August 28, 2026

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Request for Comment on Novel ETFs, Release Nos. 33-11426; 34-105808; IC-36228; File No. S7-2026-24

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] and the Asset Management Group of SIFMA ("SIFMA AMG")[2] appreciate the opportunity to provide comments to the U.S. Securities and Exchange Commission ("Commission") regarding the Commission's Request for Comment on Novel ETFs (the "Request for Comment"), which requests public comment on exchange-traded funds seeking to invest in innovative asset classes or engage in "novel" investment strategies.[3]

SIFMA AMG generally supports the Commission's efforts to address the challenges highlighted in the Request for Comment. SIFMA joins this letter from the capital markets perspective of market makers and authorized participants, which is

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation, and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] 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 that manage more than 50% of global AUM. 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.

[3] Request for Comment on Novel ETFs, 91 Fed. Reg. 40647 (July 2, 2026) (hereinafter, "Request for Comment") *available at* https://www.govinfo.gov/content/pkg/FR-2026-07-02/pdf/2026-13423.pdf.

discussed in section V below. SIFMA is also submitting a separate comment letter to the Commission from the perspective of broker-dealers and investment advisers involved in the private client/wealth management/distribution activities.

Exchange-traded funds registered under the Investment Company Act of 1940 ("ETFs") have grown in popularity over time and become the preferred vehicle through which many investors achieve their investment goals, such as saving for retirement or college education. As highlighted by the Commission, the total net assets of ETFs have grown from over $4 trillion to over $12 trillion and the number of ETFs from almost 1,900 to over 4,600 from 2019 to 2025.[4] ETF sponsors have responded to investor demand for ETF products by offering ETFs with a broad array of investment strategies and investment exposures, causing ETFs to be "a major driver of innovation in the securities markets."[5] We encourage the Commission to facilitate the continued growth of ETFs, which help investors achieve their investment goals while subject to the robust protections of the existing federal securities laws. SIFMA AMG offers its guidance on how to facilitate such growth in the comments below.

Executive Summary

- SIFMA AMG strongly supports the Commission's objective of facilitating ETF innovation while protecting investors, maintaining efficient markets, and facilitating capital formation.

- We believe that the current ETF regulatory regime, built upon the robust protections of the Securities Act of 1933 and the Investment Company Act of 1940, has created a strong foundation upon which ETFs and ETF investors can flourish.

- As a result, we do not believe that the ETF regulatory regime necessitates significant modifications to address "novel" ETFs at this time.

- SIFMA AMG encourages the Commission to fully utilize its existing tools, subject all ETFs to the same transparent regulatory process, and continue to favor automatic effectiveness of post-effective amendments within a reasonable timeframe.

I. The Current ETF Regulatory Regime Provides a Strong Foundation for ETF Innovation and Investor Protection

The current ETF regulatory regime provides a strong foundation for ETF innovation and investor protection. This regulatory regime is based in, among others, the Securities Act of 1933 ("1933 Act"), the Investment Company Act of 1940 ("1940 Act"), and the exchange listing standards. This robust regulatory regime requires ETFs

[4] Request for Comment at 40647.

[5] Chairman Atkins, Statement on Novel Exchange-Traded Funds (ETFs) (May 20, 2026) *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-statement-novel-exchange-traded-funds-052026.

to, among other things, provide ETF investors (and market participants) with the disclosures necessary to evaluate an investment, provide the Commission staff with time to review such disclosures for compliance with the federal securities laws, and abide by the 1940 Act's numerous substantive requirements. The 1933 Act was designed to "…protect investors through a disclosure-based regulatory regime…" and avoid merit regulation by the federal government.[6] Accordingly, ETFs are required to provide investors with a prospectus written in plain English containing information relating to an ETF's investment objective, investment strategy, principal risks, and other key information.[7] The 1940 Act's substantive requirements relate to, among other things, board oversight, robust compliance programs, derivatives risk management programs, liquidity risk management programs, concentration limitations, and affiliated transaction limitations. This regulatory regime provides a strong foundation for ETF innovation and investor protection.

The Commission deserves credit for both the strength of this regulatory regime and facilitating ETF innovation in 2019 by adopting rule 6c-11 under the 1940 Act (the "ETF Rule").[8] The ETF Rule thoughtfully streamlined the process associated with launching new ETFs and reduced the regulatory barriers to innovation, which enhanced the investment options from which ETF investors can choose to meet their investment goals. Prior to the adoption of the ETF Rule, ETF sponsors were required to spend significant time and money obtaining individualized exemptive relief that may have contained terms and conditions different from those in competitors' exemptive relief. This regulatory regime created an unlevel playing field for ETF sponsors, which curtailed innovation and limited investor choice. However, the ETF Rule modernized the regulatory framework by establishing a consistent and efficient regulatory regime for ETFs. It did so by refocusing on key investor protections, such as an effective arbitrage mechanism and policies governing basket construction,[9] and eliminating unnecessary historical distinctions among ETFs.

The arbitrage mechanism tethers an ETF's market price to its net asset value and ensures that ETF investors pay a fair price for ETF shares. The Commission intended to facilitate the effective arbitrage process when adopting the ETF Rule by requiring the daily disclosure of portfolio holdings, which provided "…authorized participants and other market participants with a tool to facilitate valuing the ETF's portfolio on an

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[6] Chairman Atkins, Revitalizing America's Markets at 250 (Dec. 2, 2025) *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250.

[7] See Form N-1A.

[8] Exchange-Traded Funds, 84 Fed. Reg. 57162 (Oct. 24, 2019) (hereinafter, "ETF Rule Adopting Release") *available at* https://www.sec.gov/files/rules/final/2019/33-10695.pdf.

[9] We encourage the Commission to consider enhancing the arbitrage mechanism by allowing broker-dealers affiliated with an ETF or its adviser to serve as an ETF's authorized participant, which could also reduce an ETF's authorized participant concentration risk and lower transaction costs. *See, e.g.*, ETF Rule Adopting Release at 57174. The conditions of the ETF Rule, including compliance with the basket construction policies, will effectively protect ETFs from overreaching by an affiliated person irrespective of the reason for the affiliation.

intraday basis, which, in turn, enables them to identify arbitrage opportunities and to effectively hedge their positions."[10] The Commission also acknowledged that there are alternative approaches to facilitating the arbitrage process that, due to the Commission's limited experience with such approaches, should be considered within the exemptive applications process.[11] The resulting ETF regulatory regime, built upon the robust protections of the 1933 Act and 1940 Act, appropriately focuses on the existence of an effective arbitrage process to ensure that ETF investors are treated fairly. We suggest that the Commission continue protecting investors by focusing on the effectiveness of the arbitrage process.

ETF investors also benefit from this regulatory regime to the extent that the Commission maintains a level playing field on which ETF sponsors can launch innovative ETFs, subject to the protections of the 1933 Act and 1940 Act, and ETF investors (and their financial advisors) can evaluate the merits of particular ETF investments. The Commission plays a vital role in effectuating the protections of the 1933 Act and the 1940 Act by reviewing ETF registration statement disclosures against the relevant legal requirements and assessing compliance with the securities laws. However, the Commission should be vigilant to ensure that the ETF registration statement review process does not evolve into a form of de facto merit regulation. Such an outcome would frustrate the Commission's disclosure-based regulatory regime and ultimately limit investor choice.

SIFMA AMG welcomes the opportunity to partner with the Commission as it considers whether the ETF regulatory regime would benefit from particular enhancements. Although SIFMA AMG does not believe that the ETF regulatory regime necessitates significant modifications to address "novel" ETFs at this time, we offer our perspectives below to inform the Commission's consideration of issues identified in the Request for Comment. We urge the Commission to carefully consider, and provide the opportunity for public notice and comment on, any potential enhancements arising from the Request for Comment. The public notice and comment process will allow market participants to fully identify and assess any unintended consequences, such as creating an unlevel playing field, limiting investor choice, or inadvertently saddling Commission staff with unwanted merit regulation responsibilities. SIFMA AMG offers the following perspectives, discussed more fully below, to inform the Commission's consideration of issues identified in the Request for Comment: 1) the Commission should fully utilize its existing tools before creating new tools; 2) all ETFs should be subject to the same transparent regulatory process; and 3) this regulatory process should continue to favor automatic effectiveness of post-effective amendments within a reasonable timeframe.

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[10] ETF Rule Adopting Release at 57180.

[11] Id. In addition, the Commission identified certain types of ETFs that should continue operating pursuant to exemptive relief, such as those organized as UITs, operating as share classes, or are actively managed and not providing daily disclosure of portfolio holdings. *See* ETF Rule Adopting Release at 57166.

II. The Commission Should Fully Utilize its Existing Tools

The Commission has broad authority under the federal securities laws to regulate ETFs by, among other things, promulgating rules to enhance registration statement disclosures, prohibiting post-effective amendments from becoming effective, examining ETFs and their sponsors for compliance with the law, and bringing enforcement actions for violations of law. Furthermore, the Commission is not required to review all post-effective amendments filed pursuant to rules 485(a) and (b) under the 1933 Act, providing the Commission with flexibility in allocating limited resources among various priorities.[12] SIFMA AMG encourages the Commission to fully utilize its existing tool kit to address issues highlighted in the Request for Comment before creating any new tools, such as those relating to the Commission's ability to delay or suspend effectiveness of ETF post-effective amendments or the disclosure of comments Commission staff may feel are unresolved.

Rule 485(c)(1) already permits the Commission to suspend the automatic effectiveness of a post-effective amendment filed pursuant to rule 485(a) when "it should appear to the Commission that the amendment may be incomplete or inaccurate in any material respect."[13] Furthermore, section 8(d) of the 1933 Act permits the Commission to issue a stop order suspending the effectiveness of a registration statement for similar reasons.[14] Additionally, rule 485(c)(2) permits the Commission to suspend the ability of a registrant to file a post-effective amendment under rule 485(b) if the registrant has not complied with the conditions of the rule. Finally, the Commission and Commission staff can express their views or concerns in less formal ways, such as through public statements. SIFMA AMG urges the Commission to use these tools before creating new tools that could have unintended consequences.[15]

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[12] *See* SEC Division of Investment Management, ADI 2019-07 – Review of Certain Filings Under Automatic Effectiveness Rules (April 2, 2019) *available at* https://www.sec.gov/about/divisions-offices/division-investment-management/accounting-disclosure-information/adi-2019-07-review-certain-filings-under-automatic-effectiveness-rules.

[13] The Commission could use this tool where it is impossible for an ETF to implement its investment strategy or comply with the ETF Rule. Furthermore, the Commission has explained that when it chooses not to suspend effectiveness the "registrant assumes the risk that the Commission might later determine to take action on the ground that the filing is misleading or otherwise deficient." Revised Procedures for Processing Post-Effective Amendments Filed by Investment Companies, IC Rel. No. 11315 (Aug. 25, 1980), 45 Fed. Reg. 57702 (Aug. 29, 1980).

[14] Specifically, section 8(d) of the 1933 Act permits the Commission to suspend the effectiveness of a registration statement when "it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading."

[15] For example, SIFMA AMG notes that a voluntary confidential filing process could have various impacts on investors, markets, and capital formation. On one hand, a well-designed confidential filing process for ETF registration statements and post-effective amendments may provide benefits to market participants and Commission staff. These benefits could include, for example, potentially providing Commission staff with additional time to review filings that pose truly unique legal issues and helping to protect some ETF sponsors from losing a first-mover advantage. On the other hand, a confidential filing process could have unintended consequences by reducing transparency to address a temporary increase in ETF filings.

As the Commission considers fully utilizing its existing tools, it should consider enhancing the consistency of communications provided by the Commission to ETF market participants. Multiple divisions within the Commission can be involved in the process by which ETFs launch, such as Commission staff communicating with ETF sponsors on post-effective amendments and Commission staff communicating with exchanges on which these ETFs list and trade. To facilitate innovation most effectively, the Commission should ensure that it is providing similarly situated ETFs with similar disclosure comments during the post-effective amendment review process. Similarly, the Commission should ensure that it provides exchanges with consistent feedback on similar exchange listing rules. Consistent communications from the Commission will benefit ETF investors and ETF markets by creating a transparent and level playing field from which ETF investors can choose the product that best serves their investment goals.

III. All ETFs Should be Subject to the Same Transparent Regulatory Process

All ETFs should generally be subject to the same transparent regulatory process, which facilitates a level playing field, healthy competition, and investor choice. The current regulatory process associated with launching a new ETF generally allows ETF sponsors to provide ETF investors with products in an efficient and predictable manner, all while subject to the robust protections contained within the federal securities laws. This regulatory regime should not be modified to further distinguish between different types of ETFs or between ETFs and other open-end funds.

Distinguishing between different types of ETFs may undermine the level playing field that exists today and the efficiencies created by the Commission by adopting the ETF Rule and likely cause unintended negative consequences. Prior to the adoption of the ETF Rule, the ETF regulatory regime distinguished ETFs based on, among other things, their investment strategy (e.g., index or active), index provider (e.g., self-indexed or third-party provider), and underlying investments (e.g., domestic equity, international equity, fixed income). This created complexity and confusion in the product development and distribution process for reasons the Commission subsequently determined were unnecessary.[16] Such complexity would increase where the scope of any relevant distinction among ETFs could be subjectively interpreted by different parties. Market participants have routinely warned regulators that vague definitions can produce disparate and inequitable outcomes for investors, markets, and product sponsors.[17] For example, the Commission acknowledged the challenges in determining whether a fund is an index fund or an active fund where it passively tracked a customized, methodologically complicated index.[18] It also caused similarly situated

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[16] *See, e.g.*, ETF Rule Adopting Release at 57168.

[17] *See, e.g.*, SIFMA AMG, Comment Letter on FINRA Regulatory Notice 22-08: Complex Products and Options (May 9, 2022) *available at* https://www.finra.org/sites/default/files/NoticeComment/SIFMA%20AMG_Lindsey%20Weber%20Keljo_5.9.2022_Comment%20on%2022-08_281081401_1_0.PDF.

[18] *See, e.g.*, ETF Rule Adopting Release at 57168.

ETFs to be subject to different constraints as the Commission's views evolved over time. This historical approach, which was rejected by the Commission when adopting the ETF Rule, negatively impacted innovation, competition, and investor choice.

Creating a new ETF regulatory regime that bifurcates ETFs into two types – those that the Commission considers "novel" and those that it does not – will likely cause the same unintended negative outcomes that the ETF Rule intended to resolve. We are concerned that such unintended negative outcomes would arise due to the challenges in defining a "novel ETF" both now and in the future, which would likely evolve over time and be inherently subjective. The Request for Comment loosely defines a "novel ETF" as an ETF that invests in an "innovative asset class" or uses a "novel investment strategy" and explains that, at this time, it includes "crypto assets; commodity-focused instruments; single-stock strategies; heightened leverage; blockchain-enabled opportunities; private assets; event contracts; and/or a combination of any of the above."[19]

This preliminary attempt to communicate the scope of the term highlights the challenges. For example, why does the term inherently distinguish between ETFs and mutual funds with similar investments and strategies? How would the ultimate definition be drafted to allow for natural evolution over time, whereby assets and strategies that were once considered "novel" can transition to more routine? Who would make this decision and according to what transparent framework? Defining a "novel ETF" in a flexible way to capture new types of ETFs in the future will likely create ambiguity in the product development and launch process stemming from the assessment of whether a proposed ETF constitutes a "novel ETF" subject to a different regulatory regime. Furthermore, it would inappropriately task the Commission staff with implementing a subjective line-drawing exercise on an ad-hoc basis during the prospectus disclosure review process.

Conversely, any definition that provides the objective precision necessary to create a predictable product development process may become outdated in the relatively near future as investors, products, and markets continuously evolve. After all, what is considered "novel" today will likely be considered routine in the future. Many different types of ETFs, such as fixed income index ETFs and active ETFs, were once considered "novel" and subject to unique terms and conditions until the ETF Rule eliminated the unnecessary distinctions. However, if the Commission seeks to define the term "novel" or "novel ETF," it should do so through the public notice and comment rule-making process to ensure it is appropriately crafted to facilitate innovation and benefit investors.

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[19] Request for Comment at 40648.

IV. The Regulatory Process Should Continue to Favor Automatic Effectiveness of Post-Effective Amendments within a Reasonable Timeframe

The regulatory process should continue to favor automatic effectiveness of post-effective amendments within a reasonable timeframe. Commission procedures for post-effective amendments filed by funds have historically contemplated automatic effectiveness where disclosures are accurate and funds can comply with regulatory requirements.[20] And, when amending rule 485 to account for new series of investment companies, the Commission considered and rejected prohibiting new funds from relying on rule 485(a)'s automatic effectiveness provisions.[21] Although the Commission originally proposed to prohibit filings adding a new series from becoming automatically effective under rule 485, it was convinced by public comments that "certainty in the effective date of a post-effective amendment" was "important…to the successful launch of a new series."[22] As a result, the Commission extended the time at which post-effective amendments adding new series would become automatically effective from 60 days to 75 days in an effort to provide Commission staff with sufficient time for review and comment. The Commission should continue to recognize the importance of certainty in the ETF launch process and avoid creating additional regulatory barriers to entry when launching ETFs.[23]

In addition, altering the current disclosure-based regulatory regime whereby post-effective amendments become automatically effective absent regulatory deficiencies may inadvertently saddle the Commission staff with de facto merit regulation responsibilities and undermine the intent of the 1933 Act. It would be inappropriate to ask Commission staff to assess the investment merits of a particular ETF, views on which could differ among various Commission staff members at any point in time or over periods of time. Furthermore, the subjective nature of such a determination creates uncertainty in the product launch process and could lead to an unlevel playing field, which typically limits innovation and investor choice. As a result, we do not support changes to the regulatory regime that would require the Commission or Commission staff to declare an ETF's post-effective amendments effective or provide the Commission with additional authority to delay effectiveness on its own initiative.

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[20] Revised Procedures for Processing Post-Effective Amendments Filed by Investment Companies, IC Rel. No. 11315 (Aug. 25, 1980) 45 Fed. Reg. 57702 (Aug. 29, 1980) (noting that "a principal objective of automatic effectiveness for all filings is to permit registrants to assume greater responsibility for compliance with the disclosure standards of the federal securities laws").

[21] Post-Effective Amendments to Investment Company Registration Statements, IC Rel. No. 20486 (Aug. 17, 1994) 59 Fed. Reg. 43460 (Aug. 24, 1994).

[22] *Id.* at 5.

[23] However, we acknowledge that a mechanism for addressing funds that become effective but remain unlaunched after a specified period could discourage "placeholder" filings and reduce unnecessary demands on Commission resources.

V. Facilitating Liquidity in ETF Shares

The robust regulatory regime applicable to ETFs has facilitated an effective arbitrage mechanism and ample liquidity in ETF shares. ETF sponsors, exchanges, market makers, and authorized participants all play key roles in facilitating the effectiveness of ETF markets, which ensures that ETF investors receive a fair price for their ETF shares in the secondary market and fosters efficiency and fairness in our interconnected markets. Each of these entities within the ETF ecosystem further strengthens the effectiveness of the ETF regulatory regime by implementing sound business practices.

Although many factors can impact the efficiency of ETF markets, we highlight three that are important to facilitating liquidity in ETF shares. These factors relate to transparency, liquidity of portfolio holdings, and redundancy. These three factors are interdependent and may affect the degree to which an authorized participant or market maker ("Market Participants") commit capital and manage risk associated with transacting in ETF shares.[24] This may influence the price at which Market Participants will purchase or sell ETF shares or the amount of ETF shares that will be purchased or sold at that price at any given time.

Market Participants can make better markets for ETFs, and facilitate an efficient creation and redemption process, when they have timely and accurate information. This information includes, among other things, portfolio holdings, basket compositions (including a predictable cash component), and the treatment of dividends and corporate actions. The publication of an ETF's portfolio holdings and/or portfolio composition file ("PCF") prior to market open each day eliminates information asymmetry in the market and provides Market Participants with the information they need to price, trade, and hedge ETF shares. It also allows Market Participants to commit capital knowing that they will have the option to manage their risk by submitting a creation or redemption order prior to the end of the trading day.

Although perfect portfolio transparency is not necessary, ETF sponsors should minimize avoidable opacity to maximize participation by Market Participants and facilitate the market making process. In addition, continued transparency is valuable throughout the trading day, such as when previously published information becomes stale or inaccurate, or an ETF's operations become impaired (e.g., suspension of creations). In such cases, ETFs should promptly and broadly disclose the new information to the market so Market Participants can adjust their ETF pricing and forgo any concerns that such information could be material non-public information.

The prices at which Market Participants will transact in ETF shares can be influenced by the accessibility and liquidity of the instruments in the ETF's portfolio and those used to hedge corresponding exposures throughout the trading day. Such instruments can include, among other things, the ETF portfolio holdings, index futures,

[24] While some broker-dealers serve as both authorized participants and market-makers, others may serve in only one capacity.

options, swaps, and related ETFs. The costs associated with transacting in these hedging instruments increase costs associated with transacting in ETF shares, which are generally reflected in an ETF's bid/offer spread on the secondary market. Less accessible or liquid ETF portfolio holdings, such as those related to emerging asset classes, or hedging instruments may widen bid/offer spreads for ETFs in the secondary markets. More accessible and liquid portfolio and hedging instruments will generally narrow bid/offer spreads and deepen liquidity for ETF shares.

ETFs and ETF investors benefit when ETFs have active Market Participants, which is primarily driven by economics and operational capacity. While not appropriate to impose by regulatory mandate, having multiple Market Participants reduces dependency on any one partner, improves access to the creation/redemption mechanism, and provides redundancy during changing market conditions. These benefits generally increase as an ETF's network becomes more diversified, particularly for larger or more complex products. However, the degree to which a more diversified network can improve resiliency and competition will vary by product and asset class.

As the ETF ecosystem continues to evolve and become more efficient, the factors discussed above provide a helpful framework for ETF sponsors and Market Participants to facilitate liquidity in ETF shares. These factors are particularly applicable to the product design process in light of the rapid expansion of ETFs into private credit, spot digital assets, AI-driven custom indices, and other asset classes. To the extent that some factors are less developed for emerging asset classes, Market Participants should assess alternatives when pricing and trading ETFs. For example, Market Participants may rely more heavily on modeling and liquidity-provider judgment for private credits ETFs or bespoke hedging approaches for ETFs referencing custom or proprietary indices. These alternatives, however, do not foreclose use of the ETF structure for innovative asset classes or investment strategies. Rather, they highlight instances where Market Participants may benefit from additional information or tools to enhance the liquidity for ETF shares.

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SIFMA and SIFMA AMG welcome the opportunity to partner with the Commission as it considers whether the ETF regulatory regime would benefit from particular enhancements. Thank you for considering our perspectives as the Commission considers issues identified in the Request for Comment. If you have any questions or wish to discuss our letter, please contact Kevin Ehrlich or Katie Kolchin.

Sincerely,

Kevin Ehrlich
Managing Director, SIFMA AMG

Katie Kolchin

Katie Kolchin, CFA
Managing Director, Head of Equity & Options Market Structure, SIFMA

Cc: The Honorable Paul S. Atkins, Chairman
The Honorable Hester M. Peirce, Commissioner
The Honorable Mark T. Uyeda, Commissioner