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July 28, 2026

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

Re: Request for Comment on Novel Exchange-Traded Funds — File No. S7-2026-24; Release No. 33-11426

Dear Ms. Countryman:

ETFinancial, LLC appreciates the opportunity to comment on the Commission's Request for Comment on Novel ETFs ("Request"), which seeks "comment on ways to facilitate innovation in the ETF space while protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation."

ETFinancial is developing an exchange-traded product, organized as a trust, intended to distribute lifetime income to retail shareholders by investing in group annuity contracts. ETFinancial has an application for exemptive relief pursuant to Section 6(c) of the Investment Company Act of 1940 pending before the Commission. We note that in the interest of transparency. This letter does not address the exchange-traded product in that application; rather, given the timing of the Request, we take this opportunity to recommend that the Commission expand Rule 6c-11 to enable any sponsor seeking to create products of this kind to use unit investment trusts ("UITs") in reliance on the Rule.

I. Summary

The Request identifies novel ETFs by reference to crypto assets, commodities, single-stock strategies, heightened leverage, blockchain, private assets, and event contracts — products defined by the novelty, and often the volatility, of the exposure they provide. There is a category at the opposite end of the risk spectrum that raises the same framework question: products designed to deliver certainty of lifetime income — income that cannot be outlived. It is unavailable in exchange-listed form without exemptive relief.

The reason is a single eligibility limitation. Rule 6c-11 is unavailable to ETFs organized as UITs, and for an exchange-traded product to deliver lifetime income by investing in registered group annuity contracts, the UIT is the only form under the Investment Company Act that can meet this important retirement objective. We respectfully recommend that the Commission expand the scope of Rule 6c-11 to cover ETFs organized as UITs.

II. The accumulation exposure is already in the ETF market; lifetime income is not

Listed defined-outcome and buffered ETFs deliver capped index participation with defined downside protection today, at scale. They operate as open-end management companies typically holding exchange-traded FLEX options, rely on Rule 6c-11, and list under generic standards without product-specific relief.

What is not available is a guarantee of lifetime income — an obligation to pay for as long as the investor lives, regardless of market performance or longevity. That result cannot be constructed from cleared derivatives. It requires a regulated insurance company to stand behind it, and that single difference is what moves the product outside the current Rule 6c-11 framework.

III. Why the Commission should expand Rule 6c-11 to cover UITs now

The case for extending the Rule to UITs rests on three points: the UIT is the form these products must take, the reasons for the 2019 exclusion no longer hold, and there is real and present demand for the resulting product in exactly the accounts current policy is seeking to serve.

The UIT is the form these products must take. A UIT holds a fixed portfolio for the benefit of its holders — here, a portfolio of SEC-registered group annuity contracts, with no security selection, no tactical allocation, and no discretionary management to perform. That is the classic UIT circumstance. It is also the only registered form that preserves the tax character on which the product depends:

- An open-end management company is a corporation for federal income tax purposes, and income it distributes is characterized as dividends and capital gain distributions.
- Income paid under an annuity contract has a distinct character under Section 72 of the Internal Revenue Code, including the treatment of amounts received as an annuity and the recovery of investment in the contract. That character is what allows a lifetime income stream to be delivered as such.
- That character does not survive an entity-level taxpayer. It survives a pass-through grantor trust.

Nor is the management company a workable alternative on other grounds. Such a company must qualify as a regulated investment company under Subchapter M to avoid entity-level tax, and the asset diversification tests of Section 851(b)(3) of the Internal Revenue Code — which limit any one issuer to 25% of assets, with further constraints on half the portfolio — are not conducive to a product whose holdings are annuity contracts, each an obligation of the issuing insurer. Those tests were framed for portfolios of traded securities, not for insurer obligations supporting a lifetime income guarantee.

The reasons for the 2019 exclusion no longer hold. Rule 6c-11 is available only to ETFs organized as registered open-end management companies; existing UIT ETFs continue under their pre-existing exemptive orders, and any new one must obtain its own relief. That exclusion reflected the circumstances of 2019 rather than any judgment that the UIT form is unsuited to the Rule. The UIT ETFs then in existence were long established and already operating under orders, and there was no meaningful pipeline of new filings in that form. There is now: the same economics are already being delivered at scale in the employer-plan market, and federal policy is actively pressing to extend them to the accounts most Americans use, as the following sections describe.

IV. The access gap in individual retirement accounts

Guaranteed lifetime income is already delivered at scale inside defined contribution employer plans, through collective investment trusts ("CITs") that allocate to annuity contracts. CITs are pooled vehicles maintained by banks and trust companies under federal banking regulation; they are not registered under the Investment Company Act. Assets in target-date investments with embedded income features grew to approximately $139 billion at the end of 2025.[1]

A worker without an employer-sponsored plan, and any investor saving in an IRA or a taxable brokerage account, cannot obtain this exposure as CITs are closed to them by law, and the registered fund framework available to them cannot presently accommodate the product. Availability of guaranteed lifetime income thus turns on the type of account in which an American happens to save, rather than on any difference in the protections those investors require.

The objective of promoting retirement savings has broad and durable support. The SECURE Act of 2019 and the SECURE 2.0 Act of 2022, each enacted with bipartisan majorities, both contained provisions intended to

[1] Sway Research LLC, The State of the Target-Date Market: Year-End 2025 (Feb. 2026)

widen access to guaranteed lifetime income in retirement, including measures addressing the inclusion of annuity options in employer-sponsored plans.

The current Administration has continued in the same direction and is now focused on precisely the excluded population — IRA holders. The Executive Order of April 30, 2026, "Promoting Retirement-Savings Access for American Workers by Establishing TrumpIRA.gov," directs the Secretary of the Treasury to establish, by January 1, 2027, a federal platform identifying qualifying low-cost individual retirement accounts, focused on independent contractors, the self-employed, and other workers lacking access to an employer plan. Its qualifying investment menu criteria expressly contemplate funds designed to protect principal on an ongoing basis. The objective of promoting and enabling saving is, ultimately, to provide a source of income that can last throughout retirement.

V. The access gap in advisory accounts

Outside employer plans, guaranteed lifetime income is distributed through individually sold annuity contracts, intermediated by licensed producers. It is relatively absent from the fee-based advisory channel in which a growing share of American retirement assets is managed.

Advisory practice is moving toward portfolios an annuity contract cannot enter. The model portfolio has become a central vehicle for delivering investment advice. Model portfolio assets reached nearly $8 trillion as of April 2025,[2] and are projected to grow roughly 15% annually to approximately $13.2 trillion by 2029.[3] Exchange-traded funds are a principal building block of these portfolios.

Model portfolios are constructed, traded, rebalanced and reported on centralized platforms, using instruments such as ETFs that are unitized and priced daily, custodied in the client's existing account, and traded through ordinary brokerage channels. An individually issued annuity contract cannot operationally participate in that process. Most fundamentally, such contracts are not unitized: each is individually valued, so a portfolio of them cannot be priced, allocated, or rebalanced as a model portfolio requires. Beyond that, each contract requires its own application and separate custody and statements. For an adviser whose practice is built on allocating among exchange-traded funds, there is at present no mechanism by which guaranteed lifetime income can be included as an allocation within a client's portfolio. A listed product in UIT form — unitized, daily-priced, and traded like any other ETF — would supply that mechanism.

That exclusion is operational rather than a judgment about the merits of guaranteed income for the client. Advisers already use listed defined-outcome products at scale, which suggests the channel readily absorbs protection-oriented structures when they arrive in a listed wrapper.

VI. Other areas the Commission may wish to consider

- **Generic listing standards.** Whether generic listing standards could extend to ETFs organized as UITs whose holdings are valued by an independent calculation agent from published, rules-based inputs, notwithstanding that the holdings are not themselves exchange traded.

VII. Conclusion

Expanding the scope of Rule 6c-11 to cover ETFs organized as UITs would spur exactly the innovation and capital formation the Commission is seeking, consistent with the protection of investors and the maintenance of fair, orderly, and efficient markets. It would close a gap that presently leaves guaranteed lifetime income

[2]Jack Pitcher, More Financial Advisers Are Outsourcing Investment Decisions, Wall St. Journal (June 12, 2025)
[3]Broadridge Financial Solutions, and WealthManagement.com (July 11, 2025)

available to some American savers and not others, for reasons of account type rather than investor protection. We would welcome the opportunity to provide further detail on any matter described above.

Respectfully submitted,



Thomas Haines
Co-Founder and Chief Investment Officer
ETFinancial, LLC