August 31, 2026

VIA ELECTRONIC SUBMISSION

Ms. Vanessa Countryman
Secretary
US 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,

21shares appreciates the Securities and Exchange Commission (the "Commission" or the "SEC") requesting public comment on Novel ETFs and values the opportunity to respond. 21shares is one of the world's leading cryptocurrency exchange-traded fund providers and offers one of the largest suites of crypto funds in the market. Our comments to Questions 8, 15, and 26 are below.

I. A "Fund" is a fund—we do not believe there are any implications for investor clarity.

We do not believe that investors will have any confusion with certain exchange-traded commodity trusts ("Commodity Trusts") using the term "ETF" (or "fund") as part of their name. These products are pooled investment vehicles offering investors exposure to a reference asset and operate using the same arbitrage mechanisms as open-end investment companies registered under the Investment Company Act of 1940 (the "1940 Act") operating as ETFs. Further, each of these Commodity Trusts must qualify for listing on a national securities exchange under the applicable exchange's listing standards, as would a registered investment company.[1]

[1] *See* 15 U.S.C. § 78s(b); 17 C.F.R. § 240.19b-4; Securities Exchange Act Release No. 34-103995; File Nos. SR-NASDAQ-2025-056; SR-CboeBZX-2025-104; SR-NYSEARCA-2025-54; Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To Adopt Generic Listing Standards for Commodity-Based Trust Shares; 90 Fed. Reg. 45414 (September 22, 2025).

"Fund" is not a statutorily defined term under the 1940 Act. Many established investment vehicles not registered under the 1940 Act use the term "fund" in their name (*e.g.*, hedge funds, commodity pools, business development companies). As such, an ordinary investor interprets use of the term "fund" with its plain meaning—an investment product where investors are able to obtain exposure to a specific asset class or pool of assets—and therefore also interprets the acronym "ETF" similarly, as opposed to "exchange-traded open-end investment company registered under the 1940 Act."

Given the structural and operational similarities between Commodity Trusts and exchange-traded open-end investment companies registered under the 1940 Act, the former's use of the term "ETF" (or "fund") in its name does not cause any implications for investor clarity. Additionally, since investors ascribe a colloquial meaning to the use of such terms, we do not believe this causes any confusion. Thus, we would recommend that no additional naming restrictions, labelling requirements or clarification obligations be imposed on Commodity Trusts.

II. The industry would benefit from confidential, early engagement mechanisms.

We would suggest that the Commission consider mechanics for early engagement between the staff and sponsors of Novel ETFs such as a pre-filing consultation process and/or confidential draft registration statements (the latter being similar to how the Commission allows private companies to submit confidential draft registration statements for non-public review without first filing on EDGAR).[2] These mechanisms serve a mutually beneficial purpose for such sponsors, the Commission, and investors.

Without such mechanisms, a sponsor typically only receives feedback from the staff on a proposed Novel ETF after publicly filing an initial draft registration statement. This process exposes the sponsor to the risk of "copycat" competitor filings following in rapid succession, which dilutes the value of innovation by diminishing any first mover benefits.[3] Pre-filing engagement, such as the option to confidentially submit a draft registration statement, would allow the staff to raise and the sponsor to address questions about a Novel ETF's strategy, operational feasibility, and compliance with the 1940 Act, among other topics, before a public filing is made on EDGAR.

[2] 15 U.S.C. § 77f(e); *see* SEC Division of Corporation Finance, 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.

[3] *See, e.g.*, Request for Comment on Novel ETFs, Securities Act Release No. 33-11426 n.19 (June 30, 2026) ("IM Staff has observed several Novel ETF 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."); CNBC Television, *SEC's Brian Daly Explains Why the Regulator Is Offering Public Comment on Novel ETFs*, YouTube (July 1, 2026), https://www.youtube.com/watch?v=T5ORKKso9D8 ("…but this is the ETF world. as you know, it's a winner take all, first mover wins. So it's hard for [sponsors] to have an iterative discussion with us to go back and forth when they're looking over their shoulder and they're saying, oh my god, there's somebody who's reading my disclosure in real time who's trying to jump ahead of me in line, and if they beat me, all my investment is for naught.").

The staff also benefits from these mechanisms for early engagement. The examiners would receive and review, once publicly filed, more advanced draft registration statements for Novel ETFs and would already have familiarity with the proposed strategies and contents, reducing the resources needed to review and providing the staff more time to address complex issues. Implementing a confidential review process may also decrease the number of copycat filings by sponsors who may not be ready or planning to launch such Novel ETFs, which would also conserve staff resources and time. This would lead to a more efficient and streamlined review process for the staff.

Finally, investors benefit because having the staff meaningfully engage with sponsors on Novel ETFs, which often present first-of-their-kind concepts and issues, leads to better-developed products and more comprehensive disclosure. Also, a pre-filing consultation or confidential draft registration statement review would provide the staff with a chance to screen and vet proposed Novel ETFs for structural, operational and legal soundness before these proposals enter the public domain and ultimately become available for investment.

However, we recommend that the substance of any early engagement mechanisms be kept fully confidential and, at a minimum, any reporting be fully anonymized. Confidentiality is crucial in order to promote free and fair competition and incentivize cooperation between the Commission and the industry participants. As mentioned above, we note that the Division of Corporation Finance offers an option for confidential review of a sponsor's initial draft registration statement. If the Division of Investment Management offers a corresponding mechanism, we feel that confidentiality regarding any pre-public filing consultations and review is important.

We would suggest that the Commission consider offering mechanics for confidential, early engagement between the staff and sponsors of Novel ETFs given the mutual benefits such mechanisms provide.

III. The current ETF disclosure regime is suitable for Novel ETFs.

We would recommend that the Commission not consider changes, including imposing heightened disclosure requirements, to the ETF disclosure regime for Novel ETFs. The existing disclosure regime for 1940 Act ETFs is sufficient to capture and convey to investors all relevant details regarding the investment objective, strategies, fees, performance, risks, and additional information for investors to make an informed investment decision.

First, Form N-1A contains a plain English requirement, meaning the language used therein must be concise, clear and understandable.[4] Although a Novel ETF may raise complex questions, sponsors are required to draft explanatory disclosure regarding the Novel ETF and associated risks in a straightforward way.

[4] SEC Form N-1A, Gen. Instr. B(4)(c) (requiring the use of Rule 421 plain English disclosure standards).

Second, the Commission has an opportunity to review the initial draft registration statement of a Novel ETF and provide comments. If a sponsor does not address certain questions or meet the plain English requirement, the examiner can raise these issues in a comment letter.

Third, the current disclosure regime requires ongoing disclosure obligations for ETFs. Should a Novel ETF need to disclose a material event or development following its launch, the current rules require the issuance of a prospectus supplement, disclosure in a periodic shareholder report and incorporation in the next annual prospectus update.[5] ETF boards of directors also maintain an oversight function over fund disclosures. Directors review registration statements to fulfill their fiduciary duties and due diligence obligations under federal securities laws. In addition, Rule 6c-11 mandates daily website disclosure of certain portfolio and trading information.

The current ETF disclosure regime can accommodate Novel ETFs and any questions they may raise due to its plain English requirements, the mandatory review by the staff of pertinent disclosure, and each Novel ETF's preexisting obligation to notify shareholders and market participants of important updates on an ongoing basis. The Commission has other, more individualized, options it may use to address specific disclosure deficiencies for a Novel–or any–ETF.[6] Therefore, we would suggest that the Commission not consider any changes to the ETF disclosure regime in connection with Novel ETFs.

For the foregoing reasons, 21shares respectfully suggests that the Commission (i) refrain from imposing additional naming, labelling, or clarification requirements on exchange-traded commodity trusts that use the term "ETF" or "fund"; (ii) adopt confidential, early engagement mechanisms—such as a pre-filing consultation process or draft registration statement review—for sponsors of Novel ETFs; and (iii) decline to impose heightened or additional disclosure requirements on Novel ETFs beyond the existing ETF disclosure regime. We appreciate the opportunity to comment on this important initiative and would welcome the chance to discuss our views further with the Commission and its staff.

Respectfully,



Duncan Moir
President

cc: Jennifer Nichols
Audrey Belloff
W. Wayne Miao
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[5] 17 C.F.R. §§ 230.485, 230.497, 270.30e-1 (2026).
[6] *See, e.g.*, 17 C.F.R. § 230.485(c) (suspension authority) and 15 U.S.C. § 77h(d) (stop order authority).