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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 No. 33-11426; 34-105808; IC-36228; File No. S7-2026-24)

Dear Ms. Countryman:

Andreessen Horowitz ("a16z") appreciates the opportunity to submit this comment letter in response to the request for comment ("RFC"),[1] published by the U.S. Securities and Exchange Commission ("SEC" or "Commission") on June 30, 2026, on exchange-traded funds ("ETFs") seeking to invest in innovative asset classes or engage in novel investment strategies ("Novel ETFs").

a16z is a venture capital firm that invests in seed, venture, and growth-stage technology companies, focused on AI, bio and healthcare, consumer, crypto, enterprise, fintech, games, infrastructure, and companies building toward American dynamism. a16z currently has more than $100 billion in assets under management across multiple funds, with more than $9.8 billion in committed capital for crypto funds. In crypto, a16z primarily invests in companies using blockchain technology to develop protocols that people will be able to build upon to launch internet businesses.

The RFC sought public comment on three key issues, among others: (1) the extent to which Novel ETFs should be treated as investment companies under the Investment Company Act of 1940 ("Investment Company Act"); (2) the appropriate regulatory treatment of Novel ETFs, including any applicable safeguards and disclosure requirements; and (3) how the registration and review process for Novel ETFs can be streamlined and made more efficient, to continue to support innovation while protecting investors.

a16z thanks the Commission for undertaking a thoughtful review of the regulatory framework applicable to Novel ETFs and for seeking public input on how the Commission can continue to foster innovation while maintaining appropriate investor protections, promoting capital formation, and ensuring efficient markets. We support the Commission's efforts to establish a modern, transparent, and predictable regulatory framework and pathway for Novel ETFs.

[1] *See* RFC, Investment Company Act Release No. 36228 (June 30, 2026), 91 Fed. Reg. 40647 (July 2, 2026).

As the Commission evaluates the regulatory framework for Novel ETFs, we respectfully submit four recommendations for the Commission's consideration: (1) preserve the statutory definition of "investment company" under the Investment Company Act; (2) better align the fund registration process under the Securities Act of 1933 ("Securities Act") and the Investment Company Act, and the Securities Exchange Act of 1934 ("Exchange Act") Rule 19b-4's approval process; (3) avoid treating all Novel ETFs as a single category and recognize the significant difference between the various asset types of Novel ETFs; and (4) address possible investor confusion arising from the nomenclature that currently exists for identifying exchange-traded products ("ETPs").

I. The Commission should preserve the statutory definition of "investment company" under the Investment Company Act.

The Commission should not expand the definition of "investment company" under the Investment Company Act to encompass products that primarily hold non-securities. The current statutory definition of "investment company" deliberately turns on whether an issuer's business involves "securities."[2] Section 3(a)(1)(A) covers an issuer primarily engaged in investing, reinvesting, or trading in securities, while Section 3(a)(1)(C) uses a 40% "investment securities" test. While the Staff can act within its authority to interpret the statutory definition of an "investment company" and determine what products fall into the definition,[3] any substantive expansion of the definition would require a legislative amendment by Congress.[4]

The Investment Company Act was designed principally to regulate investment companies—pools investing in securities—rather than every vehicle that pools investor capital to obtain exposure to an asset. For example, although private funds are pools of securities, Congress expressly excluded them from the definition of an "investment company" through Section 3(c)(1) and 3(c)(7) of the Investment Company Act.[5] Expanding the definition through agency interpretation to capture pools based primarily on non-securities assets would represent a broad expansion of the statute's intended scope and should not be done without congressional action. Doing so would also impose a regulatory framework that is not well suited to Novel ETF

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[2] *See* 15 U.S.C. § 80a-3.

[3] For instance, Section 3 of the Investment Company Act contains a number of exemptions from the definition of an "investment company," which the Staff has the authority to interpret.

[4] The Commission's interpretation of the Investment Company Act could also have implications for vaults, which use smart contracts to allocate user assets to yield-generating activities. *See* Comm. Hester M. Peirce, *Headstands and Summervaults: A Statement on Crypto Vaults and Lending Strategies* (July 22, 2026) (observing that vaults "fall along a spectrum from programmatic allocations determined solely by immutable smart contracts, to allocations at the sole discretion of another person or group of persons"). As noted above, the Investment Company Act defines an "investment company" as any "issuer" that engages in certain activities. *See* 15 U.S.C. § 80a-3(a)(1). Under the Act, an "issuer" is defined as every person (natural person or company) who issues or proposes to issue any security, or has outstanding any security which it has issued. *See* 15 U.S.C. § 80a-2(a)(8), (22), (28). Prior to the advent of blockchain technology, allocation and execution could not be performed without human control and discretion. However, blockchain technology makes possible fully autonomous vaults which do not involve human control and discretion and its consequent risks, and therefore would not meet the statutory definition of "investment company" under the Investment Company Act. *See* 15 U.S.C. § 80a-3(a)(1).

[5] *See* 15 U.S.C. § 80a-3(c)(1), (7).

products. This expansion is particularly ill-advised in that the SEC's regulatory objectives can be more efficiently achieved through other means, such as well designed listing standards and principles.

The statutory definition of "investment company" continues to provide an effective line between products subject to the Investment Company Act and products governed by other regulatory frameworks. Imposing the Investment Company Act's regulatory framework on products that hold primarily, or exclusively, non-securities assets would introduce a layer of regulatory complexity and compliance costs that may be poorly aligned with the structure, operation, and risks associated with the product and its underlying assets. Doing so would require sponsors to develop new compliance, governance, reporting, valuation, and operational infrastructures even where those requirements do not meaningfully address the risks presented by the underlying assets.

The SEC's successful treatment of commodity-based ETPs—including ETPs that hold crypto assets—demonstrates that the Commission can accommodate innovative products without expanding the statutory definition of "investment company." The Commission's current approach of evaluating products holding certain categories of non-securities assets for exchange listing has enabled crypto-based ETPs to enter the marketplace. The Commission has approved the listing of numerous crypto-based ETPs while maintaining the existing statutory distinction between registered investment companies and products holding non-security assets.[6] A commodity-based ETP does not fall outside the federal securities laws simply because it is not an investment company registered under the Investment Company Act. The shares themselves are securities, and the offering and exchange trading are subject to the Securities Act and the Exchange Act, including disclosure and anti-fraud requirements. This approach demonstrates that innovation can occur without expanding the statutory scope of the Investment Company Act or imposing additional compliance burdens on products that do not yield corresponding regulatory benefits. A regulatory framework that distinguishes between products that fall within and outside of the statutory definition of "investment company" would better promote proportionality, innovation, and effective investor protection.

II. The Commission should better align the fund registration process under the Investment Company Act and the Exchange Act Rule 19b-4's exchange listing approval process.

a16z applauds the Commission's efforts over the past several years to modernize the ETF approval process. In particular, Rule 6c-11 established a consistent pathway for qualifying ETFs to operate without seeking an individualized exemptive order, while the subsequent adoption of generic listing standards enabled such products to be listed pursuant to pre-established objective criteria without the need for separate, product specific Rule 19b-4 approvals. Rule 6c-11 and the

[6] *See* Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units, Exchange Act Release No. 99306 (Jan. 10, 2024), 89 Fed. Reg. 3008 (Jan. 17, 2024); Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products, Exchange Act Release No. 100224 (May 23, 2024), 89 Fed. Reg. 46937 (May 30, 2024).

corresponding generic listing standards for such ETFs eliminated delays related to the approval process by establishing standardized, rules-based pathways to market, fostering competition and innovation through a streamlined and efficient regulatory framework. These reforms resulted in the ETF market growing substantially, with assets increasing from approximately $4 trillion to $12 trillion, and the number of ETFs increasing from nearly 1,900 to more than 4,600.[7]

However, not all products are able to utilize this streamlined process. Sponsors frequently complete the fund registration process for a Novel ETF while the exchange's determination to list and trade the ETF remains pending under the Rule 19b-4 process, which is dictated by the exchange and its listing standards and not the fund sponsor.

Under the Rule 19b-4 approval process, where the exchange has not previously obtained approval for generic listing standards applicable to ETFs with the same product type, the exchange must file a proposed rule change with the Commission to permit the ETF's listing and trading. Because these proposed rule changes are subject to the Commission's review and a public notice-and-comment process, they can significantly extend the timeline for bringing new ETF products to market.[8]

The existing bifurcated framework, which requires ETF sponsors to navigate the fund registration process and the exchange listing approval process operating on widely different timelines and review procedures, reduces the SEC's ability to respond to market demand for ETF launches. Although each process serves an important regulatory purpose, the lack of coordination between them creates regulatory uncertainty for market participants regarding product launch timing.

The Commission should explore mechanisms to improve coordination between the fund registration and Rule 19b-4 approval process, increase transparency regarding review status, apply consistent standards to similar products, and reduce unnecessary delays in bringing innovative products to market.

Given the benefits that Rule 6c-11 has delivered in facilitating market access for innovative investment products, the Commission could consider amending Rule 6c-11 and the related generic listing standards to provide a clear and streamlined pathway to market certain Novel ETFs. The Commission should also consider implementing standardized timelines and a compressed review period. A standardized cycle of review in which staff discretion is not reduced, but instead where that discretion is exercised on a predictable schedule and against consistent standards for similar products would enhance efficiency. Likewise, review periods should be compressed. Today, filings are submitted electronically, the disclosure is largely templated, and the analytical questions presented in a given product category tend to recur across sponsors. It is important for the Commission to consider that the markets these products are designed to access move on a shorter horizon than the current review period. A faster review

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7 *See* 91 Fed. Reg. at 40647.

8 *Id. at* 40648.

would not implicate a lighter review; instead it means resolving the same questions on a schedule that reflects the tools available today and the pace of the business being regulated.

In tandem, the Divisions of Investment Management and Trading and Markets could coordinate to develop guidance establishing clearer expectations for fund sponsors on the fund registration process and corresponding Rule 19b-4 process and identifying circumstances in which review may be expedited. The Divisions should also work their respective filings simultaneously, or as near to simultaneously as practicable, rather than operating sequentially. The two reviews address different questions and to an extent can proceed concurrently or at the very least overlap in part, with coordination at the points where they genuinely intersect. Joint guidance setting out clear expectations for sponsors on both the registration and Rule 19b-4 processes, and identifying the circumstances in which review may be expedited, would give that coordination a durable form.

III. The Commission should avoid treating all Novel ETFs as a single category, as the underlying assets within the ETF raise distinct regulatory issues.

The Commission should avoid treating all Novel ETFs as a single category because these products raise different market structure, valuation, liquidity, and investor protection considerations. The RFC defines "Novel ETFs" as "sponsors of ETFs [who] have expressed interest in providing exposure to innovative asset classes or using novel investment strategies," such as "crypto assets; commodity-focused instruments; single-stock strategies; heightened leverage; blockchain-enabled opportunities; private assets; event contracts; and/or a combination of any of the above."[9] While these products may share certain characteristics that distinguish them from ETFs based on "traditional" asset classes or strategies, the regulatory issues they raise vary considerably and do not lend themselves to a one-size-fits-all regulatory approach.

For example, ETPs providing exposure to private assets raise fundamentally different concerns than crypto-based ETPs. Because private assets generally lack continuous secondary market pricing and readily available market quotations, the daily net asset value calculations and authorized participant mechanisms required under Rule 6c-11 are difficult or impossible to execute for private asset ETPs and thus, they generally do not qualify for Rule 6c-11. Given the illiquid nature of private assets, authorized participants for such ETFs may face significant challenges in acquiring or disposing of the underlying assets effectively. This may impair the effectiveness of the ETF arbitrage mechanism, resulting in wider and more persistent deviations between the market price of the ETF and the value of the ETF's portfolio holdings.

By contrast, crypto-based ETPs now benefit from a more developed market infrastructure, including exchange-approved listing standards, as well as disclosure requirements relating to their portfolio holdings and valuation metrics, which are similar to requirements under Rule 6c-11.[10] Crypto-based ETPs also benefit from some historical precedent, including the

[9] *Id.* at 40648.

[10] *See* Comm. Caroline A. Crenshaw, SEC, Passing the Buck on Reviewing Proposals to List and Trade Digital Asset ETPs (Sept. 17, 2025).

Commission's approval of numerous crypto-based ETPs and the subsequent approval of generic listing standards applicable to these products.

Other novel products present a distinct set of considerations arising from the nature of the underlying reference assets and the regulatory frameworks governing those markets. For example, the Commission has recognized that protocol staking does not involve the creation of an investment contract and therefore there are certain crypto ETPs that currently allow for staking.[11] Accordingly, the Commission should evaluate Novel ETFs based on the characteristics of the underlying asset class or strategy rather than treating all such products as a single regulatory regime.

IV. The Commission should address possible investor confusion arising from the nomenclature that currently exists for identifying ETPs.

As the Commission considers how to classify Novel ETFs, it should also consider whether to require additional disclosure or a naming convention or other identification scheme to assist investors in distinguishing ETFs subject to the Investment Company Act from other ETPs in future rulemaking.[12] In particular, a more rigorous approach to product nomenclature would complement any additional disclosure requirements adopted as part of the Commission's revised regulatory framework for ETFs.

In the RFC, the Commission requested comment on the naming conventions used for ETFs and sought feedback on the implications for investor clarity.[13] The term "ETF" is generally associated with ETPs regulated under the Investment Company Act.[14] However, participants frequently use the term "ETF" as a label for ETPs that are not subject to the Investment Company Act. As a result, investors may incorrectly assume that such products are regulated as if they had been issued by an investment company registered under the Investment Company Act. The term should be reserved for products issued by regulated investment companies so that investors have a clearer understanding of the term "ETF."

Distinguishing between ETFs and ETPs that are not subject to the Investment Company Act is essential because these products are subject to different regulatory regimes. ETFs are in the business of investing in securities, must register under the Securities Act and Investment Company Act, and must comply with restrictions on liquidity, affiliated transactions, and other Investment Company Act regulatory and investor protections. By contrast, certain ETPs are not subject to the extensive regulatory requirements that come with being registered as an investment

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[11] *See* Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Exchange Act Release No. 105020 (Mar. 17, 2026), 91 Fed. Reg. 13714 (Mar. 23, 2026).

[12] *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019), 84 Fed. Reg. 57162, 57169-70 (Oct. 24, 2019) (the Commission acknowledged the potential for investor confusion arising from the nomenclature that has developed for identifying ETPs, including confusion between ETFs and other types of ETPs that are not registered under the Investment Company Act, but deferred taking any action at that time).

[13] *See* 91 Fed. Reg. at 40649 (Question 8).

[14] *See* Scott Walker, *Why Ethereum ETPs (vs. ETFs) are so significant, & more FAQs*, a16z crypto (Sept. 16, 2024), https://a16zcrypto.com/posts/article/eth-etf-etp-faq/.

company under the Investment Company Act and instead must comply with reporting and other requirements of the Securities Act and the Exchange Act. The fact that many market participants use ETFs to describe ETPs that are not registered under the Investment Company Act creates investor confusion.

The Commission has previously recognized the regulatory asymmetry and the significance of product names in shaping investor expectations. The SEC adopted Rule 35d-1 under the Investment Company Act, the Names Rule, which was designed to prevent registered investment companies from using names that are materially misleading about their investment and risks.[15] The Commission emphasized that a fund's name is often the first information an investor receives and can materially influence investment decisions.[16] There is no such naming protocol for ETPs that are not subject to the Investment Company Act. Establishing clearer naming conventions would reduce investor confusion and serve as an effective complement to any disclosure requirements associated with a future product-classification regime.

V. Conclusion

We greatly appreciate the opportunity to provide comments on these important matters, and we welcome engagement with the Commission and its Staff on any of the issues discussed herein as the Commission considers ways to facilitate innovation in the ETF space while protecting investors.

Respectfully submitted,

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[15] *See* Investment Company Names, Investment Company Act Release No. 35000 (Sept. 20, 2023), 88 Fed. Reg. 70436 (Oct. 11, 2023).
[16] *See id.* at 70437.