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August 28, 2026

Ms. Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File No. S7-2026-24; Request for Comment on Novel ETFs

Dear Ms. Countryman:

Nasdaq, Inc. ("Nasdaq") appreciates the opportunity to respond to the Request for Comment on Novel ETFs ("Request for Comment" or "RFC") from the Securities and Exchange Commission's ("SEC" or "Commission"), and to engage productively with the Commission and with the exchange-traded fund ("ETF") industry on how best to support continued innovation while preserving fair, orderly, and efficient markets on which investors depend.[1] Nasdaq is a leading operator of many of the world's largest and most innovative securities exchanges, and a leading provider of technology to markets and market participants worldwide. Nasdaq also has an expansive footprint in the ETF ecosystem, including ETF listings, trade execution and reporting platforms, ETF options, and indexing services. As one of the primary listing exchanges for ETFs in the United States, we experience firsthand many of the operational and regulatory questions that the RFC is designed to address.

As a listing exchange, Nasdaq benefits from a competitive and innovative ETF market. We have seen the value that Rule 6c-11 ("Rule 6c-11" or the "ETF Rule") under the Investment Company Act of 1940 (the "1940 Act") has delivered to investors, ETF sponsors, and other market participants. In addition, as a self-regulatory organization with obligations under Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act"), Nasdaq takes seriously its role as a gatekeeper responsible for evaluating whether the products listed on our market are consistent with our rules and with the protection of investors. We approach the questions raised in the RFC with both perspectives in mind. In developing this response, we also engaged in discussions with a variety of ETF sponsors, and several of our recommendations reflect the substance of that engagement.

Rule 6c-11 has been, in our view, a significant regulatory success for the ETF industry. Since Rule 6c-11's adoption, the total net assets under management for the ETF market have grown from over $4 trillion at the end of 2019 to over $12 trillion at the end of 2025, and the number of ETFs has grown from approximately 1,900 to over 4,600.[2] The ETF Rule's consistent,

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1 See Request for Comment on Novel ETFs Release No. 33-11426, 91 FR 40647 (July 2, 2026).

2 See Request for Comment, supra footnote 1, at n.3.

transparent, and efficient framework has enabled that growth. Its core structural conditions, which are 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 per shares, have proved durable across a wide range of asset classes and investment strategies.

At the same time, we recognize the Commission's concern that certain more recent categories of ETF applications have tested the boundaries of the Rule 6c-11 framework in ways that were not fully anticipated when the ETF Rule was adopted. As the Commission notes in the RFC, market participants, including sponsors, registrants, exchanges, and other intermediaries, have raised certain unresolved threshold questions about ETFs providing exposure to innovative asset classes or using novel investment strategies ("Novel ETFs"), and are reaching the market through the current automatic effectiveness process on timeframes that may not give the Commission sufficient time to review, in ways that may undermine investor protection and fair, orderly, and efficient markets.[3] These include threshold questions around investment company status, whether particular products operate consistently with the conditions of Rule 6c-11, and whether the Commission's Division of Investment Management ("IM") staff has sufficient time to effectively review and address the legal issues and regulatory considerations (such as ongoing trading surveillance) that may arise with these types of products, especially in the context of fair and orderly trading and protection of investors. We view the RFC as a timely and appropriate step by the Commission to consider those questions in a deliberate way.

In that regard, our overarching recommendation is that the Commission address the concerns identified in the RFC through targeted, complementary tools. These include enhanced collaboration and coordination among the Commission's divisions, the primary listing exchanges, and ETF sponsors; written staff guidance; modifications to the exchanges' generic listing standards, to the extent objective, measurable criteria are available; and targeted modifications to the ETF registration process. In our view, these tools together can meaningfully address the issues the Commission has identified without reopening Rule 6c-11 itself. Reopening Rule 6c-11, by contrast, could create material uncertainty for a $12 trillion industry and risk unintended consequences that would fall on investors, ETF sponsors, and exchanges alike.

With that in mind, Nasdaq makes three recommendations. **First**, preserve Rule 6c-11 and the current regulatory framework. **Second**, establish a formal framework for industry collaboration on Novel ETF issues that brings together the appropriate SEC divisions, including IM and the Commission's Division of Trading and Markets ("TM"), the primary listing exchanges, and ETF industry participants. **Third**, formalize the framework under rule 485 of the

[3] The RFC provides that, to date, Novel ETFs include crypto assets, commodity-focused instruments, single-stock strategies, heightened leverage, blockchain-enabled opportunities, private assets, event contracts, and/or combinations of the foregoing. For clarity, we use "Novel ETFs" in this letter as shorthand. Our recommendations are meant to apply to any ETF filing where there are threshold questions, whether or not the product falls within the specific categories the RFC enumerates. Many of the same questions may arise in filings for exchange-traded product registered under the Securities Act of 1933, and we would encourage the Commission to consider analogous approaches for those products where relevant. Further, to the extent the Commission determines to formalize a definition for "Novel ETFs" in the future, Nasdaq recommends that such definition follow the public notice and comment process.

Securities Act of 1933 ("Rule 485") for Novel ETFs, including a proposed confidential submission option.[4]

I. Preserving Rule 6c-11 and the Current Framework

Nasdaq respectfully submits that many of the questions raised in the RFC can be addressed without reopening Rule 6c-11. As noted above, the rule's core structural conditions have proved durable across a wide range of asset classes and investment strategies, and the ETF Rule has enabled an efficient, transparent, and consistent listing framework that is broadly relied upon by sponsors, exchanges, and investors. In our view, reopening the ETF Rule could create material uncertainty for the ETF industry, and unwind the benefits of the clear and predictable regulatory structure that has developed over the years of experience under the current framework. Among other unintended consequences, doing so could disrupt the expectations of ETF sponsors that have built products in reliance on the ETF Rule, upend the operational, compliance, and technology investments that exchanges and other intermediaries have made to support the current framework, and have a chilling effect on ETF innovation.

Many of the concerns identified in the RFC can, in Nasdaq's view, be addressed through a combination of (i) uniform amendments to the exchanges' generic listing standards where objective, measurable criteria are appropriate, (ii) formal, written SEC staff guidance on recurring interpretive issues, and (iii) a structured framework for coordination among the SEC's divisions, the primary listing exchanges, and ETF industry participants. Each of these tools can be deployed without disturbing the underlying ETF Rule, and without altering the substantive expectations of ETF sponsors that have built products in reliance on the current regime.

To the extent the Commission concludes that changes to the generic listing standards are appropriate to address Novel ETF issues, we respectfully submit that any such changes should reflect the principles articulated below:

- such changes should be directed by the Commission and applied uniformly across all national securities exchanges that list ETFs, so that no exchange is placed at a competitive advantage or disadvantage relative to its peers nor create regulatory arbitrage;
- be based on objective, measurable criteria whenever possible;
- differentiate among Novel ETFs based on structural characteristics that meaningfully affect investor protection and market integrity, rather than on asset-class labels alone; and
- be developed with meaningful input from the primary listing exchanges and ETF industry participants through the collaborative mechanisms described in Section II below.

[4] See 17 CFR 230.485. As noted in the RFC, rule 485(a) is the rule that governs the process by which post-effective amendments to ETF registration statements become effective.

II. Establishing a Framework for Industry Collaboration

Nasdaq believes that establishing a formal, ongoing mechanism through which appropriate SEC staff, the primary listing exchanges, and ETF industry participants can discuss Novel ETF issues in a transparent and simultaneous manner could be one of the most impactful steps the Commission could take in response to the RFC. In our experience, guidance on ETF interpretive questions has sometimes been communicated bilaterally and at different times to different market participants. In some instances, the primary listing exchanges have had limited visibility into those discussions as those types of communications were targeted to primarily to ETF sponsors. Recent experience with, for example, prediction market ETFs and ETFs providing single foreign stock exposures illustrates how these dynamics can produce information asymmetry and last-minute uncertainty for ETF sponsors, exchanges, and investors.

Nasdaq takes seriously its role as gatekeeper under Section 6(b)(5) of the Exchange Act, and we approach every listing decision with that responsibility in mind. In discharging that responsibility on ETF matters, the primary listing exchanges have relied not only on the SEC's rules, but also on informal practice that reflects a common understanding of how SEC staff views are to be received, how time-sensitive concerns are to be raised, and how exchanges are expected to respond when SEC staff signal reservations about a particular product.

As the ETF listing landscape becomes more competitive and continues to evolve, particularly with the emergence of new primary ETF listing exchanges and issuers, we believe the framework should not depend on the continuation of informal practice alone. A gatekeeping system that relies on unwritten information is, by design, less resilient than one grounded in written rules, published guidance, and formal procedural mechanisms. After all, it would only take one issuer and one exchange to misinterpret or choose to move forward with product launches after receiving guidance through today's unwritten channels. That in turn could produce a potential avalanche effect of launches from other issuers and exchanges who do not want to lose competitive advantage but are looking to bring similar, or in the case of certain single stock filings, nearly identical, ETFs to market. The dynamic can be further exacerbated by the exchanges' lack of ability to communicate with one another on listings questions or to hear the same guidance from SEC staff at the same time whether due to antitrust concerns or confidentiality considerations, fueling uncertainty across the industry about whether and when Novel ETFs may come to market. In that environment, the dynamic can resemble the game theory thought experiment of the "prisoner's dilemma," where each participant may feel compelled to move quickly because the first mover stands to gain the greatest advantage if others wait. The collaboration mechanisms described in the remainder of this Section II are intended to convert what has been implicit into what is explicit, so that the framework remains durable across changes in market participants and market conditions.

A. Cross-Divisional Working Group

Nasdaq recommends that the Commission facilitate the establishment of a formal industry working group, with Commission staff serving as observers or facilitators, to discuss Novel ETF issues on an ongoing basis. Participation should include representatives from each primary listing exchange, appropriate staff from the relevant SEC Divisions, including IM and TM, and appropriate industry participants like ETF sponsors, authorized participants and other

market participants. Because questions around innovative asset classes and novel investment strategies can also arise in exchange-traded products that are not registered as investment companies, Nasdaq also recommends that the working group include representatives from the SEC Division of Corporation Finance to the extent such questions arise.[5]

Generally speaking, ETFs can raise questions that implicate multiple frameworks. IM oversees the 1940 Act framework around ETFs, including the registration process. TM oversees the Exchange Act framework around the listing and trading of ETFs, including the primary listing exchanges' generic listing standards. In our experience, Rule 6c-11 compliance does not resolve every question relevant to a new ETF's readiness to list. A product can meet the conditions of Rule 6c-11 while still leaving open questions on the exchange listing side. Examples include whether market makers can value and hedge the product with the precision needed to keep the ETF arbitrage mechanism efficient and whether existing surveillance coverage of the underlying reference asset is adequate. Today, the ETF listing exchanges' generic listing standards largely turn on Rule 6c-11 compliance. We also recognize, however, that while Rule 6c-11 compliance is an important precondition to listing, it may not be a substitute for the separate assessment of listing suitability. A shared forum in which the appropriate SEC divisions, the listing exchanges, and ETF sponsors can work through these questions together, and earlier in the process, would give each perspective the benefit of the others' analysis. It could also help ensure that the Commission is positioned to present a single, coherent view when new ETF structures come forward.

A helpful analogue already exists on the options market side. Earlier this year, the Commission approved an amendment to the Options Listing Procedures Plan (the "OLPP") that authorizes the OLPP participant exchanges to act jointly to discuss matters within the scope of the OLPP, including procedures for the listing of standardized options and criteria related to permissible options classes, for the purpose of considering whether to file OLPP amendments or 19b-4 rule filings with the SEC.[6] The OLPP amendment establishes governance provisions designed to facilitate broad dialogue on options listings, including the following features that could translate well to the ETF listing context:

- OLPP-related discussions may be held as frequently as the participant exchanges deem necessary and appropriate;
- any participant exchange may request OLPP discussions be held, and such discussions may occur as part of broader industry group meetings;
- required attendees must include representatives of each participant exchange (including legal counsel from each exchange) and one or more Commission staff observers; and
- additional industry observers may be invited to attend particular sessions where their input would advance the discussion.

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5 See supra note 3.

6 See Securities Exchange Act Release No. 104892 (February 25, 2026), 91 FR 10168 (March 2, 2026).

Since the OLPP amendment took effect earlier this year, the participant exchanges have already begun making use of the mechanism to work through certain options listing topics. That early experience reinforces our view that a similar governance framework could deliver comparable benefits on the ETF listing side. Those benefits may include earlier identification of Novel ETF issues, reduced reliance on ad hoc bilateral communications, more uniform application of listing standards across exchanges, and a written record of industry deliberations that can inform future action.

B. Simultaneous, Transparent Communication of Staff Guidance

Independent of the establishment of a formal working group, Nasdaq encourages the Commission to consider approaches for communicating guidance on recurring Novel ETF issues to all listing exchanges and, where appropriate, to ETF sponsors on a simultaneous and consistent basis. In our experience, the current practice of communicating staff views individually (sometimes only by telephone, and sometimes only to certain participants) has produced information asymmetries that place both exchanges and ETF sponsors on uneven footing. Recent experience with certain Novel ETF applications is illustrative. In those instances, substantive dialogue developed largely on a bilateral basis between the ETF sponsors and IM staff and outside a shared forum, leaving the primary listing exchanges to reconstruct staff's views second-hand from individual sponsors, and at times from sponsors that had themselves formed materially different understandings of the same conversations. In our view, providing guidance on a consistent and simultaneous basis to all affected market participants would reduce these dynamics and support a clearer, more predictable path for Novel ETF filings.

C. Written FAQs and Formal Staff Guidance

Related to the foregoing, we encourage IM staff to make greater use of written, publicly available frequently asked questions and/or staff statements to address recurring Novel ETF topics. Written guidance has a number of advantages over informal oral guidance to individual sponsors. It is available to all market participants at the same time. It is also durable, so that new entrants can understand the applicable interpretive framework without having to reconstruct from second-hand accounts, and creates a public record that the IM staff can build upon over time.

One area where written guidance or more formal rules could be valuable is the disclosure framework for ETFs that shift from indexed exposure to single-stock or otherwise highly concentrated exposure. That shift materially changes the risk profile presented to investors, including with respect to concentration and volatility. While the primary listing exchanges should continue to assess structural and market integrity considerations for such products, how those risks are communicated to investors sits within the Commission's disclosure remit. Nasdaq therefore believes that written IM staff guidance on disclosure expectations for these products could appropriately complement the exchanges' listing-side review.

D. Dedicated IM Contact for Exchanges

Finally, Nasdaq respectfully suggests that the Commission consider designating a dedicated IM contact or team through whom the primary listing exchanges could raise ETF listing questions directly. At present, communication between the listing exchanges and IM tends to flow through TM. In our view, a direct point of contact could support the listing exchanges in fulfilling their gatekeeper role under Section 6(b)(5) of the Exchange Act more effectively.

Such a mechanism could be particularly valuable in situations where a filing has become effective at the IM level, but the primary listing exchange has residual questions about whether the product is consistent with Rule 6c-11 or with the applicable generic listing standards. Recent examples include single-stock ETFs referencing foreign ADRs, and single-stock ETFs referencing foreign-listed equity securities directly. Those filings became effective at the IM level but, following the primary listing exchanges' consultation with TM, were ultimately not brought to market. In those situations, the exchanges' only means of raising the underlying interpretive questions with IM was indirect, routed through TM after the effectiveness decision had already been made. In our view, a direct path to IM could allow the exchanges to surface these questions earlier in the process and support a clearer written record of resolution.

III. Formalizing the Rule 485 Framework for Novel ETFs

The RFC asks a number of specific questions about Rule 485 and the process by which ETFs, including Novel ETFs, become effective and reach the market. We welcome the Commission's focus on this aspect of the framework. Nasdaq's approaches these questions from its vantage point as a listing exchange. As noted earlier in our letter, we have seen instances where the registration process and the listing process, applying distinct but complementary lenses, have reached seemingly different conclusions on the same product. In our view, that experience reinforces the importance of the coordination mechanisms described above and points to the value of some targeted modifications.

A. Confidential Submission Option Under Rule 485

In our engagement with ETF sponsors, some have raised the value of a confidential submission process for filings that raise significant interpretive questions. Based on that input, Nasdaq encourages the Commission to consider an optional, confidential submission mechanism under Rule 485 for ETF filings that raise interpretive questions as those described in the RFC. Precedent for such mechanisms already exist. As noted in the RFC, the Division of Corporation Finance oversees a confidential submission process for non-investment companies.[7] That process, appropriately adapted to the characteristics of ETF filings, may offer a workable conceptual model, and could support constructive early engagement between IM staff and ETF sponsors on interpretive questions. Nasdaq also believes that a discretionary confidential filing

[7] See Enhanced Accommodations for Issuers Submitting Draft Registration Statements (March 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.

option could help protect first-mover incentives against near-immediate imitation (a dynamic the RFC itself acknowledges may be accelerated by the use of artificial intelligence), and allow staff to focus its most intensive review on the initial filing rather than on substantively identical follow-on filings. Nasdaq appreciates that such an option would require careful design, and recommends that it include, among other things, preserving a clear "queue" so that ETF sponsors engaging IM staff confidentially are not disadvantaged relative to later filers.

B. Timing of Effectiveness

The RFC raises several questions about the mechanics of automatic effectiveness under Rule 485, including whether the current 75-day and 60-day windows are adequate for Novel ETF issues, whether effectiveness should be automatically tolled where a registrant has not substantively responded to staff comments before the effective date, and whether the Commission should have authority to delay effectiveness on its own initiative. Nasdaq believes that a framework in which IM staff has clearly-defined procedural options to address unresolved substantive questions, subject to appropriate public notice and consistent application, is preferable to one that depends primarily on voluntary registrant action. To the extent the Commission concludes that a clearly-defined tolling or delay mechanism would support that objective, Nasdaq would support such a step.

C. Suspension Authority

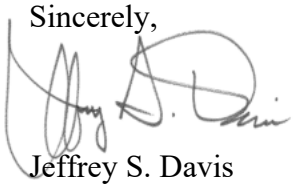
The RFC raises several questions about whether the Commission should modify or expand its authority to suspend post-effective amendments filed under Rule 485, including with respect to amendments that have already become effective. We recognize that suspension authority is an important tool for the Commission, and that there will be circumstances in which its exercise is appropriate to protect investors and maintain fair and orderly markets. We respectfully suggest that any suspension (whether based on existing or expanded authority) of a Novel ETF filing be communicated in writing to the public as well as to the registrant and be applied consistently across similarly situated filings. Transparency and consistency benefits ETF sponsors, exchanges, and other market participants alike, and reduces the risk that similar filings receive substantially different treatment.

IV. Conclusion

Nasdaq approaches this Request for Comment as both a supporter of a healthy, competitive ETF market and a listing exchange with obligations to protect investors and market integrity. In our view, Rule 6c-11 has served the ETF market well by providing an efficient regulatory framework, and the current framework should continue to be available for tried and tested offerings. Our recommendations for change, informed in part by conversations with various ETF sponsors, offer targeted, complementary tools to address the questions Novel ETFs raise without disturbing that framework. Central to those recommendations is our view that industry participants, including primary listing exchanges, would benefit tremendously from opportunities to engage collaboratively with the Commission and its staff on Novel ETF

questions, with earlier visibility into, and the ability to engage on, the interpretive questions being assessed by SEC staff. We appreciate the opportunity to submit these comments and welcome the chance to discuss any of these recommendations with the Commission and its staff.

Sincerely,



Jeffrey S. Davis
Senior Vice President
Nasdaq, Inc.