**Comment on Request for Comment on Novel ETFs**

**SEC File Number S7-2026-24, RIN 3325-AN81**

To the Commission:

This comment addresses several issues raised in the release, including the definition of "Novel," the interaction between investment-company status and rule 6c-11, the treatment of subsidiaries, derivatives usage, authorized participant participation, custody and valuation challenges, and filing requirements under rules 485 and 497. I also discuss one category of products that raises distinct concerns: ETFs built around event contracts and other short-duration, binary-outcome instruments. The Commission should ensure that the ETF structure continues to support long-term investing, capital formation, and market integrity while giving sponsors a clear and stable framework for innovation.

Retail investors rely on the ETF wrapper as a familiar and trustworthy format. They expect that an ETF represents an investment tied to productive economic activity. Event-contract ETFs may conflict with those expectations. Their payoff structure is difficult for ordinary savers to interpret, especially when the exposure resets frequently or resolves entirely on a fixed date. Investors who use ETFs to build long-term portfolios may not understand that these products do not compound, do not track an underlying enterprise, and do not behave like the diversified index funds they are accustomed to.

**Certain Novel ETF Types Are Not Addressed by the Release**

The release focuses on a limited set of examples and does not contemplate several emerging ETF structures that differ fundamentally from the categories listed. Products driven by autonomous models, real-time data inputs, tokenized share classes, insurance-linked exposures, or regulatory-permit markets raise operational and structural questions that do not fit neatly within the framework described. Autonomous models that adjust portfolio weights continuously can blur the line between ordinary portfolio management and a material change requiring amendment. This raises questions about how such activity should be evaluated under rule 485(a), how sponsors can demonstrate strategy stability, and whether real-time model behavior is compatible with the disclosure and arbitrage assumptions embedded in rule 6c-11 as currently understood in industry practice. I suggest that the Commission adopt a principles-based standard for determining whether a product's mechanics are compatible with the ETF structure or identify categories that should be excluded from rule 6c-11 eligibility.

**Ambiguity in the Definition of "Novel"**

The term "Novel ETF" is applied to a broad and inconsistent set of items, including asset classes, investment techniques, and technological features. These categories do not share a common regulatory characteristic (or characteristics), and the release does not explain how they relate to

one another. A clearer definition would help sponsors determine whether a proposed product triggers heightened review expectations or requires additional engagement with staff. It is important that the Commission provide a clear definition of "Novel ETF."

**Inconsistency Between Investment Company Status and Rule 6c-11**

The release questions whether certain Novel ETFs investing in non-securities qualify as investment companies, yet later assumes that these same products would operate under rule 6c-11. Because rule 6c-11 applies only to registered open-end funds, this creates uncertainty about how products that do not meet the definition of an investment company could be treated under the release's framework. I suggest that the Commission clarify the relationship between investment-company status and rule 6c-11 eligibility to avoid any implication that non-investment companies may rely on the rule.

**Treatment of Subsidiaries Under the Investment Company Act Tests**

The release asks how wholly-owned subsidiaries holding non-securities should be treated under the Subjective Test but does not explain how this analysis interacts with the Objective Test's 40 percent threshold. Because non-securities held by wholly-owned subsidiaries are generally treated as not counting toward the threshold under current staff interpretative practice, such subsidiaries may reduce the parent company's investment-securities percentage. I suggest that the Commission clarify that wholly-owned subsidiaries utilizing derivatives or novel assets are consolidated entirely for purposes of the Objective Test and that the Subjective Test should align with that treatment.

**Ambiguity Regarding Material Changes**

The release raises concerns about material changes made through rule 497 filings but does not define what constitutes a material change. Though there may be some generalized understanding of what is a material change, without a clear standard, registrants may find it difficult to determine whether a change requires a new rule 485(a) amendment or can be addressed through a sticker. I suggest that the Commission provide a more precise description of materiality in this context.

**Potential Sources of Confusion Regarding Rule 485 Timing**

The release states that rule 485(a) filings become effective in as early as 75 and 60 days, but does not distinguish between new series and material changes. A more detailed explanation of the rule's timing provisions would promote clarity. I suggest that the Commission clarify the timing distinctions in rule 485(a).

**Ambiguity Regarding Rule 497 Usage**

The release notes questions about material pre-launch changes made through rule 497 filings, which may suggest that rule 497 could be used for changes more appropriately addressed

through rule 485(a). I suggest that the Commission clarify the boundary between these provisions.

**Limited Discussion of Derivatives Regulation**

Many Novel ETFs rely heavily on derivatives such as swaps, futures, and structured notes. The release mentions rule 18f-4 only briefly and does not explore how derivatives-driven strategies interact with rule 6c-11's arbitrage and transparency requirements. Derivatives-based exposures can complicate daily NAV calculation, hedging, and AP arbitrage. I recommend that the Commission expand its discussion of derivatives usage and clarify how rule 18f-4 applies to Novel ETFs. Sponsors would benefit from knowing how derivatives-heavy strategies fit within the ETF framework before committing resources to product development.

**Authorized Participant and Liquidity Provider Considerations**

The functioning of the ETF arbitrage mechanism depends on authorized participants and liquidity providers. The release does not address how Novel ETFs may affect AP participation, inventory management, or hedging capacity, particularly in markets with limited liquidity or operational constraints. Some Novel ETFs may not attract sufficient AP engagement to support reliable creation and redemption activity. I recommend that the Commission consider how Novel ETFs may affect AP behavior and whether certain products can support the arbitrage process that underpins the ETF structure.

**Custody and Valuation Issues Not Addressed**

The release does not discuss custody or valuation challenges associated with crypto assets, private assets, or event-based instruments. These issues are central to determining whether a product can support daily NAV calculation and the creation and redemption process. I suggest that the Commission address custody and valuation considerations for these asset classes.

**Incomplete Description of Rule 6c-11 Strategy Limitations**

The release suggests that rule 6c-11 does not restrict investment strategies, but rule 6c-11(c)(4) imposes specific requirements for leveraged and inverse ETFs through rule 18f-4. This limitation appears only in a footnote. I suggest that the Commission provide a more complete description of rule 6c-11's strategy limitations.

**Uncertainty Around Automatic Tolling**

The release suggests tolling effectiveness when registrants do not respond to staff comments within five business days, reflecting staff practice rather than an explicit requirement, but does not specify what constitutes a response. I suggest that the Commission clarify what qualifies as a response for purposes of tolling.

**The US Markets' Dual Role**

The US markets have succeeded at their dual role of capital formation and long-term wealth creation for savers by encouraging investments. They serve as a destination for companies to raise capital and for investors to place their savings in enterprises that produce goods and services. Event contracts do not share this return profile. Their expected value at inception is essentially zero, and they do not contribute to capital formation. I recommend that the Commission consider whether zero-sum instruments are compatible with the purposes of the federal securities laws.

**Zero-Sum Wagering vs. Investment**

The distinction between investment and wagering is central to the Commission's evaluation. Investments channel capital toward productive enterprise. Event contracts do not. They are structurally zero-sum from an economic perspective. Their expected return at inception is zero in the sense that they do not involve capital formation or productive enterprise, or even risk hedging. They simply transfer value between counterparties based on the resolution of an event. Wrapping a wager in an ETF does not make it an investment. It makes it a wager with a ticker symbol. I recommend that the Commission decline to permit event-contract ETFs under rule 6c-11.

**ETF Structure and Event-Contract Incompatibility**

Public equity and debt markets channel savings into productive enterprise in exchange for a claim on future cash flows. Event contracts are short-duration and binary, resolving on a fixed date and requiring constant rollover. Wrapping this kind of instrument in a daily-NAV, intraday-tradable ETF form does not make the underlying exposure more durable. As a result, I recommend that the Commission consider whether such short-duration exposures are compatible with the ETF structure as currently implemented under rule 6c-11.

**Market Externalities**

Novel ETFs built on event contracts or extreme leverage can influence underlying markets in ways that long-term investors cannot avoid. Daily rebalancing flows, rapid contract resolution, and reverse splits can affect underlying securities and introduce volatility. The Commission should evaluate whether these externalities are consistent with fair and orderly markets.

**Economic Substance Should Govern Regulation**

Putting an ETF wrapper on event contracts adds a liquid secondary market to what remains a rapidly resolving wager. Retail investors may not recognize that they are holding a zero-sum instrument rather than a claim on productive activity. I recommend that the Commission evaluate these funds based on their economic substance rather than their form.

**Regulatory Inconsistency**

The proposed activity may involve evolving or differing interpretations of existing rules, including rule 18f-4 and the treatment of designated reference indices. Introducing complex, short-duration instruments into an environment already marked by interpretive instability would increase uncertainty. I recommend that the Commission ensure regulatory consistency before expanding the ETF wrapper to wagering-based instruments.

**Conclusion**

I urge the Commission not to extend the ETF wrapper to event-contract instruments or similar products whose economic substance is wagering rather than investment.

Beyond that specific recommendation, I encourage the Commission to clarify several aspects of the regulatory framework for Novel ETFs, including the definition of "Novel," the relationship between investment-company status and rule 6c-11, the treatment of subsidiaries, derivatives usage, authorized participant considerations, custody and valuation, and filing requirements under rules 485 and 497. Clear guidance in these areas would help sponsors innovate responsibly, give exchanges and authorized participants a predictable operating environment, and ensure that the ETF wrapper continues to serve investors and the markets well.

Thank you for considering these comments as part of this docket.

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