ROUNDHILL INVESTMENTS

154 West 14th Street, 2nd Floor • New York, NY 10011 • www.roundhillinvestments.com

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Via Electronic Submission (rule-comments@sec.gov)

Vanessa A. Countryman
Secretary
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:

Roundhill Investments ("Roundhill") appreciates the opportunity to respond to the Request for Comment on Novel ETFs (the "Request") issued by the Securities and Exchange Commission (the "Commission" or the "SEC"). Roundhill is the sponsor of a complex of exchange-traded funds ("ETFs") registered under the Investment Company Act of 1940 (the "1940 Act") and has built its business on bringing innovative strategies to market within the SEC's registered investment company framework. The questions posed in the Request go to the heart of how that framework will serve our investors and bring new investment products to market in the years ahead, and we commend the Commission for soliciting the views of market participants before taking further action.

Since its founding, Roundhill has operated in a highly competitive asset management landscape dominated by well-capitalized, long-established firms with entrenched distribution channels and significant incumbent advantages, including access to captive or loyal investor bases. In that environment, Roundhill has differentiated itself by developing and launching innovative investment products that respond to clear and timely investor demand, particularly in emerging or rapidly evolving investment categories where speed to market is essential. This experience has informed the perspective we offer below, including a broader point that we believe is central to the Request: for earlier-stage, emerging sponsors, in particular, being first to market with a novel product is frequently the difference between failure and success for establishing a viable, freestanding ETF business. A registration framework that erodes that advantage, whether through unnecessary delay, an unfair queue, or unchecked imitation, would disproportionately harm the very market participants that are the source of the ETF industry's innovation. As detailed below, we believe this type of regulatory action would be

counterproductive to the Commission's mission of facilitating capital formation without materially furthering its other missions of investor protection and the maintenance of fair, orderly, and efficient markets.

We understand that our legal counsel, Chapman and Cutler LLP, is submitting a comment letter addressing the questions raised in the Request. Roundhill supports that letter and does not intend to duplicate it or to respond to every question posed. Instead, we write separately to highlight a discrete set of issues on which our first-hand experience as a sponsor of innovative products gives us a particular perspective, and on which we believe Commission action, or, in some cases, Commission restraint, is most consequential. In brief, we make five points:

1) Investors are best served when innovative asset classes and strategies remain available within the 1940 Act, and the Commission should not adopt portfolio restrictions or exclusions that narrow the universe of what an ETF may hold.

2) Automatic effectiveness must be preserved, and the Commission should not adopt new tools that would enable open-ended delay of registration statements or post-effective amendments to registration statements.

3) The registration "queue" must be made fair and must be enforced. Registrants that misuse Rule 497 under the Securities Act of 1933 (the "Securities Act") ("Rule 497"), or other mechanisms, to cut the line should face clear, consistent, and meaningful consequences, and registrants delayed by Commission action or action by the staff of the Commission (the "Staff") should retain their place in line, and any lead to market, that they would otherwise have had.

4) The Commission should adopt an elective confidential filing framework to incentivize innovation and capital formation by protecting first movers from copycat filings.

5) The Commission should not attempt to codify a definition of "novel," and should instead continue to rely on the generic listing standards as the operative dividing line.

I. Investors Benefit When Innovative Exposures Are Available Within the 1940 Act; the Commission Should Not Restrict What an ETF May Hold (Sections II and III of the Request)

The Request asks why a sponsor of an ETF whose principal strategy involves assets that are not securities would seek to register under the 1940 Act, and whether Rule 6c-11 under the 1940 Act ("Rule 6c-11") should be amended to impose minimum securities holdings, asset-class exclusions, or similar portfolio restrictions. In our view, the answer to the first question largely answers the second.

In our view, sponsors often seek 1940 Act registration, and investors often seek 1940 Act funds, because the wrapper itself is protective. A registered fund offers independent board oversight; statutory limits on leverage and senior securities under Section 18 of the 1940 Act ("Section 18") and Rule 18f-4 under the 1940 Act; custody requirements; affiliated-transaction prohibitions; daily valuation and standardized, liability-backed disclosure; and familiar tax treatment and operational availability within ordinary brokerage and retirement accounts. Many investors who want exposure to, for example, futures markets, event contracts and prediction markets, or digital assets would strongly prefer to obtain that exposure through a 1940 Act ETF precisely because of these protections, and they should be offered the opportunity to do so.

Amending Rule 6c-11 to exclude certain assets or strategies, or to impose minimum-securities or diversification-style portfolio conditions, would not, in our view, be protective of investors. It would be the opposite. Investor demand for these exposures will not disappear if the 1940 Act door is closed; it will simply be met through vehicles and venues that carry fewer protections, including exchange-traded products ("ETPs") registered only under the Securities Act, offshore products, and direct participation in the underlying spot markets. Proactively precluding new and novel asset classes or strategies from the ETF wrapper deprives investors of the protections of the 1940 Act at precisely the moment those protections matter most, and leaves investors worse off by narrowing their choices. Innovation and the ETF structure have been linked since the structure's inception, and Rule 6c-11 asset-class neutrality is a feature of the rule, not a defect. We urge the Commission not to amend Rule 6c-11 to add portfolio-related restrictions or exclusions.

We would add that authorized participants and market makers play an essential role in ensuring that these products function efficiently for investors within the 1940 Act's protective framework. In particular, the arbitrage mechanism inherent in the creation/redemption process helps keep an ETF's market price aligned with its net asset value regardless of whether the underlying exposure is comprised of securities. As a result, the operational benefits and protections investors receive from the ETF structure are preserved even where the underlying exposure is not comprised of securities.

We also agree with the analysis on this point set forth in the comment letter submitted by Chapman and Cutler LLP, which we understand addresses the legal analysis in greater detail. We generally support the existing regulatory framework governing the availability of the 1940 Act wrapper to funds with non-securities exposure. This conclusion is consistent with long-standing Commission practice. The Commission and its Staff have permitted 1940 Act registered funds to obtain exposure to non-securities assets (including physical commodities, commodity futures, and other commodity interests) for decades, and more recently have permitted registered funds to gain exposure to digital assets through futures and other instruments. In our view, that history of considered, incremental acceptance demonstrates that the fact that an investment exposure falls outside the technical definition of a "security" has

not been regarded by the Commission or its Staff as a categorical impediment to the application of the investor protection framework of the 1940 Act, and we do not believe it should be treated as one now. Moreover, given the Commission's long-standing approach and the extensive universe of registered fund products that have been structured, offered, and operated in reliance on that approach for decades, we respectfully submit that it would be neither appropriate nor practicable to unwind, through a change in interpretation or policy, decades of legally formed 1940 Act products and settled market expectations.

II. Automatic Effectiveness Must Be Preserved, and the Commission Should Not Adopt New Tools to Delay Registrants (Section IV.A of the Request)

We believe automatic effectiveness under Rule 485(a) under the Securities Act ("Rule 485(a)") is not a loophole to be managed; rather, it is the central accountability mechanism in the fund registration process. It disciplines review timelines, gives sponsors the certainty necessary to commit capital to developing and deploying new products, and allows funds to respond to market opportunities on commercially relevant timeframes. Each of the mechanisms floated in Section IV.A of the Request (extending the 75- and 60-day periods for Novel ETFs, as that term is defined in the Request, automatically tolling effectiveness if a registrant does not respond to Staff comments within a prescribed window, and granting the Commission authority to delay effectiveness on its own initiative) would erode that mechanism and run counter to the Commission's mission, and we oppose each of them.

A tolling trigger tied to comment response times deserves particular skepticism. In our experience, Staff comment letters often include comments that are similar to, or overlap with, prior comments that have already been addressed by a fund sponsor. A rule under which any outstanding comment stops the clock or converts the comment process itself into a delay mechanism would predictably consume Staff and industry resources in rounds of correspondence and would function to hold a filing in place rather than to improve disclosure. Allowing the SEC Staff, acting unilaterally and outside a Commission-level process, to delay the effectiveness of ETF registration statements filed pursuant to Rule 485(a) would effectively displace the predictability and transparency the Commission deliberately built through years of notice-and-comment rulemaking in adopting Rule 6c-11 and Rule 18f-4. Those rules reflect the Commission's considered policy judgments regarding the conditions under which ETFs may operate and derivatives may be used within the 1940 Act framework; introducing an additional, discretionary "Staff gate" to effectiveness would, in practice, reintroduce the type of ad hoc, product-by-product review that Rule 6c-11 was specifically designed to replace. Such a Staff-driven delay mechanism would also create material regulatory uncertainty for sponsors and market participants by rendering launch timing contingent on informal, non-public, and potentially inconsistent Staff determinations rather than on the objective requirements of Commission rules. That uncertainty would predictably chill innovation, deter timely development of investor-responsive products, and raise fairness

concerns by increasing the risk that similarly situated filers are treated differently based on process rather than rule, undermining the consistent, rules-based filing regime that the Commission established to promote orderly markets and even-handed administration of the federal securities laws.

We would note that this dynamic already exists informally today: registrants have encountered situations in which listing exchanges have been directed by the Commission to delay the listing of an ETF, and registrants are being warned that there could be repercussions should a filing go effective without Staff assent, even though the filings are entitled to automatic effectiveness under the 1940 Act and the Commission's rules. Codifying that discretion could further entrench this dynamic. The Commission's experience with spot crypto asset products illustrates the cost of the alternative. Where novel products were subject to an affirmative-approval regime, investor access was delayed for years. Approval ultimately arrived only after litigation, and when products finally launched, the principal commercial beneficiaries were the largest incumbent asset managers rather than the innovators who had done the early work, borne the early costs, and offered their unique expertise in the novel asset. In our view, a registration framework in which the Commission holds open-ended discretion to delay novel products does not protect investors. Instead, it hurts the marketplace, penalizes innovative issuers, and rewards scale over innovation.

Finally, we do not believe additional "clarity" is needed with respect to ETFs becoming effective before an underlying asset class or instrument is available. A registrant that launches an ETF it cannot manage consistent with its prospectus faces statutory liability and damages, and registrants and market participants are accordingly already disincentivized from doing so. Accordingly, the only changes to Rule 485 that we believe are necessary are those needed to accommodate the confidential filing process detailed in Section IV below.

III. The Registration Queue Must Be Fair — and It Must Be Enforced (Sections IV.C, IV.E, and IV.F of the Request)

In our view, for innovative products one of the principal economic rewards available to a first mover is its lead to market. Filings are public and often imitated, and the Request itself observes that largely identical filings now appear in rapid succession, possibly accelerated by artificial intelligence. As a result, the integrity of the order in which registrants file, and the intervals between them, is not only a procedural detail, but also an important incentive structure for innovation itself. Today, that structure falls short in two respects.

First, when the Commission or its Staff delays a first mover, whether formally or through the informal mechanisms described above, while substantially similar later-filed products proceed, the innovator's lead is materially eroded by government action rather than by competition. We do not believe the Commission should have the ability to require a registrant to delay effectiveness. But if the Commission takes action that has that effect, the filing order,

and the relative lead to market that would have existed absent that action, should be preserved. Later-filed, substantially similar products should not be permitted to become effective or launch ahead of or contemporaneously with the registrant that filed first. Any framework for Staff-initiated delay that lacks this queue-preservation principle risks transferring the value of innovation from the firms that create it to the firms that copy it.

Second, the rules governing the registration framework, including Rules 485(a), 485(b), and 497, should be applied as written, and misuse should carry consequences. Rule 497 exists to allow for the filing of a definitive version of a prospectus and statement of additional information and/or to permit prospectus supplements (among other use cases), not to materially change an effective registration statement that would otherwise require a new Rule 485(a) post-effective amendment and its attendant waiting period. We note that the Division of Investment Management has publicly embraced this view in its 1995 no-action letter to investment companies wherein it provides "[r]egistrants are reminded that they may not materially alter the nature of the fund contemplated in the last pre-effective amendment by merely filing a 497(b) or (c) prospectus that makes those material changes."[1] However, there have been recent instances wherein registrants were able to make such changes via a Rule 497 filing to materially repurpose an effective registration statement. In each case we have seen, the Staff communicated that the conduct was impermissible, but in each case the product launched anyway, and the registrant kept the market position it obtained by doing so. The lesson the market has drawn is unmistakable: warnings from the Staff can be treated as nonbinding, and registrants who heed them are materially disadvantaged relative to those who proceed notwithstanding Staff concerns.

We therefore urge the Commission, whether by rule or through interpretive guidance, to (a) clarify explicitly that a material change to a fund's investment strategy, during review, pre-launch, at launch, or shortly after launch, requires a new Rule 485(a) filing and a new clock, and may not be accomplished through Rule 497 or through the repurposing of dormant effective series; (b) recommend that the Staff publish a public FAQ or similar guidance identifying the types of changes it considers "material" for purposes of requiring a new Rule 485(a) filing; and (c) establish or clarify penalties for violations, including, for example, prompt suspension of the effectiveness of the relevant registration statement, delisting of the offending fund, and meaningful financial penalties. Consistent with this view, we support the concept raised in Section IV.E of the Request of amending Rule 485 to automatically suspend or delay effectiveness when a material pre- or at-launch change occurs, a mechanism that, had it existed, would have reduced the likelihood of the episodes described above. The specific remedy matters less than its consistency: a fair process, consistently enforced, is worth more to the marketplace than any particular calibration of the rules.

[1] *See* U.S. Sec. & Exch. Comm'n, Div. of Inv. Mgmt., No-Action Letter to Investment Companies (Feb. 3, 1995), *available at* https://www.sec.gov/divisions/investment/noaction/1995/icregistrants020395.pdf.

We also recommend that the Commission establish a process through which a registrant that is uncertain whether a particular filing may properly proceed under Rule 497, rather than requiring a new Rule 485(a) amendment, may seek expedited, informal clearance from the Staff before filing. A clear channel for pre-filing consultation, with a defined response time, would allow registrants acting in good faith to resolve ambiguity in advance rather than proceeding unilaterally and risking the kind of after-the-fact Staff objection described above. It would also give the Staff an additional tool to identify and deter attempted misuse of Rule 497 before it occurs, rather than only after a product has already launched.

IV. The Commission Should Adopt an Elective Confidential Filing Framework (Sections IV.B and IV.C of the Request)

The Request asks whether the Commission should permit Rule 485(a) filings to remain nonpublic for a portion of the review period, and whether mechanisms for earlier engagement on novel products would be beneficial. We strongly support a confidential filing mechanism, subject to three design principles: it should be elective, it should preserve a defined automatic effectiveness clock, and it should provide for public disclosure a fixed period before effectiveness.

Specifically, we propose that the choice to file confidentially rest with the registrant. A registrant could elect to file "confidentially"; however, such filing would remain on the standard 75-day clock for automatic effectiveness. If a filing were made confidentially, we believe it would necessarily become public a defined period before effectiveness (we suggest 30 days). This would preserve public notice while reducing the window for imitation.

We further propose that the confidential filing framework include a queue-preservation and notice mechanism modeled on the principle described in Section III above. Where a registrant has filed confidentially, the registrant's place in the registration queue should be preserved as of the date of the confidential filing, and the Commission should notify subsequent filers of substantially similar products that a confidential filing may have already been made in that space, without disclosing the confidential filer's identity or the substance of the filing. This notice would allow later filers to make informed decisions while preserving the confidentiality and first-mover benefits the framework is intended to protect.

This structure would address the problem the Request identifies without extending timelines for everyone or abandoning automatic effectiveness. We believe that it is unlikely a competitor would file a substantially identical product on a fresh 75-day clock upon observing a first mover's 30-day public countdown. The incentive to mimic filings within hours of their appearance, conduct Roundhill has experienced directly with competitors filing copies of our products on the next business day, would be materially reduced. In addition, because the clock remains automatic, the accountability mechanism described in Section II above is retained. We would also support public reporting on the use of any confidential or pre-filing

consultation process, including the number of such filings or consultations, their duration, and their outcomes, as a further accountability measure.

V. The Commission Should Not Attempt to Codify a Definition of "Novel" (Sections III.B and IV of the Request)

Several of the Request's questions presuppose that "Novel ETF" can be made a defined regulatory category with its own distinct rules. We are not persuaded it can. In our view, novelty is inherently subjective and inherently transitory, in that the novel product of one filing season is the commonplace product of the next, and any codified definition will likely be simultaneously over- and under-inclusive while inviting gamesmanship at its edges. Novelty, in this respect, resembles Justice Stewart's famous observation: it is difficult to define, but one may recognize it upon seeing it. *See* Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). That is a challenging foundation for a rules-based regime that determines effectiveness timelines, disclosure obligations, and listing eligibility. We believe any attempt to define "novel" would force the Staff or the Commission to make judgment calls on a case-by-case basis, which could result in subjective applications that are inconsistently applied. While we do not believe the Staff or the Commission should have the ability to determine that a product is "novel," to the extent the Commission arms itself or the Staff with such ability, whatever definition is applied must be implemented fairly and objectively, regardless of whether a filing was made confidentially. The criteria should be transparent and pre-announced, and any resulting delay should be subject to the queue-preservation principles described in Section III.

Rather than defining novelty, the Commission should continue to rely on the line that already exists and already works: the generic listing standards, together with Rule 6c-11's conditions. A product that satisfies Rule 6c-11 and the generic listing standards should proceed on the standard framework. We believe that removing "novel" products from the generic listing standards and returning them to a product-by-product approval regime would materially slow innovation, as the crypto experience discussed in Section II demonstrates.

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Roundhill again commends the Commission for undertaking this review. We believe the through-line of our comments is simple: the existing framework — asset-class-neutral rules, automatic effectiveness, and generic listing standards — has produced extraordinary growth in investor choice, and its problems are problems of enforcement and fairness, not of insufficient Commission discretion. The Commission should make the queue fair, enforce its rules consistently against those who seek to bypass the ordinary course, and give registrants an elective confidential pathway. It should not narrow the 1940 Act, extend or condition automatic effectiveness, or attempt to define the undefinable.

We would welcome the opportunity to discuss any of these comments with the Commission or the Staff.

Respectfully submitted,

Timothy Maloney
Co-Founder
Roundhill Investments