

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”) permits exchange-traded funds (“ETFs”) that satisfy certain conditions to operate without first obtaining an exemptive order from the Commission. The rule was designed to create a consistent, transparent, and efficient regulatory framework for ETFs and facilitate greater competition and innovation among ETFs. Rule 6c-11 requires 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.

¹ 17 CFR 270.6c-11.

² See 44 U.S.C. 3501 through 3521.

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 ETFs, including leveraged/inverse ETFs, and facilitating greater competition and innovation among ETFs. The information collection also will continue to 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 and non-transparent ETFs.³

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 Act⁴ 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

³ The respondents to rule 6c-11 also exclude ETFs organized as UITs.

⁴ P.L. 106-229, 114 Stat. 464 (June 30, 2000).

a change to a rule. The information collection that is required by the amendments to 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, 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. 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

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 informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry. The Commission requested public comment on the collection of information requirements of rule 6c-11 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

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.⁵

Rule 6c-11 requires 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.

⁵ The Commission's estimates of the relevant wage rates 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, updated for 2022. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013, updated for 2022.

The current respondents to rule 6c-11 are ETFs registered as open-end management investment companies other than share-class ETFs or non-transparent ETFs.⁶ This collection is not mandatory, but is necessary for those ETFs seeking to operate without individual exemptive orders. We estimate 2,352 ETFs would be subject to these requirements.

Website Disclosures

Rule 6c-11 requires 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 rule requires that the portfolio holdings information contain specified information, including description and amount of each position. Additionally, the rule requires 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 requires 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

⁶ ETFs organized as UITs are also excluded as respondents as they cannot rely upon the rule.

disclose this information on a routine basis. We estimate that most ETFs will be required to make this disclosure only once in their lifetimes and thus, there will be no ongoing costs associated with it.

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

	Annual hours		Wage Rate ¹	Internal time costs	Annual external cost burden
Website updates	1.5 hours	×	\$311 (senior systems analyst)	\$466.5	
	1.5 hours	×	\$362 (senior programmer)	\$543	
Review of updated website disclosures	1.875 hours	×	\$339 (compliance manager)	\$635.625	
	1.875 hours	×	\$400 (compliance attorney)	\$750	
Total annual burden per ETF	6.75 hours			\$2,395.125	\$0
Number of ETFs	×	2,352		×	2,352
Total annual burden	15,876 hours			\$5,633,334	\$0

Notes:

1. See *supra* footnote 5.

Table 1 above summarizes the 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 15,876 hours, at a total internal time cost of \$5,633,334.

Recordkeeping

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

	Annual hours		Wage rate ¹	Internal time costs	Annual external cost burden
Recordkeeping	2.5 hours	×	\$68 (general clerk)	\$170	
	2.5 hours	×	\$104 (senior computer operator)	\$260	
Total annual burden per ETF	5 hours			\$430	
Number of ETFs	×	2,352		×	2,352
Total annual burden	11,760 hours			\$1,011,360	\$0

Notes:

1. See *supra* footnote 5.

Table 2 above summarizes the 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 11,760 hours, at a total internal time cost of \$1,011,360. We do not estimate that there will be any ongoing external costs associated with the recordkeeping requirement.

Policies and Procedures

Rule 6c-11 requires 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 is 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 is required to maintain records detailing the composition of each custom basket.

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

	Annual hours		Wage rate ¹	Internal time costs	Annual external cost burden
Reviewing and updating baskets policies and procedures	5 hours	×	\$360 (senior manager)	\$1,800	
	2.5 hours	×	\$510 (ass't general counsel)	\$1,275	\$531 ²
	2.5 hours	×	\$580 (chief compliance officer)	\$1,450	
Total annual burden per ETF	10 hours			\$4,525	\$531
Number of ETFs	×	2,352		×	2,352
Total annual burden	23,520 hours			\$10,642,800	\$1,248,912

Notes:

1. See *supra* footnote 5.

2. This estimated burden is based on the estimated wage rate of \$531, for 1 hour of outside legal services. The Commission's estimate of the relevant wage rates for external time costs, such as outside legal services, takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

Table 3 above summarizes the 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 23,520 hours, at a total internal time cost of \$10,642,800. We estimate that there will be an ongoing external cost associated with the policies and procedures requirement of \$1,248,912.

TABLE 4: RULE 6c-11 TOTAL PRA ESTIMATES

	Internal hour burden	Internal burden time cost	External cost burden
Updating website disclosure	15,876 hours	\$5,633,334	\$0
Recordkeeping	11,760 hours	\$1,011,360	\$0
Updating policies and procedures	23,520 hours	\$10,642,800	\$1,248,912
Total annual burden	51,156 hours	\$17,287,494	\$1,248,912

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 reviewing and updating website disclosures, recordkeeping, and reviewing and updating policies and procedures, will result in an average aggregate annual internal burden of 51,156 hours and an average aggregate internal time cost of \$17,287,494.

13. Cost to Respondents

As shown in Table 4 above, we estimate that there will be an ongoing external cost of \$1,248,912 associated with the policies and procedures requirement. We estimate that the costs related to rule 6c-11's website disclosures and recordkeeping requirements are fully captured as internal hour burdens in Item 12.

Table 5 below summarizes the revisions to the estimated annual responses, burden hours, and burden-hour costs for rule 6c-11.

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

Annual Number of Responses

Previously approved:	1,907
Requested:	2,352
Change:	445

Annual Time Burden (Hrs.)

Previously approved:	81,848 hours
Requested:	51,156 hours
Change:	-30,692 hours

Annual Cost Burden (\$)

Previously approved:	\$27,227,498 ⁷
Requested:	\$1,248,912
Change:	-\$25,978,586

14. Costs to Federal Government

The information collection requirements of rule 6c-11 do not entail any cost to the federal government. Rule 6c-11 does not require ETFs to file any materials with the Commission.

15. Changes in Burden

The total annual hour burden of 51,156 hours represents a decrease of 30,692 hours over the previous burden hour estimate of 81,848 hours. In addition, the annual external cost burden of \$1,248,912 represents a decrease of \$25,978,586 over

⁷ The previously approved external cost burden of \$27,227,498 reflected a ministerial error. This figure was the estimated internal cost associated with rule 6c-11's information collection requirements. The Commission's last supporting statement reflected an estimated external cost burden of \$1,907,000. Using this intended figure, the change in external cost burden is -\$658,088 (\$1,907,000 - \$1,248,912).

the previously approved annual external cost burden of \$27,227,498.⁸ The changes in burdens are due to an increase in the number of ETFs covered by rule 6c-11, the completion of initial burdens to comply with the rule, and correction of a ministerial error that resulted in prior approval of a larger external cost burden than intended.

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.

⁸ See *supra* note 7.