

SEC Proposes New Rule Impacting ETFs

October 01, 2018

On June 28, the SEC proposed new rule 6c-11 to allow open-end exchange-traded funds that satisfy certain conditions to operate without obtaining an SEC exemptive order. The proposed rule would apply to open-end ETFs, but would be unavailable to unit-investment trusts, multi-class ETFs, and leveraged or inverse ETFs.

Among other things, proposed rule 6c-11 would allow ETF sponsors to use “custom baskets” (baskets that do not reflect a pro-rata share of the fund’s portfolio or that differ from other baskets used in transactions on the same business day) in connection with creation unit purchases and redemption transactions with authorized participants. ETFs using custom baskets must adopt written policies and procedures for the construction and use of custom baskets that are in the best interests of the ETF and its shareholders.

Proposed rule 6c-11 also would require an ETF to disclose on its website:

- its portfolio holdings each day, and
- historical information regarding premiums and discounts and bid-ask spread information, designed to inform investors about the ETF’s arbitrage efficiency.

The SEC also proposed amending Form N-1A to require open-end ETFs to disclose certain ETF-specific information, including trading costs borne by secondary-market investors.

It is unclear whether the proposed rule would increase the use of ETFs in connection with variable insurance products. Historically, such use has been quite limited, because of, among other things, federal income tax constraints on using publicly traded funds as investment options under variable products. However, a final rule that makes ETFs more attractive could spur increased variable product use of ETFs, particularly in a “fund of ETFs” structure.

Related Practices

[Financial Services Regulatory](#)
[Securities Transactions and Compliance](#)

Related Industries

[Securities & Investment Companies](#)
[Life, Annuity, and Retirement Solutions](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.