Simpson Thacher & Bartlett LLP

900 G Street, NW
Washington, D.C. 20001

TELEPHONE: +1-202-636-5500
FACSIMILE: +1-202-636-5502

VIA Electronic Submission: RULE-COMMENTS@SEC.GOV

August 31, 2026

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-2026-24
Request for Comment on Novel ETFs
Release Nos. 33-11426; 34-105808; IC-36228 (the "Concept Release")

Dear Secretary Countryman:

We welcome the opportunity to comment on the questions raised by the U.S. Securities and Exchange Commission (the "Commission") in the Concept Release with respect to ways to facilitate innovation in the Novel ETF (as defined below) space while protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. Simpson Thacher & Bartlett LLP has significant experience representing investment advisory firms, asset managers and other financial institutions that sponsor and advise pooled investment vehicles, including registered investment companies under the Investment Company Act of 1940, as amended (the "1940 Act") ("RICs"), and offerings of securities registered under the Securities Act of 1933, as amended (the "1933 Act"). We submit the following comments on our own behalf and the views contained herein do not necessarily reflect the views of any of our clients.

Overview

This letter responds to Question 15 of the Concept Release, which asks whether the Commission should consider mechanisms for early engagement for exchange-traded funds seeking to invest in innovative asset classes or engage in novel investment strategies ("Novel ETFs"), such as a pre-filing consultation process or confidential draft registration statements (collectively, "Early Engagement Mechanisms"), that would allow the staff of the Division of Investment Management ("DIM") and sponsors to work together on potential issues before a public filing. We strongly support the adoption of Early Engagement Mechanisms. Additionally, we respectfully suggest that the Early Engagement Mechanisms extend equally to all new registration statements filed on Form N-2 and Form N-1A. There is no policy basis for limiting confidential treatment to Novel ETFs when the same regulatory authority, policy rationale and investor protection considerations generally apply to RIC registration statements.

Moreover, we respectfully suggest that, while the Commission considers the comments received in response to the Concept Release and develops the Early Engagement Mechanisms, it permits RICs to submit draft registration statements (including those on Form N-2) on a confidential basis outside of EDGAR on an emergency-use basis. This interim accommodation would allow sponsors and DIM to begin realizing the benefits of a confidential review process immediately, without waiting for the conclusion of a formal, lengthy rulemaking process.

The Confidential Submission Process Should Extend to All Initial RIC Registration Statements

Question 15 of the Concept Release contemplates confidential draft registration statements in the context of Novel ETF filings under Rule 485(a). We respectfully submit that there is no principled basis for limiting confidential treatment to this single category. The same regulatory authority, the same policy rationale and the same investor protection analysis apply with equal force to a new registration statement filed on Form N-2 for a closed-end fund and to a new registration statement filed on Form N-1A for an open-end fund.

Similar to Novel ETFs, closed-end funds have been a vehicle for innovative strategies over the past several years. Prominent sponsors have launched products focused on direct lending, private equity secondaries, infrastructure and other private market strategies. These sponsors continue to innovate in this space, focusing on bringing broader access to alternative markets, in line with the Commission's broader goal. Also similar to Novel ETFs, a new closed-end fund filing an initial registration statement on Form N-2 may have novel issues that can be discussed with the DIM staff prior to a public filing, including with respect to seeding and warehousing.[1] Relief from the public registration statement filing requirement during this early engagement period would allow the DIM staff to have sufficient time to review and address legal issues effectively that may arise with investment companies that have innovative strategies. Likewise, a new open-end fund filing an initial registration statement on Form N-1A, particularly one pursuing an innovative strategy, would benefit from the ability to work with DIM on a confidential basis before committing to a public filing. The Concept Release recognizes that competitive pressures and first-mover incentives may lead to rushed or imitative filings for Novel ETFs and which may be heightened by the widespread use of artificial intelligence.[2] We believe these pressures and incentives are also present when launching an innovative RIC. Permitting confidential submissions for all initial RIC registration statements would reduce these pressures and encourage sponsors to engage with DIM staff earlier in the product development process, resulting in higher-quality filings and more thoughtful product design.

Policy Considerations Support Broad Confidential Treatment for RICs

We believe there is no policy basis for treating RICs that are not Novel ETFs differently from Novel ETFs or other public companies with respect to confidential submissions. The staff

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[1] *See* Request for Comment on Novel ETFs, 91 Fed. Reg. 40649 (July 2, 2026) ("As is the case with mutual funds, new ETFs typically are offered as a new series of an existing investment company that, along with its shares, are registered by preparing and filing a post-effective amendment to a previously effective registration statement under rule 485(a) of the Securities Act") ("IM Staff has observed several Novel ETF [rule 485(a)(2)] filings submitted in rapid succession that are largely identical. Market participants have suggested that the use of artificial intelligence may be significantly accelerating the speed at which a filing can be mimicked.").

[2] *See* Concept Release at 12-13, Question 17 and Note 19.

of the Division of Corporation Finance ("DCF") has made the confidential review process broadly available to non-investment company issuers, and we suggest that all RICs should receive the same treatment.

The SEC has expressed on several occasions its willingness to reduce unnecessary disclosure burdens so long as investors' interests remain protected. As Chair Atkins has remarked, achieving the "minimum effective dose of regulation" requires the Commission's rules to be "sensible and disciplined, with materiality as [the] north star."[3] Chair Atkins has further expressed a "renewed focus on rightsizing the SEC's disclosure requirements through the lenses of materiality"[4] and a "vision for returning the Commission's disclosure regime to its original intent of 'protect[ing] the public with the least possible interference with honest business.'"[5] Extending confidential treatment to RICs is fully consistent with this overarching premise.

Granting all RICs the ability to submit registration statements on a confidential basis would provide the following benefits, while still protecting the interests of investors:

- Encouraging innovation of investment products, including those that increase access to private markets for retail investors;
- Protecting competitively sensitive information during the development process;
- Enhancing the ability of sponsors to engage with potential distribution partners privately;
- Improving strategic launch timing to align with market conditions; and
- Streamlining the registration statement review process and promoting higher-quality engagement between sponsors and DIM.

In addition to the foregoing benefits, the Commission's extension of confidential treatment to RICs would materially enhance the quality of regulatory dialogue between fund sponsors and DIM. Under the current framework, the absence of a confidential submission process creates a structural incentive for sponsors to limit the scope of their filings to structures they believe DIM will accept without substantial comment, thereby avoiding the risk of signaling regulatory uncertainty to the market or discouraging potential distribution partners. This dynamic produces registration statements that, while facially conservative, may in practice be less transparent, as sponsors forego raising complex structural or regulatory questions that would benefit from DIM guidance.

A confidential submission process would eliminate these disincentives and permit sponsors to engage substantively with DIM prior to committing to a publicly filed structure. In

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[3] Paul Atkins, Remarks at the Investor Advisory Committee Meeting (Mar. 12, 2026), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-iac-031226.

[4] Paul Atkins, Statement on Proposing Releases for Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, and Registered Offering Reform (May 19, 2026), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-statement-on-proposing-releases-for-enhancement-of-emerging-growth-company-accommodations-and-simplification-of-filer-status-for-reporting-companies-and-registered-offering-reform-051926.

[5] Paul Atkins, Remarks at the Texas A&M School of Law Corporate Law Symposium (Feb. 17, 2026), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-02-17-2026-remarks-texas-am-school-law-corporate-law-symposium#_ftn15.

particular, sponsors would be positioned to initiate dialogue at an earlier stage, present multiple structural alternatives for DIM's consideration and proactively identify potential regulatory concerns for the DIM staff's input. This enhanced engagement would afford DIM a more complete understanding of the sponsor's objectives and would ensure that investment products reaching the public market have undergone more rigorous regulatory review.

By requiring a public filing period prior to the launch of marketing, the registration process already provides an opportunity for the public to evaluate an offering. This is the same rationale DCF cited when it expanded confidential treatment to additional issuers in 2017.[6] Accordingly, the extension of confidential submission procedures to RICs would serve the dual objectives of fostering product innovation and strengthening investor protection by establishing a structured, collaborative process through which sponsors and the DIM staff can ensure that new investment products are brought to market with appropriate safeguards and in a form that more precisely reflects sponsors' differentiated investment strategies, as informed and refined by the confidential submission process.

Regulatory Authority for Confidential Submissions by RICs

As noted in the Concept Release, the staff of the DCF has made accommodations available for confidential review for non-investment company issuers since 2017.[7] We believe DIM possesses the same regulatory authority that DCF relied upon when it expanded the availability of confidential submissions to operating companies, and that this authority supports extending the confidential review process to RICs filing any initial registration statement (whether on Form N-1A or Form N-2[8]) not merely those adding a new series to an existing investment company through a rule 485(a) post-effective amendment.

The Jumpstart Our Business Startups Act, as amended (the "JOBS Act"), added Section 6(e) to the 1933 Act, allowing emerging growth companies ("EGCs") to submit draft registration statements for confidential review prior to their initial public offering. However, DCF stated in Frequently Asked Questions released in 2015 ("FAQs") that RICs may not qualify as EGCs,[9] which had the effect of not permitting RICs to file confidential registration statements.

In 2017, DCF announced that it would permit additional issuers beyond EGCs to submit confidential initial registration statements, and in 2025, DCF further expanded the availability of this process to additional entities.[10] The rationale for this expansion included giving companies more flexibility to plan their offering and reducing the potential for lengthy exposure to market

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[6] Division of Corporation Finance, *supra* note 1.

[7] *See* Press Release, *SEC's Division of Corporation Finance Expands Popular JOBS Act Benefit to All Companies*, Release No. 2017-121 (June 19, 2017), *available at* https://www.sec.gov/newsroom/press-releases/2017-121.

[8] For the avoidance of doubt, we respectfully note that we also believe that DIM possesses the same regulatory authority with respect to Form N-3, Form N-4, Form N-5, Form N-6, Form N-8A, Form N-8B-2, Form N-8B-4 and Form N-14.

[9] Jumpstart Our Business Startups Act Frequently Asked Questions, *Generally Applicable Questions on Title I of the JOBS Act* (Dec. 21, 2015), *available at* https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/jumpstart-our-business-startups-act-frequently-asked-questions.

[10] Announcement, *Enhanced Accommodations for Issuers Submitting Draft Registration Statements* (Mar. 3, 2025), *available at* https://www.sec.gov/about/divisions-offices/division-corporation-finance/draft-registration-statement-processing-procedures-expanded.

fluctuations that can adversely affect the offering process. Critically, neither the 2017 nor the 2025 expansion explicitly excluded RICs. By contrast, asset-backed securities issuers were explicitly excluded.[11] The absence of an explicit exclusion for RICs supports the conclusion that RICs remain eligible for the confidential review process.

The JOBS Act FAQs suggested that DCF relied on Rule 83 under the 1933 Act to extend confidential treatment to other issuers.[12] Rule 83 is a procedural mechanism for affording confidential treatment where no other statute or Commission rule provides specific procedures. With respect to RICs, there is no statute, rule or regulation that expressly provides procedures for seeking confidential review of draft registration statements made under both the 1933 Act and the 1940 Act. Section 8 of the 1940 Act addresses the registration of investment companies and the contents of registration statements but does not establish procedures for requesting confidential treatment. Similarly, Section 6 of the 1933 Act addresses the registration of securities but does not establish procedures for RICs (that are not EGCs) to request confidential treatment for their initial registration statements. Accordingly, Rule 83 is available as the procedural vehicle for DIM to extend this relief to RICs.

We believe DIM's authority is further supported by Rule 30-5 under the Commission's regulations, which delegates to DIM the authority act on registration statements, determine effectiveness, grant certain exemptions and interpretive positions and perform related review functions. Rule 30-5 provides that DIM has the authority to authorize the issuance of orders granting confidential treatment pursuant to Section 45(a) of the 1940 Act for matters of disclosure in registration statements filed pursuant to Section 8 of the 1940 Act, but only when the Commission has previously by order granted confidential treatment to the same information. Section 45(a) requires information in registration statements to be made public unless the Commission has found that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. By allowing confidential treatment to EGCs and the broader class of issuers under DCF's jurisdiction, we believe the Commission has effectively found that public disclosure of initial filings of registration statements is neither necessary nor appropriate in the public interest or for the protection of investors.

With respect to the 1933 Act and the matters thereunder pertaining to RICs, Rule 30-5 delegates to DIM the same functions delegated to DCF with respect to non-RICs. We contend that DIM may therefore rely on Rule 83 to extend the relief originally provided by the JOBS Act to all RIC registration statements.

Request for Interim Off-EDGAR Accommodation

We recognize that implementing the Early Engagement Mechanisms may require time to develop, as well as any formal rulemaking that may be forthcoming. However, the benefits of

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[11] *See* Voluntary Submission of Draft Registration Statements Frequently Asked Questions (Sept. 16, 2024), *available at* https://www.sec.gov/about/divisions-offices/division-corporation-finance/voluntary-submission-draft-registration-statements-faqs ("(13) Question: May an asset-backed securities issuer take advantage of these accommodations? Answer: No.").

[12] *Id*. Further, in a 2025 announcement, DCF reiterated that "[i]ssuers should consider [Rule 83] in submitting draft registration statements for nonpublic review." DCF added "[w]here possible, [it] will keep submitted nonpublic draft registration statements and related correspondence confidential subject to the provisions of applicable law."

confidential treatment for RICs are too important to delay until the conclusion of any formal rulemaking process. We therefore respectfully request that DIM, on an interim basis, permit RICs to submit draft registration statements on a confidential basis outside of EDGAR while the Commission reviews the comments received in response to the Concept Release and develops a permanent solution for all RICs.

Accountability and Transparency

Question 15 also asks whether the Commission should publicly report on confidential consultations to provide for a measure of accountability. We support reasonable transparency measures, such as periodic reporting on the number of confidential submissions received, average review timelines and the percentage that result in public filings. Such reporting would provide market participants with useful information about the process without compromising the confidentiality of any individual submission. We would urge, however, against granular disclosure requirements that would effectively reveal the identity and/or strategy of a particular filer and undermine the purpose of the Early Engagement Mechanisms. As noted above, investors will have access to the initial public registration statement once a sponsor has had the opportunity to take advantage of the Early Engagement Mechanisms. As such, investors will still have the benefits afforded by public disclosure with the added benefit of any potential gating issues prior to a fund launch having already been worked out with the DIM staff prior to the public filing of the initial registration statement.

Responses to Related Questions

We note that Question 18 of the Concept Release asks whether Rule 485(a)(2) filings should remain nonpublic for part of the 75-day period to promote innovation and reduce imitative filings. We support a confidential period as part of the 75-day review period for post-effective amendments. Rather than suggest any specific number of days, we would support a time period as reasonably necessary for the Novel ETF to adequately work through questions with the DIM staff, as certain discussions may take longer than others. If the Commission determines that post-effective amendments would benefit from a period of non-public review to reduce competitive harm from imitative filings, the case is even stronger for initial registration statements, where the entirety of a fund's novel strategy and structure would be disclosed for the first time publicly and likely for a longer time as the fund sponsor works through comments with the DIM staff.

We further note that the Concept Release acknowledges the accommodations DCF has made available to non-investment company issuers since 2017. The existence of this well-established process provides a strong foundation for DIM to extend similar accommodations to RICs under the same regulatory authority (i.e., Rule 83 under the 1933 Act). On December 31, 2025, Rule 30-5 was amended to delegate to DIM the ability to issue orders granting, denying and revoking confidential treatment for information in any filings made under the Investment Advisers Act of 1940, as amended. This recent amendment reflects the Commission's

willingness to grant DIM authority to handle confidential treatment determinations and supports the extension of such authority to registration statements for all RICs.[13]

Conclusion

In summary, we strongly support the Commission's consideration of Early Engagement Mechanisms for Novel ETFs in response to Question 15 of the Concept Release. We respectfully urge the Commission to apply any Early Engagement Mechanisms to all RICs, including those filing new registration statements on Form N-2 and Form N-1A. Additionally, we request that DIM permit confidential submissions outside of EDGAR on an interim basis while the Commission finalizes a permanent framework. These steps would promote capital formation and innovation, encourage earlier and more productive engagement between sponsors and DIM and protect competitively sensitive information, while maintaining appropriate investor protections.

The Commission's openness to consider these important issues has the potential to lead to significant innovation in the regulated funds space and provide corresponding benefits to retail investors. We appreciate the Commission's consideration of our comments. Should the Commission have any questions regarding these comments, please feel free to contact Rajib Chanda at (202) 636-5543 or rajib.chanda@stblaw.com, Ryan Brizek at (202) 636-5806 or ryan.brizek@stblaw.com, or Debra Sutter at (202) 636-5580 or debra.sutter@stblaw.com.

Sincerely,

/s/ Simpson Thacher & Bartlett LLP

Simpson Thacher & Bartlett LLP

[13] Delegation of Authority to the Director of the Division of Investment Management, 90 Fed. Reg. 61299 (Dec. 31, 2025).