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SEC Proposes New ETF Rule

June 29, 2018 | Client Update

In a June 28, 2018 release (the "**Proposing Release**") the Securities and Exchange Commission (the "**SEC**") proposed new Rule 6c-11 (the "**Proposed Rule**") and form amendments to standardize and modernize the regulatory framework for most exchange-traded funds ("**ETFs**"). According to the Proposing Release, the SEC has issued over 300 exemptive orders allowing ETFs to operate under the Investment Company Act since 1992, and in that time the ETF market has grown significantly and now represents nearly 15% of net assets managed by investment companies. Under the Proposed Rule, ETFs that satisfy its conditions would be able to come directly to market without first obtaining an exemptive order under the Investment Company Act of 1940 (the "**Investment Company Act**"). The Proposed Rule is intended to "create a consistent, transparent, and efficient regulatory framework" for ETFs that "facilitate[s] greater competition and innovation among ETFs." Currently, for example, only certain sponsors operating under older exemptive orders can pick and choose which shares to accept from, or sell to, authorized participants during the creation and redemption process (i.e., use "custom baskets"). Most recent exemptive orders generally only allow funds to accept from, or sell to, authorized participants, a pro rata slice of the ETF's portfolio. The proposed rule would create a level playing field and allow all sponsors to use custom baskets.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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