



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
TRADING AND MARKETS

March 17, 2026

Paul Cellupica
Investment Company Institute
1401 H St. NW
Washington, DC 20005

Re: Request for Relief regarding Rules 15c1-5 and 15c1-6 under the Securities Exchange Act of 1934 for Multi-Class ETFs

Dear Mr. Cellupica

Based on the facts and circumstances set forth in your letter dated March 17, 2026 (“Letter”),¹ the staff of the Division of Trading and Markets (“Division”) will not recommend enforcement action to the Securities and Exchange Commission (“Commission”) under rules 15c1-5 and 15c1-6 of the Securities and Exchange Act of 1934 (“Exchange Act”)² against a broker-dealer that effects an in-kind creation or redemption transaction on behalf of a customer involving the ETF Shares³ of a Multi-Class ETF without providing disclosure about a control relationship with an issuer, or about participation or interest in a primary or secondary distribution of a component security tendered or delivered in the transaction, provided that: (1) the creation and redemption transactions involve the ETF Shares of a Multi-Class ETF that has received a Multi-Class ETF Order, subject to a condition to operate its ETF Class as an ETF in compliance with the requirements of rule 6c-11, except that the Multi-Class ETF’s Mutual Fund Shares will not be listed on any national securities exchange and the Multi-Class ETF may offer an Exchange Privilege; and (2) the creation or redemption

¹ A copy of the Letter is attached.

² 17 CFR § 240.15c1-5 and 17 CFR § 240.15c1-6.

³ Unless otherwise defined in this letter, defined terms used have the same meaning as described in the Letter.



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transactions in ETF Shares of a Multi-Class ETF will be effected subject to the terms and conditions set forth in the 2019 Order with respect to rules 15c1-5 and 15c1-6, including a condition that requires a broker-dealer to provide any information to which a customer is entitled under rules 15c1-5 or 15c1-6 upon request and to fulfill such requests in a timely manner.

The position of the staff is based strictly on the facts and circumstances stated in the Letter. Any different facts or circumstances from those set forth in the letter might require a different response. Furthermore, this response expresses the Division staff's position on enforcement action only and does not purport to express any legal conclusions on the question presented. The Division staff expresses no view with respect to any other questions that the proposed activities discussed above may raise, including the applicability of any other federal or state laws or rules, or any self-regulatory organization rules. This position is subject to modification or revocation at any time.

Sincerely,

Emily Westerberg Russell

Emily Westerberg Russell
Chief Counsel
Division of Trading and Markets



March 17, 2026

Ms. Emily Westerberg Russell
Chief Counsel, Division of Trading and Markets

Ms. Tiffany Posil
Chief of the Office of Mergers and Acquisitions, Division of Corporation Finance

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Relief Request Regarding Section 11(d)(1) of the Securities Exchange Act of 1934 and Rules 10b-10, 15c1-5, 15c1-6 and 14e-5 thereunder*

Dear Ms. Russell and Ms. Posil:

The Investment Company Institute (“**ICI**”)¹ is writing to request exemptive relief from the Securities and Exchange Commission (“**Commission**” or “**SEC**”) regarding section 11(d)(1) of the Securities Exchange Act of 1934 (“**Exchange Act**”) and rules 10b-10 and 14e-5 thereunder. We also request that the staff of the Division of Trading and Markets issue a no-action position regarding rules 15c1-5 and 15c1-6 under the Exchange Act.

ICI notes that, pursuant to relief granted by the Commission, a registered open-end management investment company may offer one class of exchange-traded fund (“**ETF**”) shares that operates as an exchange-traded fund (an “**ETF Class**,” and such shares, “**ETF Shares**”) and one or more classes of shares that are not exchange-traded (each such class, a

¹ The [Investment Company Institute](https://www.ici.org) (ICI) is the leading association representing the asset management industry in service of individual investors. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$44.7 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 125 million investors. Members manage an additional \$10.4 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI Associate Members include service providers to member firms and CIT trust companies. ICI has offices in Washington DC, Brussels, and London.

“**Mutual Fund Class**,” and such shares, “**Mutual Fund Shares**,” and each such fund, a “**Multi-Class ETF**”).² ICI requests relief on behalf of broker-dealers and certain other persons, as applicable, that engage in certain transactions involving the ETF Shares of a Multi-Class ETF pursuant to an exemptive order issued by the Commission granting the exemptive relief necessary to operate a Multi-Class ETF subject to a condition to operate the ETF Class as an ETF in compliance with the requirements of rule 6c-11 (each such order a “**Multi-Class ETF Order**”).

ICI respectfully requests exemptive relief under section 11(d)(1) of the Exchange Act and rules 10b-10 and 14e-5 thereunder, and a no-action position regarding Exchange Act rules 15c1-5 and 15c1-6, in connection with creation and redemption transactions effected by broker-dealers and certain other persons with the ETF Class of a Multi-Class ETF as well as certain limited secondary market transactions in ETF Shares as described below.

I. Background

In 2019, the Commission adopted rule 6c-11 under the Investment Company Act of 1940 (“**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.

In conjunction with the adoption of rule 6c-11, the Commission issued an order (the “**2019 Order**”) granting an exemption from compliance with certain provisions of the Exchange Act and the rules thereunder to broker-dealers and certain other persons engaging in certain transactions in securities of ETFs relying on rule 6c-11 under the Investment Company Act.³ In

² The Commission has issued a Multi-Class ETF exemptive order to DFA Investment Dimensions Group Inc., et al., Rel. No. 35786, File No. 812-15484 (Nov. 17, 2025), available at: <https://www.sec.gov/files/rules/ic/2025/ic-35786.pdf>. On January 13, 2026, the Commission issued Multi-Class ETF exemptive orders to thirty applicants. See, e.g., AB Municipal Income Fund, Inc., et al., Rel. No. 35867, File No. 812-15570 (Jan. 13, 2026), available at: <https://www.sec.gov/files/rules/ic/2026/ic-35867.pdf>. On February 24, 2026, the Commission issued Multi-Class ETF exemptive orders to seventeen applicants. See, e.g., The Alger ETF Trust, et al., Rel. No. 35971, File No. 812-15733 (Feb. 24, 2026), available at: <https://www.sec.gov/files/rules/ic/2026/ic-35971.pdf>.

³ 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; available at <https://www.sec.gov/files/rules/exorders/2019/34-87110.pdf>. Although the exemption granted by the 2019 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 and any other persons who create and redeem shares of the ETF in creation units pursuant to

granting the 2019 Order, the Commission noted that the “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.”⁴ Further, in the 2019 Order, the Commission noted that it “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.”⁵

ICI requests the relief detailed herein in respect of ETF Classes of Multi-Class ETFs as these ETF Classes similarly will not raise the issues or concerns that underlie Exchange Act section 11(d)(1) and Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5.

II. Multi-Class ETF Orders

As of March 17, 2026, approximately fifty Multi-Class ETF Orders have been issued by the Commission that would, generally, permit a fund to offer an ETF Class and a Mutual Fund Class. The notices for these Multi-Class ETF Orders generally indicate that the applicants “assert they are unable to rely on [r]ule 6c-11 because ‘exchange-traded fund’ is defined, in part, to mean a registered open-end management investment company ‘whose shares are listed on an Exchange and traded at market-determined prices’” and “[b]ecause this definition suggests that all of the investment company’s shares must be listed on an Exchange, a Multi-Class ETF [] with Mutual Fund Shares in addition to ETF Shares would not meet this definition.”⁶ Nevertheless, the notices for the Multi-Class ETF Orders generally contain a condition requiring that a “Multi-Class ETF [] will operate an ETF Class as an ‘exchange-traded fund’ in compliance with the requirements of [r]ule 6c-11 under the [Investment Company] Act...” with certain exceptions.⁷ The exceptions, not relevant to the relief granted by the 2019 Order, are that a “Multi-Class ETF [] will list only one class of its shares on an Exchange and also may offer an Exchange Privilege...”⁸ This letter does not request relief in

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. See 2019 Order at footnote 5.

⁴ See 2019 Order at page 3.

⁵ *Id.*

⁶ See, e.g., DFA Investment Dimensions Group Inc., et al., Rel. No. 35770; File No. 812-15484 (Sept. 29, 2025) (“**DFA Notice**”) at page 11.

⁷ *Id.* at Condition 1.

⁸ Further, a Multi-Class ETF will comply with the requirements of Form N-1A and reporting forms such as Form N-CEN applicable to exchange-traded funds that rely on rule 6c-11. See, e.g., *id.* at Condition 1. An “Exchange

respect of the Mutual Fund Class or the Exchange Privilege. Neither the existence or operation of the Mutual Fund Class nor the existence or operation of the Exchange Privilege implicate Exchange Act section 11(d)(1) or Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5.

The ETF Class of a Multi-Class ETF requires relief similar to that granted by the 2019 Order in order to “reduce the complexities and burden that may otherwise be associated with the ETF creation and redemption process.”⁹ The requested relief should “help to simplify the offering and operating process for ETFs”¹⁰ which operate as a class of a Multi-Class ETF.

In granting the 2019 Order, the Commission noted its belief “that the portfolio and other transparency requirements in rule 6c-11, when combined with the conditions in [the 2019 Order], address the policy concerns underlying the relevant statutory provision and rules.”¹¹ It further noted that “[d]iversification, together with the conditions discussed [in the 2019 Order], 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.”¹²

As described herein, ETF Classes of Multi-Class ETFs will operate in compliance with the portfolio and other transparency requirements in rule 6c-11 and will comply with applicable diversification requirements. Transactions in respect of such ETF Classes will be conducted in accordance with the conditions and requirements contained in the 2019 Order with respect to Exchange Act section 11(d)(1) and Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5, as applicable (as may be modified in connection with this request for relief).

The Multi-Class ETF Orders are conditioned upon, among other things, “compliance with the requirements of [r]ule 6c-11”¹³ with certain exceptions not relevant here, and the operation of Multi-Class ETFs will, for purposes of the policy concerns underlying the relevant statutory provisions and rules, operate in all ways consistent with an ETF relying on rule 6c-11. Therefore, ICI respectfully requests relief in respect of an ETF Class of a Multi-Class ETF that: 1) operates pursuant to, and in compliance with, the terms and conditions of a Multi-Class ETF

Privilege” would permit shareholders in a Mutual Fund Class to exchange shares of a Mutual Fund Class for ETF Shares. *Id.* at page 6.

⁹ 2019 Order at page 5.

¹⁰ *Id.* at page 6.

¹¹ *Id.* at pages 6-7.

¹² *Id.* at page 10.

¹³ See e.g., DFA Notice at Condition 1.

Order issued by the Commission subject to a condition to operate the ETF Class as an ETF in compliance with the requirements of rule 6c-11, with certain exceptions; and 2) complies with the terms and conditions specific to each applicable Exchange Act provision, as set forth in the 2019 Order (as may be modified in connection with this request for relief), as discussed below.¹⁴

III. The 2019 Order

In the 2019 Order, the Commission granted a conditional exemption from Exchange Act section 11(d)(1) and Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5.¹⁵ The exemption provided relief to broker-dealers and certain other persons from these provisions of the Exchange Act with respect to ETFs relying on rule 6c-11. In order for a broker-dealer to rely on the relief, other than the relief from rule 14e-5, the 2019 Order required that a transaction must involve an ETF that further satisfies the diversification requirement discussed below. In addition, a broker-dealer relying on the 2019 Order must meet certain conditions specific to each applicable Exchange Act provision or rule. Finally, the relief 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. The relief also provides an exemption from Rule 14e-5 that allows certain specified “covered persons” with respect to a tender offer to engage in creation and redemption transactions with an ETF and also to engage in certain secondary market transactions in an ETF that relies on rule 6c-11 subject to certain conditions described below.

A. 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 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. When an authorized participant that is a registered

¹⁴ Nothing in this request is intended or should be read to request modifications of existing exemptive, interpretive or no-action advice or relief issued by the Commission or its staff.

¹⁵ Prior to the 2019 Order, Commission staff provided similar relief via no-action letters. See, e.g., Letter from James A. Brigagliano, Deputy Director, Division of Trading and Markets, to W. John McGuire, Morgan, Lewis & Bockius LLP re: U.S. One Trust Actively-Managed Exchange Traded Fund of Exchange Traded Funds (May 4, 2010), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2010/usonetrust050410.pdf>; Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation to Securities Industry Association (Nov. 21, 2005), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/sia112105.htm>.

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 or sale of a security, and each purchase or sale requires confirmation pursuant to Exchange Act rule 10b-10. The 2019 Order granted an exemption from Exchange Act rule 10b-10 that allows 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 certain conditions.¹⁶

In the 2019 Order, the Commission stated its belief that, “in general, information regarding ETFs is accessible through a variety of sources, including the NSCC, intermediaries and the ETFs themselves” and that the conditions “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.” The Commission noted that 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.”

In-kind creation or redemption transactions on behalf of a customer in an ETF Class of a Multi-Class ETF will be effected consistent with the requirements of rule 6c-11 and subject to the conditions and requirements of the 2019 Order with respect to Exchange Act rule 10b-10 (as may be modified in connection with this request for relief).

B. 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

¹⁶ The conditions are:

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.

2019 Order granted a conditional exemption from Exchange Act rules 15c1-5 and 15c1-6 to allow a broker-dealer that is effecting an ETF 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.

The Multi-Class ETF Orders provide Multi-Class ETFs with the same flexibility as ETFs relying on rule 6c-11 to use custom baskets that contain a non-representative selection of the ETFs' portfolio securities. 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, 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.

In the 2019 Order, the Commission noted its belief that, “[s]imilar to rule 10b-10 ... the general availability of information regarding ETFs through a variety of sources, including the NSCC, intermediaries and the ETFs themselves, supports this exemption” and that this “access allows market participants that use basket information to obtain information regarding securities they will exchange in a creation or redemption transaction.”¹⁷ Finally, it stated that 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.”¹⁸

In-kind creation or redemption transactions on behalf of a customer in an ETF Class of a Multi-Class ETF will be effected consistent with the requirements of rule 6c-11 and subject to the conditions and requirements of the 2019 Order with respect to Exchange Act rules 15c1-5 and 15c1-6 (as may be modified in connection with this request for relief).

¹⁷ 2019 Order at page 14.

¹⁸ *Id.*

C. 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).¹⁹

The 2019 Order granted 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 two conditions.

The conditions are:

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”²⁰ 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(I)(5)(A), (B), or (C) (“non-cash compensation”).²¹
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

¹⁹ 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**”).

²⁰ For purposes of the 2019 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 Investment Company Act section 2(a)(3)) of any such issuer or any such investment adviser, distributor, sponsor, or depositor.

²¹ On February 12, 2026, the Commission approved changes to FINRA rules which raise the dollar limits in the non-cash compensation rules. See Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as modified by Amendment No. 1, to Amend FINRA Rule 3220 (Influencing or Rewarding Employees of Others), Rel. No. 34-104830; File No. SR-FINRA-2025-003 (Feb. 12, 2026) available at: <https://www.sec.gov/files/rules/sro/finra/2026/34-104830.pdf>.

extent that such extension, maintenance, or arranging of credit is otherwise permitted pursuant to rule 11d1-1).

In addition, the relief in the 2019 Order 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.

Creation and redemption transactions on behalf of customers in an ETF Class of a Multi-Class ETF, and secondary market transactions in ETF Shares, will be effected consistent with the requirements of rule 6c-11 and subject to the conditions and requirements of the 2019 Order with respect to Exchange Act section 11(d)(1) (as may be modified in connection with this request for relief).

D. Exemption from Rule 14e-5

Exchange Act rule 14e-5 prohibits “covered persons”²² from directly or indirectly purchasing or arranging to purchase any securities that are the subject of a tender offer (“subject securities”) or any securities that are immediately convertible into, exchangeable for, or exercisable for subject securities (“related securities”) 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. 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 2019 Order granted 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 allows 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

²² As such term is defined in rule 14e-5(c)(3).

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.²³

In granting this exemption, the Commission noted its belief that “the 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 filed documents”²⁴ and that 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.”²⁵

The activities and operations of covered persons with respect to a tender offer involving an ETF Class’s component securities will be identical to the activities and operations of covered persons relying on the relief granted by the 2019 Order. Creation and redemption transactions on behalf of customers in an ETF Class of a Multi-Class ETF, and secondary market transactions in the ETF Shares, will be effected consistent with the requirements of rule 6c-11 and subject to the conditions and requirements of the 2019 Order with respect to Exchange Act rule 14e-5 (as may be modified in connection with this request for relief).

²³ 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 therein, any broker-dealer acting as a dealer-manager of a tender offer will comply with rule 14e-5.

²⁴ 2019 Order at page 19.

²⁵ *Id.* at page 20.

IV. Operations of ETF Class of Multi-Class ETF

A. Minimum Diversification Requirement

The exemption provided by the 2019 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 the Internal Revenue Code (the “IRC diversification requirement”).²⁶

In granting the 2019 Order, the Commission stated that “[d]iversification thus should mitigate any conflicts that a broker-dealer would otherwise be required to disclose under rules 15c1-5 and 15c-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).”²⁷ It further stated that “[d]iversification, 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.”²⁸

An ETF Class of a Multi-Class ETF, and the Multi-Class ETF itself, will meet the IRC diversification requirement.

B. Dissemination of Information about the ETF Class

As noted above, the 2019 Order was only available to ETFs relying on rule 6c-11. The Multi-Class ETFs have received Multi-Class ETF Orders subject to a condition to operate their ETF Class as an ETF in compliance with rule 6c-11, except for the Mutual Fund Class and Exchange Privilege as discussed above. Accordingly, the ETF Classes will comply with the website and other disclosure requirements of rule 6c-11. As a result, there will be sufficient information to: (i) “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”; and (ii) “help customers determine if they should request that their broker-dealer provide any omitted information.”²⁹

²⁶ IRC Sec. 851(b)(3)(B), 26 U.S.C. 851(b)(3)(B).

²⁷ 2019 Order at page 10.

²⁸ *Id.*

²⁹ *Id.* at page 7.

V. Conclusion

In granting the 2019 Order, the Commission limited the relief to transactions in securities issued by ETFs that rely on rule 6c-11 because the specific findings in support of the 2019 Order are based, in part, on the conditions in rule 6c-11. While Multi-Class ETFs are not able to rely on rule 6c-11, as part of the Multi-Class ETF Orders they will be subject to the same conditions and requirements in rule 6c-11 that were pertinent to the Commission's findings in support of the 2019 Order. Further, Multi-Class ETFs will comply with the IRC diversification requirement. Multi-Class ETFs will, for the purposes of the policy concerns underlying Exchange Act section 11(d)(1) and Exchange Act rules 10b-10, 15c1-5, 15c1-6, and 14e-5, operate in all ways consistent with an ETF that relies on rule 6c-11.

Therefore, ICI respectfully requests relief on behalf of broker-dealers and certain other persons, as applicable, in respect of an ETF Class of a Multi-Class ETF that: 1) operates pursuant to, and in compliance with, the terms and conditions of a Multi-Class ETF Order issued by the Commission subject to a condition to operate the ETF Class as an ETF in compliance with the requirements of rule 6c-11, with certain exceptions; and 2) complies with the terms and conditions specific to each applicable Exchange Act provision, as set forth in the 2019 Order (as may be modified in connection with this request for relief).

Please do not hesitate to contact Paul G. Cellupica at paul.cellupica@ici.org or Joshua A. Weinberg at joshua.weinberg@ici.org should you have any questions.

* * * *

Sincerely,

/s/ Paul Cellupica
Paul G. Cellupica
General Counsel