August 5, 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)

Ladies and Gentlemen:

I. Introduction

Apex Clearing Corporation ("Apex") appreciates the opportunity to comment on the Commission's Request for Comment on Novel ETFs.[1] Apex is a clearing broker-dealer that provides execution, clearing, custody, and technology services to a broad range of introducing broker-dealers, registered investment advisers, and financial technology platforms.[2] Apex supports over 40 million customer accounts with over $275 billion in assets in Apex's custody. As a National Securities Clearing Corporation ("NSCC") member and a clearing firm that carries customer positions in exchange-traded products across the market, Apex experiences the growth of novel, leveraged, inverse, and swap-based exchange-traded funds ("Novel ETFs") from a vantage point the Request does not squarely address: the vantage point of the clearing member that must fund, margin, and guarantee the settlement of these products regardless of whether it distributes or recommends them.

Apex does not oppose innovation in the ETF market, and it recognizes that the ETF wrapper has, over the past three decades, delivered real benefits to investors through low-cost, transparent access to diversified, long-term investment strategies. But Apex urges the Commission to resist treating every product that adopts the ETF wrapper as "innovation" for purposes of this rulemaking. A meaningful share of recent Novel ETF filings, including levered and inverse funds, single-stock funds, and funds that obtain their exposure synthetically through swaps, are speculative trading instruments, not capital formation vehicles. They are also capital intensive for the clearing members that stand behind their settlement, in ways that this Request does not ask about and that Apex believes the Commission should address before the next wave of these products reaches the market.

This letter makes six recommendations:

(1) That the Commission evaluate levered, inverse, single-stock, and swap-based Novel ETFs on their own terms, as speculative, capital-intensive products, rather than under the innovation and capital-formation framework developed for conventional index-tracking ETFs;

(2) That the Commission take account of South Korea's July 2026 emergency intervention in its single-stock leveraged ETF market, and of the fact that additional U.S.-listed single-stock leveraged ETFs referencing the same underlying issuers are already pending before the Commission, in evaluating whether heightened, pre-launch conditions are warranted for this product category;

(3) That the Commission condition Rule 6c-11 eligibility for these Novel ETFs on a documented assessment of the clearing and settlement capital impact of the fund, including the impact of NSCC/DTCC margin and clearing fund charges on the fund's clearing members;

(4) That the Commission require Novel ETFs that obtain leveraged or inverse exposure through swaps to determine and publicly disclose swap counterparty concentration on a periodic basis, and that the Commission impose meaningful counterparty concentration limits on these funds;

(5) That the Commission raise the current bar to entry for levered and inverse ETFs by adopting minimum diversification, minimum counterparty, and track-record standards under Rule 6c-11, rather than relying solely on the derivatives risk management program required by Rule 18f-4, and by directly addressing the fact that these products let retail investors obtain leverage that Regulation T would not permit them to obtain directly; and

(6) That the Commission extend the rule 485(a) automatic effectiveness period for levered, inverse, and swap-based Novel ETFs to allow time for the assessments described above to be completed before a fund is permitted to launch.

II. Novel ETFs Built on Leverage, Inverse Exposure, and Swaps Are Speculative Products, Not "Innovation," and Should Be Evaluated Accordingly

The Request frames the growth of the ETF market from over $4 trillion in 2019 to over $12 trillion at the end of 2025 as a story of innovation made possible by Rule 6c-11's consistent, transparent, and efficient regulatory framework.[3] Apex agrees that this describes a large part of that growth. It does not describe all of it. In Apex's view, a growing share of recent ETF filings are not vehicles that channel investor capital into operating companies, real assets, or diversified strategies for long-term holding. They are short-duration trading instruments (2x and 3x single-stock funds,

sector-levered funds, and funds built entirely on total return swaps referencing a single name or a narrow basket), whose principal use case is intraday or short-term speculation.

The Commission's own statement of purpose for this rulemaking is that it seeks to facilitate innovation "while protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation."[4] That is a three-part mandate, not a one-part mandate. A product that maximizes trading volume and fee revenue for its sponsor while doing nothing for capital formation, and while imposing incremental clearing and settlement risk on the market's infrastructure, does not advance the Commission's stated purpose merely because it satisfies rule 6c-11's structural conditions for exchange listing. Apex urges the Commission, in evaluating comments it receives in response to this Request, to distinguish between ETFs that facilitate capital formation and ETFs that exist primarily to facilitate leveraged speculation, and to calibrate any resulting rule changes to that distinction rather than apply a single, undifferentiated "innovation" lens to both.

III. Recent Events in South Korea Confirm That the Risks Described in This Letter Are Not Hypothetical

A. South Korea's Experience With Single-Stock Leveraged ETFs

In May 2026, Korean exchanges began listing single-stock leveraged and inverse ETFs referencing Samsung Electronics and SK Hynix. By mid-July, sixteen such products were listed, and retail demand had concentrated speculative trading in a small number of blue-chip names.[5] On July 16, 2026, Korea's Financial Services Commission halted new listings of single-stock leveraged ETFs, tripled the minimum cash deposit required to trade them (from 10 million to 30 million won), eliminated the ability to satisfy that deposit with substitute securities, imposed a blanket advertising ban, raised the minimum trading unit from one share to twenty, and added mandatory investor education — all "until market conditions stabilize."[6]

Those measures did not resolve the underlying volatility. On July 28 and 29, 2026, the Kospi triggered market-wide circuit breakers on consecutive trading days for the first time in its history, falling as much as 12.6 percent intraday and shedding roughly 864.5 trillion won in value over the two sessions, with SK Hynix falling as much as 17 percent intraday notwithstanding record quarterly results.[7] Lawmakers questioning Korea's Finance Minister and financial regulators directly attributed the amplified volatility to single-stock leveraged ETFs, and the Finance Minister acknowledged in testimony that authorities "should have examined the products more carefully before their launch."[8] Following an emergency meeting of Korea's Finance Ministry, Financial Services Commission, Financial Supervisory Service, and central bank on July 29, regulators announced they would move to cap single-stock leveraged ETFs as a percentage of an individual investor's portfolio, with 20 percent discussed as one potential threshold, and to establish legal authority for direct government intervention during periods of extreme volatility.[9]

B. The Same Products Are Migrating to U.S.-Listed Markets, Where the Bar to Entry Remains Lower

Korea's domestic curbs apply only to Korean-listed products. They do not apply to functionally identical products listed elsewhere, and Korean retail investors have already shown a willingness to redirect this demand overseas: Korean retail investors placed approximately $40 billion into U.S.-listed leveraged ETFs in 2025 alone, prompting Korean regulators to impose mandatory training and mock-trading requirements on Korean investors seeking access to foreign leveraged and inverse products.[10] Industry reporting following Korea's July 16 action noted that eleven leveraged or inverse products referencing Samsung Electronics and SK Hynix were already listed outside Korea, including in the United States, and that additional U.S.-listed single-stock leveraged ETFs referencing Samsung Electronics, Hyundai Motor, and Hanwha Aerospace were, as of that reporting, awaiting the Commission's approval.[11]

Apex raises this not to suggest that the Commission should regulate U.S. markets by reference to Korean policy, but because the sequence is directly relevant to this rulemaking: a jurisdiction that moved quickly to list single-stock leveraged products, on the view that doing so served innovation and investor choice, is now moving just as quickly in the opposite direction after concluding that the products it approved had not been examined carefully enough before launch. If U.S.-listed Novel ETFs referencing the same underlying names reach the market on rule 485(a)'s accelerated timeline without the clearing-capital and counterparty-concentration review Apex describes below, U.S. clearing members, not Korean intermediaries, will bear the settlement and margin consequences of the volatility that follows, regardless of which market originates the speculative flow.

IV. NSCC and DTCC Margin and Capital Requirements Impose Burdensome, and in Some Cases Prohibitive, Costs on Clearing Members That the Request Does Not Address

Question 5 of the Request asks whether the assets and strategies of Novel ETFs present "other structural or operational issues."[12] They do, and the most significant of these issues, from a clearing member's perspective, does not appear anywhere in the Request: the capital and margin burden that levered, inverse, and volatile Novel ETFs place on their clearing members through the NSCC's Continuous Net Settlement system and Clearing Fund methodology.

NSCC's value-at-risk-based margin methodology is sensitive to volatility and concentration. A levered or inverse ETF referencing a single stock, or a narrow, high-beta index, generates a volatility profile that is materially higher than the diversified, broad-market ETFs the clearing and settlement system was originally built to support. As a matter of ordinary risk-based margining, that higher volatility translates directly into higher required Clearing Fund deposits for the clearing members that carry positions in these products, and into margin calls that can be sudden and large.

This is not a hypothetical dynamic, and the pattern by which it has been addressed to date is itself part of the problem. When the Options Clearing Corporation faced a surge in short-dated options activity, it did not identify or price that risk before the activity grew large; it responded by adding a margin charge to clearing member accounts only after the exposure had already built up across the market, correcting its margin methodology in arrears rather than assessing the risk before the product category proliferated.[13] NSCC has now gone through the same sequence with respect to Novel ETFs. In July 2026, the Commission approved an NSCC rule change that overhauls the way NSCC's Clearing Fund methodology accounts for leveraged, inverse, and single-stock ETFs, including a new methodology that maps these funds to their underlying reference assets or single-stock positions in order to capture concentration risk that NSCC's prior methodology did not capture.[14] NSCC's own impact study for that rule change showed that, once single-stock and leveraged or inverse ETF exposures were properly mapped and decomposed, the resulting Gap Risk Charge for a number of NSCC's largest members increased by more than 100 percent, and in some cases by as much as 750 percent.[15]

Apex does not cite NSCC's rule change to suggest that the Commission should direct NSCC to impose new, ad hoc capital charges whenever a novel product outpaces its margin models; how NSCC calibrates its own Clearing Fund methodology is properly a matter for NSCC's risk-based rule filings. Apex cites it because of what the sequence itself shows: NSCC needed to overhaul its core margin methodology only after single-stock and leveraged or inverse ETFs had already been trading, and after clearing members had already been carrying that risk without a Clearing Fund deposit calibrated to it. The same was true of the Options Clearing Corporation's response described above. In both cases, the risk was identified and corrected only in arrears, through a clearing agency rule-filing process that takes months, rather than assessed before the product category reached the market. That sequence (list first, measure the capital impact later, once it has already materialized in clearing members' portfolios) is the sequence Apex's recommendation is intended to change. Rather than leave NSCC to identify and correct for the capital impact of Novel ETFs after they have already launched and traded, as it was required to do here, the Commission should require the fund sponsor to obtain and disclose an assessment of the fund's expected NSCC/DTCC margin and Clearing Fund impact before the fund is permitted to launch, so that the risk NSCC's own rule change confirms is real is assessed at the point of registration rather than discovered by clearing members, and eventually by NSCC, after the fact.

That risk is not confined to the clearing level. FINRA's own margin rules require that the maintenance margin for a leveraged ETF scale directly with the fund's leverage factor, up to 100 percent of the position's value; for a fund seeking 2x daily exposure, that translates to a maintenance margin requirement of approximately 50 percent of the position's value (double the 25 percent maintenance margin that applies to an ordinary long equity position), because FINRA has concluded that ordinary equity margin levels do not adequately protect against the volatility these products are designed to produce.[16] Margin levels of that magnitude, set by the industry's

own regulator to guard against the rapid, near-total loss of a position's value overnight, are not the margin levels of ordinary securities investing; they are the margin levels the industry reserves for its highest-risk instruments. A Korean lawmaker made a version of this same point directly to his country's Finance Minister during the hearings described in Section III: "The country has turned into a casino."[17] Apex takes no position on Korean policy, but it shares the underlying concern: a product category whose own margin and clearing requirements are calibrated at levels the industry reserves for its most speculative instruments should not be listed and cleared as though it were an ordinary, diversified investment vehicle.

A clearing member does not choose which ETFs its introducing brokers' customers will trade; it must be prepared to fund and guarantee settlement in whatever products reach the market, on whatever timeline rule 485(a) allows those products to launch. The capital cost of that obligation is real, it falls on clearing members rather than on the sponsors who design and market these products, and it is not reflected anywhere in the Request's discussion of investor protection or market structure.

Apex recommends that the Commission, as part of any amendment to rule 6c-11 addressing Novel ETFs, require a fund seeking to rely on rule 6c-11 with a principal strategy involving leverage, inverse exposure, or a single-name or narrow-basket reference asset to obtain and make available to the Commission a current assessment of the fund's expected NSCC/DTCC margin and Clearing Fund impact, prepared in consultation with its clearing members, before the fund's registration statement is permitted to become effective. This is not a novel form of review. It mirrors the kind of pre-launch diligence exchanges already perform before listing a new product class, but it is not currently required, and it should be.

V. The Commission Should Require Determination and Disclosure of Swap Counterparty Concentration Before a Swap-Based Novel ETF Is Permitted to Launch

Question 6 of the Request asks whether Rule 6c-11 should be amended to address new portfolio requirements, including concentration limits or issuer-specific limits.[18] Apex recommends that the Commission answer yes, specifically with respect to counterparty concentration in swap-based Novel ETFs.

A growing number of Novel ETFs obtain their leveraged or inverse exposure synthetically, through total return swaps or similar derivatives, rather than through direct positions in the reference asset. The Investment Company Act's diversification framework was built around issuer concentration in a fund's underlying securities holdings; it was not built to address concentration in the small number of swap dealers willing to provide the leverage a Novel ETF requires. Under current practice, a fund's exposure to any single swap counterparty is not systematically determined, monitored, or disclosed in a way that allows the Commission, the fund's clearing members, or the market to assess what happens if that counterparty's credit quality deteriorates or

it exits the business of writing these swaps. That is a gap, and it is a gap with real consequences: a clearing member supporting the creation and redemption process for a swap-based Novel ETF is exposed to the operational and liquidity consequences of a counterparty disruption even though it has no visibility into, or control over, the fund's swap book.

Apex recommends that the Commission require swap-based Novel ETFs to determine swap counterparty concentration on a periodic basis, disclose that concentration to investors and to the Commission, and comply with a counterparty concentration limit comparable in spirit to the issuer diversification limits that already apply to registered investment companies. Determining and monitoring this concentration should be treated as a baseline condition of relying on Rule 6c-11, not an optional enhancement left to individual sponsors' risk appetites.

VI. The Current Bar to Entry for Levered and Inverse ETFs Is Too Low and Should Be Raised

Rule 6c-11(c)(4) currently requires only that a levered or inverse ETF comply with rule 18f-4's derivatives risk management program.[19] That is a self-administered, value-at-risk-based compliance obligation; it is not a minimum diversification requirement, a minimum counterparty requirement, or a track-record requirement, and it does not draw any distinction between a broad-market levered index fund and a 3x single-stock fund referencing a single, thinly-traded name. Combined with rule 485(a)'s automatic effectiveness timeline, this framework allows a levered or inverse Novel ETF to reach the market with very little friction relative to the risk it introduces, a gap that Korea's own regulators, as described in Section III, have now concluded was too wide even for a market with an existing minimum-deposit regime for these products.

This low bar to entry also permits levered and inverse Novel ETFs to function as a mechanism for circumventing Regulation T. Regulation T generally limits a retail investor's initial margin borrowing to 50 percent of the purchase price of a margin security, and a retail investor seeking to establish a comparable leveraged position through options must separately qualify for options trading approval from a broker-dealer.[20] Because the leverage or inverse exposure in a Novel ETF is embedded in the fund itself, typically through swaps or other derivatives held at the fund level, a retail investor can purchase 2x, 3x, or inverse exposure to a single stock or narrow index in an ordinary cash account, with no margin agreement, no margin maintenance requirement, and no options-trading approval, and without the investor ever triggering Regulation T directly. The Commission's own Investor Advisory Committee reached the same conclusion in the 2023 recommendation on single-stock and leveraged ETFs that the Request itself cites: panelists recognized that these products let retail investors conduct a form of "regulatory arbitrage," accessing leverage "without margin accounts or options trading permission."[21] Apex does not suggest that the ETF wrapper is itself improper, but a wrapper that allows a retail investor to obtain leverage the investor could not otherwise obtain directly, without the safeguards Regulation T and

options-approval requirements are designed to provide, is a structural feature of these products that the Commission should weigh directly (and not merely as a byproduct of rule 6c-11's listing conditions) in deciding whether to raise the bar to entry for levered and inverse ETFs.

The Request notes, in a footnote accompanying Question 18, that the Commission's staff have observed Novel ETF filings submitted in rapid succession that are largely identical, and that the use of artificial intelligence may be accelerating the speed at which a filing can be mimicked.[22] Apex agrees that this is a real phenomenon, and views it as further evidence that the current bar to entry is too low: a regulatory framework under which a filing can be substantially replicated by an automated process is not calibrated to the risk these products carry into the clearing and settlement system, let alone to the Regulation T concern described above.

Apex recommends that the Commission use this rulemaking to raise the bar to entry for levered and inverse ETFs specifically, including through minimum diversification standards for the fund's reference asset or index, minimum counterparty standards for any derivatives used to obtain leverage, and a demonstrated capacity on the part of the sponsor to support the fund through periods of elevated volatility, before such a fund is eligible for the expedited registration and listing treatment that rule 6c-11 and rule 485(a) currently provide. As part of that review, the Commission should directly consider whether additional conditions are warranted where a fund's principal effect is to deliver embedded leverage to retail investors in a cash account at levels Regulation T would not permit those same investors to obtain on a direct, unwrapped basis.

VII. The Rule 485(a) Effectiveness Timeline Should Be Extended for Levered, Inverse, and Swap-Based Novel ETFs

Question 10 asks whether the 75-day and 60-day automatic effectiveness periods under Rule 485 should be extended for Novel ETFs.[23] Apex recommends that the Commission extend these periods specifically for Novel ETFs that employ leverage, inverse exposure, or swap-based synthetic exposure, to allow time for the clearing-capital and counterparty-concentration assessments described in Sections IV and V above to be completed before the fund is permitted to launch. A fund that cannot demonstrate, within an extended review period, that its clearing members can support its expected margin profile and that its swap counterparty concentration has been determined and is within an appropriate limit should not become effective on the accelerated timeline that Rule 485(a) affords conventional, diversified ETFs.

Apex also supports the early engagement mechanism raised in Question 15, a pre-filing consultation process for Novel ETFs, provided that any such process specifically contemplates input on clearing and settlement impact, not only on the fund's status under the Investment Company Act.[24] A pre-filing consultation that resolves questions of investment company status but leaves clearing capacity and counterparty concentration unexamined will not address the concerns raised in this letter.

VIII. Conclusion

Apex supports a Commission framework for Novel ETFs that treats these products according to the risk they actually carry, rather than according to the wrapper they happen to use. Levered, inverse, and swap-based Novel ETFs are speculative products that impose real, and in some cases prohibitive, capital costs on the clearing members that stand behind their settlement. In addition, these products allow retail investors to obtain leverage that Regulation T would not permit them to obtain directly. The recent events in South Korea are a live illustration of the consequences of listing these products without examining that risk carefully before launch, and the same underlying speculative demand is already migrating toward U.S.-listed products. The six recommendations in this letter (evaluating these products apart from the Commission's broader innovation framework, accounting for the Korean experience and the pending U.S. filings it implicates, conditioning Rule 6c-11 eligibility on a clearing-capital assessment, requiring determination and disclosure of swap counterparty concentration, raising the bar to entry for levered and inverse ETFs, and extending the Rule 485(a) timeline for these products) are directed at that goal. Apex welcomes the opportunity to discuss these comments with the staff.

Questions regarding this letter may be directed to Andrew Tourney, Chief Compliance Officer, at atourney@apexfintechsolutions.com.

Respectfully submitted,

/s/ William Capuzzi
William Capuzzi
Chief Executive Officer
Apex Clearing Corporation

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[1] Securities Act Release No. 33-11426, Exchange Act Release No. 34-105808, Investment Company Act Release No. IC-36228 (June 30, 2026) ("Request").

[2] Apex Clearing Corporation is a registered broker-dealer and NSCC member that provides clearing, custody, settlement, and execution services to introducing broker-dealers, registered investment advisers, and financial technology platforms.

[3] Request at 3-4.

[4] Request, Summary.

[5] Currently, 16 single-stock leveraged ETFs linked to Samsung Electronics and SK Hynix, including two inverse products, are listed on the Korea Exchange. THE INVESTOR, Korea puts brake on leveraged chip ETFs (July 16, 2026).

[6] Financial Services Commission (Korea), joint statement (July 16, 2026), reported in Bloomberg, South Korea to Halt New Listings of Single Stock Leveraged ETFs (July 16, 2026), and THE INVESTOR, Korea puts brake on leveraged chip ETFs (July 16, 2026).

[7] Bloomberg, South Korea Steps Up Leverage ETF Curbs After Kospi Plunge (July 29, 2026); Yahoo Finance/Bloomberg, South Korea Holds Emergency Meeting as 864 Trillion Won Leaves Its Stock Market (July 29, 2026).

[8] Bloomberg, South Korea to Hold Emergency Market Meeting After Kospi Turmoil (July 29, 2026).

[9] The Korea Times, Financial authorities eye cap on single-stock leveraged ETFs in individual portfolios (July 29, 2026); Korea JoongAng Daily, Korea to cap proportion of single-stock leveraged ETFs in retail portfolios (July 29, 2026).

[10] Reporting on Korean retail flows into foreign leveraged ETFs and the Financial Supervisory Service's December 15, 2025 training and mock-trading requirement for such investments (effective Dec. 15, 2025).

[11] Korea Herald, Korea's ETF clampdown may push leverage demand overseas (July 29, 2026).

[12] Request at 9 (Question 5).

[13] See, e.g., SIFMA comment letter, OCC Intraday Risk Charge, RE: File No. SR-OCC-2024-010 (discussing OCC's margin add-on charge applied to all Clearing Member accounts to mitigate risks from intraday and overnight trading activity).

[14] Securities Exchange Act Release No. 34-105901; File No. SR-NSCC-2026-008 (July 14, 2026); 91 Fed. Reg. 44896 (July 17, 2026) (order approving NSCC's Clearing Fund methodology enhancements addressing risks presented by leveraged/inverse and single-stock ETFs).

[15] Id. (NSCC's impact study showed that, among the top 20 largest daily average notional impacts by account, the Gap Risk Charge increased by approximately 110 percent to 750 percent once single-stock and leveraged/inverse ETF positions were mapped and decomposed).

[16] See FINRA Regulatory Notice 09-53 (2009); FINRA Regulatory Notice 09-31 (2009) (maintenance margin requirements for leveraged ETFs increase by a factor commensurate with the fund's leverage, not to exceed 100 percent of the position's value; the standard maintenance margin requirement is 25 percent for a long ETF position and 30 percent for a short ETF position).

[17] THE EDGE SINGAPORE, South Korea to hold emergency market meeting after Kospi turmoil (July 29, 2026) (quoting South Korean lawmaker Lee Jongwook).

[18] Request at 9 (Question 6).

[19] 17 CFR 270.6c-11(c)(4); 17 CFR 270.18f-4.

[20] 12 CFR Part 220 (Regulation T); 12 CFR 220.12 (margin requirement for margin stock); see also FINRA Rule 2360 (options trading approval requirements).

[21] SEC Investor Advisory Committee, Recommendation of the Advisory Committee on Single Stock ETFs and Leveraged ETFs, at 2 (approved June 22, 2023), cited at Request at 10 n.16.

[22] Request at 12-13 (Question 17 & n.19).

[23] Request at 11 (Question 10).

[24] Request at 12 (Question 15).