J.P.Morgan
Asset Management

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October 1, 2018

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Dear Mr. Fields:

J.P. Morgan Asset Management ("JPMAM")[1] strongly supports the Securities and Exchange Commission's (the "SEC" or the "Commission") proposed rule 6c-11 and related provisions, which would permit exchange-traded funds ("ETFs") that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order (the "proposal").[2]

JPMAM currently offers 27 ETFs in the US, and 7 more currently in registration, with a total of approximately $11.3 billion in assets under management ("AUM") at the end of August 2018. We launched our first ETF in June 2014. As a more recent entrant to the ETF market, we are pleased that the SEC is moving forward to substantially ease the process of bringing ETFs to market, and in doing so, making the rules more consistent across all registrants.

We generally support the comments on the proposal provided by the Investment Company Institute and SIFMA's Asset Management Group. We offer our additional comments below.

I. ETFs and Transparency

While we strongly support proposed rule 6c-11, including its emphasis on daily portfolio transparency to facilitate effective arbitrage,[3] we wish to reiterate our view that such transparency is not a necessary prerequisite for effective arbitrage, and may limit investors' access to certain

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[1] J.P. Morgan Asset Management is a marketing name for the investment management subsidiaries of JPMorgan.

[2] Exchange-Traded Funds, Release Nos. 33-10515, IC-33140 (June 28, 2018), 83 Fed. Reg. 37332 (July 31, 2018).

[3] *See, e.g.,* Proposal at n.28 and accompanying text.

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J.P. Morgan Investment Management Inc.

investment strategies in an ETF vehicle. JPMAM has a long history of delivering active investment strategies to investors who value hands-on, professional investment management grounded in fundamental research. As we have previously explained to SEC staff,[4] a key impediment holding JPMAM back from offering more actively managed ETFs is our concern about potential negative consequences associated with daily portfolio disclosure – specifically, the risks of front-running by other market participants and "free riding" by market participants who are able to reconstruct and replicate our proprietary insights and strategies. We have an application pending before the SEC for an ETF that would rely on an alternative methodology to facilitate effective arbitrage without daily portfolio transparency.[5] We believe the proposed methodology would provide sufficient information to enable market makers to effectively arbitrage and maintain efficient markets in the funds contemplated by the Application. We urge the Commission to move forward with granting exemptive relief for this novel ETF structure.

II. Scope of Proposed Rule 6c-11

We support the SEC's proposal to include both index-based and fully-transparent actively managed ETFs that are organized as open-end funds within the scope of Rule 6c-11. We agree with the Commission's conclusion that existing actively managed ETFs have functioned effectively since the first such funds were launched in 2008, and therefore are appropriately included. We also agree that the line between index-based and actively managed ETFs has become blurred over time, and therefore it is unnecessary and even inefficient to impose additional regulatory requirements upon actively managed ETFs. Finally, we note that the expansive scope of the rule will confer benefits to ETF sponsors, investors, and the SEC.

a. Inclusion of Actively Managed ETFs

In explaining the Commission's rationale for including both index-based and actively managed ETFs within the scope of proposed rule 6c-11, the proposal observes that the deviation between the market price and net asset value ("NAV") per share has generally been relatively small for both types of ETFs.[6] The proposal cites data suggesting that deviations are more variable across asset classes underlying the ETFs than between index-based and actively managed ETFs investing in the same asset class. This is consistent with our experience. JPMAM offers both index-based and actively managed fixed income funds, and our active ETFs trade with similar, and at times lower, deviations than our index ETF; all of them typically trade within approximately 50 basis points of their NAVs.

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[4] *See* Letter from Christopher P. Willcox, CEO, J.P. Morgan Asset Management, to David W. Grim, Director, Division of Investment Management, U.S. Securities and Exchange Commission, dated July 7, 2017, *available at* https://www.sec.gov/comments/sr-nysearca-2017-36/nysearca201736-2636844-161243.pdf.

[5] J.P. Morgan Exchange-Traded Fund Trust, et al., File No. 812-14790, filed June 28, 2017.

[6] Proposal at II.B.2.

Thus, we agree with the SEC's determination to include actively managed ETFs within proposed rule 6c-11.

We also agree that there is no reason to create or maintain a meaningful regulatory distinction between index-based and actively managed ETFs.[7] As the proposal notes, "[t]he proliferation of highly customized, often methodologically complicated, indexes has blurred the distinction between such products."[8] We agree; bespoke ETFs tracking customized smart beta strategies are in many ways more similar to actively managed ETFs than to traditional "plain vanilla" index ETFs. Indeed, we believe investors could be confused by a regulatory distinction between index-based and actively managed ETFs, insofar as they may assume that ETFs carrying the "index-based" designation are less complex or risky. Particularly given that, as the proposal notes, practices around portfolio transparency have converged across index-based and actively managed ETFs, we support the SEC's approach.

b. Affiliated Index Providers

Similarly, we believe there is no need for enhanced requirements for index-based ETFs relying on an affiliated index provider.[9] We agree with the SEC's commentary in 2008 that existing provisions under the federal securities laws require funds to adopt measures reasonably designed to prevent the misuse of material non-public information.[10] Since that time, the SEC has stopped imposing specific conditions in exemptive orders designed to address potential conflicts of interest stemming from these arrangements. Instead, in more recent orders, including JPMAM's, the SEC has required such ETFs to abide by conditions similar to those of actively managed ETFs, which address similar concerns – most notably, full portfolio transparency.[11] Based on our experience, full portfolio

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[7] For this reason, we do not believe the SEC should require ETFs to disclose tracking error, where applicable, as doing so would reintroduce a distinction between index-based ETFs (*i.e.,* those for whom tracking error is meaningful) and actively managed ETFs. *See* Proposal at 129.

[8] Proposal at 26.

[9] *See* Proposal at 28.

[10] *See* Exchange-Traded Funds, SEC Release Nos. 33-8901 and IC-28193 (Mar. 11, 2008), 73 Fed. Reg. 14618 (Mar. 18, 2008), at n. 105-106 and accompanying text, referencing rule 38a-1 (requiring funds to adopt policies and procedures reasonably designed to prevent violation of federal securities laws); rule 17j-1 (requiring funds to adopt a code of ethics containing provisions designed to prevent certain fund personnel ("access persons") from misusing information regarding fund transactions); Section 204A of the Investment Advisers Act of 1940 (requiring an adviser to adopt policies and procedures that are reasonably designed, taking into account the nature of its business, to prevent the misuse of material, non-public information by the adviser or any associated person); and Section 15(f) of the Securities Exchange Act of 1934 (requiring a registered broker or dealer to adopt policies and procedures reasonably designed, taking into account the nature of the broker's or dealer's business, to prevent the misuse of material, nonpublic information by the broker or dealer or any person associated with the broker or dealer).

[11] J.P. Morgan Exchange-Traded Fund, et al.; Release Nos. IC-30898 (Notice) January 30, 2014; IC-30927 (Order) February 25, 2014.

transparency, together with existing provisions designed to prevent the misuse of non-public information, should be sufficient to protect against the risk of information sharing between portfolio management staff and index management staff. We therefore support the Commission's proposal to codify this approach (*i.e.*, to not include additional requirements for ETFs relying on an affiliated index provider).

c. Benefits of the Proposed Scope

Finally, it is worth noting that the inclusive scope of the rule will result in decreased time and cost for most new ETFs to enter the market, benefitting both investors and ETF sponsors, and will free up critical SEC resources to focus on novel products. These benefits should not be understated. By way of example, JPMAM filed four amendments to our exemptive application for index-based ETFs and eight amendments for our actively managed ETFs.

III. Exemptive Relief – Affiliated Transactions

We generally support the Commission's proposed approach to the provision of exemptive relief, but we recommend that the Commission consider expanding its approach to affiliated transactions. Specifically, we request that the SEC provide relief to a broader group of affiliates, *i.e.,* broker-dealers or other entities that are affiliated with the ETF's adviser, to create and redeem shares with the ETF. To the extent the SEC is concerned about providing this flexibility together with the proposed relief for custom baskets, it could consider limiting such transactions to published baskets.

As the proposal acknowledges, the arbitrage mechanism is central to the operation of an ETF, and an increase in the number of entities eligible to transact with an ETF generally promotes an efficient arbitrage mechanism and reduces concentration risk.[12] We agree. As an affiliate of an active and well-regarded authorized participant ("AP") desk (J.P. Morgan Securities, LLC), the restriction on affiliated transactions has a direct impact on JPMAM, limiting our universe of potential APs and thus, in theory, our ability to maximize the trading efficiency of our ETFs.

The proposal explains that the ability of ETFs to use custom baskets increases the possibility that affiliates and non-affiliates could be treated differently in connection with an ETF's receipt or delivery of baskets.[13] As a preliminary matter, we would observe that the Commission proposes to impose substantial (and, we believe, appropriate[14]) process requirements for ETFs that use custom baskets, for the specific purpose of protecting against the risk that an ETF might be pressured to

[12] Proposal at 53.

[13] *Id.*

[14] *See infra* Section IV.b.

create baskets that favor a particular AP.[15] Given that the concerns underlying the use of custom baskets is the same for both affiliated and non-affiliated counterparties (*i.e.,* "cherrypicking" and "dumping"), it is not clear why the proposed protections would be sufficient for transactions with non-affiliates but not for those with affiliates.[16]

However, to the extent the Commission believes its custom basket protections would be insufficient with respect to transactions by affiliates, we recommend that it permit affiliates to transact using the published basket.[17] Since the published basket applies to all orders for the purchase or redemption of creations units that are not custom, and its contents are made public daily, it is hard to conceive of a way that an affiliate could be treated differently than a non-affiliate when transacting in the published basket.

IV. Conditions for Relief

We generally support the proposed conditions for relief. Below we offer more detailed comments on the requirements associated with the issuance and redemption of shares, intraday indicative value, baskets, and website disclosure.

a. Issuance and Redemption of Shares

We support the Commission's proposed requirements in the paragraph defining "exchange-traded fund." In particular, we agree with the Commission's proposal to not require a minimum creation unit size. We agree with the Commission's preliminary conclusion that ETFs have no incentive to set very large or small creation unit sizes that could disrupt the arbitrage mechanism; [18] to the contrary, ETFs have every incentive to establish a creation unit size that is appropriate for market demand. As the proposal notes, a large creation unit size could reduce willingness or ability of APs to purchase and redeem ETF shares, which could lead to larger and/or more frequent premiums or discounts to NAV. We agree. Based on our experience, the flexibility to use smaller creation units will be particularly beneficial for new or more thinly traded ETFs.

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15 *See* Proposal at 96.

16 Further, as the ICI notes, any attempt by an affiliate to influence the ETF's selection of securities would be a violation of federal securities laws and regulations prohibiting manipulative practices and misuse of non-public information. *See* Letter from Susan Olson, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, dated Sept. 21, 2018, at 9, available at https://www.sec.gov/comments/s7-15-18/s71518-4403410-175592.pdf.

17 *But see infra* Section IV.b.1, recommending that the acceptance of cash in lieu of a readily-priced security should not cause a basket that is otherwise consistent with the published basket to be construed as a custom basket.

18 Proposal at 65-66.

For example, JPMAM's passive exemptive relief and the applicable class relief letter[19] require that our creation units are valued at no less than $1 million at the time of issuance. We launched a suite of five single factor US equity ETFs in late 2017. These funds each have approximately $30 million in AUM, a current share price of $25-$30, and a typical daily volume ("ADV") of only a few hundred shares. A single creation unit valued at approximately $1 million would represent about one thirtieth of AUM and many multiples of the fund's daily volume, suggesting that it could take several weeks (we estimate 8-10 weeks based on the current 30 day ADV of the most actively traded of the five) for a market maker to sell their full position; in the meantime, they are paying substantial financing costs to carry that position (*e.g.,* capital costs, hedges). Not surprisingly, smaller trades in these ETFs trade at an average premium of 12 basis points, because there is no financial incentive for a market maker to conduct arbitrage until their carrying costs can be covered.[20] If we were permitted to offer smaller creation units (*e.g.,* $250k or $500k), the cost to create and carry a position would decrease, and we believe this would cause premiums for smaller trades in these ETFs to decrease.

Intraday Indicative Value

We agree with the Commission's proposal to not require ETFs within the scope of rule 6c-11 to publish an intraday indicative value ("IIV"). As the proposal explains, sophisticated market participants typically calculate their own intraday value at far more frequent intervals, and are unlikely to use IIV except as a secondary or tertiary check.[21] In addition to observing that 15-second intervals are likely too long to provide meaningful information in today's fast moving markets, the proposal notes that IIV can be stale or inaccurate for ETFs with foreign securities or less liquid debt instruments.[22] We agree.

Although we concur with the SEC's preliminary conclusion that the dissemination of IIV is unnecessary for ETFs within the scope of the proposed rule (*i.e.,* those that provide daily portfolio disclosure), it is important to note that we believe a modified IIV could be a valuable tool to enhance arbitrage in certain circumstances. JPMAM's pending application for an ETF that does not provide daily portfolio transparency relies in part on a modified (and more frequently calculated) IIV.[23] Consistent with the SEC's stated concern that the IIV can be stale in respect of foreign

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[19] Class Relief for Exchange Traded Index Funds, Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, U.S. Securities and Exchange Commission, dated October 24, 2006, available at https://www.sec.gov/divisions/marketreg/mr-noaction/etifclassrelief102406-msr.pdf.

[20] By contrast, larger trade sizes, *i.e.,* those near creation unit size, result in lower carrying costs because a market maker would have fewer shares to sell into the market, and therefore typically occur at a much lower premium.

[21] Proposal at 72-73.

[22] Proposal at 73-74.

[23] *See* J.P. Morgan Exchange-Traded Fund Trust, et al., *supra* note 5.

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securities for which markets are closed, and less liquid debt instruments, the ETFs covered by the application currently would be limited to investing primarily in securities listed on U.S. exchanges.

b. Baskets

i. Basket Flexibility

We strongly support the Commission's preliminary determination to allow baskets to differ from a *pro rata* representation of the ETF's portfolio, as well as the use of different baskets for transactions with different APs ("custom baskets"). This flexibility is particularly important for fixed income ETFs. As a relatively late entrant to the ETF market[24], JPMAM is not permitted to use custom baskets in our fixed income ETFs, nor use non-*pro rata* baskets in our actively managed ETFs (three of the four fixed income ETFs in our current lineup).[25] As a result, to date APs have primarily created in cash in our fixed income ETFs, in large part because of the challenges associated with *pro rata* fixed income baskets (*e.g.*, potential difficulty in locating some of the bonds in a portfolio, increased transaction costs, odd lot trading sizes). The ability to use non-*pro rata* baskets that represent a sample of the portfolio, as well as accept and deliver substitutions for basket securities, will allow us to improve our tax efficiency, reduce portfolio transaction costs, and lower the amount of cash our funds hold to meet redemptions, allowing the funds to be more fully invested; it will also allow us to compete more fairly with earlier entrants to the ETF market who currently have this flexibility.[26]

We recommend, however, that the definition of custom basket not include circumstances in which an ETF substitutes cash in lieu of specified securities for an AP, at least with respect to equities. Cash substitution typically occurs when an AP is restricted from trading in a particular security, which happens routinely when APs are affiliated with investment banks (*e.g.,* because affiliates of the AP are in possession of material non-public information regarding the issuer, or engaged with the issuer in non-public activity such as mergers and acquisitions or underwriting activities, or because the security itself is issued by an affiliate of the AP). The SEC appears to be concerned with the risk of differential pricing when cash is offered in lieu of a security, *i.e.,* that an AP could pay less or receive more cash than the value of the security it is replacing, hence the need for the additional oversight given to custom baskets. We do not believe this is necessary. Equities are readily priced

[24] JPMAM launched its first index-based ETF in 2014, and its first actively managed ETF in 2016.

[25] We have the ability to deviate from pro rata baskets in very limited circumstances such as to address minimum lot sizes and fractional shares, for instruments that cannot be transferred in kind, and for temporary index rebalancing, where applicable.

[26] The benefits of custom baskets and challenges of a *pro rata* approach are described in more detail in a 2016 letter from the ICI. *See* Letter from David W. Blass, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, dated January 13, 2016, at 50-53, available at https://www.sec.gov/comments/s7-16-15/s71615-54.pdf.

on the secondary market, making differential pricing impracticable.[27] APs typically also pay a transaction fee to compensate the ETF for its execution costs in relation to the restricted securities. As a result, we do not believe these scenarios present any additional risk that necessitates subjecting them to the additional protections applied to custom baskets.

Finally, we support the proposed requirement for policies and procedures establishing detailed parameters for the use of custom baskets, and the process for deviation from those parameters; we further believe that the process for deviation should require individual review of the basket in question. However, we believe that requiring an employee other than the portfolio manager to review every individual custom basket is unnecessary and could be unduly burdensome. For custom baskets within the parameters of the policy, however, we believe routine compliance oversight, coupled with the proposed board oversight, should be sufficient.

ii. Posting of a Published Basket

We support the proposal to require ETFs to post information on their websites regarding their published basket at the beginning of each trading day, *i.e.,* before the market opens. JPMAM currently adheres to this practice. However, we are concerned about the additional requirement that an ETF may not accept creation or redemption orders until the basket is published. As discussed in more detail in the ICI's comment letter[28], this is problematic for ETFs invested predominantly in foreign securities, particularly those trading in Asian markets – including JPMAM's international equity, global equity, and emerging markets equity ETFs – and results in wider spreads and higher premiums and discounts for investors. As the ICI letter articulates, any effect from the marginal reduction in transparency due to an order being placed using the prior day's portfolio holdings and basket will be priced into the ETF; those prices are likely to be far more efficient than if T-1 orders were not permitted. We therefore recommend that the SEC not prohibit orders placed prior to the posting of a published basket.[29]

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[27] We are primarily concerned with the use of cash in lieu of securities in equity baskets, because we believe that if the rule is adopted, most in-kind fixed income baskets will be customized with or without cash substitutions, and therefore will be subject to the additional protections either way.

[28] *See* Letter from Susan Olson, *supra* note 16.

[29] In addition, if the rule requires that the information for portfolio holdings be presented consistent with Article 12 of Regulation S-X, the portfolio holdings may not be available until at least 10 p.m., thus making it operationally infeasible to accept T-1 orders.

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c. Website Disclosure

We fully support the Commission's overarching desire to ensure investors have access to clear, digestible and useful information to help them make informed investment decisions.[30] We generally support the SEC's proposed requirements for website disclosure under rule 6c-11; indeed, we currently provide much of the information in question. Below we recommend a potential enhancement to the presentation of historical information regarding premiums and discounts.

However, we do not entirely agree with the Commission's belief that "many investors obtain information regarding ETFs on the ETFs' websites."[31] In the first half of 2018, 24,615 users viewed JPMAM ETF product web pages. Although we do not have data on how many retail investors own shares in our ETFs[32], this number seems small given our $11.3 billion in AUM (1 viewer per $452,000) and 27 ETFs (912 viewers per fund). This leads us to believe that investors are more likely to look for information on the website of the entity with which they interact. In the case of ETFs, this is typically a brokerage firm. These websites offer the added benefit of allowing side-by-side comparisons of ETFs across different sponsors. Nonetheless, we are amenable to providing the required information on our website for the benefit of those investors who do seek it there. We offer the following comments regarding these disclosures.[33]

With respect to historical information regarding premiums and discounts, we agree with the SEC that this information could assist investors in understanding how the arbitrage mechanism performs for an ETF under various market conditions.[34] We therefore support the proposed table and line graph showing premiums and discounts for the most recently completed calendar year and quarters. To provide additional context around the variability in market conditions, we recommend the SEC also consider requiring a separate line graph showing the ETF's market price and NAV over the same time periods, as shown below. We believe this could be helpful because a small spike in a fund's premium or discount, observed in isolation, may concern an investor; however, when viewed against the market price and NAV, the reason for the spike may be more evident – such as if there was unusual volatility in the underlying asset class, causing the ETF's market price to dislocate more than usual from its NAV.

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[30] *See, e.g.,* Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission *Keynote Address: ICI Securities Law Developments Conference*, Dec. 7, 2017, available at https://www.sec.gov/news/speech/blass-keynote-ici-securities-law-developments-conference-2017.

[31] Proposal at 107.

[32] Brokerage firms typically hold their positions in street name, making it difficult to look through to our underlying shareholders.

[33] *See infra* Section V.a. for a discussion of the proposed bid-ask spread disclosure.

[34] Proposal at 117.

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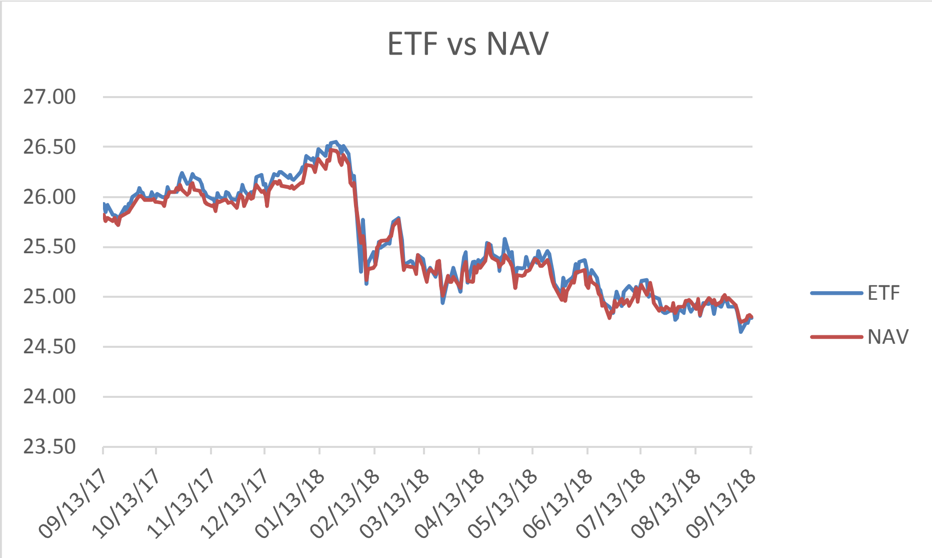

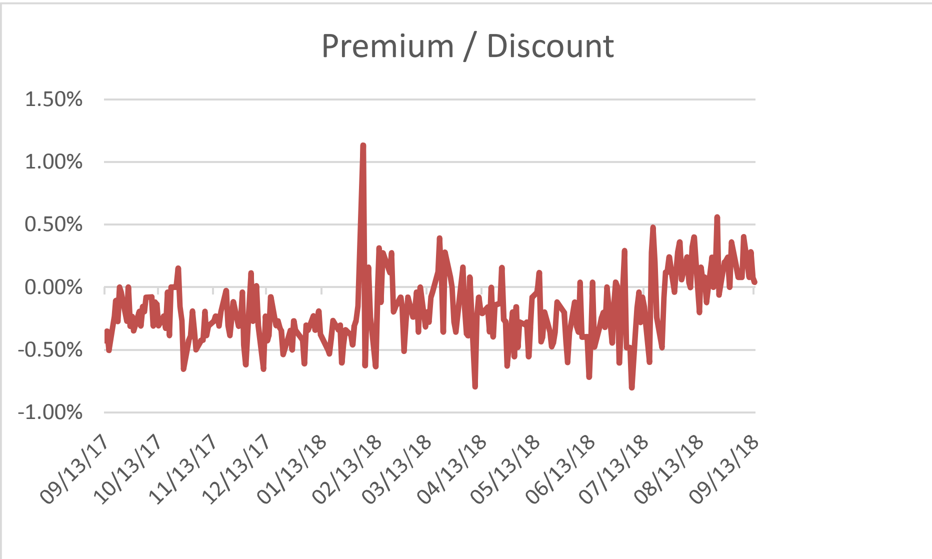

V. Amendments to Form N-1A

As noted above, we strongly support the Commission's objective to provide clear and useful information to investors. As the proposal notes, ETF investors may be subject to different costs than mutual fund investors, and it is important that they be able to understand the full costs associated with their investment. We generally support the SEC's approach of addressing these costs in the summary prospectus. However, we have concerns about the emphasis on bid-ask spread, and therefore about elements of the proposed summary prospectus Q&A and the interactive calculator. These concerns are discussed below.

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a. Bid-Ask Spread

The proposal explains that the website disclosures and Q&A in the summary prospectus are designed to help investors understand the impact of trading costs on their investment. Both sets of disclosures rely heavily on bid-ask spread data. We believe that spread is a valuable metric to demonstrate how efficiently an ETF is trading,[35] and for this reason is important to disclose. Spread may also be a component of trading costs for some investors. However, we believe that for the typical retail investors the SEC seeks to educate, the impact of spread on trading costs is likely to be much less substantial, and also far more difficult to measure and therefore demonstrate in the interactive calculator.

As a preliminary matter, we believe that the SEC is contemplating the proposed disclosures for the primary benefit of retail investors, or what Chairman Clayton frequently refers to as "Main Street Investors."[36] We draw this conclusion from the example in the proposed summary prospectus, which uses a trade size of $10,000; from the reliance on the summary prospectus, a document designed primarily for retail investors; and from the commentary about investors obtaining information on the ETFs' websites. By contrast, institutional and other professional investors (*e.g.,* investment advisers) that tend to trade at higher dollar amounts are unlikely to rely on the summary prospectus as a primary source of information, and typically have their own access to trading data that would underlie the ETF's disclosures.

In our experience, spreads do not provide a meaningful indication of trading cost, particularly for retail investors. A spread, often referred to as the National Best Bid or Best Offer ("NBBO"), is the first layer of displayed liquidity – that is, the best price available on an exchange or "lit" trading venue. However, we estimate that more than 30 percent of ETF trading does not occur on exchange, but rather is executed in venues such as Alternative Trading Systems or through principal transactions with broker-dealers. We believe most trading by retail investors falls into this group. In reviewing order routing data and other information provided by brokerage platforms, we have observed that the majority of smaller trades are routed to liquidity providers who improve upon the

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[35] We are pleased that the SEC has proposed a specific methodology for the calculation of bid-ask spread, to improve consistency of reporting across funds. However, we believe a time-weighted average spread would be preferable to the proposed median spread. This approach would weight each iteration of spread according to the amount of time the spread remained at that level, which may more accurately reflect fluctuations over the course of a full day than the median. For example, there are 2,340 ten-second intervals in a normal trading day. If an ETF traded with a $0.01 spread for 1,200 10-second intervals and a $0.20 spread for the remaining 1,140 intervals, the median spread would be $0.01. Using a time-weighted calculation, the spread would be $0.103 ($0.103 = ($0.01 x 51%) + ($0.20 x 49%), which may be closer to an investor's experience.

[36] *See, e.g.,* Jay Clayton, Chairman, U.S. Securities and Exchange Commission, *The Evolving Market for Retail Investment Services and Forward-Looking Regulation — Adding Clarity and Investor Protection while Ensuring Access and Choice*, May 2, 2018, available at https://www.sec.gov/news/speech/speech-clayton-2018-05-02.

price of the NBBO. Because retail orders typically do not execute at the NBBO, spreads are not an accurate reflection of the cost of a trade.

Although we are concerned about overemphasizing bid-ask spread as an identifiable trading cost to retail investors, we do believe it is a useful metric to observe how efficiently an ETF trades over time. Other things being equal, for example, a narrow spread is an indicator of an ETF with robust trading volume; in contrast, a wider spread may indicate that the ETF is thinly traded. For this reason, it is helpful for investors to be able to observe fluctuations in spread over time. Therefore, in addition to the proposed single data point (median spread over the last fiscal year) in the prospectus and on the fund website, we recommend the SEC require sponsors to include on their websites a line graph showing the daily spread over the last four calendar quarters (*i.e.,* updated quarterly).

Finally, it is important to note that ETFs themselves are unable to track data on secondary market transactions in their shares.[37] This data can be purchased from a number of sources, which may not provide identical information, particularly in respect of the ordering of data within short time periods. Additionally, purchase and redistribution (*i.e.*, publication on an ETF website) are not without cost. JPMAM currently purchases the relevant data, and we are comfortable providing the disclosures we describe above with appropriate caveats about the data consistency across funds, and the fact that the data is provided by outside vendors, but we recommend that the SEC consider whether there is a way to minimize these costs and ensure standardized data across ETFs, such as by making data from its Market Information Data Analytics System ("MIDAS") available to the industry.

b. Item 3 of Form N-1A: Q&A

Consistent with our view that investors should receive clear and useful information to help them make informed investment decisions, we support the concept of a section in the summary prospectus dedicated to trading cost information for ETFs. We believe the narrative discussion of trading costs and the explanation of the bid-ask spread are appropriate to include, along with the bid-ask spread for the most recent fiscal year. However, given our concerns about overemphasizing the relationship of the spread to an individual investor's trading experience, particularly at a trade size of $10,000 which, as discussed above, is likely to receive price improvement, we recommend removing the hypothetical $10,000 trades in questions 4 and 5. If the SEC adopts our recommendation to require sponsors to include on their website a line graph showing historic

[37] As the ICI notes, "calculating an ETF's bid-ask spread is significantly different from an ETF's other quantitative disclosure responsibilities, such as calculating a fund's performance and the shareholder fees and annual fund operating expenses listed in the prospectus. Funds produce those figures using highly prescribed methodologies with objective inputs. By contrast, an ETF does not control bid-ask spread costs and cannot independently calculate its bid-ask spread." *See* Letter from Susan Olson, *supra* note 16, at 29.

spread for the prior four calendar quarters, a reference to the fund's website could be included in the summary prospectus.

c. Interactive Calculator

We do not support the proposed interactive calculator, which purports to allow investors "to determine how the bid-ask spread would impact [the investor's] specific investment."[38] As discussed above,[39] we believe the spread is typically not an accurate reflection of the trading costs for any individual retail investor (*i.e.,* those trading in smaller sizes). We also have concerns about the implication that historical information (*i.e.,* the median bid-ask spread for the last fiscal year) can or should be used to predict a single execution at one point in time, given how market conditions can vary from day to day. Further, as noted above, data inconsistencies, together with the likelihood of different methodologies across ETF sponsors, could result in vastly different outputs across similar funds, potentially confusing investors. For these reasons, in addition to the cost and our skepticism that investors will seek out such a resource on our website[40], we recommend the SEC not require the interactive calculator.

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JPMAM appreciates the opportunity to comment on the Commission's proposed rule. We would be pleased to provide any further information or respond to any questions that the Commission or the staff may have.

Very truly yours,

/s/ Joanna M. Gallegos

Joanna M. Gallegos

Cc: The Honorable Jay Clayton, Chairman
The Honorable Kara M. Stein, Commissioner
The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
Dalia Blass, Director, Division of Investment Management

[38] Proposed Amendment to Item 3 of Form N-1A.

[39] *See supra* Section V.a.

[40] *See supra* Section IV.c.