

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

A. JUSTIFICATION

1. Necessity for the Information Collection

Rule 6c-11¹ under the Investment Company Act of 1940 (the “Act”) will permit exchange-traded funds (“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 ETFs and facilitate greater competition and innovation among ETFs. The rule eliminates historical distinctions and conditions that the Commission no longer believes are necessary and thus appropriately levels the playing field for ETFs that pursue the same or similar investment strategies. Rule 6c-11 will require an ETF to disclose certain information on its website, to maintain certain records, and to adopt and implement written policies and procedures governing its 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 “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).² The information collection is integral to the framework of rule 6c-11 and therefore necessary to help further the rule’s aforementioned goals. The information collection also will assist the Commission’s examination staff in assessing ETFs’ compliance with the conditions of rule 6c-11.

2. Purpose and Use of the Information Collection

The collection of information under rule 6c-11 is integral to the framework of rule 6c-11 and therefore necessary to help further the 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 also will assist the Commission’s examination staff in assessing ETFs’ compliance with the conditions of rule 6c-11. The respondents to rule 6c-11 are ETFs registered as open-end management investment companies other than share-class ETFs, leveraged/inverse ETFs, or non-transparent ETFs.

¹ 17 CFR 270.6c-11.

² See 44 U.S.C. 3501 through 3521.

3. Consideration Given to Information Technology

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 Act³ 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 adopts a new rule or a change to a rule. The information collection that is required by rule 6c-11 is not duplicated elsewhere.

5. Effect on Small Entities

The information collection requirements of 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 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 rule without compromising its objectives. The conditions necessary to rely on 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 rule 6c-11 appropriately uses a combination of performance and design standards. 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 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 adopted 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 rule 6c-11 is integral to the framework of rule 6c-11 and therefore necessary to help further the rule's goals of creating a consistent,

³ P.L. 106-229, 114 Stat. 464 (June 30, 2000).

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 rule 6c-11.

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

Rule 6c-11 requires ETFs to preserve and maintain copies of all written authorized participant agreements ETFs. Additionally, rule 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 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

In its release proposing rule 6c-11, the Commission requested public comment on the information collections related to the proposed rule. The Commission did not receive any comments on the information collections related to proposed rule 6c-11. 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 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.⁴

Rule 6c-11 will require an ETF to disclose certain information on its website, to maintain certain records, and to adopt and implement written policies and procedures governing its 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 rule 6c-11 are ETFs registered as open-end management investment companies other than share-class ETFs, leveraged/inverse ETFs, or non-transparent ETFs. This collection is not mandatory, but is necessary for those ETFs seeking to operate without individual exemptive orders. We estimate that 1,735 ETFs likely will rely on rule 6c-11. Information provided to the Commission in connection with staff examinations or investigations will be kept confidential subject to the provisions of applicable law.

Website Disclosures

Rule 6c-11 will 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. The

⁴ The Commission's estimates of the relevant wage rates, as set forth in the tables below, 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 figures are modified by 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.

rule will require that the portfolio holdings information contain specified information, including description and amount of each position. Additionally, the rule will require an ETF to disclose on its website: (i) the ETF's NAV per share, market price, and premium or discount, each as of the end of the prior business day; (ii) 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 (or for the life of the fund if shorter); and (iii) the ETF's median bid-ask spread over the last thirty calendar days.

Rule 6c-11(c)(1)(vi) also will 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 threshold for this requirement, we do not believe that many ETFs will be required to disclose this information on a routine basis. We estimate that most ETFs will be required to make this disclosure only once in their lifetimes. Therefore, we believed that this requirement will impose only initial costs and that there will be no ongoing costs associated with it.

TABLE 1: RULE 6c-11 WEBSITE DISCLOSURE PRA ESTIMATES

	Initial hours	Annual hours ¹	Wage Rate ²	Internal time costs	Initial external cost burden	Annual external cost burden ³
Website development	11.25 hours	3.75 hours	× \$284 (senior systems analyst)	\$1,065	\$3,000	\$1,000
	11.25 hours	3.75 hours	× \$331 (senior programmer)	\$1,241.25		
Review of website disclosures	7.5 hours	2.5 hours	× \$309 (compliance manager)	\$772.50		
	7.5 hours	2.5 hours	× \$365 (compliance attorney)	\$912.50		
Website updates		1.5 hours	× \$284 (senior systems analyst)	\$426		
		1.5 hours	× \$331 (senior programmer)	\$496.50		
Review of updated website disclosure		1.875 hours	× \$309 (compliance manager)	\$579.38		
		1.875 hours	× \$365 (compliance attorney)	\$684.36		
Total annual burden per ETF	37.5 hours	19.25 hours		\$6,177.49	\$3,000	\$1,000
Number of ETFs		× 1,735		× 1,735	× 1,735	× 1,735
Total annual burden		33,398.75 hours		\$10,717,945.15	\$5,205,000	\$1,735,000

Notes:

1. Includes initial burden estimates annualized over a three-year period.
2. See *supra* footnote 4.
3. Includes initial external cost burdens annualized over a three-year period.

Table 1 above summarizes the final PRA estimates associated with the website disclosure requirements of rule 6c-11. We estimate that the annual total burdens and time costs for drafting, reviewing and uploading the website disclosures will be 33,398.75 hours, at a total internal time cost of \$10,717,945.15. We further estimate an annual external cost burden of \$1,735,000.

Recordkeeping

Rule 6c-11 requires ETFs to preserve and maintain copies of all written authorized participant agreements. Additionally, the rule will require ETFs 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; (ii) if applicable, 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.

TABLE 2: RULE 6c-11 RECORDKEEPING PRA ESTIMATES

	Initial hours	Annual hours¹		Wage rate¹	Internal time costs	Initial external cost burden	Annual external cost burden
Recordkeeping	0 hours	2.5 hours	×	\$62 (general clerk)	\$155		
	0 hours	2.5 hours	×	\$95 (senior computer operator)	\$237.50		
Total annual burden per ETF	0 hours	5 hours			\$392.50		
Number of ETFs		× 1,735			× 1,735		
Total annual burden		8,675 hours			\$680,987.50	\$0	\$0

Notes:

1. Includes initial burden estimates annualized over a three-year period.
2. See *supra* footnote 4.

Table 2 above summarizes the final PRA estimates associated with the recordkeeping requirements of rule 6c-11. We estimate that the annual total burdens and time costs associated with these requirements will be 8,675 hours, at a total internal time cost of \$680,987.50. We do not estimate that there will be any initial or ongoing external costs associated with the recordkeeping requirement.

Policies and Procedures

Rule 6c-11 will require ETFs relying on the 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, as discussed above, an ETF using custom baskets would be required to maintain records detailing the composition of each custom basket.

TABLE 3: RULE 6c-11 POLICIES AND PROCEDURES PRA ESTIMATES

	Initial hours	Annual hours ¹		Wage rate ²	Internal time costs	Initial external cost burden	Annual external cost burden
Establishing and implementing standard baskets policies and procedures	3 hours	1 hour	×	\$329 (senior manager)	\$329		
	2 hours	.67 hours	×	\$530 (chief compliance officer)	\$353.33		
	1 hour	.33 hours	×	\$365 (compliance attorney)	\$121.67		
Establishing and implementing custom baskets policies and procedures	9 hours	3 hours	×	\$329 (senior manager)	\$987		
	5 hours	1.67 hours	×	\$466 (ass't general counsel)	\$776.67		
	5 hours	1.67 hours	×	\$530 (chief compliance officer)	\$883.33		
	1 hour	.33 hours	×	\$365 (compliance attorney)	\$121.67		
Reviewing and updating baskets policies and procedures		5 hours	×	\$329 (senior manager)	\$1645		
		2.5 hours	×	\$466 (ass't general counsel)	\$1165		
		2.5 hours	×	\$530 (chief compliance officer)	\$1325		
Total annual burden per ETF		18.67 hours			\$7,707.67	\$0	\$0
Number of ETFs		× 1,735			× 1,735		
Total annual burden		32,392.45 hours			\$13,372,807.45		

Notes:

1. Includes initial burden estimates annualized over a three-year period.
2. See *supra* footnote 4.

Table 3 above summarizes the final PRA estimates associated with the policies and procedures requirements of rule 6c-11. We estimate that the annual total burdens and time costs associated with these requirements will be 32,392.45 hours, at a total internal time cost of \$13,372,807.45. We do not estimate that there will be any initial or ongoing external costs associated with the recordkeeping requirement.

TABLE 4: RULE 6c-11 TOTAL PRA ESTIMATES

	Internal hour burden	Internal burden time cost	External cost burden
Website disclosure	33,398.75 hours	\$10,717,945.15	\$1,735,000
Recordkeeping	8,675 hours	\$680,987.50	\$0
Developing policies and procedures	32,392.45 hours	\$13,372,807.45	\$0
Total annual burden	74,466.2 hours	\$24,771,740.10	\$1,735,000

As summarized in Table 4 above, we estimate that the total hour burdens and time costs associated with rule 6c-11, including the burden associated with website disclosure, recordkeeping, and developing policies and procedures, will result in an average aggregate annual burden of 74,466.2 hours and an average aggregate time cost of \$24,771,740.10. We also estimate that there are external costs of \$1,735,000 associated with this collection of information.

TABLE 5: CHANGE IN RULE 6c-11 PRA ESTIMATES

Annual Number of Responses

Previously approved: 0
 Requested: 1,735
 Change: 1,735

Annual Time Burden (Hrs.)

Previously approved: 0
 Requested: 74,466.2 hours
 Change: 74,466.2 hours

Annual Cost Burden (\$)

Previously approved: \$0
 Requested: \$1,735,000
 Change: \$1,735,000

13. Cost to Respondents

As shown in Table 1 above, the estimated external cost burden is the estimated cost associated with ETFs consulting outside professionals to assist with website development relating to new website disclosures. The staff estimates the initial external cost would be \$3,000 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 \$1,000. Accordingly, we estimate that the total external cost related to the website disclosures would be \$1,735,000. We estimate that the costs related to rule 6c-11's recordkeeping and policies and procedures requirements are fully captured as internal hour burdens in Item 12.

14. Costs to Federal Government

The annual cost of reviewing and processing disclosure documents, including new registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of investment companies amounted to approximately \$22.2 million in fiscal year 2018, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. Changes in Burden

Rule 6c-11 is a new rule, and therefore there are no currently approved burden estimates associated with the rule. As such, the increase in the annual burdens is equivalent to the estimated total annual burdens, which are 74,466.2 hours (annual time burden) and \$1,735,000 (annual external cost burden).

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.