sifma
Invested in America

asset management group

February 22, 2019

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Exchange-Traded Funds
File No. S7-15-18

Dear Mr. Fields:

The ETF Committee of the Asset Management Group (the "**AMG**") of the Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to provide comments to the United States Securities and Exchange Commission (the "**Commission**") on the Commission's proposed new Rule 6c-11 under the Investment Company Act of 1940, as amended (the "**Investment Company Act**" or the "**1940 Act**"), that would permit exchange-traded funds ("**ETFs**") that satisfy certain conditions to operate without having to obtain an exemptive order (the "**Proposed Rule**"). These comments supplement the comments on the Proposed Rule previously submitted by AMG.[2]

As indicated in the Initial AMG Letter, and as reiterated during in-person meetings with the Commission staff on October 29, 2018 (the **"Staff Meeting"**), AMG strongly supports the object of the Proposal – to permit ETFs to operate without the expense and delay of obtaining an exemptive order and to level the playing field for new and existing ETF sponsors. To further assist the Commission in finalizing the Proposed Rule, and based in part on our discussions during the Staff Meeting, AMG sets forth below several specific additional comments and suggestions regarding the Proposal.[3]

A. Disclosure of Bid-Ask Spread Information

---

[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

[2] See, https://www.sec.gov/comments/s7-15-18/s71518-4460525-175804.pdf (the "**Initial AMG Letter**"). The Initial AMG Letter also included comments on other aspects of the Commission's proposal relating to ETFs (together with the Proposed Rule, the "**Proposal**"). Exchange-Traded Funds, Release No. IC-33140 (June 28, 2018), 83 Fed. Reg. 37332 (July 31, 2018), *available at* https://www.sec.gov/rules/proposed/2018/33-10515.pdf (the "**Proposing Release**").

[3] The Initial AMG Letter describes in detail the current state of U.S. ETF regulation, summarizes the Proposed Rule and details AMG's specific comments and recommendations.

Narrative Bid-Ask Spread Disclosure and Example

In the Initial AMG Letter, we noted that AMG is generally supportive of providing additional information to investors regarding the costs of investing in ETFs. Nevertheless, we noted that AMG has a number of comments and concerns regarding specific aspects of the Proposal, principally the required bid-ask spread disclosure and the interactive bid-ask spread calculator.

While AMG agrees with the Commission that an understanding of the impact of bid-ask spreads is important to gaining an understanding of the costs of investing in ETF shares, we believe that bid-ask spreads represent only one element of ETF trading costs. AMG believes that rather than requiring prospectus disclosure of historical bid-ask spread information, retail investors would be better served by having clear narrative disclosure regarding the potential impact of bid-ask spreads and brokerage costs on their purchases and sales of ETF shares. As noted, AMG is concerned with the utility of including the proposed historical bid-ask spread disclosures in ETF prospectuses, and recommends that the Commission reconsider the one-year historical bid-ask spread disclosure requirement.

We recommend that in lieu of providing historical bid-ask spread information in the prospectus, ETFs be required to advise investors that they may incur brokerage fees and will bear the impact of bid-ask spreads when acquiring or disposing ETF shares, and to provide a simple example that details the impact of brokerage commission and the bid-ask spread on a hypothetical purchase of ETF shares. If the Commission elects to adopt any historical bid-ask spread disclosure requirement, AMG recommends that the Commission instead adopt a 45-day look back period and require that the information be made available only on the ETF's website (subject to appropriate narrative disclosures) in order to provide more useful and timely information about recent bid-ask spreads.

Proposed Narrative Disclosure Regarding Bid-Ask Spreads and Related Example

During the discussion at the Staff Meeting, the Commission Staff indicated that discussions with retail investors and investor advocates had consistently surfaced the need to have a "dollars and cents" example available to enable investors to understand the impact of brokerage costs and the bid-ask spread. To address these concerns, AMG recommends that the Commission require narrative disclosure and an expense example along the following lines in lieu of requiring historical bid-ask spread information in the summary prospectus:

> **[The following would appear immediately below the Item 3 fee table and expense example]**
>
> In addition to the above costs and expenses that the ETF pays out of its assets, you may also be subject to certain additional costs, such as brokerage commissions, and an ETF's "bid-ask spread" when you buy and sell ETF shares.
>
> When you purchase ETF shares, just like when you purchase shares of an individual stock, you will typically be charged a brokerage commission by your broker. The commission is frequently a fixed amount regardless of the quantity of shares purchased.
>
> Purchase transactions in ETF shares (as well as individual stocks) will also be impacted by the bid-ask spread. The bid-ask spread is the difference between what investors are willing to pay for ETF shares (the "bid" price) and the price at which sellers are willing to sell ETF shares (the "ask" price). The spread, which may vary over time and is based on many factors including supply and demand for the underlying securities in the ETF, supply and demand for shares of the

ETF itself, current interest rates, and the historical and current magnitude of price fluctuation of the ETF's asset class, is generally narrower if the ETF has higher trading volume, and wider if the ETF has lower trading volume (which may be the case for funds that are newly launched or small in size). Bid-ask spreads may also be wider during periods of higher market volatility.

The market price of the ETF shares you purchase may differ from the ETF's net asset value per share ("NAV"). Although it is expected that the market price of an ETF share typically will approximate its NAV, there may be times when the market price and the NAV diverge more significantly, such as during times of market volatility.

ETF Share Purchase Example

Although your actual costs may be higher or lower, based on the assumptions below, the following provides an example of the costs and impacts you may experience if you arrange with your broker to purchase $10,000 worth of ETF shares:

Market best bid price per ETF share	$49.95
Market best ask price per ETF share	$50.05

Available cash in your brokerage account	$10,000.00
Brokerage commission on the entire transaction paid to your broker	$ 5.00
Amount used to purchase 199 shares of the ETF at the ask price of $50.05	$ 9,959.95
Cash remaining in your brokerage account	$ 35.05

For purposes of the foregoing example, it is assumed that you purchase shares of the ETF at the ask price and that the bid-ask spread per ETF share is $0.10 for a total impact of $19.90 on your purchase of 199 shares. The $19.90 bid-ask spread impact is reflected in your purchase price and is not a separate charge.

Please note that when you sell your ETF shares, you will typically pay a brokerage commission on the separate sale transaction, and you will bear the impact of the bid-ask spread on the sale (which may differ from the bid-ask spread borne when you purchased your ETF shares). When you sell your ETF shares, they may be trading at a premium or discount to their current NAV.

[For more information about the specific risks of buying and selling ETF shares, please see __________________________ in the "Risk Factors" section of this Summary Prospectus.]

AMG believes that the proposed narrative fee disclosure and example will provide helpful, practical information to retail investors regarding the potential impact of bid-ask spreads and brokerage commissions on their decision to purchase ETF shares. For simplicity sake, we recommend that the example only represent a purchase transaction, since providing an example of a round trip transaction using the same bid-ask spread may be confusing and unrealistic, especially if retail investors intend to buy and hold their shares for an extended period of time. Nevertheless, our proposed narrative disclosure does explain that when selling shares, investors will again bear the impact of brokerage commissions and the bid-ask spread.

Experience of AMG Members in Complying with Canadian "ETF Facts" Disclosure Requirements

As suggested by the Commission staff during the Staff Meeting, AMG members gathered information regarding the experience of Canadian ETF sponsors with Canadian Form 41-101F4 (the **"ETF Facts Document"**).[4] The ETF Facts Document is a recently implemented disclosure requirement applicable to Canadian ETFs. Under Canadian securities regulations, dealers that receive an order to purchase ETF shares will be required to deliver the ETF Facts Document, instead of the prospectus, to investors within two days of the purchase.[5] The ETF Facts Document is designed to provide investors with access to information about an ETF, in language they can easily understand, regarding the potential benefits, risks and costs of investing in an ETF. One of the specific requirements of the ETF Facts Document is that it must contain the daily average bid-ask spread over a 12-month period ending within 60 days before the date of the ETF Facts Document.[6]

We understand that the Commission staff is seeking AMG's views regarding the ETF Facts Document specifically as it relates to the requirement to disclose historical bid-ask spread information, so AMG expresses no views regarding the other aspects of the Canadian disclosure requirements. With respect to the historical bid-ask spread disclosure requirements, AMG understands that when the disclosure requirements were proposed, the Canadian ETF industry participants raised numerous objections, including objections regarding the utility and clarity of the historical bid-ask spread information that are similar to those raised by AMG in the Initial AMG Letter. We understand that, despite the objections raised by the Canadian ETF industry, the proposed disclosure requirements were adopted without significant revisions.

Since the requirement to deliver the ETF Facts Document went into effect just over two months ago (December 10, 2018), it is too early to tell whether investors find the disclosures useful or relevant. We do note, however, that the bid-ask spread data is sourced from the ETF's listing exchange (mostly the Toronto Stock Exchange, although there are some Canadian ETFs listed on NEO Aequitas Exchange), and not from the ETF issuers.[7] Accordingly, a number of Canadian ETF sponsors noted that, while they still question the utility of such disclosure, the cost of compliance is not material (which is not the case in the U.S., where the Proposed Rule places the responsibility for supplying bid-ask spread data on the ETF sponsors rather than the listing exchanges or others with ready access to such data). Further, similar to U.S. ETF sponsors, Canadian ETF issuers have no way to verify the accuracy of the bid-ask spread data, including whether the TSX and NEO Aequitas are calculating bid-ask spreads in the same manner. Therefore, AMG recommends that the Commission staff not emulate the requirements of the Canadian ETF Facts Document in the Proposed Rule. As discussed above and in the Initial AMG Letter, as well as in various other comment letters on the Proposed Rule, historical bid-ask spread information is not useful to investors because it focuses only on one aspect of the costs of purchasing ETF shares and by

[4] See, e.g., http://www.osc.gov.on.ca/en/SecuritiesLaw_ni_20161208_41-101_traded-mutual-funds.htm.

[5] The prospectus will continue to be made available to investors upon request, at no cost.

[6] The daily average bid-ask spread is calculated by taking the average of the intraday bid-ask spreads (calculated at each one second interval beginning 15 minutes after the opening and ending 15 minutes prior to the closing of the listing exchange) for each trading day.

[7] The disclosure requirements do permit the ETF Facts Document to include a cross reference to the ETF's website where more up-to-date bid-ask spread information could be made available, AMG is not aware of any Canadian ETF issuer providing such website links.

the time it is made available to investors, it will be stale and no longer reflective of what an investor would currently experience. Coupled with the concerns over the sourcing of bid-ask spread data articulated in the Initial AMG Letter and other comment letters, AMG instead recommends that the Commission require the narrative disclosure and example detailed above.

B. Custom Baskets

Treatment of Cash Substitutions as Custom Basket Transactions

In the Initial AMG Letter, we commented that despite AMG's strong support of the Proposed Rule's inclusion of custom basket flexibility, AMG does not support the Proposed Rule's apparent treatment of partial cash and/or "cash in lieu" baskets as custom baskets. We noted that traditional mutual fund portfolio management involves accepting cash when investors purchase fund shares, and allowing the fund's portfolio manager to hold the cash or to purchase the securities or other assets that they desire to include in the fund's portfolio. Similarly, when shares are redeemed, the portfolio managers decide which securities or other assets to sell (or whether to use cash reserves) to meet the redemption. We noted that these processes are subject to the mutual fund adviser's general fiduciary duty to act in the best interests of the fund, and commented that the decision by an ETF portfolio manager whether to utilize cash, including cash in lieu of basket securities, should be treated the same way.[8] We believe that the treatment of partial cash or cash in lieu baskets as "custom baskets" subject to Custom Basket Policies elevates a routine portfolio management prerogative to the same level as transactions that present a greater potential for conflicts and overreach.

If the Commission remains determined that the use of cash baskets should fall within the custom basket rubric established under the Proposed Rule, AMG recommends that ETF sponsors be able to differentiate between basket transactions involving cash substitutions and those involving securities substitutions (where concerns regarding potential "cherry picking" or "dumping" are arguably more present). Accordingly, AMG recommends that the Commission acknowledge that "custom basket" policies and procedures regarding cash substitutions could limit their focus to the reasons for accepting (or distributing) cash rather than securities and the practices governing how an ETF passes back transaction costs to creating or redeeming Authorized Participants.

C. Conclusion

AMG reiterates its strong support for the Commission's and IM staff's efforts to streamline U.S. ETF regulation and level the ETF playing field. Along with the Initial AMG Letter, the issues set forth above represent AMG's efforts to assist the Commission in adopting ETF rules and standards that will protect investors and also ensure that the U.S. ETF industry remains the most dynamic, innovative and safe ETF industry in the world.

---

[8] In many cases, the use of cash is driven by restrictions applicable to authorized participants, restrictions on in-kind transactions in certain markets, or authorized participants' inability to access individual securities. For example, in certain countries, ETFs are unable to transfer securities in-kind, so it is necessary to engage in cash transactions. In addition, some ETF sponsors may be more expert in acquiring certain types of basket securities than the authorized participants, so they may require an authorized participant to contribute cash so they can acquire the desired securities directly. In addition, individual authorized participants may be restricted from transacting in certain securities or may not have access to all basket securities, so it may be necessary to substitute cash for individual securities for that authorized participant.

SIFMA AMG sincerely appreciates the opportunity to provide these supplementary comments and your consideration of these views. We stand ready to provide any additional information or assistance that the Commission might find useful. Please do not hesitate to contact either Timothy Cameron at 202-962-7447 (tcameron@sifma.org) or Lindsey Keljo at 202-962-7312 (lkeljo@sifma.org), or our outside counsel, Edward Baer, Ropes & Gray LLP, at 415-315-6328 (edward.baer@ropesgray.com), with any questions.

Sincerely,

Timothy W. Cameron, Esq.
Asset Management Group – Head

SIFMA AMG

Lindsey Weber Keljo, Esq.
Asset Management Group – Managing Director and Associate General Counsel

Securities Industry and Financial Markets Association

cc: Honorable Jay Clayton, Chairman, U.S. Securities and Exchange Commission
Honorable Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
Honorable Robert J. Jackson, Jr., Commissioner, U.S. Securities and Exchange Commission
Honorable Elad L. Roisman, Commissioner, U.S. Securities and Exchange Commission
Ms. Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission