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August 28, 2026

Submitted electronically via https://www.sec.gov/comments and rule-comments@sec.gov

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 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:

Rafferty Asset Management, LLC ("RAM," d/b/a "Direxion"), on behalf of the separate series of the Direxion Shares ETF Trust ("Direxion ETFs") and Direxion Funds ("Direxion Mutual Funds") (collectively with RAM, "Direxion"),[1] appreciates the opportunity to comment on the Commission's Request for Comment on Novel ETFs.[2] We commend the Commission and the staff of the Division of Investment Management (the "Staff") for seeking public input on these issues, and we hope our comments assist the Commission and the Staff in addressing them.

As a sponsor of innovative and "novel" ETFs for decades, we write from direct experience. We worked with the Staff and the Commission to obtain exemptive relief to allow us to offer innovative leveraged strategies nearly two decades ago.[3] Our exchange-traded funds ("ETFs") registered under the Investment Company Act of 1940 (the "Investment Company Act" or the "Act") include funds that pursue derivatives-based, futures-based, and/or leveraged and inverse

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[1] The Direxion ETFs, most of which seek to provide investors with daily leveraged or inverse leveraged investment results, have been publicly offered since 2008. The Direxion Mutual Funds, most of which currently seek to provide investors with monthly leveraged investment results, have been publicly offered since 1997. Such Direxion ETFs and Direxion Mutual Funds are referred to in this letter as the "Direxion Funds." Registered funds that seek leveraged or inverse leveraged returns, as described in Rule 6c-11(c)(4) under the Investment Company Act of 1940, are referred to collectively herein as "Leveraged Funds." For avoidance of doubt, this letter considers the Direxion Funds to be Leveraged Funds, even though certain Direxion Funds do not operate as ETFs in reliance on Rule 6c-11.

[2] Request for Comment on Novel ETFs, Release Nos. 33-11426; 34-105808; IC-36228 (June 30, 2026) (the "Request") *available at* Request for Comment on Novel ETFs. Capitalized terms used but not defined in this letter have the meanings given to them in the Request.

[3] *See e.g., Rafferty Asset Management, LLC, et al.,* Investment Company Act Release No. 28434 (Oct. 6, 2008) (order); notice at Investment Company Act Release No. 28379 (Sept. 12, 2008), 73 FR 54179 (Sept. 18, 2008).

strategies in reliance on rule 6c-11 and in compliance with rule 18f-4. The questions in the Request are not abstractions to us. They bear directly on our funds, our shareholders, and our competitive ability to bring well-regulated innovative investment vehicles to market.

I. INTRODUCTION AND EXECUTIVE SUMMARY

A. The ETF Framework Is Working

The modern ETF is one of the most successful financial innovations of the past half century. The first domestic ETF was authorized in 1992 pursuant to an exemptive order.[4] Today, by the Commission's own count, ETFs hold more than $12 trillion across more than 4,600 funds, up from roughly $4 trillion and 1,900 funds at the end of 2019.[5] The growth is not slowing. U.S.-listed ETFs took in more than $1 trillion in the first half of 2026, including a record second quarter of roughly $560 billion, and industry participants project more than $2 trillion in growth for the full year.[6]

Investors choose ETFs deliberately. Week after week, long-term mutual funds see net outflows while ETFs take in new money.[7] The reasons are familiar: intraday liquidity, transparency, tax efficiency, and low cost, sharpened by fierce competition among sponsors. These are exactly the outcomes the Commission set out to achieve when it adopted rule 6c-11 in 2019, and exactly the outcomes the Request acknowledges the rule has delivered.[8] Rule 6c-11 provides a framework, grounded in the protections of the 1940 Act, but informed by decades of innovation, that was developed collaboratively with the Commission through iterative exemptive orders. Over time, the success of the ETF vehicle became undeniable, and the Commission determined to adopt rule 6c-11, in part, to avoid the need for individualized exemptive orders and reduce costs for sponsors.

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4 *See* 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).

5 Request at 3 (citing Registered Fund Statistics, Staff of the Division of Investment Management Analytics Office).

6 *See* State Street Investment Management, US-Listed ETF Flash Flows (June 30, 2026) *available at* Monthly Flash Flows.

7 *See, e.g.*, Investment Company Institute, Combined Estimated Long-Term Flows and ETF Net Issuance (July 8, 2026) *available at* *Release: Combined Estimated Long-Term Flows and ETF Net Issuance | Investment Company Institute* (reporting, for the week ended July 1, 2026, estimated long-term mutual fund outflows of $28.87 billion and estimated ETF net issuance of $32.30 billion).

8 *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) [84 FR 57162 (Oct. 24, 2019)] ("6c-11 Adopting Release") *available at* *Exchange-Traded Funds (Conformed to Federal Register version)*; Request at 3 (observing that rule 6c-11 established a consistent, transparent, and efficient regulatory framework that has led to greater competition and innovation among ETFs and increased investor choice).

Just as importantly, the Commission adopted the rule as a means of "create[ing] a level playing field for ETFs" [9] We believe that these goals hold just as true today, with the rule allowing a clear transparent framework for new and prior entrants alike to work within, thereby allowing for competition and investor choice, consistent with the Commission's mission.

We appreciate that the request for comment is just that, a request for comment and not a proposed rulemaking, and we value the opportunity to provide our input before any potential rulemakings are proposed. In that spirit, throughout our comment letter we have identified areas where we believe rulemaking should not be considered, and areas where it should be. A framework that is demonstrably working should not be restructured without strong evidence that something is wrong. As we explain below, we generally do not believe that the Request supplies the kind of evidence that significant new rulemaking activity is required, but believe that in certain areas, the process could be improved.

B. The Request Identifies Questions, Not Problems

The Request describes questions said to have been "raised" by unidentified "market participants, including sponsors, registrants, exchanges, and intermediaries."[10] With respect, questions are not findings or evidence of problems. This point is more than rhetorical. Any new rule must respond to a problem the record supports,[11] and the Commission must consider whether its actions promote efficiency, competition, and capital formation.[12] Before proposing any change to the ETF framework, the Commission should identify the specific harm, the evidence that it exists, and the reasons existing tools, such as disclosure review, examinations, and enforcement, cannot address it. This caution is especially compelling when so many other significant rulemaking items are competing for the Commission's and the Staff's finite resources. The Request identifies no failure of the arbitrage mechanism, no valuation breakdown, no pattern of investor complaints, and no market disruption attributable to the products it calls "Novel ETFs." The request highlights the increased volume of ETF filings, and we understand that the number of staff reviewing registration statements has not kept pace with that rapid increase. Such a mismatch in resources of course can create difficulties. This may require adaptability and creativity on the part of the Commission in managing its resources, to ensure that the disclosure review process does not become a roadblock

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9 *See, e.g., 6c-11 Adopting* Release *at pp 6, 15, 23, 124 etc ("Leveling the ETF playing field is a goal for rule 6c-11").*

10 Request at 5.

11 *See* Motor *Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Business Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011); *Chamber of Commerce v. SEC*, 412 F.3d 133 (D.C. Cir. 2005).

12 Section 2(c) of the Investment Company Act [15 U.S.C. 80a-2(c)]; Section 3(f) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78c(f)].

to innovation, and instead remains the effective process designed to protect investors and facilitate competition it is today.

C. "Novel" Cannot Be Defined, So Any Change Would Reach the Whole Market

The Request's organizing concept, the "Novel ETF," has a definitional problem that we believe is insurmountable. Novelty means the absence of precedent. A definition keyed to today's list of new asset classes will be obsolete on arrival, because tomorrow's innovations will fall outside of it. A definition keyed to newness itself will sweep in routine product development and penalize every incremental improvement. The Request's own list proves the point. Crypto assets, commodity-focused instruments, single-stock strategies,[13] heightened leverage, blockchain-enabled opportunities, private assets, and event contracts share no common structure, no common risk profile, and no common regulatory gap.[14] What they share is that they are either relatively recent, or at one time were innovative or reflected new types of instruments in which ETFs invest.

History teaches the same lesson. Index equity ETFs, fixed income ETFs, actively managed ETFs, bank loan ETFs, defined outcome ETFs, leveraged single stock ETFs, and bitcoin futures ETFs were each once seen as novel. Now they are unremarkable, simply an accepted part of the investing landscape. This innovation and adaptability is exactly what ETFs are so well suited for and allows investors to access new asset classes and investment strategies within the investor protection wrapper of the vehicle, following investor demand. A regulatory category built on novelty would be a moving target, administered by necessarily subjective judgment, raising fair notice problems and punishing first movers while fast followers escape the label. Given the Commission's focus on fostering innovation and express capital formation mission, it seems contrary to that goal and its express mission to build a special set of burdens triggered by innovation itself.

The definitional problem also has a practical consequence. Because no administrable line separates a "Novel ETF" from any other ETF, any new conditions would have to be written into guidance of general application such as rule 6c-11, rule 485 and Form N-1A. These changes therefore would reach all 4,600-plus ETFs, the overwhelming majority of which no one contends raise any concern. And many changes would likely reach mutual funds too, because most of the questions in the Request, including those on investment company status, disclosure, and filing timing, apply equally to open-end mutual funds. Nothing about exchange listing makes a portfolio inherently riskier than the identical portfolio held in a mutual fund; if anything, the ETF adds transparency

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[13] We note that many of these strategies are not novel in any real sense, with some (such as commodity focused interest funds or those with leverage) having been offered in ETF form for more than 20 years.

[14] Request at 5 (listing asset classes and strategies of interest).

and continuous pricing. If these questions do not justify restructuring the mutual fund framework, and we do not believe they do, they do not justify restructuring the ETF framework either.

D. Regulate the Instruments, Not the Wrapper

To the extent the Request reflects concern about particular asset classes, and event contracts appear to be the current leading candidate for that concern, the correct response is to regulate those instruments directly, through the regulator with jurisdiction over them. That work is well underway. For event contracts, the Commodity Futures Trading Commission (the "CFTC") proposed a regulatory framework for prediction markets in June 2026, and the courts are actively sorting out jurisdiction: the Third Circuit held earlier this year that sports event contracts traded on a CFTC-designated contract market are likely swaps within the CFTC's exclusive jurisdiction, and Supreme Court review remains possible.[15] Layering ETF-specific restrictions on top of that instrument-level work would be premature and duplicative, and would likely be overtaken by more recent events.

It is also worth remembering what the wrapper itself provides. An investor who reaches an asset class through a registered ETF receives, on top of whatever regulation governs the underlying instrument, the full set of 1940 Act protections, including: oversight by a board with independent directors; strict custody requirements; prohibitions on self-dealing and affiliated transactions; leverage limits under Section 18 as implemented by rule 18f-4; liquidity risk management and a 15 percent limit on illiquid investments under rule 22e-4; daily valuation under board-overseen fair value procedures; a comprehensive compliance program; annual independent audits; a private remedy against excessive fees; and tax-law diversification requirements.[16] Restricting access to an asset class through the ETF wrapper does not extinguish demand for that asset class. It redirects the demand to spot markets, offshore platforms, and products registered only under the Securities Act of 1933 (the "Securities Act"), all of which offer fewer protections, and encourages regulatory arbitrage. It does not prevent retail investors from investing in these asset classes, this policy pushes retail investors out of the most protective wrapper available and reduces investor protection, instead of enhancing it.

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15 *See KalshiEX LLC v. Flaherty* (3d Cir. Apr. 6, 2026); Commodity Futures Trading Commission proposed rulemaking published June 10, 2026 (proposing a framework for event contracts, including amendments to CFTC Rule 40.11).

16 *See, e.g.,* Sections 10(a), 17(a), 17(d), 17(e), 17(f), 17(g), 18(f), 22(e), 32(a), and 36(b) of the Investment Company Act; rules 2a-5, 18f-4, 22c-1, 22e-4, and 38a-1 thereunder; Section 5(b)(1) of the Investment Company Act.

E. Summary of Recommendations

Below we discuss our thoughts in response to the questions raised by the request for comment. Our responses are reflective of the overall approach we discussed above. In summary, we recommend that the Commission:

- retain the statutory definition of investment company and the existing investment company status framework, and decline to use status determinations as a tool for excluding disfavored products;
- preserve rule 6c-11's asset-class neutrality, adopting no portfolio conditions, strategy restrictions, or categorical exclusions;
- rely on the existing principles-based disclosure framework and investor education, rather than a new disclosure or naming regime, and preserve the generic listing standards;
- retain the current rule 485 automatic effectiveness periods, and decline to adopt open-ended tolling or unilateral delay authority;
- explore a meaningful minimum registration fee, offset over time by any fees paid pursuant to rule 24f-2;
- decline to require disclosure of unresolved Staff comments;
- require a new rule 485(a) filing for material strategy changes not made in response to Staff comments;
- adopt suspension authority tailored to a specific filing or series, with appropriate procedural safeguards; and
- decline to adopt a confidential filing process.

We discuss each of these in turn below.

II. THE COMMISSION SHOULD NOT REVISIT INVESTMENT COMPANY STATUS

The Request first asks whether an ETF whose principal strategy involves assets that may not be securities is an "investment company" under Section 3 of the 1940 Act, whether the existing investment company status framework should continue to govern that analysis, how wholly-owned subsidiaries fit in, and why such a fund would register under the Act at all.

A. The Statute Controls, and Reinterpreting It Is Not Necessary

The definition of "investment company" is fixed by Section 3(a)(1), and "security" is defined broadly in Section 2(a)(36).[17] The five-factor framework from *Tonopah Mining* ("*Tonopah*") has guided the Commission for nearly 80 years,[18] but *Tonopah* is a Commission adjudication, not a statute, and the final word on Section 3 belongs to the courts. That was always true and after *Loper Bright*, it is beyond dispute, because courts now construe the statutes agencies administer without deferring to the agency's reading.[19] And courts have disagreed with the Commission on status questions before. For example, in *National Presto*, the Seventh Circuit rejected the Commission's application of the framework and conducted its own analysis of what makes an issuer an investment company.[20]

The implication is straightforward. Reinterpreting the definition to exclude currently disfavored products, or adding new factors for that purpose, would rest on uncertain authority, invite litigation in which the Commission's reading receives no deference, and unsettle structures that a large part of the registered fund industry has relied on for decades. If the definition is to change, that is a task for Congress. Eighty years of Commission, Staff, and judicial practice have made the framework well understood and administrable, which is exactly what a threshold jurisdictional test should be.

B. These Funds Satisfy the Statutory Tests

The Request asks whether a fund providing exposure to non-security assets might not be an investment company at all. That premise understates what these funds actually hold and do. We can begin with "holding out." A fund that registers under the 1940 Act, describes itself as a registered investment company on its prospectus cover, files on Forms N-PORT, N-CEN, and N-CSR, maintains a board with independent directors, and retains an adviser under a contract approved under Section 15 is holding itself out as an investment company by any reasonable measure. *Tonopah*'s public representations factor points the same way. There is no mystery here, and nothing that needs clarifying.

Now look at the assets. The portfolios of the funds the Request describes typically include substantial holdings that are securities under Section 2(a)(36), such as shares of wholly-owned subsidiaries, shares of money market funds and other registered funds used for cash and collateral

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17 Sections 3(a)(1)(A) and 3(a)(1)(C) of the Investment Company Act; Section 2(a)(36) of the Investment Company Act.

18 *In the Matter of Tonopah Mining Co.*, 26 S.E.C. 426 (1947).

19 *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

20 *SEC v. National Presto Indus., Inc.*, 486 F.3d 305 (7th Cir. 2007); *see also SEC v. Fifth Avenue Coach Lines, Inc.*, 289 F. Supp. 3 (S.D.N.Y. 1968), *aff'd*, 435 F.2d 510 (2d Cir. 1970).

management, and repurchase agreements. Even where a fund's economic exposure references a non-security asset, the instruments that deliver the exposure, and the collateral behind them, are often securities. The statutory tests turn on what a fund invests in and owns, not on what its returns reference, and on that measure these funds are in the business of investing in securities.

As for wholly-owned subsidiaries, we see no serious textual doubt that their shares are "securities." Section 2(a)(36) lists "stock" without qualification. Congress knew how to treat subsidiary securities differently when it wishes. Section 3(a)(2) carves securities of majority-owned subsidiaries out of "investment securities" for purposes of section 3(a)(1)(c) of the Act (the "Objective test").[21] No comparable carve-out appears in the definition laid out in section 3(a)(1)(A) of the Act (the "Subjective Test") or in Section 2(a)(36). That targeted design is deliberate, and it should not be undone by interpretation.

The structure at issue is also anything but exotic. Registered funds have used wholly-owned on shore and offshore subsidiaries, typically Cayman entities holding no more than 25 percent of assets, for roughly two decades, principally to satisfy Subchapter M's qualifying income rules.[22] Consistent with long-standing Staff comment practice, these funds routinely undertake that the fund and its subsidiary will comply with the Act's substantive provisions, including Section 18 and the custody and affiliated transaction rules, on an aggregate basis, and the Staff has reviewed the structure for decades and not raised status concerns. Reinterpreting how subsidiary holdings bear on status could not be confined to "Novel ETFs." It would unsettle broad-based commodity funds, managed futures funds, and other alternative strategy funds, ETF and mutual fund alike, that have operated without incident for many years, as well as funds using a subsidiary for simple tax structuring reasons. As for operating holding companies, the Act already answers the question.

There has not been a problem beyond a purported need for "greater clarity" that has been identified that justifies changing a statutory definition of an investment company.

C. Registration Is the Most Protective Choice Available, and It Should Be Welcomed

The Request asks, in effect, why a fund with non-security exposure would register under the Act rather than operate as, say, an exchange-traded commodity trust. The reason is simple and obvious; it is because registration under the Act is the gold standard of pooled vehicle regulation, and sponsors and investors both know it. A registered ETF carries the full set of protections described above. There are practical reasons too. Many platforms, model portfolios, and retirement channels favor or require registered funds, and financial professionals subject to Regulation Best Interest and fiduciary duties sensibly prefer the more protective wrapper when recommending newer asset

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[21] Section 3(a)(2) of the Investment Company Act; Request at 6 n.10.

[22] *See* Rev. Rul. 2006-1, 2006-1 C.B. 261, as modified by Rev. Rul. 2006-31, 2006-1 C.B. 1133.

classes. Sponsors register under the Act because that is where investors want these products to live. The Act contains no suggestion that registration is reserved for favored asset classes[23]. Any issuer within the definition may, and generally must, register as an investment company. The Commission should be far more concerned about products structured to avoid the Act than about products structured to comply with it.

Above all, status determinations should not become a policy tool. They are binary and blunt, as they admit an issuer to the regulated system or exclude it, with no calibration in between. Using such determinations to keep out disfavored asset classes would echo the years in which spot digital asset applications were repeatedly denied, an approach the D.C. Circuit ultimately held to be arbitrary and capricious.[24]

III. THE COMMISSION SHOULD PRESERVE RULE 6C-11'S NEUTRALITY

The Request next asks (1) whether the assets and strategies of Novel ETFs raise questions about the arbitrage mechanism, investor protection, market integrity, or fund operations, and (2) whether rule 6c-11 should be amended, including through new portfolio requirements or outright exclusions. Our answer to the first question is that the existing framework already addresses these matters. Our answer to the second is an emphatic no.

A. Neutrality Is the Design, Not an Oversight

Rule 6c-11 is largely a procedural rule. Its conditions, creation and redemption through authorized participants, exchange listing at market-determined prices, daily portfolio transparency, website disclosure of premiums, discounts, and bid-ask spreads, custom basket policies, and recordkeeping all serve the goal of ensuring an efficient arbitrage mechanism that keeps market price tied to NAV.[25] The Commission did not condition the rule on what an ETF invests in. It erased the old distinction between index-based and actively managed ETFs, imposed no portfolio composition requirements, and substantially rescinded prior exemptive orders precisely to create one consistent framework and a level playing field.[26] The rule's asset-class neutrality is not an oversight to be corrected. It is one of the reasons the rule works.

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23 An exchange-traded commodity trust is accessible to many retail investors on various brokerage platforms.

24 *Grayscale Investments, LLC v. SEC*, 82 F.4th 1239 (D.C. Cir. 2023).

25 6c-11 Adopting Release Rule 6c-11(c).

26 6c-11 Adopting Release.

B. The Existing Rules Already Address the Request's Concerns

Arbitrage efficiency comes from the structural features established in rule 6c-11, such as the transparent holdings and the ability of authorized participants to create and redeem at NAV, not from the assets underlying the fund. The arbitrage mechanism has worked across assets and strategies, including equities, fixed income, commodity-linked strategies, and derivatives-based strategies. It has also held up under stress. For example, in the March 2020 market dislocation, fixed income ETFs kept trading actively, and the Commission's Staff noted that their market prices served a price discovery function.[27] More recently, exchange-traded products holding spot crypto assets, which operate without the benefit of rule 6c-11 at all, have generally maintained tight spreads and premiums since their approval in 2024. Our own experience is consistent: across more than 100 ETFs, including leveraged, inverse, and derivatives-based funds, premiums, discounts, and spreads have stayed in line with the broader market. We are aware of no evidence that the arbitrage process established by the rule is failing, and the Request cites none.

As for investor protection and operations, where the Commission has concluded that particular portfolio risks warrant substantive regulation, it has already adopted rules of general application that reach every strategy the Request lists. Leverage, including the heightened leverage the Request identifies, is governed by rule 18f-4, with its VaR limits, derivatives risk management program, and board reporting.[28] Illiquid and hard-to-value assets, including private assets, are governed by rule 22e-4's 15 percent limit on illiquid investments and its board-overseen liquidity risk management program, and by rule 2a-5's fair value requirements.[29] A fund name that suggests a focus must be backed by an 80 percent investment policy under amended rule 35d-1.[30] Custody of is governed by Section 17(f) and its rules. These rules work, and to the extent they need to be amended to address novel products, they should be for all funds, and ETFs should not be singled out for individual treatment.

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27 *See* Staff of the U.S. Securities and Exchange Commission, U.S. Credit Markets: Interconnectedness and the Effects of the COVID-19 Economic Shock (Oct. 2020) US Credit Markets COVID-19 Report ("In addition, because bond ETFs trade on exchanges and are generally more liquid than the cash bond market, bond ETFs are viewed by a number of market participants as playing an increasingly important role in price discovery.")

28 Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 (Nov. 2, 2020) [85 FR 83162]; 17 CFR 270.6c-11(c)(4).

29 Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142]; Good Faith Determinations of Fair Value, Investment Company Act Release No. 34128 (Dec. 3, 2020) [86 FR 748 (Jan. 6, 2021)].

30 Investment Company Names, Investment Company Act Release No. 35000 (Sept. 20, 2023) [88 FR 70436].

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C. The Commission Should Not Adopt Portfolio Conditions, Which Would Amount to Merit Regulation

We strongly oppose amending rule 6c-11 to add portfolio requirements, whether minimum securities holdings, asset-class or strategy restrictions, diversification or concentration criteria, or categorical exclusions. The Commission has already considered this approach and rejected it, when in 2019 it considered whether rule 6c-11 should differentiate among ETFs by strategy, and it concluded the rule should not. The years since have vindicated that judgment with the strongest evidence available: the performance of the market itself.

Portfolio conditions would also put the Commission in the role of a merit regulator, deciding which investments Americans may access through the most popular investment vehicle available. Merit regulation is not the path of the federal securities laws. Congress instead chose disclosure and structural safeguards. Indeed, it did not authorize the Commission to pass on the wisdom of a fund's investment choices and, as a general matter, the Commission has not opted to pursue such an approach when adopting exemptive rules.[31]

Who would decide which asset classes are permitted, under what standard, and how often would the list be revisited as markets evolve? Recent history shows how categorical judgments about disfavored asset classes harden into durable barriers. Spot digital asset products were kept out of U.S. markets for years through successive disapprovals, until the D.C. Circuit held the Commission's approach arbitrary and capricious in *Grayscale*,[32] and the current Commission has moved decisively away from that model, most notably in approving generic listing standards for commodity-based trust shares in September 2025.[33] Writing asset-class limitations into rule 6c-11 would rebuild the very gatekeeping approach the Commission has dismantled elsewhere.

Restrictions on assets held by just ETFs, and not by other registered funds, simply do not make sense. Why would an ETF be so limited when a mutual fund may pursue the identical strategy

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[31] Section 1(b) of the Investment Company Act. Rule 2a-7 could be seen in this way, but in our view it proves the opposite point. Money market funds seek a stable value, and rule 2a-7's risk-limiting conditions exist to hold them to that specific promise. ETFs do not have a similar objective. There is no representation for portfolio conditions to police, and no principled basis for importing the rule 2a-7 model into rule 6c-11.

[32] *See Grayscale Investments, LLC v. SEC*.

[33] Order Granting Approval of Proposed Rule Changes to Adopt Generic Listing Standards for Commodity-Based Trust Shares, Exchange Act Release No. 103995 (Sept. 17, 2025) [90 FR 45414 (Sept. 22, 2025)]; SEC Press Release 2025-121 (Sept. 17, 2025) *available at* SEC.gov | SEC Approves Generic Listing Standards for Commodity-Based Trust Shares ("By approving these generic listing standards, we are ensuring that our capital markets remain the best place in the world to engage in the cutting-edge innovation of digital assets. This approval helps to maximize investor choice and foster innovation by streamlining the listing process and reducing barriers to access digital asset products within America's trusted capital markets.")

with the identical instruments, but with no restrictions? The only difference is that the ETF's shares trade on an exchange with continuous price transparency, daily portfolio disclosure, and professional arbitrageurs enforcing the link to NAV. Restricting the more transparent wrapper while leaving the less transparent one untouched appears to conflict with SEC's overall goal of investor protection, not just those that utilize the ETF structure.

Finally, asset limitations would not make the limited assets or strategies unavailable. Sponsors would likely be forced to return to product-by-product exemptive applications, recreating the expense, delay, and unlevel playing field that rule 6c-11 was adopted to eliminate. Alternatively, they would move products into Securities Act-only wrappers that carry none of the Act's protections. Or most likely of all, investors would simply buy the underlying exposures directly, through a product that offers less protections and is not their favored choice. Every one of those paths leaves investors less protected. Rule 6c-11 should remain what it is today, a neutral, structural rule that has served investors extraordinarily well.

IV. THE COMMISSION SHOULD RELY ON DISCLOSURE AND EDUCATION, NOT NEW LABELS OR LISTING BARRIERS

A. The Disclosure Framework Already Requires Tailored Disclosure; Education Is the Right Approach

The Request asks whether the Commission should take steps to help investors better understand Novel ETFs. As previously discussed, we disagree with this premise that "Novel ETFs" are a distinct category needing special treatment. However, the underlying concern, investor understanding, is why fund disclosure is flexible and principles based. Item 4 of Form N-1A requires every fund to summarize, prominently and in plain English, its principal investment strategies and the principal risks of investing in that fund, with Item 9 providing even more detail.[34] In practice, funds pursuing newer strategies provide extensive bespoke risk disclosure, much of it shaped through the Staff comment process. Single-stock leveraged ETFs, for example, disclose from the prospectus cover onward the effects of daily reset, compounding, and single-issuer concentration.

Nonetheless, it is always helpful to provide additional resources and investor education tools. The Office of Investor Education and Advocacy reaches investors through channels that prospectuses do not. We would welcome new education initiatives aimed at newer asset classes and strategies, and typically we would gladly participate in those initiatives. If study reveals actual disclosure gaps, they should be fixed through generally applicable amendments to Form N-1A, keyed to strategy and risk, and provided through the notice and comment process. We also have significant experience providing tailored education that we create about the risks and benefits of the funds we

[34] Items 4(a), 4(b), and 9 of Form N-1A.

offer. These education materials provide useful, product specific information to investors in an effort to help them understand what they are buying and how our products operate. We believe that this type of education approach has an important role in helping to educate and inform investors interested in so called "novel" ETFs.

B. The Commission Should Not Adopt a New Naming Regime

We do not support a new naming or labeling regime for exchange-traded products. The term "ETF" has served for more than two decades as a colloquial umbrella over exchange-traded products of different legal structures. Commodity trusts have been marketed and popularly described as ETFs since the first exchange-traded gold trust listed in 2004, without any demonstrated pattern of investor confusion. The Commission has examined this issue before when its 2015 request for comment on exchange-traded products asked whether investors understand the differences among ETP structures.[35] The Commission then adopted rule 6c-11 in 2019 without imposing any naming convention, relying instead on disclosure. The Request offers no new evidence that would justify a different answer now.

What matters to an investor is a product's strategy, risk, and cost. The offering documents convey those, differing appropriately by regime. Non-1940 Act ETPs already disclose prominently, as a matter of settled practice, that they are not registered investment companies and that their holders do not receive the Act's protections. Mandatory relabeling, by contrast, would impose substantial and permanent costs on brands, tickers, index licenses, and distribution arrangements, in service of a taxonomy with line-drawing problems of its own. If the Commission concludes that structural distinctions among ETPs are underappreciated, education is the right response.

C. The Commission Should Preserve the Generic Listing Standards

The Request correctly observes that amendments to rule 6c-11 could affect how the generic listing standards apply, and it asks whether that interplay should inform the actions it takes. We agree that the generic listing standards are a critical part of the success of the ETF structures since rule 6c-11 was adopted. Under the current framework, an ETF that complies with rule 6c-11 is eligible to list under the exchanges' generic standards without a product-specific rule filing under Section 19(b) of the Exchange Act. Amendments that pushed categories of ETFs out of rule 6c-11 would push them out of the generic standards too, and back into the product-by-product rule 19b-4 process, with its delay, expense, and unpredictability. That would cut directly against the Commission's own recent trajectory, which continues to move towards the equal treatment and streamlined approach of generic frameworks. It would be hard to explain why products registered under the Investment Company Act, the more comprehensively regulated category, should face a

[35] *See* Request for Comment on Exchange-Traded Products, Exchange Act Release No. 75165 (June 12, 2015) [80 FR 34729 (June 17, 2015)] *available at* Request for Comment on Exchange-Traded Products.

higher listing barrier than Securities Act-only commodity trusts. Nor should merit judgments be pushed down to the exchanges. Listing standards appropriately address market structure surveillance and surveillance-sharing. Conditioning listing on the popularity of particular asset classes would assign to the exchanges a role Congress assigned to no one, and would recreate at the exchange level the definitional and institutional problems we discussed above.

V. THE COMMISSION SHOULD PRESERVE AUTOMATIC EFFECTIVENESS WHILE IMPROVING THE REGISTRATION PROCESS

The Request raises a number of questions regarding the registration process and the potential effects of the current process on the staff and the industry. We understand that the issues raised in this section of the Request reflect operational realities. Filing volume has grown enormously, the Staff's review resources are finite, and automatic effectiveness deadlines put real pressure on the review process. We appreciate what the Disclosure Review and Accounting Office is being asked to do, and we could support some targeted changes to that process, as we discuss below.

A few framing points run through our discussion of what we do and do not support with respect to the registration process. Again, because we believe that "Novel ETFs" cannot be effectively defined, any change to rule 485 presumably would need to be a rule of general application to avoid arbitrary application of changes to only certain ETFs or the Commission being put in the position of being a merit or risk regulator. We also believe that the automatic effectiveness framework is a foundational choice, as the federal securities laws regulate fund offerings through disclosure, review, and liability, not merit regulation or product approval. Changes that would transform the Staff review process into merit regulation, or provide unaccountable veto points is not consistent with that framework. Much of the friction the Request describes comes from unclear expectations, and the solution is clear rules administered on predictable timelines.

A. The Automatic Effectiveness Periods Should Not Be Extended

Under rule 485(a), a post-effective amendment adding a new series becomes effective automatically on the 75th day after filing, and an amendment making material changes to an existing series becomes effective on the 60th day.[36] In general, we do not believe these periods should be extended. An extension limited to "Novel ETFs" would be difficult to manage, so any extension would have to apply to every ETF, and, given rule 485's scope, likely to mutual funds, unit investment trusts, and insurance product separate accounts as well. And the Request offers no evidence that the current periods are systematically inadequate. The Staff reviews thousands of

[36] 17 CFR 230.485(a)(1), (2).

rule 485(a) filings within these windows every year, and when a particular filing needs more time, the Staff's practice is to ask the registrant to file a delaying amendment.[37]

An across-the-board extension would carry real costs, as the Request itself anticipates. Product development remains time sensitive. ETF launches are timed to market conditions, index schedules, distribution windows, and investor demand that can shift quickly. Extending the process would delay investor access to new products, raise the costs and risks of bringing them to market, and negatively impact the majority of registrants in order to address the conduct of an undefined few. It would also not be consistent with the Commission's mission to promote efficiency, competition, and capital formation.

Giving the Commission power to delay effectiveness on its own initiative, a possibility the Request also raises, concerns us. Congress built Section 8 of the Securities Act around automatic effectiveness, subject to exceptions with due process.[38] A discretionary delay power without those safeguards would accomplish through timing what Section 8 does not permit through order, and would edge the framework toward the product approval regimes Congress rejected. Anything that would extend the current 75 day window in an unpredictable manner will only have the effect of hindering innovation, and reducing capital formation without any real investor protection benefit. It would also create a risk that history shows is not hypothetical, and this Commission has already explicitly stated was a mistake, filings for disfavored categories held in limbo indefinitely. It is worth noting that rule 485(a) is already asymmetric, in the direction of flexibility: the Commission may accelerate an (a) filing, but the rule deliberately gives it no unilateral power to slow one down.[39]

As for funds that seek effectiveness before their intended asset class or instrument is available for investment, if this is an issue that the Commission believes raises problems that are consistent with its mission, we do not object to it providing clarity as to when such ETFs may launch. Clear standards are fine so long as they are applied equally and without favor. If the Commission sees a specific risk in a fund becoming effective before it can implement its strategy, the Commission should say what that risk is and address it through generally applicable requirements, for example,

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37 *See* Division of Investment Management, Accounting and Disclosure Information 2019-07, Review of Certain Filings Under Automatic Effectiveness Rules (Apr. 2019) ("ADI 2019-07") *available at* SEC.gov | ADI 2019-07 – Review of Certain Filings Under Automatic Effectiveness Rules (describing the Staff's review of filings made under automatic effectiveness rules and its practice of requesting delaying amendments under rule 485(b)(1)(iii) where comments remain unresolved).

38 Sections 8(b) and 8(d) of the Securities Act (each requiring notice and an opportunity for hearing).

39 *See* 17 CFR 230.485(a)(3) (permitting the Commission, having due regard to the public interest and the protection of investors, to declare an amendment filed under paragraph (a) effective on an earlier date).

disclosure of how the fund will operate in the interim, any temporary investment strategy, and the conditions under which it will invest in the new asset class or instrument.

B. A Creditable Minimum Registration Fee Is Worth Exploring

The Request asks whether competitive pressures push sponsors to file quickly and in rapid succession. First-mover advantage is real and durable, and sponsors respond by filing early, filing often, keeping registered series in reserve, and repurposing unused series where the rules permit. We would resist the conclusion that this is necessarily a problem to be solved. Speed to market is what competition looks like. It is why investors today enjoy unprecedented choice at historically low cost. The problems noted on competitive filing, rushed or materially incomplete disclosures, are best managed by Staff review and the liability provisions of the Securities Act, which apply no matter how quickly a registration statement was prepared.[40]

That said, if the underlying concern is the burden that speculative and imitative filings place on the Staff and the system, we think the minimum registration fee concept the Request floats is an idea worth exploring. Under the current framework, registration fees are paid annually in arrears under Section 24(f) and rule 24f-2, based on net sales, so a series that is filed but never launched bears essentially no registration cost.[41] Filing is a free option, and free options get exercised liberally. A meaningful minimum fee at filing, creditable against future rule 24f-2 obligations so that funds that launch and attract assets recover it, would change that calculus in a healthy way. Sponsors would need skin in the game for each series they propose, encouraging them to file only products they genuinely believe will find demand. Purely imitative filings, including the machine-generated variety, would face a real price. It would also have the byproduct of addressing ETF Shelf accumulation, a concern the Request raises separately. And all of this would happen through a neutral price mechanism rather than through anyone's judgment about which products deserve to be filed.

A fee set too high, or structured as a deadweight cost rather than a creditable advance on eventual fees paid, would become a barrier to entry. Such a barrier would harm smaller sponsors and new entrants, in tension with the Commission's obligation to weigh competitive effects. The crediting structure itself, scaling by registrant size or filing volume, or accommodations for a sponsor's initial filings could manage that risk. Designed with those safeguards, a minimum fee could address the concerns raised in the Request more effectively, and more fairly, than any timing or discretionary mechanism.

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[40] Sections 11 and 12(a)(2) of the Securities Act.

[41] Section 24(f) of the Investment Company Act; rule 24f-2 (providing for annual payment of registration fees in arrears based on net sales, with credits for redemptions).

Finally, we doubt that the Request's idea of automatically deregistering funds that never launch would accomplish much without being paired with the fee discussed above. A sponsor that values optionality will simply keep a catalog ready to refile, and the requirement would just add process without changing the incentive that produces unused series in the first place.[42] Launches are also delayed for legitimate reasons, such as, market conditions, listing logistics, seed capital timing, and an arbitrary cutoff would punish ordinary business judgment.

C. The Commission Should Not Require Disclosure of Unresolved Staff Comments

The Request asks whether funds should be required to disclose material unresolved Staff comments, similar to the approach used for certain operating company and closed-end fund filers. We do not support this approach. Staff comments are the informal views of individual reviewers, not findings or orders of the Commission, a point the Staff's own correspondence takes care to make. The comments a filing draws can depend on the particular reviewer, and that reasonable professionals differ constantly, and in both directions, about the adequacy of disclosure. The automatic effectiveness framework deliberately preserves a registrant's ability, after genuine engagement, to decline a comment respectfully and proceed. In addition, the Staff's comment letters and registrants' responses are already released on EDGAR after review concludes, for anyone to read.[43] A prospectus flag for "unresolved" comments could brand a good-faith professional disagreement as a deficiency. It also would have the effect of making process disputes look like risk disclosure. If a comment identifies a real deficiency, the Commission should use its existing tools to address any such issues.

D. Material Strategy Changes Should Require a New Filing

We support amending rule 485 to require a fresh rule 485(a) filing, with a fresh 75- or 60-day clock, when a registrant makes a material change to a fund's investment strategy during review or before launch, unless the change is made in response to Staff comments. We also believe that this should apply equally to funds that have launched and are operational, and are making a material strategy change. Importantly, we believe that a rule change would be necessary to implement this, as such activity is consistent with the rule as it exists today. However, we agree that the practice the Request describes can be real. We have observed funds file strategy A, swap to strategy B late in the period, and launch B on a review clock that ran against A. That can potentially let the fund skip ahead of registrants who filed strategy B from the onset, and may deny the Staff time to review the final product in which investors will actually invest. A fresh filing requirement might fix both problems and do so through a clear rule rather than discretion. As always, the details matter. The

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42 Section 8(f) of the Investment Company Act .

43 *See* SEC Press Release 2004-89, SEC Staff to Publicly Release Comment Letters and Responses (June 24, 2004) *available at* SEC Staff to Publicly Release Comment Letters and Responses.

materiality trigger should be defined by reference to the fund's principal investment strategies, so registrants have fair notice of what requires a new filing, and the carve-out for comment-responsive changes is essential, so that no one is punished with a restarted clock for cooperating with the Staff. Proposing rule changes that would involve Staff review of material strategy changes, may be appropriate.

The related practice the Request identifies, making material pre-launch or at-launch changes through a rule 497 filing rather than a rule 485(a) amendment, calls for the same approach. Rule 497 exists to supplement a prospectus, not to substitute a materially different product for the one the Staff reviewed, and the Request itself notes that material changes made by rule 497 must be followed by a rule 485(a) filing.[44] We would welcome codification of clear requirements here.

E. Suspension Authority Should Be Tailored to the Offending Filing or Series

We support tailoring the Commission's suspension tools fit the modern fund complex. For a registrant trust or corporation with dozens of series, a stop order is a nuclear option. It punishes shareholders of every series for a problem that almost always is based in a single filing or a single series. We agree that the Commission should not have to choose between doing nothing and doing everything. A tailored approach would allow the Commission to address the specific filing or series at issue; suspending a specific post-effective amendment, or a specific series within one, including after effectiveness, if the need arises. As always, we think this requires a structured and transparent process with room for engagement by registrants. That gives the Commission a fast, proportionate tool, honors the notice-and-hearing values of Section 8, and shields investors in unrelated series from collateral damage.

F. The Commission Should Not Adopt a Formal Confidential Review Process

Regarding the potential for a confidential review process, we do not support the creation of a formal process, as it is likely to have significant anti-competitive effects. The Commission should not propose a confidential submission or pre-filing consultation process for fund registration statements, and we encourage the Commission to address the underlying concern in a different way.

Public filing is not a minor feature of the registration process. This public process allows all sponsors to develop their products on a transparent level playing field and allow them to prepare to respond to such filings, either through developing new products of their own, positioning their products to distinguish themselves, or any other way they see fit. It also allows other market participants, including the stock exchanges, market makers, authorized participants, and other liquidity providers, to evaluate potential products coming to market and suggest enhancements or

[44] Rule 497.

raise concerns early in the process. This iterative process among sponsors, the Staff, and the market participants is key to assessing risk, developing viable strategies, and providing investors with a well-developed product. A confidential review process denies the market the transparency essential for ensuring market efficiencies and competition.

In addition, positions worked out in confidence would be invisible to everyone except the sponsor that negotiated them. Those positions could harden into de facto standards, because the Staff might reasonably expect later registrants to follow the approach it had already accepted. Later registrants would inherit a template without ever having seen how it was built, without notice of the reasoning behind it, and without any opportunity to explain why a different but equally legitimate approach might be better for investors. That is not a level playing field. It advantages whoever gets to the Staff first, and it does so out of public view.

A confidential channel would also create incentives that work against the Staff. A filing that carries no public exposure allows issuers freedom to submit as often and as many poorly developed products as they wish. Sponsors would have every reason to file earlier, file more, and file speculatively, testing ideas through the review process rather than developing them internally first, all with the goal of establishing first mover advantage on any and all new ideas. Ultimately, we believe this process could exacerbate the Staff resource burdens the Request identifies. It also rewards incomplete work. A registrant that knows its draft will never be seen by others has less reason to file a complete document, and the Staff would absorb the cost of that in review capacity it has already identified that it does not have. Registrants should be encouraged to act in the exact opposite manner, submitting well developed and fully thought-out disclosure to the Staff, minimizing the need for more extensive Staff review.

Instead, we support more transparent Staff communication, not less. Published guidance, statements of the Staff's general views on recurring questions, and consistent treatment across registrants would provide every sponsor with the same information at the same time, which is what a level playing field requires. Sponsors would then face predictable expectations before filing. We believe the current timeline and process for submitting registration statement for new Funds works well, incentivizing sponsors to submit well-developed and compliant disclosure and resolve issues quickly in order to launch the Fund.

G. The Existing Disclosure Framework Is Sufficient

We see no need for new or heightened disclosure requirements for "Novel ETFs." Form N-1A is principles-based and already requires that a fund disclose, among other things, its principal investment strategies and principal risks. A fund pursuing a novel strategy or investing in a new asset class already must disclose the strategy, the instruments, and the material risks, specifically tailored to the fund. The Staff's review and comment process already allows the Staff to raise any concerns about disclosure weaknesses with respect to such strategies. Furthermore, the layered

disclosure framework (i.e., the summary prospectus, the statutory prospectus and statement of additional information and the tailored shareholder report) deliver this information at various depth levels to an investor.[45] Adding separate requirements for a "Novel ETF" category would add a definitional problem without adding information that is not already required by Form N-1A. Where the Staff sees recurring disclosure weaknesses in particular strategies, guidance and the comment process are the proven fix, not new form requirements.

VI. CONCLUSION

The ETF framework is not broken. It is one of the great successes of the modern federal securities laws, and much of the credit belongs to the founding choice to regulate structure and disclosure rather than investment merit. The Request identifies no problem that justifies departing from those principles, and the "Novel ETF" concept cannot supply the missing justification, because novelty cannot be defined, cabined, or fairly administered as a regulatory category. The definition of investment company should stay where the statute and 80 years of practice have settled it. Rule 6c-11 should remain the neutral structural rule. And the disclosure framework should remain principles-based and generally applicable.

Where constructive change is warranted, we have suggested improvements. In the registration process, we support codified treatment of material pre-launch strategy changes; suspension authority aimed at the offending filing or series rather than the entire trust; and serious exploration of a creditable minimum registration fee. We do not support measures that turn Staff review into de facto product approval, whether through open-ended tolling or unilateral delay authority, because those would abandon the disclosure-based architecture that has served investors so well.

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[45] Rule 498; Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds.

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We appreciate the Commission's consideration of these comments, and we stand ready to assist the Commission and the Staff as they consider these issues. If you have any questions or would like to discuss our comments in more detail, please contact us at (646) 572-3463 or brickla@direxion.com.

Respectfully submitted,



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cc: The Honorable Paul S. Atkins, Chairman
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