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SEC Grants Conditional Exemptive Relief and Related No-Action Relief From Exchange Act Provisions for Multi-Class ETFs

The Final Piece of the Multi-Class ETF Regulatory Puzzle Is Now in Place.



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On March 17, 2026, the U.S. Securities and Exchange Commission (SEC) issued an order¹ granting conditional 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 for broker-dealers and other market participants engaging in transactions involving exchange-traded shares of a Multi-Class ETF (defined below). Simultaneously, the staff of the SEC's Division of Trading and Markets (the "Staff") issued a no-action letter² under Rules 15c1-5 and 15c1-6 of the Exchange Act for broker-dealers that effect an in-kind creation or redemption transaction on behalf of customers involving the ETF Shares of a Multi-Class ETF. The 2026 Order and the ICI Letter were issued in response to a request from the Investment Company Institute and provides relief for Multi-Class ETFs that is substantially similar to the relief the SEC previously granted in a 2019 order³ for ETFs operating in reliance on Rule 6c-11 under the Investment Company Act of 1940 (the "Investment Company Act").

Background

As of March 17, 2026, approximately 100 applications have been filed with the SEC seeking exemptive relief necessary to operate a Multi-Class ETF, and the SEC has issued orders to nearly 50 registered open-end management investment companies permitting the operation of a Multi-Class ETF ("Multi-Class ETF Order").⁴ Pursuant to a Multi-Class ETF Order, 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 "Mutual Fund Class," and such shares, "Mutual Fund Shares," and each such fund, a "Multi-Class ETF").

In 2019, the SEC adopted Rule 6c-11, which permits ETFs that satisfy certain conditions to operate without the expense and delay of obtaining an individual exemptive order under the Investment Company Act.⁵ Contemporaneously, the SEC issued the 2019 Order granting exemptive relief to broker-dealers and other persons from the requirements of Section 11(d)(1) and Rules 10b-10, 15c1-5, 15c1-6, and 14e-5 under the Exchange Act, but only with respect to ETFs that rely on Rule 6c-11. As a result, because Multi-Class ETFs may not meet the definition of an "ETF" under Rule 6c-11, they have been unable to rely on either Rule 6c-11 or the 2019 Order.⁶

Scope and Conditions of the Relief

The 2026 Order and the ICI Letter extend to Multi-Class ETFs the same regulatory treatment that the SEC provided to standard ETFs operating under Rule 6c-11 in the 2019 Order. The 2026 Order provides exemptive relief from Section 11(d)(1) of the Exchange Act, and Rules 10b-10 and 14e-5 thereunder, under conditions substantially similar to those contained in the 2019 Order. A key difference, however, is that instead of requiring a Multi-Class ETF to fall within the definition of an "ETF" under Rule 6c-11, the 2026 Order requires the Multi-Class ETF to operate its ETF Class as an ETF in compliance with Rule 6c-11, with two exceptions: (1) the Multi-Class ETF's Mutual Fund Shares will not be listed on any national securities exchange; and (2) the Multi-Class ETF may offer an Exchange Privilege.⁷

For a broker-dealer to rely on the 2026 Order's relief, the following conditions must be met: (1) the Multi-Class ETF must have received a Multi-Class ETF Order from the SEC subject to a condition to operate its ETF Class in compliance with Rule 6c-11 (with the exceptions noted above); (2) other than as provided for in the relief from Rule 14e-5, the ETF Class must satisfy the diversification requirement set forth in the 2026 Order; (3) the broker-dealer must meet certain conditions specific to each applicable Exchange Act provision, as set forth in the 2026 Order; and (4) except in limited circumstances, the relief does not apply to purchases or sales of ETF Shares in the secondary market.

The ICI Letter provides no-action relief from Rules 15c1-5 and 15c1-6 under the Exchange Act to permit broker-dealers to effect in-kind creation or redemption transactions on behalf of customers without providing disclosure about control relationships with issuers or participation in primary or secondary distributions of component securities. The Staff's relief is conditioned upon (1) the Multi-Class ETF having received a Multi-Class ETF Order requiring it to operate its ETF Class in compliance with Rule 6c-11 requirements, and (2) the transactions being effected subject to the terms and conditions of the 2019 Order, including the condition that broker-dealers must provide any information to which a customer is entitled under Rules 15c1-5 or 15c1-6 upon request in a timely manner.

Below is a summary table of the Exchange Act relief provided in the 2019 Order compared to the relief provided in the 2026 Order and the ICI Letter.

| | RELIEF UNDER RULE 6C-11 AND THE 2019 ORDER | RELIEF GRANTED IN THE 2026 ORDER AND THE ICI LETTER |
|---|--|---|
| SCOPE OF RELIEF | Provides conditional relief from Exchange Act Section 11(d)(1) and Rules 10b-10, 15c1-5, 15c1-6, and 14e-5 for broker-dealers and certain other persons engaging in transactions in securities of ETFs that rely on Rule 6c-11. | Provides conditional exemptive relief from Exchange Act Section 11(d)(1) and Rules 10b-10, 15c1-5, 15c1-6 and 14e-5 for broker-dealers and certain other persons engaging in transactions involving the ETF Shares of Multi-Class ETFs that have received a Multi-Class ETF Order. Relief does not apply to transactions involving Mutual Fund Shares or transactions pursuant to the Exchange Privilege. |
| ELIGIBLE ETFs | ETFs that meet the definition under Rule 6c-11. ⁸ | Multi-Class ETFs where: (1) Mutual Fund Shares are not listed on any national securities exchange, and (2) shareholders may exchange Mutual Fund Shares for ETF Shares through an Exchange Privilege. |
| RULE 10B-10 EXEMPTION (CONFIRMATION REQUIREMENTS) | Exemption from confirmation requirements allowing broker-dealers effecting in-kind creation or redemption transactions to confirm transactions without providing contemporaneous statements of the identity, price, or number of shares of each component security. | Same relief as the 2019 Order: exemption from Rule 10b-10 allows broker-dealers to confirm in-kind creation or redemption transactions without providing identity, price, or number of shares of each component security, subject to providing the information upon request. |
| SECTION 11(D)(1) EXEMPTION FOR BROKER-DEALER APS | Exemption from the new issue lending restriction, subject to conditions including: (1) no special compensation from the Fund Complex other than permitted noncash compensation under FINRA Rule 2341(l)(5)(A), (B), or (C), and (2) no extension or maintenance of credit on ETF Shares until 30 days after ETF Shares initially commence trading. | Same conditions as the 2019 Order: (1) neither the Broker-Dealer AP nor any natural person associated with such Broker-Dealer AP receives from the Fund Complex any payment or compensation to promote ETF Shares other than permitted noncash compensation, and (2) no extension or maintenance of credit on ETF Shares before 30 days have passed from initial trading date. |
| SECTION 11(D)(1) EXEMPTION FOR NON-AP BROKER-DEALERS | Relief granted for broker-dealers who effect ETF transactions solely in the secondary market and do not receive compensation to sell ETF Shares other than limited forms of noncash compensation. | Same relief as the 2019 Order: exemption from Section 11(d)(1) for Non-AP Broker-Dealers effecting transactions exclusively in the secondary market, subject to the condition that they do not receive any payment or economic incentive to promote ETF Shares other than permitted noncash compensation. |

| | RELIEF UNDER RULE 6C-11 AND THE 2019 ORDER | RELIEF GRANTED IN THE 2026 ORDER AND THE ICI LETTER |
|--|---|--|
| RULE 14E-5 EXEMPTION (TENDER OFFER PURCHASES) | Relief from Rule 14e-5 provided to ETFs, the legal entities of which each ETF is a series, and authorized participants and other covered persons who create and redeem ETF Shares in creation units, allowing them to (1) redeem ETF shares for redemption baskets that may include subject or related securities, (2) engage in secondary market transactions during tender offers, and (3) purchase subject or related securities to purchase creation units. | Same relief as the 2019 Order: exemption from Rule 14e-5 provided to Multi-Class ETFs, 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 in creation units, allowing them to (1) redeem ETF Shares for redemption baskets that may include subject or related securities, (2) engage in secondary market transactions during tender offers, and (3) purchase subject or related securities to purchase creation units. |
| RULE 15C1-5 RELIEF (DISCLOSURE REQUIREMENT) | Relief from Rule 15c1-5 disclosure requirements allowing broker-dealers effecting ETF in-kind creation or redemption transactions to do so without providing disclosure regarding a control relationship with an issuer. | Same substantive relief as the 2019 Order. Relief conditioned on two requirements: (1) the Multi-Class ETF having received a Multi-Class ETF Order requiring it to operate its ETF Class in compliance with Rule 6c-11 requirements; and (2) the transactions being effected subject to the terms and conditions of the 2019 Order, including the condition that broker-dealers must provide any information to which a customer is entitled under Rule 15c1-5 upon request in a timely manner. |
| RULE 15C1-6 RELIEF (DISCLOSURE REQUIREMENT) | Relief from Rule 15c1-6 disclosure requirements allowing broker-dealers effecting ETF in-kind creation or redemption transactions to do so without providing disclosure regarding participation or interest in a primary or secondary distribution of a component security. | Same substantive relief as the 2019 Order. Relief conditioned on two requirements: (1) the Multi-Class ETF having received a Multi-Class ETF Order requiring it to operate its ETF Class in compliance with Rule 6c-11 requirements; and (2) the transactions being effected subject to the terms and conditions of the 2019 Order, including the condition that broker-dealers must provide any information to which a customer is entitled under Rule 15c1-6 upon request in a timely manner. |
| DIVERSIFICATION REQUIREMENT | Relief from Section 11(d)(1) and Rule 10b-10 only available for transactions involving ETFs meeting the Internal Revenue Code Section 851(b)(3)(B) diversification requirement. | Same diversification requirement as the 2019 Order: relief available only for Multi-Class ETFs meeting the diversification requirement applicable to regulated investment companies under the Internal Revenue Code Section 851(b)(3)(B). |



Conclusion

The 2026 Order is a significant milestone for the development of a true Multi-Class ETF market. By extending to Multi-Class ETFs the same type of Exchange Act relief that has been available since 2019 for ETFs operating under Rule 6c-11, the SEC has removed a notable regulatory gap that could have imposed additional compliance burdens on broker-dealers transacting in Multi-Class ETF Shares. Additionally, this relief complements the Multi-Class ETF Orders that the SEC has issued beginning last November, as well as the generic listing rules adopted by the ETF listing exchanges in 2025.² The 2026 Order and the ICI Letter remove the last regulatory hurdle to offering Multi-Class ETFs.

Endnotes

¹ 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, Release No. 34-105028 (March 17, 2026), available [here](#) (the “2026 Order”).

² Investment Company Institute, SEC No-Action Letter (March 17, 2026), available [here](#) (the “ICI Letter”).

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 [here](#) (the “2019 Order”).

⁴ See, e.g., DFA Investment Dimensions Group Inc., et. al., Investment Company Act Release No. 35786 (Nov. 17, 2025), available [here](#). The SEC previously granted several exemptive orders between 2000 and 2007 permitting certain existing funds operating as mutual funds to offer a class of exchange-traded shares. Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order); The Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); and Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order).

⁵ The SEC declined to include ETF share classes as part of Rule 6c-11, noting that ETF class relief raised policy considerations that are different from those that the SEC intended to address in Rule 6c-11. The SEC 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. As a result, certain costs may result from transactions through one class, but all shareholders generally would bear the costs. Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) (“Adopting Release”) 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.”).

⁶ 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. Multi-Class ETFs may not meet the definition of an “ETF” under Rule 6c-11 because they offer Mutual Fund Shares that are neither listed on an exchange nor traded at market-determined prices, and they may permit shareholders of Mutual Fund Shares to acquire individual ETF Shares directly through an exchange privilege (the “Exchange Privilege”).

⁷ The 2026 Order does not provide relief for transactions involving Mutual Fund Shares (or the Mutual Fund Class) or transactions pursuant to the Exchange Privilege as such relief is unnecessary.

⁸ See *supra* note 6.

⁹ See Cboe BZX Rule 14.11(n), available at https://cdn.cboe.com/resources/regulation/rule_book/BZX_Exchange_Rulebook.pdf; Nasdaq Rule 5703, available at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%205700%20Series>; NYSE Arca Rule 5.2-E(j)(9), available at <https://nysearcaguide.srorules.com/rules/631a6eeb0eee4b4bbaed6f7cb43cda69>.

LET US KNOW HOW WE CAN HELP

Multi-Class ETF relief represents an exciting opportunity for Fund sponsors to expand their existing ETF and Mutual Fund offerings. While we recognize that implementation of Multi-Class ETF relief will involve challenges and complexities, given our broad fund industry contacts and unmatched ETF operational expertise, Ropes & Gray is well positioned to help Funds, their sponsors and their Boards and other Fund industry participants, navigate them. Ropes & Gray has been at the forefront of industry conversations about Multi-Class ETF relief, as Ropes & Gray clients represent nearly 25% of all Multi-Class ETF relief applicants. Ropes & Gray attorneys have participated in numerous industry meetings and presentations on Multi-Class ETF relief, including with respect to the Exchange Act topics addressed in the 2026 Order and the ICI Letter, and we have published a number of detailed white papers on Multi-Class ETF relief (available here: <https://www.ropesgray.com/en/insights/alerts/2025/06/preparing-for-etfs-as-a-share-class-operational-issues>; <https://www.ropesgray.com/en/insights/alerts/2025/06/preparing-for-etfs-as-a-share-class-updated-and-expanded-second-edition>).

Please reach out to your regular Ropes & Gray contact or contact us at ETFInnovations@ropesgray.com if you would like to discuss the 2026 Order and the ICI Letter or any other topics related to Multi-Class ETF relief.

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