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Paul Atkins,
Chair
Honorable Members
c/o Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F St NE
Washington DC

Request for Comment on Novel ETFs, File Number S7-2026-24

Dear Commissioners,

On behalf of more than one million members and supporters of Public Citizen, we offer the following comment in opposition to the Securities and Exchange Commission (SEC) proposal to expand exchange-traded funds (ETFs) to include "novel" products. This may include private assets as well as gambling.

IETFs were not contemplated by the Investment Company Act of 1940 (the "Investment Company Act") and operate because the SEC granted exemptions from this law. ETFs emerged in the 1990s, but each required individual SEC authorization. In 2008, the SEC floated a blanket rule proposal permitting standard ETFs, but this stalled following the 2008 financial crisis. In 2019, the SEC adopted Rule 6c-11 that permitted creation of an ETF that met certain standard conditions.

ETFs account for more than $12 trillion in investor funds as of the end of 2025.

As it grants exemptions, SEC under has traded the true enforcement of investor protection policy for a "buyer beware" regime, without even bothering to alert the public to that warning. As the Commodity Futures Trading Commission (CFTC) ruptures sensible and statutory mandates about hedging with prediction markets that include gambling on sports and politics, the SEC now appears bent on inviting the same through ETFs.

America's economy thrives when entrepreneurs producing valuable goods and services can attract capital from savers. The SEC's primary mandates include investor protection and the promotion of capital markets. Further, Securities law provides that any new product serve the "public interest" and not be "susceptible to manipulation." (Section 6(b)(5) of the Securities Exchange Act of 1934.)

Gambling ETFs

Gambling, by nature, does not serve the public interest. It does not provide capital to growing enterprises. It does not offer investors a viable opportunity for stability. (Notably, the SEC does not use the word "gambling" in its proposal. Instead, it refers to the anodyne "event contract.") Under the conditions established for standardized permission for ETFs, the 2019 SEC, led by Trump-appointed commissioners, required that the ETF serve the "public interest." The rule notes this mandate numerous times. The underlying Securities Act of 1933 also makes frequent mention of the public interest.

Nor can gambling escape manipulation, another stipulation for the exemption. Participants in any contest can impact results. The chance for winnings enhanced by SEC-endorsed trading will only exacerbate this manipulation. Convicted fraudster and former member of Congress George Santos gambled through a CFTC-authorized platform on whether he'd attend a major speech. He bet correctly. Gambling on wildfires promotes arson.

Gambling on elections perverts our democracy. Manipulators can alter results, inviting the rich and powerful to debase the electoral system into a financial game.

Retail investors rely on ETFs as a familiar and trustworthy format, expecting them to represent investments tied to productive economic activity. Event-contract ETFs may conflict with those expectations. Their payoff structure may be 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.

Private Assets EFTs

By nature, private assets assaults the Securities Act. That law established honest disclosure as the foundation of market integrity. Private assets are so-called because they do not disclose basic information to investors. As such, these investors must be deep-pocketed and able to withstand major losses. Average investors enjoy a plethora of public companies in which they may invest; it is the private market that appears to be running dry on willing funders and now turn to a compliant SEC to dump unwanted assets. As the New York Times noted, private equity is "stuck" with some 33,000 companies it can't sell.

Conclusion

The SEC should not authorize ETFs for novel products such as gambling and private assets. These do not serve the public interest, are prone to manipulation, and do nothing to match the savings of investors with the funding needs of legitimate businesses central to a healthy, growing economy.

For questions, please contact Bartlett Naylor at bnaylor@citizen.org.

Sincerely,

Public Citizen