August 31, 2026

VIA ELECTRONIC SUBMISSION

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:

Tidal Investments LLC ("Tidal") respectfully submits this letter in response to the Securities and Exchange Commission's (the "Commission") request for comment concerning exchange-traded funds that invest in innovative asset classes or employ novel investment strategies (the "Request"). Tidal appreciates the Commission's willingness to consider how the regulatory framework can continue to support responsible product development while protecting investors and maintaining fair, orderly and efficient markets.[1]

Tidal is a registered investment adviser that serves as investment adviser to a substantial and growing number of exchange-traded funds ("ETFs") across multiple registered investment companies. Tidal works with a broad range of sponsors and sub-advisers to develop, register, launch and operate ETFs. That experience gives Tidal a direct view of both the strengths of the current regulatory framework and the competitive distortions that can arise during the registration process.

Tidal's central submission is that the existing principles-based framework has served investors and the ETF market well and is sufficiently flexible to accommodate continued product development. Tidal respectfully believes that the Commission and its staff (the "Staff") should consider preserving the independent tests in Section 3 of the Investment Company Act of 1940 (the "1940 Act") and the strategy-neutral design of Rule 6c-11. In Tidal's view, ETFs should remain available for a wide range of lawful investment exposures, including digital assets, commodities, private assets, derivatives-based strategies, leveraged strategies, single-security exposure, and other lawful exposures, provided that the particular fund can satisfy the applicable statutory and operational requirements and provide appropriate disclosure. Tidal also believes that the Commission and the Staff should consider targeted measures to reduce copycat filings and prevent registrants from obtaining an artificial timing advantage through dormant series, Rule 485(b) amendments or Rule 497 filings.

EXECUTIVE SUMMARY

- Investment company status. Tidal believes that the Commission and the Staff should consider continuing to apply Sections 3(a)(1)(A) and 3(a)(1)(C) as independent, alternative bases for investment company status. The Tonopah factors remain a workable framework for the Section

[1] Request for Comment on Novel ETFs, Securities Act Release No. 33-11426, Exchange Act Release No. 34-105808, Investment Company Act Release No. 36228 (June 30, 2026), 91 Fed. Reg. 40647 (July 2, 2026) (the 'Request').

3(a)(1)(A) inquiry. A registered fund whose business is investing, whose public disclosures identify it as an investment vehicle, and whose officers, trustees, adviser and service providers perform investment-company functions ordinarily should not be treated as an operating enterprise merely because its economic exposure includes non-security assets.

- Subsidiaries. In Tidal's view, equity interests issued by a wholly owned subsidiary are "securities" for purposes of Section 3(a)(1)(A), even when they are excluded from "investment securities" for purposes of Section 3(a)(1)(C). The existing multi-factor analysis can distinguish an investment conduit that exists solely to implement a fund's strategy from a holding company that conducts operating businesses through subsidiaries.
- Product eligibility and disclosure. Tidal believes that the Commission and the Staff should consider retaining a strategy-neutral Rule 6c-11 framework rather than imposing broad exclusions for digital assets, commodities, private assets, derivatives-based strategies, leveraged strategies, single-security exposure or other lawful exposures. Commercial innovation should not be conflated with regulatory novelty; heightened review should focus on genuine legal or operational matters of first impression. Functional considerations, existing regulatory safeguards and exposure-specific disclosure can address the particular risks of a proposed ETF without creating a formal or permanent "Novel ETF" designation.
- Confidential review and filing priority. Tidal would support several approaches to protecting genuinely innovative filings, including a uniform initial nonpublic period for Rule 485(a) filings or an opt-in confidential process based on a good-faith request. Any accommodation could preserve the filing's original Rule 485(a) date, require public filing sufficiently before effectiveness and maintain the originating filer's relative position while the Staff reviews substantially similar filings.
- First-mover fairness and anti-evasion. Tidal believes that the Commission and the Staff should (i) consider a fresh 75-day period for repurposed series and fundamental pre-launch changes, (ii) clarify that Rule 497 may not be used for such changes (iii) consistently enforce the Rule 485(b) certifications, and (iv) impose proportionate consequences on registrants that materially misuse Rule 485. These neutral measures would protect legitimate first movers without granting proprietary rights in investment ideas.

I. THE EXISTING 1940 ACT FRAMEWORK REMAINS WORKABLE

Sections 3(a)(1)(A) and 3(a)(1)(C) Provide Independent and Workable Tests

Section 3(a)(1)(A) of the 1940 Act defines an investment company to include an issuer that "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities" (the "Subjective Test"). Section 3(a)(1)(C), by contrast, includes an issuer that is engaged in, or proposes to engage in, the business of investing, reinvesting, owning, holding or trading in securities and owns or proposes to acquire "investment securities" having a value exceeding 40% of its total assets, exclusive of Government securities and cash items, on an unconsolidated basis (the

"Objective Test"). Each provision is an independent statutory basis for investment company status. A proposed fund need not satisfy both.[2]

Tidal respectfully believes that this structure remains appropriate. The Objective Test supplies a readily administrable numerical test where the composition of a fund's portfolio permits it. The Subjective Test addresses the different question whether, in light of the issuer's purpose, representations, activities, assets and income, it is primarily an investment vehicle. The Subjective Test is particularly important for strategies that obtain some economic exposure through instruments or assets that may not be "investment securities" for purposes of Section 3(a)(1)(C), including through a wholly owned subsidiary.

Tidal believes that the Commission and the Staff should consider confirming that qualification under either test is sufficient and declining to import the 40% threshold, or a look-through version of it, into Section 3(a)(1)(A). Congress used different language in the two provisions. Treating Section 3(a)(1)(C) as the exclusive or controlling test whenever a fund obtains exposure to non-security assets would deprive Section 3(a)(1)(A) of much of its independent function; potentially contradicting Congressional intent and exceeding the Commission's rulemaking, adjudicatory and/or discretionary authority under the 1940 Act.

The Tonopah Factors Remain Appropriate for the Subjective Test

The Commission and courts have long considered five factors in determining an issuer's primary business: (1) its historical development; (2) its public representations of policy; (3) the activities of its officers and directors (and, where relevant, employees); (4) the nature of its assets; and (5) the sources of its income (the "Tonopah factors"). Those factors are deliberately flexible. They permit the Commission to evaluate the issuer as a whole and to distinguish an investment vehicle from an operating enterprise without elevating any single balance-sheet item into a dispositive rule.[3]

The Seventh Circuit's decision in SEC v. National Presto Industries, Inc. is instructive. Applying the Tonopah framework, the court emphasized that what principally matters is the belief the company is likely to induce in investors: whether its portfolio and activities will cause investors to treat it as an investment vehicle or as an operating enterprise. That investor-perception inquiry maps naturally onto a proposed registered fund. A series organized within a registered investment company, offered on Form N-1A, managed by a registered investment adviser, overseen by investment-company trustees and officers, and operated through the familiar ecosystem of a custodian, administrator, transfer agent, distributor and other fund service providers holds itself out as an investment vehicle. It does not sell goods or services, maintain an operating workforce, or seek operating profits from a commercial business.[4]

The nature of the fund's expected returns points in the same direction. Investors purchase the fund's shares to obtain professionally managed exposure to a disclosed investment strategy. The fund's NAV and returns are derived from its portfolio positions and related investment activities. That remains true when one portfolio position is an interest in a subsidiary formed solely to facilitate an investment strategy or when the economic reference asset underlying a derivative is not itself a security.

Tidal does not believe that an additional Tonopah factor is necessary and respectfully believes that the Commission and the Staff should consider declining to convert the factors into rigid percentages. A

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2 Investment Company Act §§ 3(a)(1)(A), 3(a)(1)(C), 3(a)(2), 15 U.S.C. §§ 80a-3(a)(1)(A), 80a-3(a)(1)(C), 80a-3(a)(2).

3 In the Matter of Tonopah Mining Co., 26 S.E.C. 426, 429-32 (July 21, 1947); Request at 6-7.

4 SEC v. Nat'l Presto Indus., Inc., 486 F.3d 305, 315-16 (7th Cir. 2007).

prescriptive test would be difficult to apply to a new fund that has no operating history and whose portfolio necessarily changes over time. The existing totality-of-the-circumstances analysis is both more faithful to Section 3(a)(1)(A) and better able to accommodate future product structures.

Wholly Owned Investment Subsidiaries Fit Within the Existing Framework

A share or other equity interest issued by a wholly owned subsidiary is a "security" within the broad definition in Section 2(a)(36) of the 1940 Act. Section 3(a)(2) excludes certain securities issued by majority-owned subsidiaries from the defined term "investment securities," but that exclusion applies to the calculation under Section 3(a)(1)(C); it does not rewrite the term "securities" in Section 3(a)(1)(A). Tidal respectfully believes that the Commission and the Staff should consider maintaining this distinction.[5]

Tidal does not believe that a categorical rule treating every issuer that holds subsidiary interests as primarily engaged in investing in securities is necessary. The Tonopah factors already supply the relevant limiting principle. A fund subsidiary of the type commonly used to obtain commodity or other specialized exposure generally has no separate public investors, no employees, no independent business plan and no operating business. It exists only as an extension of the parent fund's disclosed investment program, and its activities are supervised within the fund's compliance, valuation, custody, financial reporting and governance framework. Investors reasonably view the parent fund as the pooled investment vehicle and the subsidiary as one mechanism through which the strategy is implemented.

An operating holding company presents materially different facts. Its subsidiaries employ personnel, conduct commercial businesses, generate operating revenues, serve customers and may have independent business purposes. The parent represents itself as an operating enterprise, and its officers and directors devote their activities to directing those businesses. Applying the same Tonopah factors to these different facts produces a different result without requiring the Commission to disregard the legal character of a subsidiary interest or to create a special rule for innovative funds.

Registered-Fund Status Provides Material Investor Protections

A fund that can satisfy Section 3 may reasonably prefer the registered-fund framework even when its strategy provides economic exposure to assets that are not securities. Registration subjects the fund and its adviser to a comprehensive governance and compliance regime, including board oversight, restrictions on affiliated transactions and capital structure, custody and valuation requirements, liquidity and derivatives risk-management requirements, advisory-contract standards and extensive disclosure and reporting obligations. It also places the product within a familiar regulatory and operational framework for investors, intermediaries, exchanges and service providers.

These are not merely distribution advantages. They are substantive investor protections that do not apply in the same manner to an exchange-traded commodity trust or another Securities Act-only product. When an issuer satisfies the statutory definition and affirmatively accepts the 1940 Act's investor protections and constraints, Tidal believes that the Commission and the Staff should consider facilitating, rather than discouraging, that choice consistent with the Commission's core mandate to protect investors.

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[5] Investment Company Act §§ 2(a)(36), 3(a)(2), 15 U.S.C. §§ 80a-2(a)(36), 80a-3(a)(2). See also Nat'l Presto, 486 F.3d at 310-11 (explaining that stock or bonds remain securities even when the issuer invests the proceeds in non-security assets).

II. A PRINCIPLES-BASED RULE 6c-11 FRAMEWORK CAN ACCOMMODATE DISTINCTIVE RISKS

Rule 6c-11 Can Accommodate a Broad Range of Lawful Exposures

Rule 6c-11 was adopted to establish a consistent, transparent and efficient regulatory framework that would promote competition and innovation among ETFs. Its core conditions support the creation and redemption process, portfolio transparency and the arbitrage mechanism. The rule generally does not prescribe the assets that an ETF may hold or the strategies it may pursue, subject to its express provisions and the other requirements of the 1940 Act.[6]

Tidal is of the view that experience under the ETF regulatory framework counsels against equating a new investment proposition with regulatory novelty. An ETF may offer an exposure that is new to the market while relying on legal, operational and portfolio-management structures that the Commission and the Staff have already addressed. The relevant question is not whether the product is new, but whether it can operate consistently with Rule 6c-11 and applicable investor protections.

This distinction matters because investors can obtain leveraged and options-based exposures through structured notes, margin accounts and directly traded options, often without the same combination of daily valuation, portfolio transparency, board oversight, professional management and compliance requirements applicable to a registered ETF. Offering a comparable exposure through an ETF may, in appropriate circumstances, place it within a more transparent and regulated structure. The 2022 introduction of single-stock leveraged and inverse ETFs illustrates the point: the investment proposition was new, but the products relied on the existing ETF and derivatives frameworks under Rules 6c-11 and 18f-4. Their distinct risks warrant clear, product-specific disclosure, not a separate regulatory category based solely on novelty.

Tidal takes the position that heightened review should focus on genuine matters of regulatory first impression. The use of leverage, single-security exposure, options or swaps should not, standing alone, cause an ETF to be treated as novel or subjected to additional Rule 6c-11 conditions. Where the relevant regulatory structure has been reviewed repeatedly, subsequent funds should remain subject to the existing framework, including Rule 18f-4 and applicable disclosure, valuation, liquidity and exchange-listing requirements.

Tidal respectfully believes that the Commission and the Staff should consider preserving that strategy-neutral design. Novelty alone does not establish that an ETF's arbitrage mechanism will fail or that its strategy is unsuitable for the ETF wrapper. The relevant considerations are functional: whether the fund can calculate a reliable daily NAV; value and custody its assets; manage liquidity and derivatives risk; construct workable baskets or use cash transactions with appropriate transaction fees; obtain sufficient authorized-participant and market-maker support; and comply with exchange-listing and market-surveillance requirements. Those questions can be evaluated by reference to the particular strategy rather than through minimum securities holdings, categorical asset exclusions or generally applicable diversification and concentration limits.

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[6] Exchange-Traded Funds, Securities Act Release No. 33-10695, Investment Company Act Release No. 33646 (Sept. 25, 2019), 84 Fed. Reg. 57162, 57163 (Oct. 24, 2019) (the 'Rule 6c-11 Adopting Release').

In Tidal's view, this functional analysis can accommodate ETFs providing exposure to digital assets, commodities, private assets, derivatives-based strategies, leveraged strategies, single-security exposure and other emerging markets or instruments. These products may require careful consideration of valuation, custody, liquidity, counterparty, settlement, market-surveillance and arbitrage issues, but those issues are not identical across products and do not necessarily warrant categorical exclusion. Where a fund obtains the relevant exposure through securities, derivatives or a wholly owned investment subsidiary and otherwise satisfies the 1940 Act, the character of the economic reference asset alone should not make the ETF wrapper unavailable.

For example, as applied to digital assets, commodities and private assets. The daily-NAV and arbitrage requirements of an ETF, together with the valuation, liquidity, custody, derivatives and compliance requirements applicable to a registered fund, supply meaningful safeguards. Some proposed strategies may not be workable in an open-end ETF, and the Staff appropriately may raise questions based on the facts of a particular filing. Tidal respectfully believes, however, that investors generally benefit when a product that can satisfy the statutory and operational requirements is offered within the registered-fund framework rather than being excluded solely because its reference exposure is new, complex or not itself a security.

Existing rules already address many of these matters. Rule 2a-5 provides a framework for fair value determinations; Rule 22e-4 requires liquidity risk management; Rule 18f-4 governs derivatives risk and leverage; Rule 38a-1 requires compliance policies and procedures; and Rule 6c-11 and Form N-1A impose ETF-specific transparency and disclosure requirements. Tidal believes that the Commission and the Staff should consider using and, where necessary, clarifying these existing tools before adding strategy-specific portfolio conditions to Rule 6c-11.

Exposure-Specific Disclosure Is Preferable to a Formal Label

Tidal supports clear and, where warranted, enhanced disclosure for strategies that present risks not adequately conveyed by existing standardized disclosure. Such disclosure may appropriately address, as applicable: the source and duration of the fund's economic exposure; the difference between the assets held by the fund and the assets or events referenced by those holdings; leverage, daily reset and compounding effects; valuation inputs and circumstances requiring fair value; liquidity and cash creation or redemption risks; counterparty concentration; the use and role of a subsidiary; and circumstances in which the strategy may not be implemented as intended.

Tidal respectfully believes that the Commission and the Staff should consider avoiding a generic “Novel ETF” legend, a public list that permanently designates particular funds as novel, or a formal regulatory category based on a definition that is likely to become obsolete. A loosely defined and time-dependent label would create ambiguity rather than reduce it. A single-stock ETF, a private-asset strategy, a commodity-linked fund, and a leveraged or derivatives-based strategy do not present the same risks. A broad label could imply that all such products require the same analysis, stigmatize strategies long after they cease to be new and distract investors from the risks that actually matter. Exposure-specific, plain-English disclosure is more useful.

This does not preclude the Staff from identifying a filing as presenting a matter of first impression for internal review or from determining that a filing contains a genuinely innovative feature. Tidal believes that any such determination should be procedural, filing-specific and temporary. It should not operate as a merits

judgment, trigger a permanent public designation, or subject the fund to substantive restrictions that do not apply to comparable products once the relevant issue has become familiar.

III. THE RULE 485 PROCESS CAN BETTER PROTECT INNOVATION AND PREVENT TIMING ARBITRAGE

The Standard Review Periods Generally Remain Appropriate

Tidal respectfully believes that the Commission and the Staff should consider retaining the existing 60- and 75-day automatic effectiveness periods as the general rule. Many filings that are new in a commercial sense do not present unresolved legal or operational issues. A blanket extension would delay investor access and impose costs on sponsors without necessarily improving review. It also would make the threshold definition of "novel" outcome-determinative and invite inconsistent treatment.

Tidal also believes that the Commission and the Staff should consider whether automatic tolling based solely on a failure to respond to Staff comments within five business days would be unnecessarily rigid. The Staff may issue comments at different points in the review period, and a substantive response may require input from a sponsor, sub-adviser, exchange, counterparty, tax counsel, and/or multiple service providers. Registrants already may file an amendment designating a later effective date when additional time is needed, and Rule 485(c) permits the Commission to suspend effectiveness where an amendment appears materially incomplete or inaccurate. If additional authority is considered, Tidal believes it would be most effective if targeted to a specific filing, accompanied by written notice and subject to objective time limits.[7]

Tidal Would Support Multiple Approaches to Confidential Review and Filing Priority

The public filing process can expose a genuinely innovative ETF concept, its portfolio construction and its legal and operational architecture well before the originating sponsor can reach the market. Competitors can now use automated tools to reproduce substantial portions of a filing almost immediately. The originating sponsor bears the cost of developing the concept, analyzing the structure, retaining counsel, engaging service providers, arranging counterparties and market support, and working through regulatory questions. A later filer can free-ride on that work and, in some circumstances, reach the market first by repurposing a dormant series, using a 60-day amendment for a substantially new product, or making a material change through an immediately effective filing.[8]

Tidal does not suggest that an investment idea should receive a proprietary right or that later sponsors should be prevented from offering competing products. Competition benefits investors. The concern is that the filing process can reward the registrant with the largest inventory of unused series or the greatest willingness to stretch the boundaries of Rules 485 and 497, rather than the sponsor that developed a

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7 17 C.F.R. § 230.485(a)(1)-(2), (b)(1)(iii), (c)(1).

8 The Request notes that Commission Staff has observed substantially identical filings submitted in rapid succession and that artificial intelligence may accelerate imitative filings. Request at 13 n.19. See also Comment Letter of The Digital Chamber, Request for Comment on Novel ETFs, File No. S7-2026-24, at 11-14 (Aug. 27, 2026) (supporting confidential review and reforms addressing imitative filings and dormant-series repurposing); Comment Letter of Anonymous, 40 Act Lawyer, Request for Comment on Novel ETFs, File No. S7-2026-24, at 6-10 (July 31, 2026) (supporting an initial nonpublic period for Rule 485(a) filings, new review periods for repurposed series and material changes, limitations on Rule 497 use, preservation of filing priority, and consequences for misuse of Rule 485).

complete product and first exposed the concept to public view. That dynamic weakens incentives to invest in genuine product development, pressures sponsors to file prematurely, and undermines confidence that similarly situated registrants will receive comparable review periods.

Tidal respectfully believes that the Commission and the Staff should consider one or more confidential-review and priority-preservation measures. A process modeled in part on the Division of Corporation Finance's nonpublic review accommodation provides one useful reference point. Tidal would be open to several approaches, including the following, individually or in combination:[9]

- Uniform initial nonpublic period. The Commission could permit all Rule 485(a) filings to remain nonpublic for an initial period, such as 30 days. This approach would be objective, administratively straightforward and would avoid the need to define or publicly designate a "Novel ETF." The filing would then become public for the balance of the applicable review period.
- Optional confidential treatment. Alternatively, or in addition, a registrant could submit a substantially complete Rule 485(a)(2) amendment with a short, good-faith request explaining why the strategy, structure, instrument or regulatory issue is genuinely innovative. The Staff could accept or deny the request promptly. A different reference security or cosmetic variation, standing alone, ordinarily would not support extended confidentiality.
- Preservation of the filing date. Under either model, the applicable Rule 485(a) period could run from the original nonpublic submission date. A good-faith request that is denied could be made public without restarting the period, while a materially incomplete or bad-faith submission could be required to begin a new period.
- Public availability before effectiveness. The Commission could require the registration statement and any nonpublic drafts to be filed publicly for a meaningful period before effectiveness, such as 15 days. This would preserve public transparency and permit market participants to review the operative disclosure before launch.
- Preservation of relative priority. Where substantially similar filings are under review, the Staff could consider maintaining their relative order and avoiding actions that allow a later filer to eliminate an earlier filer's timing lead solely because the Staff required additional analysis from the originating filer. This could be accomplished without guaranteeing effectiveness or limiting the Staff's ability to address the merits of each filing.
- Accountability and aggregate reporting. Staff comments and registrant responses could be released after effectiveness on a timetable similar to the Corporation Finance process. The Commission also could publish aggregate information regarding confidential submissions, acceptance rates and review times without identifying the strategies under review or creating a permanent Novel ETF list.
- Consequences for material misuse. If, after written notice and an opportunity to respond, the Staff determines that a registrant materially misrepresented the basis for confidential treatment, omitted a known materially similar filing or otherwise abused the process, the Commission could consider making the filing public, restarting the applicable period, restricting the registrant's future access

[9] See Division of Corporation Finance, Enhanced Accommodations for Issuers Submitting Draft Registration Statements (Mar. 3, 2025).

to confidential treatment or Rule 485, or taking other proportionate action available under the federal securities laws.

Tidal believes that it would be important to distinguish a good-faith request that the Staff denies from a submission that materially abuses the process. Automatically restarting the period whenever the Staff reaches a reasonable but different judgment about novelty could chill legitimate use of the accommodation and place excessive weight on a necessarily judgmental threshold determination. A restart and other consequences would be more appropriately reserved for a bad faith, materially misrepresented or materially incomplete submission.

The Staff's acceptance of confidential treatment would be procedural only. It would not constitute an approval of the strategy, a conclusion that the filing complies with the federal securities laws, a formal designation of the product as novel, or a proprietary right in the concept. The registrant would remain responsible for the accuracy and completeness of its registration statement and for resolving Staff comments.

Anti-Evasion Measures Could Complement Confidential Review

Confidential review would address only part of the copycat problem if later filers could bypass the originating sponsor through a shorter or immediately effective filing. Rule 485(a)(2) currently provides a 75-day period for an amendment adding a series, while other Rule 485(a) amendments generally become effective after 60 days. Rule 485(b) is limited to enumerated purposes, including non-material changes, and requires registrant and, where applicable, counsel certifications regarding the amendment's eligibility for immediate effectiveness.[10]

Tidal believes that the Commission and the Staff should consider clarifying or amending Rule 485 so that a dormant or unlaunched series converted into a substantially different fund is treated as a new series for timing purposes. The same treatment could apply where a series is held only by the sponsor or its affiliates and has not commenced a bona fide public offering. In Tidal's view, a registrant should not obtain a 15-day advantage solely because it previously registered a placeholder series that never operated according to the strategy described in its effective prospectus.

Tidal also believes that the Commission and the Staff should consider clarifying that a registrant may not file a Rule 485(a) amendment describing one strategy and then use a Rule 485(b) amendment at effectiveness to substitute a materially different strategy. Rule 485(b) permits non-material changes; it is not an alternate pathway for a fundamental change. The Commission's integrated disclosure guidance likewise states that a post-effective amendment is appropriate for major and substantial changes so that the information is subject to statutory liability and Staff review. Consistent enforcement of the existing registrant and counsel certifications, together with a new reviewable amendment for material departures, would materially reduce this avenue for line-jumping.[11]

For the same reason, Tidal believes that the Commission and the Staff should consider clarifying that Rule 497 is not available to accomplish indirectly a change that requires a reviewable Rule 485(a) amendment. Rule 497 can efficiently update disclosure in appropriate circumstances, but it should not serve as a

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[10] 17 C.F.R. § 230.485(a)(1)-(2), (b)(1)(v), (b)(2), (b)(4).

[11] Adoption of Integrated Disclosure System, Securities Act Release No. 6383 (Mar. 3, 1982), 47 Fed. Reg. 11380, 11395 (Mar. 16, 1982); Request at 5 n.7.

substitute for Rule 485(a) when a pre-launch change fundamentally alters the product. A fundamental change made before launch, at launch or while shares are held only by affiliates could require a new Rule 485(a)(2) amendment and a new 75-day period, unless the change is necessary to address a Staff comment and does not materially alter the strategy's central economic exposure.

Tidal believes that a principles-based materiality standard focused primarily on changes to a fund's principal investment strategy description would be preferable to an exhaustive list. For example, a change could be considered material when a filing containing a broad or non-specific principal investment strategy is revised to describe a substantially more focused or otherwise materially different strategy. Revisions made in response to Staff comments, and nominal changes that do not materially change the fund's strategy, such as conforming revisions made in response to a corresponding change in an underlying index's strategy, should not trigger a new review period.

Tidal believes that any such standards should be applied consistently to the originating sponsor and later filers. They would not require the Commission to adjudicate ownership of an investment idea. They would simply help ensure that economically comparable new products receive comparable review periods and that a registrant cannot obtain priority through a filing form that does not match the substance of the change.

The Commission and the Staff also could consider requiring a filing to be substantially complete before it receives the benefit of confidential treatment or procedural priority. This would discourage placeholder filings that disclose too little to permit meaningful review while preserving the ability to make ordinary revisions in response to Staff comments. The standard could focus primarily on whether the filing describes the fund's principal investment strategy with sufficient specificity for the Staff to evaluate the proposal.

Finally, Tidal would be open to proportionate consequences for material or repeated misuse of the filing process. Depending on the conduct and after appropriate notice and an opportunity to respond, the Commission could consider suspending the effectiveness of a materially incomplete or inaccurate filing under Rule 485(c), restricting a registrant's future use of confidential review, amending Rule 485 to permit temporary loss of automatic-effectiveness eligibility in egregious cases, or requiring the registrant to proceed under Section 8(c) and seek acceleration. The availability of meaningful remedies would help deter abuse, while a good-faith disagreement concerning materiality or filing eligibility ordinarily would not warrant the same treatment.

Other Potential Measures Could Be Evaluated in Light of Their Practical Effects

From Tidal’s perspective, an upfront registration fee is unlikely to solve the copycat or dormant-series problem. It could increase the cost of entry, disproportionately burden smaller innovators and have little deterrent effect if the amount can be offset against Rule 24f-2 fees. In Tidal's view, measures directed at timing arbitrage and filing eligibility would more directly address the concern.

Tidal also believes that the Commission and the Staff should consider whether requiring a fund's board to identify and approve each proposed series as a condition to filing would produce meaningful benefits. Existing registration statement signature requirements, the registrant's disclosure controls and the board's oversight responsibilities already impose accountability. A filing-specific board requirement could disadvantage complexes whose boards meet on a regular quarterly schedule and would not necessarily prevent a sponsor from approving a large inventory of placeholder concepts.

Automatic deregistration six months after effectiveness likewise may be unnecessary if repurposed funds are required to use a fresh 75-day filing. A sponsor may delay launch for legitimate reasons, including market conditions, exchange readiness, seed capital, counterparty capacity or the availability of an underlying instrument. If the Commission considers a sunset, Tidal believes that a materially longer period, such as 18 to 24 months (or at least a 9-month timeframe comparable to the approach taken under Rule 479 prior to abandonment of a pre-effective amendment),[12] together with a limited extension upon a good-faith showing, would better balance recordkeeping concerns with legitimate product-development timelines.

Finally, Tidal does not support requiring prospectus disclosure of unresolved Staff comments. Many comments concern drafting, consistency or requests for supplemental explanation rather than information material to an investment decision. There can also be considerable variation or inconsistency in the nature and scope of Staff comments regarding substantially similar funds or strategies across various branches or groups within a Division, or Commission-wide. A broad disclosure requirement of unresolved Staff comments could confuse investors, create inequities in treatment of otherwise similar funds, convert the comment process into collateral negotiation over characterization, and encourage boilerplate. Where a registration statement is materially incomplete or inaccurate, the Commission already has authority under Rule 485(c) to suspend effectiveness. Tidal believes that this targeted authority would be more useful than embedding the comment process in investor disclosure.

IV. CONCLUSION

The ETF market has benefited from a regulatory framework that is flexible enough to accommodate new strategies while imposing robust investor protections. The history of the ETF wrapper demonstrates that commercial innovation should not be treated as regulatory novelty where the underlying legal and operational structure is familiar. Tidal respectfully believes that the Commission and the Staff should consider preserving the independent statutory tests in Section 3, continuing to apply the Tonopah factors to the facts of each proposed fund, and retaining Rule 6c-11's principles-based design. Targeted disclosure can address distinctive product risks without creating a rigid or stigmatizing category of "Novel ETFs."

Tidal also believes that the Commission and the Staff should consider permitting ETFs to provide exposure to a broad range of lawful assets and strategies, including digital assets, commodities, private assets, derivatives-based strategies, leveraged strategies, and single-security exposure, when the particular product can satisfy the applicable statutory, operational and disclosure requirements. A case-by-case, functional analysis would preserve investor choice and encourage responsible innovation while allowing the Staff to address the risks presented by each product.

At the same time, innovation may be discouraged if the public filing process enables competitors to copy a concept and bypass the originating sponsor through dormant-series repurposing or material changes made under inapplicable filing provisions. Tidal would welcome the Commission's consideration of confidential review, preservation of filing priority, a new 75-day period for repurposed series and fundamental changes made before launch, clarification of the proper uses of Rules 485(b) and 497, and proportionate consequences for material misuse. These measures could address the problem directly while preserving transparency, competition and investor protection.

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[12] 17 C.F.R. § 230.479

Tidal appreciates the Commission's consideration of these comments and would welcome the opportunity to discuss them with the Commission or the Staff.

Respectfully submitted,

TIDAL INVESTMENTS LLC

By: /s/ Michael T. Pellegrino
Michael T. Pellegrino
General Counsel