16,788,180.¹¹ Amortizing these costs over three years, the annual burden of complying with these requirements would be 14,170 hours, at a time cost of \$5,596,060. We also estimate that there would be no external cost for an ETF associated with these requirements.

¹⁰ This estimate is based on the following calculation: (6 hours + 20 hours) x 1,635 ETFs = 42,510 hours.

¹¹ These estimates are based on the following calculations: 12 hours x \$317 (hourly rate for a senior portfolio manager) = \$3,804; 12 hours x \$480 (blended hourly rate for assistant general counsel (\$449) and chief compliance officer (\$511) = \$5,760; 2 hours (for a fund attorney's time to prepare and review materials) x \$352 (hourly rate for a compliance attorney) = \$704. \$3,804 + \$5,760 + \$704 = \$10,268; \$10,268 x 1,635 ETFs = \$16,788,180. See SIFMA Report, *supra* footnote 4.

We estimate that each ETF would incur an ongoing burden of an additional 10 hours, at a time cost of an additional \$3,985¹² each year to review and update its custom basket policies and procedures as well as its process for documenting the construction and acceptance of baskets. In aggregate, we estimate that the total ongoing costs associated with these requirements are 16,350 hours, at a time cost of \$6,515,475.¹³ We do not estimate that there will be any ongoing external costs associated with these requirements. Therefore, we estimate that the total initial and ongoing costs associated with complying with the policies and procedures requirements of proposed rule 6c-11 would be 30,520¹⁴ hours at a time cost of \$12,111,535.¹⁵

Estimated Total Burden

We estimate that the total hour burdens and time costs associated with proposed rule 6c-11, including the burden associated with: (i) website disclosure; (ii) recordkeeping; and (iii) developing policies and procedures, would result in an average aggregate annual burden of

¹² These estimates are based on the following calculations: 5 hours x \$317 (hourly rate for a senior portfolio manager) = \$1,585; 5 hours x \$480 (blended hourly rate for assistant general counsel (\$449) and chief compliance officer (\$511) = \$2,400. \$ 1,585 + \$2,400 = \$3,985. See SIFMA Report, *supra* footnote 4.

¹³ This estimate is based on the following calculation: \$3,985 x 1,635 ETFs = \$6,515,475.

¹⁴ This estimate is based on the following calculation: 14,170 hours + 16,350 hours = 30,520 hours.

¹⁵ This estimate is based on the following calculation: \$5,596,060 + \$6,515,475 = \$12,111,535.

60,440.5 hours¹⁶ and an average aggregate time cost of \$19,225,910.50.¹⁷ Therefore, to comply with rule 6c-11 each ETF would incur an annual burden of approximately 36.97¹⁸ hours, at an average time cost of approximately \$11,758.97.¹⁹

Table 1: Summary of Burden Hours and Burden Hour Cost Estimates for Each Information Collection Component

IC	IC Title	Burden Hours	Burden Hour Costs
IC1	Website Disclosures	21,745.5	\$6,493,075.50
IC2	Recordkeeping	8,175	\$621,300
IC3	Policies and Procedures	30,520	\$12,111,535
	Totals for Proposed Rule 6c-11	60,440.5	\$19,225,910.50

13. Cost to Respondents

The external cost burden is the cost associated with advisers consulting outside professionals to assist with website development relating to new website disclosures. The staff estimates the initial external cost would be \$2,000 for an external website developer to develop the webpage. Commission staff does not believe there will be any ongoing external costs related to the website disclosure requirements. Amortized over a 3-year period, the external cost is approximately \$666.65. Accordingly, we estimate that the total external cost related to the website disclosures would be

¹⁶ This estimate is based on the following calculation: 21,745.5 hours + 8,175 hours + 30,520 hours = 60,440.5 hours.

¹⁷ This estimate is based on the following calculation: \$6,493,075.50 + \$621,300 + \$12,111,535 = \$19,225,910.50.

¹⁸ This estimate is based on the following calculation: 60,440.5 hours ÷ 1,635 ETFs = 36.97 hours.

¹⁹ This estimate is based on the following calculation: \$19,225,910.50 ÷ 1,635 ETFs = \$11,758.97.

\$1,089,972.75.²⁰ This cost burden does not include the hour burdens discussed in Item 12.

We estimate that proposed rule 6c-11's costs related to recordkeeping and policies and procedures are fully captured as internal hour burdens in Item 12.

14. Costs to Federal Government

Proposed rule 6c-11 does not impose a cost to the federal government. Commission staff may, however, review records produced pursuant to the rule in order to assist the Commission in carrying out its examination and oversight program.

15. Changes in Burden

This is the first request for approval of the collection of information for this rule.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification for Paperwork Reduction Act

Submissions

The Commission is not seeking an exception to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.

²⁰ This estimate is based on the following calculation: \$666.65 x 1,635 ETFs = \$1,089,972.75.