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August 31, 2026

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

Re: Request for Comment on Novel ETFs

Dear Ms. Countryman:

We are pleased to have the opportunity to provide feedback on the SEC's Request for Comment on Novel ETFs ("RFC"). Franklin Templeton, Inc. is a global investment management organization serving clients in over 150 countries. Franklin Templeton's mission is to help clients achieve better outcomes through investment management expertise, wealth management, and technology solutions. Through its specialist investment managers, the company offers specialization on a global scale, bringing extensive capabilities in fixed income, equity, alternatives, and multi-asset solutions. With more than 1,500 investment professionals, and offices in major financial markets around the world, Franklin Templeton has over 75 years of investment experience and $1.79 trillion in assets under management as of June 2026.

Franklin Templeton currently manages approximately 80 exchange-traded funds ("ETFs") that are registered with the SEC (including exchange-traded products ("ETPs"), shares of which are registered with the SEC). We are innovators in the ETF space, launching our first active ETF back in 2013 and since then managing strategies that provide exposure to a wide range of assets including equity and fixed-income securities, cryptocurrencies, options, equity-linked notes, swaps, and physical gold, including both actively managed and index ETFs. We supported the SEC's 2019 adoption of Rule 6c-11 and believe the rule has provided an effective and efficient framework for the development of the ETF market. One of the key assumptions underlying Rule 6c-11 is that there are no structural operational differences from a primary market perspective between index and active strategies. This premise has allowed the rule to support tremendous growth over the years of active ETFs, which now exceed $2 trillion in assets under management, representing 37% of all net inflows into US-domiciled ETFs. ETFs have significantly benefited retail investors, by providing them with an efficient and cost-effective way to gain exposure to a wide range of underlying assets in a transparent manner, with intraday liquidity.

We participated in the development of, and broadly endorse, the comment letters on the RFC filed by the Investment Company Institute and SIFMA/SIFMA AMG. We are submitting our own comments to highlight the strength and innovation of today's ETF market and the many benefits ETFs offer to investors. We commend the SEC for raising thoughtful questions about novel ETFs. We urge the SEC to avoid regulating ETFs based on whether they are "novel." Instead, the Commission should consider any issues raised on a holistic basis, first leveraging its existing regulatory tools before considering the potential need for new tools. Further, the SEC should recognize the role of new trading platforms in supporting effective ETF arbitrage under current regulatory standards.

The SEC should facilitate responsible innovation without engaging in merit regulation.

Franklin Templeton supports the SEC's objective of facilitating innovation in the ETF market while protecting investors and maintaining fair, orderly, and efficient markets. The SEC should pursue those objectives in a

product-neutral manner, similar to how it has approached regulation in the digital asset space, in which the SEC has emphasized clear rules of the road, regulatory certainty, investor protection, and support for responsible innovation. The Commission's regulatory framework should permit investors, with appropriate disclosure, to choose among investment products, rather than substitute the SEC's regulatory judgments about the merits of particular investments for investor choice.

The SEC should not define "Novel ETF" or regulate based on whether an ETF is "novel."

The SEC states that "Novel ETFs" are those that provide exposure to innovative asset classes or use novel investment strategies and include, to date, those that seek exposure to "crypto assets; commodity-focused instruments; single-stock strategies; heightened leverage; blockchain-enabled opportunities; private assets; event contracts; and/or a combination of any of the above." We urge the SEC to not define "Novel ETF" or establish a separate regulatory category based on whether an ETF is "novel." Novelty is inherently temporary and subjective: an asset class, trading venue, or investment strategy considered novel today may become commonplace in a few months or a year, while future innovations cannot be anticipated. The RFC itself illustrates this difficulty by grouping together substantially different products and strategies (i.e., crypto assets, commodities, private assets, leveraged strategies, blockchain-enabled opportunities, event contracts). A definition broad enough to capture future developments would be too vague, while a more prescriptive definition would quickly become obsolete and could result in substantively similar products being regulated differently, creating a risk of regulatory arbitrage.

We believe it would be a mistake for the SEC to seek to change the well-established approach for determining whether a fund is an investment company subject to the 1940 Act based on whether the fund is a "Novel ETF." The statutory tests under Section 3 of the Investment Company Act of 1940 ("1940 Act") for determining whether a fund is an "investment company" are foundational to the 1940 Act. The SEC and its staff have provided color over the years on how these tests apply, including the SEC's "five-factor test" established in the 1947 Tonopah Mining case, a test that still is widely applied today. Changing these tests would have widespread consequences, not limited to "Novel ETFs." We therefore urge the SEC to act cautiously and, if it believes it is necessary to reconsider certain aspects of the 1940 Act status analysis, it should do so on a holistic basis, not limited to "Novel ETFs," with any proposed changes being subject to public notice and comment.

Similarly, we do not believe Rule 6c-11 under the 1940 Act should be amended to include different requirements or standards for "Novel ETFs." Rule 6c-11 remains effective, in part, because it is product neutral. To rely on the rule, an ETF must meet conditions related to the ETF's arbitrage mechanism, reliable valuation of the ETF's portfolio, complete and understandable disclosure, custody and operational arrangements, and characteristics of the exchange on which the ETF will trade. The SEC itself observes that Rule 6c-11 defines the structural characteristics necessary to support effective arbitrage but generally does not restrict the asset classes or investment strategies an ETF may pursue. This product neutral approach to regulating ETFs is more effective and efficient than creating additional or different requirements for "Novel ETFs."

Issues with the fund registration process should be addressed holistically.

We appreciate the Commission's concern that some filings may raise significant legal, disclosure, or operational questions that are difficult to resolve within Rule 485's prescribed effectiveness periods. These concerns, which are legitimate, are not necessarily unique to ETFs or to products that are "novel." Any potential changes to Rule 485 or to guidance on the filing and staff review process therefore should be considered holistically and should apply according to objective characteristics of a filing, rather than whether the fund has been labeled a "Novel ETF."

The Commission should fully leverage its existing tools regarding fund registration statements before considering the potential need for new tools. We agree with SIFMA/SIFMA AMG that these tools include the Commission's ability to:

- Pursuant to Rule 485(c)(1), suspend the automatic effectiveness of a post-effective amendment filed pursuant to Rule 485(a) if it appears "to the Commission that the amendment may be incomplete or inaccurate in any material respect."
- Pursuant to Section 8(d) of the Securities Act of 1933, issue a stop order suspending the effectiveness of a registration statement if "it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading."
- Pursuant to Rule 485(c)(2), suspend the ability of a registrant to file a post-effective amendment under Rule 485(b) if the registrant has not complied with the conditions of the Rule.
- Express its views or concerns in less formal ways, such as through public statements or Commission or staff interpretive guidance.

If the Commission ultimately concludes its existing tools are not adequate to address the process issues raised by recent ETF registration statement filings, we would support further discussion regarding a potential new voluntary confidential filing process that would provide Commission staff with additional time to review filings that pose unique issues. Any such consideration should be done in a transparent manner that includes public notice and opportunity for comment.

The SEC should recognize the role of new trading platforms in supporting effective ETF arbitrage.

Innovation has resulted in a broader variety of trading platforms that can support effective ETF arbitrage. This is a positive development for the market and investors that the SEC should support under its current standards, without the need to label certain ETFs as "novel" and impose different regulatory requirements on the ETF arbitrage mechanism.

The SEC should evaluate an ETF's arbitrage mechanism based on the actual liquidity, price transparency, execution capabilities, valuation processes, and creation and redemption arrangements applicable to that fund—not on whether the underlying market resembles the equity markets for which the earliest ETFs were developed. ETFs have evolved to reflect asset classes with different market structures. Fixed-income ETFs, for example, developed in markets historically dominated by over-the-counter trading, while electronic trading venues and portfolio-trading protocols now provide additional means of executing bond baskets and obtaining price information. Rule 6c-11's accommodation of custom baskets further recognizes that effective arbitrage does not require every ETF to transact through a pro rata basket identical to its portfolio.

Gold ETFs provide another example of an ETF structure operating successfully where the underlying asset does not trade on the same platform as the ETF shares. The London bullion market provides global spot trading, physical settlement infrastructure, observable benchmark pricing, and substantial trading activity. The relevant regulatory inquiry is therefore not whether an underlying asset trades like an exchange-listed equity, but whether authorized participants and other market participants have practical, reliable means to value, purchase, sell, hedge, and deliver exposure to that asset. Many newer asset classes such as crypto assets and event contracts trade on newer venues where the foundational concepts of price discovery and transparency exist. If market makers are confident in their ability to source liquidity on those exchanges, then they should be able to maintain the arbitrage mechanism that is a foundational element of ETFs.

Conclusion

The SEC's existing ETF regulatory framework has supported substantial growth, competition, innovation, and investor choice, while protecting investors and maintaining fair, orderly, and efficient markets. The Commission should avoid creating a new category of "Novel ETFs" and should address any concerns about current practices in a product-neutral manner across registered investment companies. The SEC should facilitate the ongoing evolution of the ETF market, which provides investors with transparent, regulated access to a variety of

underlying asset classes, with intraday liquidity.

Thank you for your consideration of our views. We are glad to meet with the commissioners or the SEC staff to discuss our views or answer any questions.

Sincerely,



David Mann
Head of ETF Product & Capital Markets

cc: The Honorable Paul S. Atkins, Chairman
The Honorable Hester M. Peirce, Commissioner
The Honorable Mark T. Uyeda, Commissioner
Brian Daly, Director, Division of Investment Management
Securities and Exchange Commission