

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33-11426; 34-105808; IC-36228; File No. S7-2026-24]

RIN 3235-AN81

Request for Comment on Novel ETFs

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission (the “Commission” or the “SEC”) requests public comment on exchange-traded funds (“ETFs”) seeking to invest in innovative asset classes or engage in novel investment strategies. We seek comment on ways to facilitate innovation in the ETF space while protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

DATES: This request for comment was published in the *Federal Register* on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [60 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the SEC’s internet comment form (<https://www.sec.gov/comments/s7-2026-24/request-comment-novel-etfs>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-2026-24 on the subject line.

Paper Comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-2026-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the SEC's website (<https://www.sec.gov/rules-regulations/public-comments/s7-2026-24>). Do not include personally identifiable information in submissions; you should submit only information that you wish to make available publicly. The Commission may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

FOR FURTHER INFORMATION CONTACT: Taylor Evenson, Senior Counsel; Marc Mehrespand, Branch Chief; Kay M. Vobis and Michael Kosoff, Senior Special Counsels; Kaitlin C. Bottock and Andrea Ottomanelli Magovern, Assistant Directors, at (202) 551-6720, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment from funds, their advisers, investors, and other market participants on ETFs seeking to invest in innovative asset classes or engage in innovative investment strategies and to help assess whether further action would better protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

I. INTRODUCTION

ETFs are a type of exchange-traded product (“ETP”) that possess characteristics of both open-end funds (*e.g.*, mutual funds), which issue redeemable securities, and closed-end funds, which may issue shares that trade at market-determined prices on a national securities exchange

and are not redeemable.¹ Because ETFs were not contemplated by the Investment Company Act of 1940 (the “Investment Company Act”), they required, and the Commission granted, exemptions from certain provisions of the Investment Company Act in order for them to operate.²

In 2019, the Commission adopted rule 6c-11 under the Investment Company Act to permit ETFs that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order. The rule includes conditions designed to support an efficient arbitrage mechanism to maintain a close tie between the market price of an ETF share and its net asset value (“NAV”) per share. The rule sets forth a consistent, transparent, and efficient regulatory framework for ETFs, which has led to greater competition and innovation among ETFs as well as increased investor choice. Since the adoption of rule 6c-11, the ETF market has grown significantly. Between the end of 2019 and end of 2025, total net assets under management have grown from over \$4 trillion to over \$12 trillion and the number of ETFs from almost 1,900 to over 4,600.³

¹ See generally Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) [84 FR 57162 (Oct. 24, 2019)] (“6c-11 Adopting Release”). As used in this Request for Comment, the term “ETF” refers to exchange-traded funds organized as open-end investment companies registered under the Investment Company Act. Other types of ETPs include exchanged-traded commodity trusts and exchange-traded notes that register their offerings only under the Securities Act (as defined below). For a description of different types of ETPs, see, e.g., Request for Comment on Exchange-Traded Products, Exchange Act Release No. 75165 (June 12, 2015) [80 FR 34729 (June 17, 2015)], available at <https://www.sec.gov/files/rules/proposed/2018/33-10515.pdf>, at 6-8.

² The Commission issued the first exemptive order allowing the operation of an ETF in 1992. These exemptive orders were subject to several conditions designed to address the concerns underlying the relevant provisions of the Investment Company Act. See, e.g., SPDR Trust, Series 1, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) [57 FR 43996 (Sept. 23, 1992)] (notice) and 19055 (Oct. 26, 1992) (order) and related application.

³ See Registered Fund Statistics, Staff of the Division of Investment Management Analytics Office, Securities and Exchange Commission, available at <https://www.sec.gov/data-research/investment-management-data>.

Exchange listing is one of the fundamental characteristics that distinguishes ETFs from other types of open-end funds. Before an ETF can trade on a national securities exchange, an exchange must make a determination to list the ETF for trading on its market, and it must have initial and continued listing standards that permit listing of that type or “class” of ETF. These listing standards are rules of the listing exchange and are therefore subject to filing with the Commission and public notice and comment under Section 19 of the Securities Exchange Act of 1934. Exchanges have received approval of “generic” listing standards for ETFs that rely on rule 6c-11, which permit an exchange to list and trade these ETFs without the need to file a product-specific proposed rule change with the Commission for each ETF.⁴

ETFs issue publicly offered securities and thus file a registration statement with the Commission to register the offering of their securities under the Securities Act of 1933 (the “Securities Act”). As is the case with mutual funds, new ETFs typically are offered as a new series of an existing investment company that, along with its shares, are registered by preparing and filing a post-effective amendment to a previously effective registration statement under rule 485(a) of the Securities Act.⁵ Registering new ETFs via post-effective amendment allows these ETFs to avoid the costs associated with a new registration statement, which is filed on Form N-1A. Additionally, rule 485(a) permits post-effective amendments making material changes to registration statements to become effective automatically after a prescribed period of time, thus allowing such ETFs to launch efficiently and respond to market opportunities without

⁴ See, e.g., NYSE Arca Rule 5.2-E(j)(8); Nasdaq Rule 5704; Cboe BZX Rule 14.11(l).

⁵ See 17 CFR 230.485(a). An investment company’s (“registrant’s”) initial registration statement under the Securities Act is filed with the Commission and, unless a delaying amendment is included, becomes effective automatically after 20 days. Most registrants, however, include a delaying amendment and then request that the Commission accelerate the effective date. See Section 8(a) of the Securities Act [15 U.S.C. 77h(a)] and rule 473 [17 CFR 230.473] thereunder.

Commission or staff action. Non-material changes and other enumerated routine changes are permitted to be filed under rule 485(b) and such post-effective amendments may become automatically effective immediately upon filing. ETFs may also reflect certain changes by filing a “sticker” pursuant to rule 497 under the Securities Act. Rule 497 filings enable a fund and its adviser to respond to market conditions without the significant delay inherent in a rule 485(a) filing.⁶ However, a post-effective amendment filed under rule 485(a) is required “to reflect any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereto) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement.”⁷

Over the past several years, sponsors of ETFs have expressed interest in providing exposure to innovative asset classes or using novel investment strategies (“Novel ETFs”). To date, these include: 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.

Market participants, including sponsors, registrants, exchanges, and intermediaries, among others, have raised questions regarding certain issues associated with Novel ETFs. For example, questions have arisen about whether a Novel ETF qualifies as an “investment company” or will operate consistent with rule 6c-11 and its conditions. Moreover, questions have

⁶ See 17 CFR 230.497. When making material changes by rule 497 filing, ETFs must follow the rule 497 filing with a rule 485(a) filing before becoming eligible to file under rule 485(b).

⁷ Adoption of Integrated Disclosure System, Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380 at 11395 (Mar. 16, 1982)]. This release clarifies the meaning of “fundamental” by explaining that post-effective amendments are required when major and substantial changes are made to information in the registration statement, and that even numerous smaller changes can, in the aggregate, become fundamental. Further, the release states the Commission’s view that “the filing of a post-effective amendment is appropriate in certain instances in order to ensure full statutory liability for the information disclosed and to afford the Commission’s staff an opportunity to review the disclosure in appropriate cases.”

arisen about whether the Commission’s Division of Investment Management (“IM”) staff has sufficient time to effectively review and address legal issues that may arise with these Novel ETFs due to the fact that many Novel ETF filings seek automatic effectiveness within prescribed time periods.

II. INVESTMENT COMPANY STATUS

Market participants have raised questions regarding whether Novel ETFs with a principal investment strategy to invest in assets that are not securities under the Investment Company Act are investment companies as defined under the Investment Company Act. This, in turn, raises questions regarding whether such a Novel ETF may register as an investment company and whether the Novel ETF should be regulated as such under the Investment Company Act.

As relevant here, Section 3 of the Investment Company Act defines the term “investment company” as an issuer that:

- Is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities (the “Subjective Test”),⁸ or
- Is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent or more of such issuer’s total assets (exclusive of Government securities⁹ and cash items), on an unconsolidated basis (the “Objective Test”).¹⁰

⁸ Section 3(a)(1)(A) of the Investment Company Act [15 U.S.C. 80a-3(a)(1)(A)]. *See also* Section 2(a)(36) of the Investment Company Act [15 U.S.C. 80a-2(a)(36)] (which defines “securities” for the purposes of the Investment Company Act).

⁹ *See* Section 2(a)(16) of the Investment Company Act [15 U.S.C. 80a-2(a)(16)] (which defines “Government security” for the purposes of the Investment Company Act).

¹⁰ Section 3(a)(1)(C) of the Investment Company Act [15 U.S.C. 80a-3(a)(1)(C)]. *See also* Section 3(a)(2) of the Investment Company Act [15 U.S.C. 80a-3(a)(2)] (which defines “investment securities” for the purposes of the

For purposes of the Subjective Test, the Commission developed a five-factor test.¹¹ The five factors are the issuer's:

- Historical development;
- Public representations of policy;
- Activities of its officers and directors;¹²
- Nature of its present assets; and
- Sources of its present income (collectively, the “Tonopah Factors”).

The Commission is interested in feedback on the following questions:

1. Would a Novel ETF meet the Subjective Test by “hold[ing] itself out” as an “investment company,” and/or as “engaged primarily, or propos[ing] to engage primarily, in the business of investing, reinvesting, or trading in securities,” notwithstanding that its principal investment strategy is to invest in assets that may not be securities? Is there a need for greater clarity about this aspect of the Subjective Test? Why or why not?
2. Why would a Novel ETF with a principal investment strategy to invest in assets that are not securities seek to register as an investment company and be regulated as such (rather than as, for example, an exchanged-traded commodity trust or some other type of ETP)?

Objective Test, as relevant here, to include all securities except (a) Government securities and (b) securities issued by majority-owned subsidiaries of the issuer which are (i) not investment companies, and (ii) not relying on the exclusion from the definition of investment company in Section 3(c)(1) or (7) (*i.e.*, private funds)).

¹¹ See *In the Matter of Tonopah Mining Co.*, 26 S.E.C. 426 (July 21, 1947).

¹² The Commission has also considered the activities of an issuer's employees, in addition to its officers and directors, in determining its primary business. See, *e.g.*, rule 3a-8 under the Investment Company Act [17 CFR 270.3a-8].

3. When evaluating whether a Novel ETF meets the Subjective Test, should the Commission continue to apply the Tonopah Factors? Are there different or additional factors the Commission should consider or emphasize in its analysis of a Novel ETF? Why or why not?
4. Would a Novel ETF that holds on an unconsolidated basis “securities” (*i.e.*, shares or other equity interests) issued by one or more wholly-owned subsidiaries that are not themselves primarily invested in securities meet the Subjective Test, notwithstanding that its principal investment strategy is to invest in assets that are not securities? Why or why not? Under what circumstances, if any, should the Commission consider investments in securities issued by wholly-owned subsidiaries (or by other subsidiaries generally consolidated with the issuer) to comprise part of a securities investment business under the Subjective Test? Should the analysis differ for holding companies that are engaged in various operating businesses through wholly-owned and majority-owned subsidiaries? Why or why not?

III. NOVEL ETFs AND RULE 6C-11

While rule 6c-11 defines the fundamental structural characteristics of ETFs to support effective arbitrage, it does not restrict which investment strategies or asset classes an ETF may pursue.¹³ ETFs that meet rule 6c-11’s conditions are eligible for exchange listing under generic

¹³ *But see* rule 6c-11(c)(4) [17 CFR 270.6c-11(c)(4)] (an ETF “that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time, must comply with all applicable provisions of [rule 18f-4 under the Investment Company Act]”).

listing standards and thus can generally be sold directly to investors soon after their registration statement goes effective.¹⁴

The Commission is interested in feedback on the following questions:

A. Portfolio-Related Conditions

5. Do the assets and strategies of Novel ETFs present any questions regarding: a) the functioning of the ETF arbitrage mechanism and related secondary trading activity that supports it; b) investor protection; c) the maintenance of fair, orderly, and efficient markets, as well as any unique challenges to market surveillance necessary to support the ETF's listing; or d) other structural or operational issues? Why or why not?
6. Should rule 6c-11 be amended to address these or other questions with respect to Novel ETFs? For instance, should the Commission consider amendments addressing new portfolio requirements, such as minimum holdings in securities, restrictions from using certain strategies or investing in certain asset classes, or criteria such as specific diversification requirements, concentration limits, or issuer-specific limits? Why or why not? Or should the rule be amended to exclude certain assets or investment strategies?¹⁵
Why or why not?

B. Other Questions

¹⁴ See *supra* note 4.

¹⁵ See rule 6c-11(a) [17 CFR 270.6c-11(a)] (defining “exchange-traded fund” as “a registered open-end management company: (A) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (B) Whose shares are listed on a national securities exchange and traded at market-determined prices”).

7. Should the Commission consider any steps to help investors better understand the features of Novel ETFs? Are there steps the Commission could consider to help investors understand what distinguishes Novel ETFs from other ETFs?¹⁶
8. Some ETPs that are not investment companies (*e.g.*, exchange-traded commodity trusts) may use the term “ETF” (or “fund”) in their name or label themselves as ETFs. How do investors interpret this, and are there any implications for investor clarity?
9. Amendments to rule 6c-11 (such as new portfolio conditions) could affect how the generic listing standards apply to a Novel ETF. Should this interplay between rule 6c-11 and the generic listing standards inform any analysis of potential changes to the rule? Are there other ways in which rule 6c-11 could be amended or other Commission action taken to better facilitate innovation while protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation?

IV. REGISTRATION AND RULE 485

As discussed above, rule 485 under the Securities Act sets forth the effective dates for post-effective amendments to registration statements filed by certain investment companies, including ETFs. Generally, Novel ETFs that are registering their shares use rule 485(a), which allows certain existing investment companies to add new funds as series of the company or make material changes to existing series of an investment company, by filing a post-effective amendment to their existing registration statement. Under the rule, these filings become

¹⁶ For example, industry observers have noted recommendations to aid investors in understanding the differences among Novel ETFs and other ETFs. *See* Investor Advisory Committee, Securities and Exchange Commission, Recommendation of the Advisory Committee on Single Stock ETFs and Leveraged ETFs,” (June 22, 2023), available at <https://www.sec.gov/files/spotlight/iac/20230622-recommendation-single-stock-etfs-and-leveraged-etfs.pdf>.

automatically effective in as early as 75 and 60 days, respectively, of the filing. IM staff uses this time to review filings and to provide feedback to registrants.

The Commission is interested in feedback on the following questions:

A. Timing of Effectiveness

10. Certain post-effective amendments filed under rule 485, including those for certain Novel ETFs, may raise issues that may be challenging to address within the rule's currently prescribed timeframes. Should the 75-day and 60-day automatic effectiveness periods be extended for Novel ETFs? If yes, for how long? If not, why not?
11. Should effectiveness be automatically tolled for a Novel ETF if a registrant fails to respond to staff comments within a specified period (*e.g.*, five business days) before effectiveness? Why or why not?
12. While registrants may voluntarily delay effectiveness under rule 485, should the rule be amended to enable the Commission to delay effectiveness of a Novel ETF on its own initiative?¹⁷ If yes, how should the amended rule be structured, under what circumstances should the Commission be able to delay effectiveness, and what if any limits or notice requirements should apply?
13. Some market participants have raised questions about Novel ETFs seeking to become effective before an asset class or instrument is available for investment. Is additional clarity needed regarding rule 485(a) with respect to a Novel ETF becoming effective before its investment strategy can be implemented? Why or why not?

¹⁷ See *infra* note 22 discussing potential actions that the Commission may take to delay or suspend effectiveness.

14. If the automatic effectiveness periods were extended, would registrants experience unnecessary delays in responding to market demand?

B. Early Engagement & Innovation

15. Should the Commission consider mechanisms for early engagement for Novel ETFs (*e.g.*, a pre-filing consultation process or confidential draft registration statements) that would allow the staff and sponsors of Novel ETFs to work together on potential issues before the sponsor makes a public filing?¹⁸ If so, should we publicly report on these consultations to provide for a measure of accountability in the process? For example, should we report how many such consultations occur, how long they take, and how many result in public filings?

16. Are there other ways rule 485(a) could be modified to better support innovation, while protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation?

C. Competitive Pressures and First-Mover Incentives

17. Do market participants have concerns about competitive pressures that may incentivize sponsors to submit filings for Novel ETFs quickly and in rapid succession? If so, could such competitive pressures result in rushed or incomplete filings or the filing of many ETFs that never launch? Could such competitive pressures cause sponsors to attempt to repurpose unused series to take advantage of shorter waiting periods resulting in an unfair treatment of funds? Should we amend rule 485 to specifically address these concerns?

¹⁸ The staff of the Division of Corporation Finance has made accommodations available for non-public review for non-investment company issuers since 2017. *See* Enhanced Accommodations for Issuers Submitting Draft Registration Statements (Mar. 3, 2025), SEC Division of Corporation Finance, *available at* <https://www.sec.gov/about/divisions-offices/division-corporation-finance/draft-registration-statement-processing-procedures-expanded>.

Why or why not? For example, should the Commission amend its rules to require upfront payment of a minimum registration fee that may be subsequently offset by redemptions under rule 24f-2?

18. Should the Commission allow rule 485(a)(2) filings to remain nonpublic for part of the 75-day period to promote innovation and reduce imitative filings?¹⁹ Why or why not? If yes, for how long?
19. To encourage filing only fully developed new series, should rule 485(a) require a fund's board or authorized signatories specifically to identify each new series included in the filing?²⁰ Why or why not?
20. Certain ETFs may be able to allocate assets to markets or strategies before newly registering funds pursue similar exposures, due to the discretion they have sought to retain over their investment practices. How should the Commission balance permitting investment flexibility with the need to preserve a fair and orderly registration process and to ensure investors are protected?
21. Should the Commission take action with respect to funds that become effective but never launch? For example, should the Commission amend its rules to provide that such funds would be automatically deregistered after a defined period (*e.g.*, 6 months)? Why or why not?

D. Unresolved Staff Comments

¹⁹ IM Staff has observed several Novel ETF filings submitted in rapid succession that are largely identical. Market participants have suggested that the use of artificial intelligence may be significantly accelerating the speed at which a filing can be mimicked.

²⁰ Rule 483(b) under the Securities Act [17 CFR 230.483(b)] includes a similar provision requiring that power of attorney must relate to a specific registration statement filing.

22. Should the Commission develop additional mechanisms to address unresolved staff comments? For instance, should funds be required to disclose material unresolved staff comments, similar to the approach used for certain closed-end funds and Form 10-K and Form 20-F filers?²¹ Would such disclosure be useful to investors and other market participants? Why or why not?

E. Material Changes During Review or Pre-Launch

23. Is there a need for greater clarity about how our rules apply when a material investment strategy change is made for a Novel ETF during the review process or before launch? Should rule 485 be amended to explicitly require a new 75-day or 60-day rule 485(a) filing for changes that are not made in response to staff comments?

24. Some registrants seek to make material changes to a Novel ETF's investment strategy after the effectiveness of the registration statement but before, at, or shortly after launch. For example, questions have arisen about material pre-launch changes made to a Novel ETF through a rule 497 filing rather than by a rule 485(a) amendment. Is additional clarity needed about rules 485 or 497 in light of these questions? Alternatively, should rule 485 be amended to automatically suspend or delay the effectiveness of a registration statement for a Novel ETF when a material pre- or at launch change occurs?

F. Suspensions

25. Rule 485 allows the Commission to suspend a registrant's ability to file under rule 485(b) if it appears the registrant has not complied with the applicable conditions of the rule or

²¹ See, e.g., Instruction 4.h.(4) to Item 24 of Form N-2; Item 1B of Form 10-K. The Commission recently proposed to require non-accelerated filers to make this disclosure, as large accelerated and accelerated filers do currently. See *Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies*, Securities Act Release No. 11419 (May 19, 2026) [91 FR 30086 (May 21, 2026)].

to suspend the effective date of a rule 485(a) filing that is materially incomplete or inaccurate.²² Should the Commission consider changes to this rule? For example, should the circumstances under which the Commission may suspend a post-effective amendment be expanded? Should the Commission have the authority to suspend the effectiveness of a specific post-effective amendment, or of a particular series within that amendment, after it has become effective? Should the Commission condition the use of rule 6c-11 on compliance with filing requirements, or reserve the ability to suspend the use of rule 482 advertisements?²³

G. Changes to ETF Disclosure

26. Should the Commission consider changes to the ETF disclosure regime because of questions that Novel ETFs may raise? Should the Commission consider heightened disclosure requirements for certain Novel ETFs?
27. Are there additional reforms the Commission should consider to help facilitate innovation, while protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation?

V. REGULATORY PLANNING AND REVIEW

This request for comment is a significant regulatory action under Section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget, consistent with Executive Order 14215.

²² See rule 485(c)(1) and (2) [17 CFR 230.485(c)(1) and (2)]. The Commission retains other options, such as a stop order under Section 8(d) of the Securities Act [15 U.S.C. 77h(d)].

²³ Rule 482 under the Securities Act [17 CFR 230.482] permits investment company advertisements or sales materials that are used to offer or promote securities so long as they comply with certain content and disclosure standards.

VI. GENERAL REQUEST FOR COMMENT

This request for comment is not intended to limit the scope of comments, views, issues, or approaches to be considered. In addition to comments from investors and funds, we welcome comments from other market participants and particularly welcome statistical, empirical, and other data and real-world examples from commenters that may support their views or support or refute the views or issues raised by other commenters.

By the Commission.

Dated: June 30, 2026.

Vanessa A. Countryman,

Secretary.