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 Nos. 33-11426; 34-105808; IC-36228; File No. S7-2026-24; RIN 3235-AN81)

Dear Ms. Countryman:

The Crypto Council for Innovation ("CCI") appreciates the opportunity to respond to the Securities and Exchange Commission's (the "Commission" or "SEC") request for comment on exchange-traded funds ("ETFs") seeking to invest in innovative asset classes or engage in novel investment strategies (the "RFC").[1]

Overview

CCI is a global alliance of industry leaders within the digital assets industry committed to promoting the advantages of digital assets while showcasing their potential for transformation. CCI's members represent a wide array of businesses from across the digital asset ecosystem, united by a shared objective of advocating for the responsible global regulation of digital assets to unlock economic opportunities, enhance quality of life, promote financial inclusivity, safeguard national security, and counter illicit activities. CCI firmly believes that achieving these goals necessitates well-informed, evidence-driven policy choices achieved through collaborative participation with regulators in the United States and globally.

With these goals in mind, CCI commends the SEC for seeking public comment on ETFs seeking to invest in innovative asset classes or engage in innovative investment strategies ("Novel ETFs"), and to help assess how to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.[2] As the RFC explains, the ETF market has grown significantly in recent years, with total net assets under management now over $12

[1] Request for Comment on Novel ETFs, 91 Fed. Reg. 40647 (proposed July 2, 2026).
[2] RFC at 40647.

trillion and the number of ETFs at over 4,600.[3] This growth has in no small part resulted from clear rules and the Commission's willingness to update frameworks to accommodate evolutions in the market and investor preferences, while retaining robust investor protections. For example, in 2019, the Commission adopted rule 6c-11 under the Investment Company Act of 1940 ("Rule 6c-11") to permit ETFs that satisfy certain conditions to operate without the more burdensome expense and delay of obtaining an exemptive order.[4]

As the ETF market has grown, ETF sponsors have also increasingly expressed interest in providing exposure to Novel ETFs.[5] These Novel ETFs include products that offer investors exposure to crypto assets, blockchain-enabled opportunities, and event contracts, among others.[6] ETFs represent just one type of exchange-traded product ("ETP"). Whereas ETFs are generally registered investment companies under the Investment Company Act of 1940 and may rely on streamlined frameworks such as Rule 6c-11, many ETPs, including crypto-asset products currently trading in the U.S., are not investment companies. Instead, their shares are registered under the Securities Act of 1933 ("Securities Act") and separately approved for exchange listing under Section 19(b) of the Securities Exchange Act of 1934.

Investor interest in crypto assets and blockchain technology can be seen not just in Novel ETFs, but also across the broader ETP landscape. Total assets in U.S. spot Bitcoin ETPs alone are estimated at just under $100 billion,[7] and investors now have access to ETPs offering exposure to various digital assets, including Bitcoin, Ethereum, and Solana.[8] More broadly, one recent industry estimate found that approximately 49.6 million U.S. adults—roughly 18.6% of the adult population—now own Bitcoin, exceeding the number of Americans who own gold.[9] These figures demonstrate clear and persistent interest by

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[3] *Id. See also* Inv. Co. Inst., *Release: Exchange-Traded Fund Data, June 2026* (July 30, 2026), https://www.ici.org/research/stats/etf/etfs_06_26 (estimating combined assets of the nation's exchange-traded funds were $15.70 trillion in June).
[4] *See* RFC at 40607.
[5] *Id.*
[6] RFC at 40608.
[7] Oluwapelumi Adejumo, *Bitcoin ETFs Inflow Streak Reaches $2.2 Billion in 6 Days as Assets Near $100 Billion*, CryptoSlate (Aug. 25, 2026), https://cryptoslate.com/bitcoin-etfs-inflow-streak-reaches-2-2-billion-in-6-days-as-assets-near-100-billion/
[8] *See, e.g.*, *Crypto Funds Prospectus*, Fidelity Investments, https://www.fidelity.com/etfs/crypto-funds-prospectus.
[9] *America Is the Global Bitcoin Superpower*, River (2026), https://river.com/content/america-leads-in-bitcoin?ref=blockhead.co.

investors in digital assets, and underscore the importance of clear, workable, and efficient rules for ETP issuers and investors alike.[10]

With these considerations in mind, CCI offers targeted feedback to certain questions and issues raised by the RFC below, consistent with the RFC's overall objective of facilitating innovation while protecting investors and promoting fair and efficient markets. First, just as the Commission has modernized rules to promote efficiencies for ETFs, the Commission should consider providing similar efficiencies for non-ETF ETPs to promote regulatory parity, foster innovation, and expand investor choice. Second, the Commission should refrain from updating the definition of investment company, which has long served the market well, to avoid introducing uncertainty. Third, CCI supports the Commission exploring ways to protect against imitative filings, including by considering the establishment of a voluntary confidential registration statement filing process, provided such a process does not impede an issuer's ability to rely on existing streamlined approval processes.

Facilitating Responsible Innovation and Creating a Level Playing Field

As noted above, Rule 6c-11 has transformed the ETF industry by establishing a consistent ETF regulatory framework, reducing time-to-market, and standardizing operations while maintaining investor protections.[11] Prior to Rule 6c-11, the Commission had to grant exemptions from certain Investment Company Act provisions in order for ETFs to operate. Rule 6c-11 helped alleviate this process by removing the expense and delay of seeking exemptive relief, so long as certain investor protection conditions are met.[12]

In addition, because ETFs issue publicly offered securities, issuers must file a registration statement with the Commission to register the offering under the Securities Act.[13] Rule 485

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[10] While many investors choose to buy and hold digital assets directly, many may prefer to gain exposure through ETFs due to the ability to invest using a familiar brokerage account and within tax-advantaged retirement accounts, and to rely on institutional custody arrangements. A sound regulatory approach should preserve this choice, ensuring investors, not regulators, determine which investment vehicle best fits their needs. *Cf.* Paul S. Atkins, Chairman, & Hester M. Peirce, Comm'r, SEC, Remarks at ETHDenver: Number Go Down and Other Schadenfreude (Feb. 18, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-peirce-021826-number-go-down-other-schadenfreude. ("[M]arket participants should be able to engage with decentralized applications on public, permissionless blockchains if they desire. But I expect that many Americans will be more comfortable allowing intermediaries to custody and trade on their behalf. Individual investors, not the SEC, should make the decision.").

[11] RFC at 40647 (noting Rule 6c-11 provides a "consistent, transparent, and efficient regulatory framework").

[12] *See* RFC at 40647 (explaining Rule 6c-11 avoids the expense and delay of obtaining an exemptive order while including conditions designed to support an efficient arbitrage mechanism to maintain a close tie between the market price of an ETF share and its net asset value per share).

[13] RFC at 40648.

under the Securities Act ("Rule 485") allows ETF issuers to register new ETFs via post-effective amendment, thereby avoiding expenses and delays that would result from filing a new registration statement.[14] Importantly, Rule 485 provides clearly defined and self-enforcing timelines. Under Rule 485(a), a post-effective amendment that adds a new series to an existing registrant becomes automatically effective 75 days after filing, while a post-effective amendment reflecting material changes to an existing fund's registration statement becomes automatically effective 60 days after filing. This timing certainty allows ETF sponsors to plan product launches on a predictable timeline and bring new funds to market faster and at lower cost.

CCI encourages the Commission to further promote product innovation by developing processes for all ETPs that are comparable to those that have benefited ETFs, without compromising investor protections. Ensuring all ETPs have comparably efficient paths to market will promote regulatory parity. For example, extending automatic effectiveness or providing greater time certainty with respect to registering ETPs would enable product sponsors to more efficiently carry out ETP launches as they do for ETFs and mutual funds. A more efficient and consistent approval pathway for all ETPs would benefit issuers and investors alike. Issuers would have a clear and timely framework to bring Novel ETFs and ETPs to market, increasing competition and innovation among issuers.[15] In turn, investors would have greater choice and access to safe, well-regulated investment products offering exposure to innovative asset classes and investment strategies.

Relatedly, CCI encourages the Commission to engage with Treasury and the Internal Revenue Service to consider ways to improve tax parity between ETFs and non-ETF ETPs under existing authorities. ETFs organized as regulated investment companies ("RICs") generally are not taxed at the entity level and can pass capital gains through to shareholders at favorable long-term capital gains rates.[16] In contrast, non-ETF ETPs may face entity-level tax inefficiencies or ordinary income treatment on certain gains that

[14] RFC at 40648.
[15] *See* RFC at 40647 (discussing how Rule 6c-11 has led to greater competition and innovation among ETFs as well as increased investor choice).
[16] *See* I.R.C. § 852(b)(3)(B) (2024) (providing that a regulated investment company may deduct dividends paid without regard to capital gain dividends and exempt-interest dividends, and that capital gain dividends shall be treated by shareholders as a gain from the sale or exchange of a capital asset held for more than 1 year).

RIC-eligible ETF investors do not.[17] Reducing tax asymmetry would further improve regulatory parity and allow sponsors to select a fund structure based on what best suits the underlying asset class or strategy. SEC and IRS collaboration could build on the IRS's recent 2025 revenue procedure regarding grantor trusts, which offers a narrow safe harbor permitting digital asset ETPs to stake assets without jeopardizing their tax classification, but did not resolve the broader structural tax asymmetry between grantor trust ETPs and RIC-eligible ETFs.[18]

Investment Company Status & Clear Disclosures

Section 3 of the Investment Company Act defines the term "investment company," in relevant part, as an issuer that: is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; or is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of such issuer's total assets (exclusive of Government securities and cash items), on an unconsolidated basis.[19]

CCI recommends that the Commission refrain from amending the current definition of "investment company" under the Investment Company Act. The current definition's subjective and objective tests provide the necessary clarity and flexibility to apply to Novel ETFs. Upending longstanding precedent regarding what constitutes an investment company risks introducing unnecessary uncertainty as to when an ETP would meet the definition, and therefore be structured and registered as an ETF, without a clear corresponding benefit.

As a general matter, CCI supports the Commission's consideration of how to promote greater clarity regarding ETP naming conventions, so that investors can more easily determine whether they are, in fact, purchasing shares in an ETF that is subject to the Investment Company Act. Currently, certain ETPs that are not investment companies, such as exchange-traded commodity trusts, may still use the term "ETF" in their name or label

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[17] *See* Roger Wise, *IRS Revenue Procedure 2025-31 Attempts to Put Stake Through Heart of Concerns about Staking by Digital Asset Exchange-Traded Products*, Willkie Farr & Gallagher LLP (Nov. 14, 2025), https://www.willkie.com/-/media/files/publications/2025/11/irsrevenueprocedure202531attemptstoputstakethroughheartofconcernsaboutstakingbydigitalassetexchanget.pdf (explaining that a Digital Asset ETP, which cannot qualify as a RIC because it is not registered under the Investment Company Act of 1940, may be treated as a partnership with more complicated tax reporting than a grantor trust or, if it fails to qualify as a partnership due to the uncertain tax treatment of digital asset income and gains, could be subject to entity-level tax as a taxable C corporation).

[18] *See* Rev. Proc. 2025-31, 2025-48 I.R.B. 1 (providing a safe harbor permitting exchange-traded trusts that hold a stakeable digital asset to earn staking rewards while maintaining tax classification as grantor trusts).

[19] *See* Investment Company Act § 3(a)(1); *See* RFC at 40648.

themselves as an ETF.[20] As the Commission evaluates how to improve disclosures for Novel ETFs, CCI supports the Commission exploring ways to reduce any potential investor confusion arising from the nomenclature that currently exists for identifying ETPs.

Confidential Registration & Protecting Against Imitative Filings

CCI appreciates the Commission seeking feedback on a broad array of issues relating to registration of ETFs and Rule 485.[21] As a general matter, CCI believes the existing registration process under Rule 485 is well-structured. However, as the Commission points out, the use of artificial intelligence may be significantly accelerating the speed at which a Novel ETF filing submitted for review may be copied.[22] Accordingly, to reduce imitative filings that may impede true innovation, CCI supports the Commission considering establishing a voluntary pre-filing consultation process or confidential draft registration statement process, subject to appropriate guardrails, and provided that such processes would not impede or otherwise limit an issuer's ability to rely on Rule 485.[23] Importantly, to the extent the SEC pursues such an approach, it should ensure any pre-filing consultation or confidential filing period does not extend or toll the automatic effectiveness or review period.

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CCI appreciates the Commission's efforts to solicit public input on these important questions and commends its willingness to evaluate its rules against an evolving product and technology landscape. As discussed above, the Commission can best achieve its goals of facilitating innovation while protecting investors by promoting regulatory parity and efficiencies across the entire ETP landscape, preserving the current definition of

[20] *See* RFC Question 8 (noting that some ETPs that are not investment companies may use the term "ETF" (or "fund") in their name or label themselves as ETFs, while asking how investors interpret this and whether there are any implications for investor clarity); *See also* Scott Walker, *Why Ethereum ETPs (vs. ETFs) Are So Significant, & More* FAQs, a16z Crypto (July 2024), https://a16zcrypto.com/posts/article/eth-etf-etp-faq/ (noting that certain issuers may strategically apply the better-known "ETF" label, despite actually offering ETPs and distinguishing between ETFs that usually hold certain collections of securities and ETPs that hold assets that are not securities).
[21] *See* RFC Part IV (posing questions relating to timing of effectiveness, early engagement and innovation, competitive pressures and first-mover incentives, unresolved staff comments, material changes, suspensions, and disclosures).
[22] *See* RFC n. 19 ("IM Staff has observed several Novel ETF filings submitted in rapid succession that are largely identical. Market participants have suggested that the use of artificial intelligence may be significantly accelerating the speed at which a filing can be mimicked.").
[23] *See* RFC Questions 15-18 (asking if the Commission should consider mechanisms for early engagement for Novel ETFs to allow the staff and sponsors of Novel ETFs to work together on potential issues before the sponsor makes a public filing, and noting concerns regarding imitative filings).

"investment company," and pursuing measures to curb imitative filings without adding delay or uncertainty to existing approval timelines. CCI and its members welcome the opportunity to serve as a resource to the Commission and its staff as it considers these issues and would be pleased to provide any additional information that would assist the Commission's review.

Respectfully submitted,

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