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NYSE
AN ICE EXCHANGE

September 3, 2026

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

Re: File Number S7-2026-24: Novel ETFs

Dear Ms. Countryman:

NYSE Group, Inc. ("NYSE" or the "Exchange") appreciates the opportunity to provide feedback on the Securities and Exchange Commission (the "Commission") request for comment on novel exchange-traded funds ("ETFs").[1] As the world's largest ETF listing venue, there are more than 2,700 ETFs representing approximately $11.6 trillion in aggregate market value listed on NYSE exchanges.[2]

For nearly four decades, the NYSE has championed innovation in the ETF ecosystem, leading efforts to adopt listing rules that enable new and unique ETFs to come to market. Generic listing standards related to actively-managed ETFs[3], non-transparent ETFs[4], Rule 6c-11 compliant ETFs[5], and commodity-based trust shares[6] reflect significant input from the NYSE and its community of listed issuers. With each ETF innovation, the NYSE has been mindful that the goal of maximizing investor choice must be married with an intention to safeguard principles of investor protection and efficient capital markets. For these reasons, the NYSE welcomes the Commission's dialogue on issues related to novel ETFs.

[1] See Securities Act Release No. 33-11426 (June 30, 2026), 91 FR 4647 (July 2, 2026) (the "RFC"). The RFC defines "Novel ETFs" as securities that "provid[e] exposure to innovative asset classes or us[e] novel investment strategies." Among the innovative asset classes cited in the RFC are crypto assets, commodity-focused instruments, single-stock strategies, heightened leverage, blockchain-enabled opportunities, private assets, and event contracts.
[2] The NYSE lists ETFs on three equities exchanges: NYSE Arca, Inc., the New York Stock Exchange LLC, and NYSE Texas, Inc.
[3] See Exchange Act Release No. 34-78397 (July 22, 2016), 81 FR 49320 (July 27, 2016).
[4] See Exchange Act Release No. 34-89185 (June 29, 2020), 85 FR 40328 (July 6, 2020).
[5] See Exchange Act Release No. 34-88625 (April 13, 2020), 85 FR 21479 (April 17, 2020).
[6] See Exchange Act Release No. 34-103995 (September 17, 2025), 90 FR 45414 (September 22, 2025).

Process Changes Could Address Questions Around Novel ETFs Without the Need for Revisions to Rule 6c-11

In announcing the RFC, Chairman Atkins stated that "innovation in exchange-traded funds depends on a consistent, transparent, and efficient regulatory framework."[7] The NYSE agrees with this sentiment and believes that questions regarding the listing of novel ETFs are best addressed through refinement — rather than wholesale revision — of the existing regulatory construct.

As noted in the RFC, asset classes and investment strategies are in a state of constant and rapid evolution. Therefore, adoption of Rule 6c-11 under the Investment Company Act[8] ("Rule 6c-11"), in 2019[9] was a welcome, and much needed, improvement to the ETF listing process. Prior to Rule 6c-11, both actively-managed and index-based ETFs were required to meet complex generic listing standards or submit a product-specific rule filing for Commission approval, which presented challenges to the efficient listing of innovative products. The generic listing rules imposed rigid limitations that hampered flexibility in index and portfolio construction and often led to inadvertent noncompliance. Product-specific rule filings, meanwhile, required a lengthy and unpredictable review process and frequently resulted in inconsistent standards for comparable products. Rule 6c-11's disclosure-based approach enabled exchanges to standardize listing rules and more efficiently approve new products for listing.[10]

Given the positive impact that Rule 6c-11 has had on the growth of the ETF market, the NYSE urges caution in proposing amendments that impose new portfolio requirements, such as minimum holdings in securities, restrictions from using certain strategies or investing in certain asset classes, or criteria like specific diversification requirements, concentration limits, or issuer-specific limits. The Exchange's experience in the pre-Rule 6c-11 era demonstrates that enforcing detailed rules on portfolio composition adds needless complexity for issuers and exchanges in monitoring compliance, with little corresponding benefit to investors.

As noted in the RFC, Rule 6c-11 does not restrict ETFs from pursuing any particular investment strategy or asset class. Nonetheless, while many novel ETFs seemingly comply with exchange listing standards for ETFs operating in reliance on Rule 6c-11, whether they qualify for listing under Rule 6c-11 may not be entirely clear given the novel features of these securities and sometimes inconsistent regulatory guidance. Therefore, when faced with listing a novel ETF, the Exchange often seeks Commission guidance on its application of existing rules. In several instances, Commission staff have requested that the Exchange delay listing while it considers the innovation. In such scenario, there is no specified timeline for when feedback will be received and, in the interim, there is nothing to prevent another listing exchange from moving ahead. This informal practice adds uncertainty to scheduled product launches and raises competitive concerns around regulatory arbitrage that may disincentivize seeking regulatory clarification.

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[7] See Paul S. Atkins, Chairman, "SEC Seeks Public Comment on Novel Exchange-Traded Funds," June 30, 2026, available at https://www.sec.gov/newsroom/press-releases/2026-60-sec-seeks-public-comment-novel-exchange-traded-funds.

[8] See, for example, NYSE Arca Rule 5.2-E(j)(8) (Exchange-Traded Fund Shares).

[9] See Securities Act Release No. 33-10695 (September 26, 2019), 84 FR 57162 (October 24, 2019).

[10] The RFC notes that in the six years since Rule 6c-11 was adopted, ETF net assets under management increased from $4 trillion to more than $12 trillion and the number of listed ETFs increased from approximately 1,900 to more than 4,600.

Rather than implement additional rules that may not keep up with innovation in the ETF space, the Exchange encourages the Commission to develop a process, within the existing Rule 6c-11 framework, whereby issuers and exchanges can seek timely Commission feedback on innovative products or investment strategies prior to listing. A transparent process in which issuers and exchanges can vet novel ETFs with Commission staff and obtain feedback on a predictable timeline, that must be honored by all exchanges, would help address many of the questions asked in the RFC without creating additional rules and compliance requirements. It would also eliminate regulatory arbitrage and reduce barriers to entry.

Conclusion

The Commission's attention to issues around novel ETFs is a welcome and important initiative. In the seven years since its adoption, Rule 6c-11 has facilitated significant growth in the ETF marketplace by enabling issuers to efficiently bring innovative ETFs to market. As ETFs continue to evolve, the Exchange believes that Rule 6c-11 can continue to serve as an effective regulatory basis for the listing of novel ETFs, alongside a transparent, principles-based process for evaluating new issues that is applicable to all issuers and exchanges. The NYSE welcomes the opportunity to actively participate in these conversations going forward.

Respectfully submitted,



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