

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105028]

Order Under Section 36 of the Securities Exchange Act of 1934 (the “Exchange Act”) Granting Conditional Exemptive Relief from Rules 10b-10, 14e-5, and Section 11(d)(1) of the Exchange Act for Multi-Class ETFs

March 17, 2026.

I. Introduction

The Securities and Exchange Commission (“Commission”) has issued a series of orders¹ permitting open-end management investment companies registered under the Investment Company Act of 1940 (each such company, a “Fund”) to offer one class of exchange-traded fund (“ETF”) shares that operates as an exchange-traded fund (each such class, an “ETF Class,” and such shares, “ETF Shares”) and one or more classes of shares that are not exchange-traded (each such class, a “Mutual Fund Class,” and such shares, “Mutual Fund Shares,” and each such Fund, a “Multi-Class ETF”). As of March 17, 2026, approximately 100 applications have been filed with the Commission requesting exemptive relief necessary to operate a Multi-Class ETF (a “Multi-Class ETF Order”) under the Investment Company Act of 1940 (“Investment Company Act”).

On March 17, 2026, the Commission received a request from the Investment Company Institute (“Requester”) for exemptive relief from section 11(d)(1) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and rules 10b-10 and 14e-5 thereunder (collectively

¹ See, e.g., DFA Investment Dimension Group Inc., et al., Investment Company Act Rel. Nos. 35770 (Sep. 29, 2025) (“DFA Notice”) and 35786 (Nov. 17, 2025) (order); AB Municipal Income Fund, et al., Investment Company Act Rel. Nos. 35834 (Dec. 17, 2025) (notice) and 35867 (Jan. 13, 2026) (order). The orders issued by the Commission are available at [SEC.gov | Investment Company Act Notices and Orders](https://www.sec.gov/investment-company-act-notice-and-orders).

referred to herein as the “Exchange Act Provisions”) 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, as described below.²

The Requester seeks relief from the Exchange Act Provisions substantially similar to relief previously granted to broker-dealers and certain other persons engaging in certain transactions in securities of ETFs that rely on rule 6c-11³ under the Investment Company Act.⁴ Specifically, the Requester is asking for conditional exemptive relief from the Exchange Act Provisions on behalf of broker-dealers and certain other persons that engage in certain creation and redemption transactions involving the ETF Shares of a Multi-Class ETF that has received a Multi-Class ETF Order, and certain limited secondary market transactions in the ETF Shares of such a Multi-Class ETF.⁵ The Requester states that the operations of a Multi-Class ETF do not raise policy concerns with respect to the Exchange Act Provisions other than those that were already raised and resolved by the Commission in the 2019 Order.

The Requester seeks relief for a Multi-Class ETF that would operate under the same terms and conditions as those contained in the 2019 Order, including the conditions and the requirements of rule 6c-11, with two exceptions consistent with the Multi-Class ETF Orders. First, the Mutual Fund Shares will not be listed on any national securities exchange. Second, the

² See 15 U.S.C. 78k(d)(1); 17 CFR § 240.10b-10; and 17 CFR § 240.14e-5. The Requester also requested a staff no-action position with respect to rules 15c1-5 and 15c1-6.

³ See Exchange Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019) (“Rule 6c-11 Adopting Release”); see also 17 CFR § 270.6c-11.

⁴ 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, SEC Rel. No. 34-87110 (Sept. 25, 2019) (“2019 Order”).

⁵ The relief requested and provided by this exemption would apply to such transactions involving the ETF Shares of any Multi-Class ETF that receives a Multi-Class Order and satisfies the terms and conditions of this order, even if after the date of this exemption.

Multi-Class ETF may allow shareholders to exchange Mutual Fund Shares for ETF Shares (“Exchange Privilege”).⁶ However, the Requester is not requesting any relief from the Exchange Act Provisions for transactions involving either the Mutual Fund Shares (or the Mutual Fund Class) or the Exchange Privilege. Rather, the request is only for certain transactions involving the ETF Shares (or the ETF Class) of the Multi-Class ETF.

The Commission has considered the issues raised by Multi-Class ETFs and believes that it is appropriate to grant relief from the Exchange Act Provisions for the ETF Class as discussed below. Specifically, the Commission believes that to the extent the ETF Class of a Multi-Class ETF complies with the requirements and conditions of rule 6c-11 (with the exception of the Mutual Fund Shares not being listed on any national securities exchange and the possible existence of the Exchange Privilege) and this order, the operational differences between ETFs that can rely on rule 6c-11 and Multi-Class ETFs do not implicate the policy concerns that underlie the Exchange Act Provisions, as the operational differences are unrelated either to the creation and redemption transactions or to the secondary market transactions that are the subject of this request for relief.

II. Background

In 2019, the Commission adopted rule 6c-11, which permits ETFs that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order from the

⁶ The Exchange Privilege would permit shareholders in a Mutual Fund Class to exchange Mutual Fund Shares for ETF Shares. The Exchange Privilege would not permit shareholders of ETF Shares to exchange such shares for Mutual Fund Shares, except in situations where the ETF Class is terminated or where the Multi-Class ETF merges into a fund with no ETF Class. *See* DFA Notice at 6; *see also* DFA Order (granting exemptive relief to DFA subject to the conditions contained in its application). The description of the Exchange Privilege in the DFA Notice is common to all Multi-Class ETF Orders.

Commission under the Investment Company Act.⁷ Rule 6c-11 was designed to create a consistent, transparent, and efficient regulatory framework for ETFs and to facilitate greater competition and innovation among ETFs.⁸

Contemporaneously with the adoption of rule 6c-11, the Commission granted conditional exemptive relief from the Exchange Act Provisions to broker-dealers and certain other persons engaging in certain transactions in securities of ETFs that rely on rule 6c-11.⁹ This exemptive relief was intended 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.¹⁰ The exemptive relief was also intended to simplify the offering and operating process for ETFs.¹¹ The 2019 Order provides relief to broker-dealers from rules 10b-10, 15c1-5, and 15c1-6¹² and Exchange Act section 11(d)(1) when engaging in transactions with ETFs relying on rule 6c-11. In addition, the 2019 Order provides relief from Exchange Act rule 14e-5 to ETFs, the legal entities of which each ETF is a series, and authorized participants (as defined in rule 6c-11) and any other covered persons, as defined in rule 14e-5I(3), who create and redeem shares of an ETF in creation units pursuant to contractual arrangements between such covered persons and the ETF.¹³

⁷ Rule 6c-11 Adopting Release at 5.

⁸ *Id.*

⁹ 2019 Order.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 6.

¹² *See supra* note 2.

¹³ The prohibition in rule 14e-5(a) from purchasing or arranging to purchase any securities that are the subject of a tender offer or any related securities except as part of the tender offer only applies to “covered persons.” *See* 2019 Order.

The Commission expressly limited the relief provided by the 2019 Order to 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.”¹⁴ For purposes of rule 6c-11, an ETF is defined as a registered open-end management company: (1) whose shares are listed on a national securities exchange and traded at market-determined prices, and (2) that issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any.¹⁵ Multi-Class ETFs differ from these ETFs, in relevant part, because: (1) Multi-Class ETFs offer Mutual Fund Shares that are neither listed on an exchange nor traded at market-determined prices, and (2) the Multi-Class ETF would permit a shareholder of Mutual Fund Shares to acquire individual ETF Shares directly from the Multi-Class ETF through an Exchange Privilege. Accordingly, Multi-Class ETFs may not meet the definition of an ETF under rule 6c-11, and thus may be unable to rely on rule 6c-11 and the 2019 Order.¹⁶

In explaining the Commission’s determination not to provide the exemptive relief necessary to allow share class ETFs to rely on rule 6c-11, the Commission stated that share class ETFs raise policy considerations that are different from those that the Commission sought to address in rule 6c-11.¹⁷ The Commission highlighted that rule 6c-11 does not provide relief from Section 18(f)(1) or 18(i) of the Investment Company Act, which, in large part, were intended to protect investors from certain abuses associated with complex investment company capital structures, including conflicts of interest among a fund’s share classes. In the Rule 6c-11

¹⁴ See 2019 Order at 6.

¹⁵ Investment Company Act rule 6c-11(a)(1), 17 CFR § 270.6c-11(a)(1).

¹⁶ See Rule 6c-11 Adopting Release at 122 (“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”); 2019 Order.

¹⁷ See Rule 6c-11 Adopting Release at 122-124.

Adopting Release, the Commission specifically noted that an ETF class that transacts with authorized participants on an in-kind basis and a mutual fund class that transacts with shareholders on a cash basis may give rise to differing costs to the portfolio.¹⁸ As a result, certain costs may result from transactions through one class, but all shareholders generally would bear the costs.¹⁹ The Commission concluded that it is appropriate for share class ETFs to request relief from section 18(f)(1) and 18(i) of the Investment Company Act through the exemptive applications process so that the Commission may assess all relevant policy considerations in the context of the facts and circumstances of particular applicants.²⁰

As noted above, the Commission has issued Multi-Class ETF Orders to over 48 registered open-end management investment companies permitting the operation of a Multi-Class ETF²¹ and is currently reviewing applications for similar relief from other applicants. The Multi-Class ETF Orders provide Multi-Class ETFs with two broad categories of relief: (1) the relief necessary to permit standard ETF operations consistent with rule 6c-11 under the Investment Company Act and (2) the relief necessary for a fund to offer an ETF Class and one or more Mutual Fund Classes.²²

¹⁸ *Id.* at 123.

¹⁹ *See id.* at 122-123 (noting that “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”).

²⁰ *See id.* at 124.

²¹ *See supra* note 1.

²² *See* DFA Notice at 1.

III. Discussion and Exemptive Relief

The Commission believes it is appropriate in the public interest, and is consistent with the protection of investors to grant a conditional exemption from Exchange Act section 11(d)(1) and Exchange Act rules 10b-10 and 14e-5 for the ETF Class of a Multi-Class ETF that has received a Multi-Class ETF Order.²³ This exemption will provide relief from these provisions to broker-dealers and certain other persons under substantially the same conditions and requirements as the 2019 Order, except that instead of requiring that the Multi-Class ETFs fall within the definition of an ETF under rule 6c-11, this exemption requires that the Multi-Class ETF must operate the ETF Class as an ETF in compliance with the requirements of rule 6c-11, with certain exceptions. Specifically, in order for a broker-dealer to rely on this relief: (1) a Multi-Class ETF must have received a Multi-Class ETF Order from the Commission 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; (2) other than as provided for in the relief from rule 14e-5, the ETF Class of the Multi-Class ETF must further satisfy the diversification requirement as set forth in this order; (3) the broker-dealer relying on the relief must meet certain conditions specific to each applicable Exchange Act Provision, as set forth in this order; and (4) except as

²³ Section 36(a)(1) of the Exchange Act grants the Commission the authority, with certain limitations not at issue here, to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1).

provided in Sections III.D.2 and III.E below, this relief does not apply to purchases or sales of ETF Shares of a Multi-Class ETF in the secondary market.

A. Compliance with Rule 6c-11

The Commission is limiting the relief under this exemption to transactions in the ETF Shares of a Multi-Class ETF that has received a Multi-Class ETF Order subject to a condition to operate the ETF Class as an ETF in compliance with the requirements of rule 6c-11, except that the Multi-Class ETF: (1) will list only the ETF Shares on a national securities exchange; and (2) may permit an Exchange Privilege in addition to traditional creation and redemption transactions with the ETF Class. As noted above, this condition is generally consistent with the 2019 Order, except that instead of requiring that the Multi-Class ETFs fall within the definition of an ETF under rule 6c-11, this exemption requires that the Multi-Class ETF must operate the ETF Class as an ETF in compliance with the requirements of Rule 6c-11.²⁴

As with the 2019 Order, 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 provisions 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 Multi-Class ETFs, and in particular the ETF Class, through a variety of sources, including the National Securities Clearing Corporation (“NSCC”), intermediaries and the Multi-Class ETFs themselves, 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-

²⁴ See 2019 Order at 7-8.

dealer would otherwise be required to disclose. These requirements should also help customers determine if they should request that their broker-dealer disclose any omitted information.

The Commission further believes that neither the existence of the Exchange Privilege nor the introduction of the Mutual Fund Classes has any adverse effect on the relief granted in this order. The relief provided is limited to 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 the ETF Shares of the Multi-Class ETF. These creation and redemption transactions are separate and distinct from transactions in Mutual Fund Shares (and the operation of the Mutual Fund Class) where shareholders can purchase and redeem individual shares directly from the Mutual Fund Class without the need to engage in creation and redemption transactions. Similarly, the Exchange Privilege does not involve the exchange of a creation or redemption basket of securities and other assets. Instead, the Exchange Privilege permits a shareholder of Mutual Fund Shares to acquire individual ETF Shares directly from the Multi-Class ETF. The Requester has not requested, and relief has not been granted, for transactions involving the Mutual Fund Shares (or the Mutual Fund Class) or pursuant to the Exchange Privilege.

B. Minimum Diversification Requirement

Consistent with the relief provided under the 2019 Order, the exemption provided by this order from Exchange Act section 11(d)(1) and Exchange Act rule 10b-10 is available only with respect to transactions involving a Multi-Class 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”).²⁵ Creation and redemption transactions in diversified Multi-Class ETFs involve the exchange of a basket that contains numerous securities, which in turn implicates disclosure requirements, as discussed below, under rule 10b-10. 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 and minimize the incentive for a broker-dealer to seek to use a Multi-Class ETF to evade the new issue lending restriction in Exchange Act section 11(d)(1).²⁶

Diversification, together with the conditions discussed below, forms the basis for the Commission’s conclusion that relief from section 11(d)(1) and rule 10b-10 is 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 certain information, including among other items, the identity, price, and number of shares or units (or principal amount) of the security

²⁵ 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)).”

²⁶ See 2019 Order at note 19.

purchased or sold by the customer.²⁷ 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.²⁸ 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 purchase²⁹ or sale³⁰ of a security, and each purchase or sale requires confirmation pursuant to Exchange Act rule 10b-10.

Consistent with the relief granted in the 2019 Order, the Commission is granting an exemption from Exchange Act rule 10b-10 with respect to transactions involving the ETF Shares of the Multi-Class ETF 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 Multi-Class 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.

²⁷ 17 CFR 240.10b-10.

²⁸ Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612, 59613 (Nov. 17, 1994).

²⁹ Exchange Act Sec. 3(a)(13).

³⁰ Exchange Act Sec. 3(a)(14).

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 I 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 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 Multi-Class ETFs, and in particular the ETF Class, is accessible through a variety of sources, including the NSCC, intermediaries and the Multi-Class 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 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 within thirty days prior to such transaction. Because Multi-Class 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 ETF Shares, 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 above, a Broker-Dealer AP is a registered broker-dealer that has entered into a contractual arrangement with a Multi-Class ETF or one of its service providers that allows the Broker-Dealer AP to place orders for the creation or redemption of creation units, but the Broker-Dealer AP is not compensated by the Multi-Class ETF 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 Multi-Class ETF's market price and its NAV.

Consistent with the relief granted in the 2019 Order, 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"³¹ any payment, compensation, or other economic incentive to promote or sell the shares of the Multi-Class ETF to persons outside the fund complex, other than non-cash compensation currently permitted under Financial Industry and Regulatory Authority ("FINRA") rule 2341(l)(5)(A), (B), or (C) ("non-cash compensation").³²

³¹ 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.

³² Non-cash compensation currently permitted under FINRA rule 2341(l)(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. On February 12, 2026, the Commission approved a proposed change to FINRA Rule 2341(l)(5)(A), among others. This rule change increased the annual amount per person fixed periodically by FINRA in paragraph (A) from \$100 to \$300. *See* Exchange Act Release No. 104830 (Feb. 12, 2026) (File No. SR-FINRA-2025-003), 91 FR 7570 (Feb. 18, 2026) (available at: <https://www.federalregister.gov/d/2026-03127>).

2. The Broker-Dealer AP does not extend, maintain or arrange for the extension or maintenance of credit to or for a customer on ETF Shares before thirty days have passed from the date that the ETF 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.³³ This 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

³³ 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>).

and generally do not receive any compensation for selling ETF Shares, other than, in some cases, limited forms of non-cash compensation. Such 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). To remove any ambiguity about the circumstances when Non-AP Broker-Dealers may offer margin on ETF Shares, however, the Commission is granting this exemption from section 11(d)(1) consistent with the relief granted in the 2019 Order.

The Commission believes this relief is appropriate because, as stated above, Non-AP Broker-Dealers do not engage in creation and redemption transactions with Multi-Class ETFs and, thus, may reasonably be considered not to be participating in the distribution of the ETF Shares. 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 ETF Shares to persons outside the Fund Complex, other than non-cash compensation. For the foregoing reasons, the Commission believes it is appropriate and in the public interest and consistent with investor protection to grant this exemption.

E. 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”)³⁴ or any securities that are immediately convertible into, exchangeable for, or exercisable for subject securities (“related securities”)³⁵ except as part of such tender offer.

³⁴ Exchange Act rule 14e-5(c)(7).

³⁵ Exchange Act rule 14e-5(c)(6).

Subject to certain exceptions, this prohibition applies from the time of the public announcement of the tender offer until the expiration of such offer. The term “covered person” includes, among other persons, 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.³⁶ 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 Multi-Class ETF, and any legal entity of which the Multi-Class ETF is a series.

Consistent with the relief granted in the 2019 Order, the Commission is granting a conditional exemption from rule 14e-5 to a Multi-Class ETF, the legal entity of which the Multi-Class ETF is a series, and authorized participants and any other covered persons who create and redeem ETF Shares of a Multi-Class ETF in creation units pursuant to contractual arrangements between such covered person and the Multi-Class ETF (“Rule 14e-5 Covered Persons”). The conditional exemption will allow such persons to: (1) redeem ETF Shares of a Multi-Class ETF in creation unit sizes for a redemption basket that may include a subject security or related security, (2) engage in secondary market transactions with respect to the ETF Shares of a Multi-Class ETF after the first public announcement of a tender offer involving the ETF Class’s component securities 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 (3) 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 of a Multi-Class ETF.

³⁶ Exchange Act rule 14e-5(c)(3).

Consistent with the 2019 Order, 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 an ETF Class's 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 Class's 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 other Rule 14e-5 Covered Persons to engage in creation or redemption transactions between the public announcement of a tender offer and its expiration, thereby permitting the ETF Class of a Multi-Class ETF to operate as intended for the benefit of its holders and as disclosed in publicly filed documents. The conditions to which the relief is subject will help 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 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 and certain other persons that engage in certain transactions involving the ETF Shares of a Multi-Class ETF that has received a Multi-Class ETF Order, subject to conditions contained in this order, from the requirements of section 11(d)(1) of the Exchange Act and Exchange Act rules 10b-10 and 14e-5 appropriate in the public interest, and consistent with the protection of investors.

Accordingly, 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 ETF Shares of a Multi-Class ETF.

IT IS FURTHER ORDERED, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III. A, B, and D.1 above, that a Broker-Dealer AP for the ETF Class of a particular Multi-Class ETF 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 such ETF Shares.

IT IS FURTHER ORDERED, pursuant to section 36 of the Exchange Act, subject to the conditions described in Sections III. A, B, and D.2 above, that a Non-AP broker-dealer that effects transactions in ETF Shares of a Multi-Class ETF, 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 E above, that the Rule 14e-5 Covered Persons are exempt from Exchange Act rule 14e-5 with respect to the transactions described in Section III.E 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.

For the Commission, by the Division of Trading and Markets pursuant to delegated authority³⁷ and by the Division of Corporation Finance pursuant to delegated authority³⁸.

Sherry R. Haywood,

Assistant Secretary.

³⁷ Regarding the exemption from Exchange Act Rule 10b-10 pursuant to 17 CFR 200.30-3(a)(32) and regarding the exemption from Exchange Act Section 11(d)(1) pursuant to 17 CFR 200.30.3(a)(62).

³⁸ Regarding the exemption from Rule 14e-5 pursuant to 17 CFR 200.30-1(f)(16)(ii).