Kalshi

Submitted via SEC Internet Comment Form

August 31, 2026

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-2026-24—Request for Comment on Novel ETFs

Dear Ms. Countryman:

Kalshi Inc., together with its subsidiaries KalshiEX LLC, a board of trade designated by the Commodity Futures Trading Commission (the "CFTC") as a contract market ("DCM"), and Kalshi Klear LLC, a CFTC-registered derivatives clearing organization (collectively, "Kalshi"), is the leading prediction market in the United States. Kalshi has listed event contracts across economic indicators, financial indices, weather, politics, science, sports, and culture; it has submitted more than 85 percent of all event contracts certified with the CFTC; and it has processed tens of billions of dollars in notional volume under the CFTC's oversight. Because a Novel ETF may hold contracts traded on KalshiEX and cleared through Kalshi Klear, Kalshi has direct operational and regulatory experience relevant to the Commission's questions.

Kalshi submits these comments in response to Questions 1 through 3, 5, 6, and 9 in the Commission's Release on Novel ETFs. Our comments focus on event contracts, and, where relevant, perpetual futures. In May 2026, the CFTC approved KalshiEX's BTCPERP contract for listing as a futures contract.[1] When investors seek pooled exposure to these event contracts, we believe the registered fund is an appropriate vehicle.

Summary of Recommendations

Kalshi urges the Commission to:

- Confirm that a Novel ETF organized, managed, and held out to investors as a pooled

[1] *See* CFTC, CFTC Approves BTCPERP Contract Submitted by KalshiEX, LLC (May 29, 2026), CFTC Release No. 9240-26, https://www.cftc.gov/PressRoom/PressReleases/9240-26.

investment vehicle may qualify as an investment company under the Subjective Test, notwithstanding that its principal investment strategy is to invest in assets that are not securities;

- Retain the Tonopah Factors[2] as a facts-and-circumstances inquiry into business character, and decline to convert the Subjective Test into an asset-percentage test;

- Preserve Rule 6c-11 as an asset-neutral structural framework, without asset-class exclusions, minimum securities holdings, or Novel-ETF-specific diversification, concentration, or issuer limits; and

- Address valuation, liquidity, arbitrage, disclosure, and surveillance questions specific to event contracts through existing Investment Company Act requirements, tailored disclosure, exchange listing standards, and coordination with the CFTC.

I. Investment Company Status

The Commission's inquiries in Part II of the Release center on whether, and under what circumstances, a Novel ETF whose principal investment strategy involves innovative assets[3] that are not securities may qualify as an investment company under Section 3(a)(1)(A), the "Subjective Test."[4] Questions 1 and 3 concern whether Novel ETFs could satisfy the Subjective Test and properly register as an investment company under the Investment Company Act, and relatedly, whether the Tonopah Factors[5] remain suitable in the Novel ETF context. Question 2 asks why a Novel ETF investing principally in assets that are not securities would register as an investment company rather than use an alternative ETP form.

Novel ETFs should be able to give investors access to innovative asset classes, including event contracts, perpetual futures, and other asset classes the Release identifies. An ETF carries with it professional portfolio management, Commission-mandated disclosure, Commission Staff review of Form N-1A filings, the protections and convenience of exchange trading, and the anti-fraud

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[2] *In the Matter of Tonopah Mining Co. of Nevada*, 26 S.E.C. 426 (1947) (establishing the test to determine whether an entity is an operating company or an investment company under the Investment Company Act of 1940). The factors are: (1) historical development; (2) public representations of policy; (3) activities of officers and directors; (4) nature of present assets; and (5) sources of present income.

[3] The Release identifies the following innovative asset classes and novel investment strategies as potentially underlying Novel ETFs: crypto assets; commodity-focused instruments; single-stock strategies; heightened leverage; blockchain-enabled opportunities; private assets; event contracts; and a combination of any of the above. *See* the Release at 40,648. We would add perpetual futures to this list.

[4] Investment Company Act of 1940 Section 3(a)(1)(A), 15 U.S.C. § 80a-3(a)(1)(A).

[5] Request for Comment on Novel ETFs, Release No. 33–11426; 34–105808; IC–36228 (June 30, 2026), 91 Fed. Reg. 40,647 (July 2, 2026) (the "Release"). Pin citations are to the Release as filed; we use the same defined terms here as the Commission does in the Release.

protections of the federal securities laws.

The Commission asks in Question 1 whether greater clarity is needed regarding how a Novel ETF would interact with the Subjective Test. Clarity would benefit market participants, and the Staff alike. We ask the Commission to confirm that a Novel ETF that is organized, managed, and held out to investors as a pooled investment vehicle may qualify as an investment company under the Subjective Test, notwithstanding that its principal investment strategy is to invest in assets that are not securities.

The Subjective Test should remain a facts-and-circumstances inquiry into the issuer's overall business character; it should not be converted into an asset-percentage test. A fund that is organized, managed, marketed, and operated as a pooled investment vehicle, and that invests in a portfolio of securities and other investments, should be capable of satisfying Section 3(a)(1)(A) of the Investment Company Act even where a substantial portion of its economic exposure is to assets that are not securities. That exposure should be relevant under the Tonopah Factors, but not independently dispositive.

Section 3(a)(1)(C), the "Objective Test," remains an independent route. An issuer engaged in the securities-investment business that holds investment securities valued at more than 40 percent of its total assets, excluding Government securities and cash items, may satisfy that test even if a substantial portion of its assets are not securities.[6] This confirms that non-security exposure does not, by itself, place a fund outside the Act.

Regarding Question 2, the registered fund form supplies investor protections and governance requirements that alternative ETP forms do not necessarily provide. Both a registered fund and a commodity pool may be professionally managed, listed on an exchange, and subject to the anti-fraud provisions of the federal securities laws; however, the Investment Company Act provides additional investor protections. Those protections include board (or designee, subject to board oversight) fair value determinations for investments without readily available market quotations;[7] a written derivatives risk management program with a VaR-based leverage limit administered by a derivatives risk manager independent of portfolio management;[8] a liquidity risk management program with at least monthly classification of portfolio investments, including derivatives, into Rule 22e-4's liquidity categories for open-end funds and ETFs;[9] and written compliance policies and procedures overseen by a chief compliance officer protected from coercion or improper

[6] Investment Company Act of 1940 Section 3(a)(1)(C), 15 U.S.C. § 80a-3(a)(1)(C). The statute refers to investment securities having a value "exceeding 40 per centum" of total assets, exclusive of Government securities and cash items.

[7] 17 CFR § 270.2a-5.

[8] 17 CFR §§ 270.18f-4(a), (c)(3).

[9] 17 CFR § 270.22e-4.

influence.[10] An ETP organized outside the Investment Company Act is not subject to this set of requirements.

Novel ETFs with event-contract exposure may also implicate CFTC commodity-pool regulation. Where event contracts held by a Novel ETF are "commodity interests," the Novel ETF may constitute a commodity pool, and its operator may be required to register as a commodity pool operator unless an exclusion or exemption applies.[11] That oversight is not a structural impediment. The CFTC already maintains a harmonized regime for registered investment companies whose operators are commodity pool operators, under which compliance with SEC rules satisfies most corresponding Part 4 disclosure, reporting, and recordkeeping requirements.[12] That regime reflects long regulatory experience with funds combining securities and CFTC-regulated commodity interests. We encourage the Commission to take account of this overlay and, where appropriate, to coordinate with the CFTC on any interpretation, rule amendment, exemptive relief, or other action that would facilitate a Novel ETF's holding of event contracts. The prospect of concurrent CFTC oversight is not itself a reason to exclude event contracts or perpetual futures from the registered-fund framework.

Responding to Question 3, we support retaining the Tonopah Factors and urge the Commission not to replace them with thresholds keyed to the proportion of a Novel ETF's holdings that are securities. Two of the five Tonopah Factors already address asset character: the nature of present assets and the sources of present income.[13] A bright-line percentage test would risk collapsing the Subjective Test into an asset-composition test and would displace the other factors (historical development, public representations of policy, and the activities of officers and directors) that bear directly on business character. Further, a securities percentage would collapse the Subjective Test into an asset test and blur the distinction Congress drew between Sections 3(a)(1)(A) and 3(a)(1)(C). Novel ETFs may differ both in the assets they hold and in how they are organized, managed, and held out to investors; the Tonopah Factors permit the Commission to weigh those considerations together.

II. Novel ETFs and Rule 6c-11

The requests for comment in Part III of the Release ask whether Rule 6c-11 should be amended for Novel ETFs. As the Release observes, Rule 6c-11 defines the structural characteristics of ETFs to support effective arbitrage, but it does not restrict which investment strategies or asset classes

[10] 17 CFR § 270.38a-1.

[11] *See* CEA §§ 1a(10), 4m(1). For example, CFTC Regulation 4.5 provides an exclusion for qualifying registered investment companies. See 17 CFR § 4.5.

[12] *See* Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators (Aug. 12, 2013), 78 Fed. Reg. 52,308 (Aug. 22, 2013).

[13] *In the Matter of Tonopah Mining Co. of Nevada*, 26 S.E.C. 426 (1947).

an ETF may pursue.[14] That design is sound and should be retained. Rule 6c-11 should continue to operate as an asset-neutral structural framework: a registered open-end fund that satisfies the rule's conditions should not face a separate portfolio-eligibility test merely because its strategy includes event contracts or other assets that are not securities.

Question 5 asks whether the assets and strategies of Novel ETFs raise concerns regarding the ETF arbitrage mechanism and investor protection. We do not believe Novel ETFs raise concerns the existing framework cannot address. Event contracts have two distinctive features: a contract resolves to a fixed amount or to zero based on defined criteria at a specified time or upon a specified event, and an individual contract may have less market depth than a conventional futures contract or other widely traded instrument. Although neither feature is present in every event contract. Those features, where present, do not warrant categorical exclusion. Rule 6c-11's daily portfolio transparency gives authorized participants and other market participants the information needed to value a fund's exposures, and the rule's basket flexibility, including custom baskets and cash components, can accommodate instruments that are impractical to transfer in kind.[15] Existing valuation, liquidity, and derivatives-risk requirements separately obligate a fund to address market depth, settlement, and related risks.[16] The relevant inquiry should be functional rather than asset-based: whether the particular fund can be reliably valued; whether its exposures can be traded or hedged; and whether creations, redemptions, and arbitrage can keep the market price of its shares close to NAV.

Question 5 also asks whether Novel ETFs present specialized questions concerning fair, orderly, and efficient markets and the surveillance necessary to support an ETF's listing. Event contracts of the type at issue here already trade on federally regulated DCMs subject to CFTC requirements governing rule enforcement, susceptibility to manipulation, real-time market monitoring, and the prevention of price distortion and market disruption.[17] Those requirements provide a meaningful foundation for surveillance of an ETF holding such contracts. Where additional cross-market visibility is needed, information sharing arrangements between the exchanges that are listing Novel ETFs and the DCMs on which the underlying contracts trade can supply the relevant data and surveillance information, and we would welcome the opportunity to discuss how such arrangements might be structured.

Regarding Question 6, we urge the Commission not to amend Rule 6c-11 to exclude asset classes, require minimum holdings in securities, or impose Novel-ETF-specific diversification,

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[14] Release at 40,649.

[15] *See* 17 CFR §§ 270.6c-11(a)(1), (c)(1), (c)(3).

[16] *See* Rule 22e-4(b)(1)(ii) and (iv). In particular, Rule 22e-4 requires classification of each portfolio investment, including derivatives transactions, taking into account market depth, and prohibits a fund from acquiring any illiquid investment if the fund would thereby exceed 15% of net assets in illiquid investments.

[17] *See* Commodity Exchange Act § 5(d)(2)-(4); 17 CFR §§ 38.150, 38.200, 38.250-.255.

concentration, or issuer limits. Excluding specific asset classes would produce inconsistent results where economically similar exposures are obtained through different legal instruments.[18] A minimum-securities-holdings requirement would burden the entire ETF market to address concerns presented by a narrow set of products. Where a particular asset or strategy presents valuation, liquidity, leverage, or arbitrage concerns, those issues can be addressed through the Investment Company Act's existing requirements, tailored disclosure, applicable exchange listing standards, and Commission Staff review, rather than through a categorical prohibition in Rule 6c-11.

Question 9 notes that an amendment to Rule 6c-11 could affect the generic listing standards.[19] We agree and we urge caution. Rule 6c-11 eligibility and the exchanges' generic listing standards are linked but distinct, and an amendment aimed at a narrow concern could indirectly render an otherwise viable Novel ETF ineligible for generic listing, reintroducing the delay, cost, and product-by-product review that Rule 6c-11 was designed to reduce.

III. Conclusion

For these reasons, we urge the Commission to preserve a flexible application of the Subjective Test grounded in the Tonopah Factors; to retain Rule 6c-11 as an asset-neutral structural framework; and to address event-contract-specific valuation, liquidity, arbitrage, disclosure, and surveillance questions through the existing registered-fund framework, together with applicable CFTC requirements and market-specific arrangements, rather than through categorical exclusions.

We would welcome the opportunity to discuss these views with the Commission and its Staff. Please contact me at sjain@kalshi.com with any questions.

Respectfully submitted,

Sudhir Jain
Chief Compliance Officer
Kalshi Inc.

[18] *See Grayscale Investments, LLC v. SEC*, 82 F.4th 1239 (D.C. Cir. 2023) (vacating the Commission's denial of a spot bitcoin product where the Commission had approved materially similar futures products without adequately explaining the difference).

[19] Release at 40,649.