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August 31, 2026

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 Secretary Countryman:

The Security Traders Association ("STA")[1] appreciates the opportunity to respond to the U.S. Securities and Exchange Commission ("Commission" or "SEC") Request for Comment on exchange-traded funds ("ETFs") seeking to invest in innovative asset classes or engage in novel investment strategies ("Novel ETFs"); File No. S7-2026-24 ("the Request").[2]

STA is a trade association composed of individuals actively involved in securities trading across the United States and Canada. Our members represent a diverse range of business models within the financial services sector, including market makers, broker-dealers, exchanges, central counterparties, clearing firms, technology vendors, and other key participants. STA maintains four Advisory Committees, each composed of and chaired by industry professionals. These committees promote engagement across the full spectrum of roles essential to equities, options, and ETF trading.

Summary Views and Recommendations

The Request thoughtfully seeks input on ways to facilitate innovation in the ETF space while protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. Novel ETFs, those seeking exposure to innovative asset classes or employing novel strategies (including crypto assets, commodity-focused instruments, single-stock strategies,

[1] STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 24 affiliate organizations in North America with individual members who are engaged in the buying, selling and trading of securities. STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association's founding principle, Dictum Meum Pactum – "My Word is My Bond." For more information, visit https://securitytraders.org/.

[2] https://www.sec.gov/files/rules/other/2026/33-11426.pdf

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heightened leverage, blockchain-enabled opportunities, private assets, event contracts, or combinations thereof), raise important threshold questions. These include investment company status under the Investment Company Act of 1940, (the "1940 Act"),[3] the application of Rule 6c-11,[4] the functioning of the arbitrage mechanism, investor understanding, and the interplay with exchange listing standards.

STA believes the term "Novel ETFs," as used in the Request, is overly broad for purposes of any subsequent rulemaking. The Request groups together products that raise meaningfully different legal, operational, market-structure, and investor-protection questions. Therefore, should the Commission move to formal rulemaking, STA recommends that regulatory distinctions be based on the risk characteristics of the specific type of ETF, rather than on the fact that a product is new or uses the ETF wrapper.

STA also believes the Commission should consider requiring, for certain Novel ETFs, an assessment of the fund's expected NSCC/DTCC margin and Clearing Fund impact before the fund is permitted to launch. Assessing and pricing risk at the point of registration would better ensure that additional and unexpected margin charges – which are highly disruptive to clearing members, introducing firms, and other market participants - are identified before trading begins rather than discovered after the product is already in the market.[5]

This requirement should not apply to every ETF or to every product that might be labeled "Novel." It is most relevant where the fund's principal strategy involves leverage, inverse exposure, single-name or narrow-basket concentration, or other characteristics that produce a volatility and concentration profile materially different from the diversified, broad-market ETFs the clearing and settlement system was originally designed to support.

STA recommends two targeted process improvements would meaningfully advance the Commission's objectives without impeding innovation or creating unnecessary friction for products that fit within established frameworks.

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[3] https://www.sec.gov/rules/final/2019/33-10695.pdf

[4] https://www.sec.gov/investment/exchange-traded-funds-small-entity-compliance-guide

[5] See STA Letter dated November 6, 2024, to Ms. Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission on File No. SR-OCC-2024-010; Margin Add-On Charge to Help Mitigate the Risks of Intraday and Overnight Trading Activity
See also, Apex Clearing Letter dated August 5, 2026, to Ms. Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission on Request for Comment on Novel ETFs (Release No. 33-11426; 34-105808; IC-36228; File No. S7-2026-24) "That sequence (list first, measure the capital impact later, once it has already materialized in clearing members' portfolios) is the sequence Apex's recommendation is intended to change."

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1. Confidential, Time-Bound Review Option for Novel ETF Filings

The Commission should consider providing an optional confidential, time-bound filing or review process for ETFs (or new series thereof) registered under the 1940 Act where the products raise questions about structure, investment company status under Section 3 of the 1940 Act (including the subjective and objective tests and the Tonopah factors),[6] and/or the regulatory treatment of underlying instruments. This process would allow issuers and the Commission's Division of Investment Management to engage on complex issues before a public filing under Rule 485(a)[7] or an initial Form N-1A, while remaining time-bound to preserve efficiency and accountability. Such a procedure would create a more orderly process for resolving threshold regulatory questions before a public filing generates competitive pressure, investor expectations, copycat filings, or media coverage that issuers may be limited in their ability to address during the review process. It could also reduce the risk that the sequencing of public filings, staff comments, withdrawals, or effectiveness dates inadvertently advantages or disadvantages particular issuers.

Confidential review would be particularly useful for ETFs raising threshold questions, such as:

- Whether underlying instruments constitute securities.
- Whether the vehicle is appropriately regulated as an investment company.
- Whether the product is best suited for the Investment Company Act ETF framework or another exchange-traded product structure.
- Whether the strategy can operate within Rule 6c-11.
- Whether considerations by the Commission's Division of Trading and Markets may warrant additional disclosure, operational safeguards, surveillance measures, creation/redemption procedures, or listing conditions prior to launch.

The Commission could look to the confidential submission process available for Emerging Growth Companies ("EGCs") under the Jumpstart Our Business Startups Act (the "JOBS Act")[8] as a conceptual model, while tailoring the timing and procedural requirements to the unique characteristics of ETFs.

Once a filing becomes public, there should be a defined period prior to effectiveness that gives issuers, exchanges, and market participants greater certainty regarding launch timing and reduces the likelihood that unresolved regulatory concerns emerge immediately before launch.

[6] https://www.sec.gov/investment/im-guidance-2017-03.pdf
[7] SEC.gov | ADI 2019-07 – Review of Certain Filings Under Automatic Effectiveness Rules
[8] SEC.gov | Jumpstart Our Business Startups (JOBS) Act

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Confidential review would not be necessary or appropriate for every ETF filing. Sponsors could elect to use the process where a product raises significant new questions or where early engagement by Commission staff would be beneficial. Public disclosure would still occur before launch, ensuring that investors receive appropriate transparency and the opportunity to evaluate the product prior to trading.

This approach aligns with the Commission's questions regarding early engagement mechanisms (including pre-filing consultation or confidential draft registration statements), the timing of automatic effectiveness under Rule 485, competitive pressures and first-mover incentives, and the need for greater clarity around material changes during review or pre-launch.

2. Formal Cross-Divisional Coordination Process

While a confidential review process could help identify and resolve threshold regulatory questions, Novel ETF filings may also raise considerations from the Commission's Division of Trading and Markets that warrant earlier and more structured coordination across the Commission and with listing exchanges.

Therefore, the Commission should consider establishing a formal cross-divisional coordination process for Novel ETF review. This process should include required coordination between the Division of Investment Management and the Division of Trading and Markets, allowing for dialogue on exchange listing considerations at the outset or as part of the review process. A product may satisfy the technical requirements of Rule 6c-11, but still raise separate Trading and Markets questions such as, for example, whether market makers can efficiently value and hedge the ETF to support efficient arbitrage, and whether existing surveillance arrangements are adequate.

Where an ETF would introduce a new asset class, exposure, or strategy not previously listed in ETF form, the Commission should have a structured opportunity to coordinate across divisions and exchanges, where appropriate, to determine whether existing generic listing standards are sufficient or should be amended, clarified, or supplemented before trading begins.

The review should be targeted and time-bound. It should not halt innovation, impose unnecessary friction on products that fit within established regulatory and listing frameworks, or delay new products indefinitely. The coordinated review should involve, as appropriate:

- The Division of Investment Management;
- The Division of Trading and Markets;

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- The relevant listing exchange;
- Commission staff responsible for exchange rule filings and listing standards;
- Other ETF listing exchanges, where broader generic listing standard implications exist; and
- Other Commission offices or divisions depending on the asset class, product regulatory framework, strategy, or underlying market.

This coordination process would provide a mechanism for identifying and resolving considerations by the Division of Trading and Markets earlier in the review process and help ensure that the Commission can effectively "speak with one voice" when evaluating new ETF structures and strategies.

This recommendation responds directly to the Commission's questions concerning portfolio-related conditions under Rule 6c-11, the interplay between Rule 6c-11 and generic listing standards, investor understanding of Novel ETFs versus other ETPs, and steps to facilitate innovation while protecting investors and maintaining fair, orderly, and efficient markets.

Conclusion

STA believes that a carefully designed confidential review option, paired with formal, time-bound cross-divisional coordination, would improve the quality and predictability of the review process for novel ETFs. These steps would reduce disorderly competitive dynamics, allow threshold legal and operational questions to be addressed earlier and more thoroughly, and better align the Division of Investment Management and Division of Trading and Markets perspectives before products reach the public markets without sacrificing investor transparency or impeding products that fit within existing frameworks.

We appreciate the Commission's thoughtful engagement on these important issues and stand ready to provide additional input or participate in further discussions. Please do not hesitate to contact me if STA can be of further assistance.

Respectfully submitted,

Kevin Skarbek
Chairman
Security Traders Association

James Toes
President & CEO
Security Traders Association