October 1, 2018

**VIA E-MAIL**

Mr. Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: *Exchange-Traded Funds, Investment Company Act Release No. 33140* (File No. S7-15-18)

Dear Mr. Fields:

This letter presents the comments of John Hancock Advisers, LLC and John Hancock Investment Management Services, LLC (collectively, "**John Hancock Investments**") with respect to the U.S. Securities and Exchange Commission's ("**SEC**" or "**Commission**") proposed new rule 6c-11 ("**Proposed Rule**") and the above-referenced release ("**Proposing Release**") under the Investment Company Act of 1940 ("**1940 Act**"). John Hancock Investments is a premier asset manager representing one of America's most trusted brands, with a heritage of financial stewardship dating back to 1862. We provide investment management services to the John Hancock Group of Funds; a family of 217 registered funds, including 14 exchange-traded funds ("**ETFs**"), with approximately $214.2 billion and $1.5 billion in assets, respectively.[1] This position gives us a unique perspective and insight into the management and operation of ETFs.

We appreciate the opportunity to comment on the Proposed Rule, and we strongly support the SEC's efforts to employ standardized conditions "designed to level the playing field among most ETFs."[2] We support the Commission's goal of modernizing the regulatory framework for ETFs, and we acknowledge and appreciate the SEC's determination to revisit the codification of many of the conditions imposed on ETFs through individual exemptive orders.

John Hancock Investments is a member firm of the Investment Company Institute ("**ICI**"). We generally support the comments and proposals advanced in the ICI's comment letter to the Proposed Rule ("**ICI Letter**"), and have highlighted certain of these comments and proposals herein.

## I. Custom Baskets

We welcome the flexibility for an ETF to use custom baskets if the ETF has adopted 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. In this regard, we agree with the ICI Letter in commending the Commission for recognizing that this basket flexibility can ultimately produce cost savings and increased tax efficiencies for investors, and we strongly support the Proposed Rule on this topic.

[1] Asset information is stated as of August 31, 2018.

[2] Fact Sheet, Exchange-Traded Funds, SEC Open Meeting (June 28, 2018).

However, we recommend to the Commission that if an ETF substitutes cash-in-lieu for a portion (or all) of the basket assets, that basket would not be considered a custom basket. We do not believe that cash substitutions give rise to an increased potential for the manipulation concerns discussed in the Proposing Release and urge the Commission to allow these cash substitution baskets to be governed by an ETF's regular policies and procedures. We note the ICI Letter also supports this position, stating that the ICI fails to see how a cash substitution raises the same potential conflicts of interest (such as cherry picking or dumping) that may be seen with a security substitution.

## II. Proposed Disclosure Enhancements

We acknowledge the importance of investor education and marketplace transparency, and we generally support efforts to advance both education and transparency through enhanced or improved disclosure for all financial products, including ETFs. Accordingly, we commend the Commission's efforts in this area generally and also as contemplated in the Proposed Rule, with certain exceptions. Specifically, we object to the proposed introduction of "bid-ask spread" data ("**Bid-Ask Spread Data**") in an ETF's summary prospectus as well as in the online interactive calculator ("**Interactive Calculator**"). We believe that each may result in unintended consequences by ultimately causing an investor to make an investment decision based on misleading or stale data. Additionally, we respectfully submit that the costs of implementation will be higher than those estimates provided in the Proposing Release.

### a. Unintended Consequences and Usefulness of Bid-Ask Spread Data

As stated in the Proposing Release, one of the goals of introducing the Bid-Ask Spread Data in an ETF summary prospectus and in the Interactive Calculator is to facilitate comparisons between similar ETFs. While the proposed amendments to Form N-1A would provide detail as to calculation of the Bid-Ask Spread Data, they lack specificity as to the calculation of the source data (i.e., trade data). ETF sponsors would largely have to obtain the source data to prepare the Bid-Ask Spread Data from third-parties (for a cost, as explained further below), and different third-parties may take varying approaches in the calculation of the source data. This would make comparisons of the Bid-Ask Spread Data of limited use and potentially misleading as the information received from third-parties may not be of the same type, quality or reliability across ETFs. Without uniform data across the industry, the utility of the Bid-Ask Spread Data as a tool to compare similar ETFs would be severely limited.

We are also concerned that the potential for investors to be misled is amplified through the use of the Interactive Calculator, which on its face, would suggest or imply a certain degree of robustness, precision and/or assurance of the Interactive Calculator source data obtained from third-parties that might not be accurate.

The Proposing Release also states that another goal of introducing the Bid-Ask Spread Data into the ETF disclosure paradigm is to inform investors regarding the potential impact of spread costs. We also question the use of historical Bid-Ask Spread Data by investors as a means of analyzing the costs of a future trade, and note that it is quite possible that the actual costs for such future trade are materially different than the costs indicated by the Bid-Ask Spread Data and the Interactive Calculator. The differences may be explained by (i) the integrity, reliability or quality of the third-party data used as noted above and (ii) the general difficulty in using historical market information as a reliable indicator of future market events due to such information becoming stale.

The Bid-Ask Spread Data is also likely to be of little use to retail investors as it is often the case that purchases and sales of ETF shares by retail investors (those investors for whom these disclosure enhancements are intended to benefit) are internalized by the executing broker-dealer. This means that the

Bid-Ask Spread Data analysis is likely irrelevant at best and misleading at worst to the execution experience of retail investors.

**b. Liability for Bid-Ask Spread Data**

Requiring ETFs and their sponsors to incorporate the Bid-Ask Spread Data in the summary prospectus and on their websites may also raise liability concerns for the ETFs and their sponsors. For example, the use of Bid-Ask Spread Data in the summary prospectus raises the prospect of liability under Section 11 of the Securities Act of 1933. Given our concern with the ability to obtain quality information and source data for the Bid-Ask Spread Data, we do not believe this risk can be adequately mitigated through controls around preparation of the disclosure (as significant aspects of this disclosure are outside of the direct control of the ETFs).

**c. Costs of Bid-Ask Spread Data**

The Proposing Release indicates that the Commission estimates that each ETF would incur a one-time cost of $6,710 and an ongoing cost of $3,355 per year to implement the disclosure enhancements contained in the Proposed Rule. These estimates include the costs associated with the incorporation of the Bid-Ask Spread Data in the summary prospectus and the implementation of the Interactive Calculator on the website. We expect that the initial costs associated with creating this additional disclosure and the ongoing maintenance will exceed the $10,000 "all-in" estimate. We respectfully request the Commission to reconsider its cost estimates in this regard.

Additionally, it appears that the $10,000 cost estimate does not include the vendor costs and licensing fees associated with obtaining the data necessary to calculate the Bid-Ask Spread Data (see specific request for comment regarding such costs on page 168 of the Proposing Release). We expect the cost of obtaining this data to be a considerable ongoing expense for each ETF and urge the Commission to properly recognize this cost as a factor in its deliberations on the Proposed Rule. In particular, and as noted in the ICI Letter, the cost of obtaining this data will likely require ETFs (and thus ultimately shareholders) to pay additional vendor and licensing fees to third-parties for the use of proprietary data necessary to satisfy this proposed requirement given that ETFs generally cannot independently calculate the Bid-Ask Spread Data.

**d. Alternatives**

We welcome the opportunity to discuss with the Commission and other ETF sponsors potential alternatives to the disclosure enhancements contained in the Proposed Rule, particularly alternatives to the use of the Bid-Ask Spread Data in the summary prospectus and in the Interactive Calculator on the website.

An illustrative trading cost example based on a representative trade amount of hypothetical Bid-Ask Spread Data may address the concerns identified above while still providing investors and the marketplace with the enhanced disclosure on the trading costs associated with ETFs. For example, the illustrative example could be the application of a value range of the Bid-Ask Spread Data to a hypothetical $10,000 purchase or sale of ETF shares.

In our view, this alternative addresses several concerns: (i) eliminating the potential for an investor to "over rely" on the Bid-Ask Spread Data; (ii) addressing the potential liability issues noted above and reducing costs by allowing the ETF to better control and maintain the appropriate Bid-Ask Spread Data; and (iii) allowing the summary prospectus to retain its "summary" length.

## III. Premium and Discount Website Disclosure

We make the following recommendations with respect to the condition for relief under the Proposed Rule that requires an ETF to disclose on its website premium and discount information daily.

First, with respect to the disclosure triggered where the premium or discount is greater than 2% for more than seven consecutive trading days, we agree with the ICI Letter's arguments against requiring such disclosure. Specifically, we agree that this disclosure may be triggered too frequently for certain types of ETFs (e.g., international ETFs). We also agree that it may be difficult for an ETF to accurately determine the material causes for the deviation. However, if the Commission believes this disclosure obligation should be retained, we encourage the Commission to consider changing the 2% threshold measure to a materiality threshold that would be more consistent with the provisions of no-action relief under Section 16(a) of the Securities Exchange Act of 1934 ("**Exchange Act**") on which many ETFs rely.[3] In order to rely on this relief from Section 16(a) of the Exchange Act, an ETF's shares must trade at prices that do not "materially deviate" from its NAV.[4] We believe that because ETFs must satisfy the materiality threshold for purposes of relying on relief from Section 16(a), imposing a 2% threshold in order to rely on the Proposed Rule would create an unnecessary distinction and confusion. We believe that a materiality standard would achieve the same outcome and would provide the oversight that the Commission desires.

Second, we note the condition for relying on the Proposed Rule that requires an ETF to include on its website both a table and a line graph regarding historical premium and discount information. We believe that the information included in the line graph would be duplicative of the information included in the table. Accordingly, we encourage the Commission to consider removing the line graph disclosure requirement as it will increase the costs of complying with the Proposed Rule without providing investors with any new information.

## IV. T - 1 Orders

We agree with the ICI's request to allow ETFs to accept T-1 orders. The Proposed Rule requires that an ETF's basket and portfolio holdings be published on the ETF's website before the ETF can accept creation and redemption orders, which would preclude ETFs from accepting T-1 orders. The use of T-1 orders is vital as it allows ETFs that invest in foreign markets that close overnight to ensure that investors receive an efficient price when transacting in the ETFs' shares on the secondary market. The use of T-1 orders also reduces the likelihood of slippage (the difference between the expected price of a trade and the price at which the trade is actually executed) for ETFs transacting in foreign securities. We agree with the ICI that the potential concerns regarding reduced transparency resulting from the use of T-1 orders are not warranted, and we respectfully request that the Commission allow the acceptance of T-1 orders. In this regard, we recommend that the Commission codify the basket and portfolio holdings disclosure requirement contained in the existing exemptive orders, which requires such information to be published before the open of trading on the listing exchange.

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[3] *See* Select Sector SPDR Trust, SEC No-Action Letter (pub. avail. May 6, 1999) (providing relief from Section 16(a), which requires each officer, director and beneficial owner of more than 10% of a public company's outstanding shares to file reports with the SEC disclosing the number of shares beneficially owned, and reports regarding changes in ownership).

[4] *Id*. ("We note particularly your representation that each Fund's Shares have traded and will continue to trade at prices that do not materially deviate from the relevant Fund's NAV"). *See also* PDR Services LLC, SEC No-Action Letter (pub. avail. Dec. 14, 1998) (providing relief from Section 13(d) of the Exchange Act where "each Series Trust's PDRs have traded and will continue to trade at prices that do not materially deviate from the Series Trust's NAV").

## V. Creation Unit Size

We applaud the Commission's determination not to include in the Proposed Rule a minimum size for creation units of an ETF and, for the reasons stated in the Proposing Release, we support the Form N-1A amendments eliminating those disclosure requirements for ETFs issuing creation units of less than 25,000 shares. We believe that providing an ETF sponsor with flexibility to establish a range of creation unit sizes would help facilitate a more robust and effective arbitrage mechanism for ETFs.

We note, however, that ETFs currently rely on relief from various Exchange Act requirements, only certain of which are addressed through the Proposed Rule. In some cases, this relief contains minimum creation unit size requirements. Accordingly, unless the Commission fully addresses the need for Exchange Act relief, the creation unit size requirement will continue to apply in certain circumstances. In this regard, we respectfully note that John Hancock Investments has previously obtained relief from such creation unit size requirements.[5] We recommend that the Commission fully harmonize the Exchange Act relief with the Proposed Rule.

## VI. "Sunset Provision" Relating to Relief from Section 22(e)

We support the Commission's decision to include relief from Section 22(e) in the Proposed Rule as we believe the ability to postpone payment of redemption proceeds for certain circumstances outside of an ETF's control continues to be appropriate and necessary, with many ETFs utilizing such relief through exemptive orders. However, we agree with the ICI's recommendation against the inclusion of a 10-year sunset provision for the Proposed Rule's Section 22(e) relief, as certain frontier markets and local market holidays may continue to require such relief after the expiration of the 10-year sunset provision. Accordingly, we urge the Commission to reconsider the inclusion of the sunset provision as it moves forward with the Proposed Rule.

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[5] *See* John Hancock Exchange-Traded Fund Trust, Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to Certain Index-Based ETFs Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M (34-82234; December 7, 2017); see also John Hancock Exchange-Traded Fund Trust, SEC No-Action Letter (pub. avail. December 7, 2017) (providing relief from Exchange Act Rule 14e-5).

John Hancock Investments appreciates the opportunity to comment on the Proposed Rule and hopes that the Commission finds these comments helpful and constructive. If you wish to discuss these comments further, please contact Steve Deroian, Head of US ETF Products, at [redacted].

Sincerely,

Andrew Arnott

Andrew G. Arnott
President and CEO
John Hancock Investments

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