

## SEC Requests Public Comment on Novel ETFs

July 1, 2026

On June 30, 2026, the Securities and Exchange Commission (the “SEC” or “Commission”) issued a Request for Comment (the “Request”) seeking public input on exchange-traded funds (“ETFs”) that invest in innovative asset classes or engage in novel investment strategies (including crypto assets, commodity-focused instruments, single-stock strategies, heightened leverage, blockchain-enabled opportunities, private assets, event contracts, or a combination of any of the above) (“Novel ETFs”). The Request reflects the Commission’s recognition that the ETF market has experienced significant expansion since the adoption of Rule 6c-11 under the Investment Company Act of 1940 (the “1940 Act”) and the accompanying approvals of generic listing standards for Rule 6c-11 compliant ETFs. The Request raises key questions as to the facilitation of innovative investment products through Novel ETFs and the application of the current regulatory framework to such Novel ETFs, including whether rules governing registration of Novel ETFs should be changed to provide the SEC with more opportunity to scrutinize such products. The Request considers potential significant changes to the registration process, which, if implemented, could dramatically change the process and timing for bringing Novel ETFs to market.

Comments must be received within 60 days after publication in the Federal Register.

### Key Areas of Inquiry

---

The Request poses detailed questions across several major topics affecting the regulation of Novel ETFs:

- **Investment Company Status.** The SEC asks whether Novel ETFs whose principal strategy is to invest in non-security assets (such as crypto assets, commodities, or event contracts) qualify as “investment companies” under the 1940 Act. The questions address: (i) application of factors that should be used to assess when Novel ETFs should qualify as an investment company; (ii) whether a Novel ETF’s use of wholly-owned subsidiaries holding non-security assets should have implications for that ETF’s investment company status; and (iii) whether additional clarity is needed with respect to the investment company status for Novel ETFs investing in non-security assets.
- **Rule 6c-11 and Novel ETFs.** Rule 6c-11 defines the fundamental structural characteristics of ETFs, and the Request raises questions about whether certain Novel ETF assets or strategies present concerns regarding the arbitrage mechanism, investor protection, orderly markets or market surveillance. The SEC also asks whether Rule 6c-11 should be amended—for example, by imposing minimum securities holdings, diversification requirements, or excluding certain asset classes from reliance on the rule. The SEC notes that changes to Rule 6c-11 could have implications for a fund’s ability to rely on the exchange’s generic listing standards.
- **Investor Understanding.** The Request asks whether the SEC should take steps to better assist investors in understanding the features of Novel ETFs. The Commission also poses questions regarding investors’ interpretation of the use of the term “fund” and “ETF” in the name of exchange-traded products that are not investment companies.
- **Registration and Rule 485.** The largest set of questions concerns the registration process, organized into several sub-topics:

- **Timing of Effectiveness:** Whether the 75-day and 60-day automatic effectiveness periods should be extended for Novel ETFs; whether effectiveness should be tolled for failure to respond to comments received from the staff of the Commission; whether the Commission should be able to delay effectiveness of the registration statement for a proposed Novel ETF on its own initiative; and whether additional clarity is needed regarding Novel ETFs that become effective before an asset class or instrument is available for investment.
- **Early Engagement & Innovation:** Whether to establish pre-filing consultation processes or allow confidential draft registration statements for Novel ETFs.
- **Competitive Pressures and First-Mover Incentives:** Whether market participants have concerns about rushed or incomplete filings, repurposing of unused series to take advantage of shorter waiting periods, and whether the Commission should allow filings to remain nonpublic for part of the 75-day review period to promote innovation and reduce imitative filings.
- **Unresolved Staff Comments:** Whether funds should be required to disclose material unresolved staff comments.
- **Material Changes During Review or Pre-Launch:** Whether additional clarity regarding material strategy changes made during the review process or after effectiveness but before launch of an ETF via Rule 497 filings rather than Rule 485(a) amendments is necessary and whether Rule 485 should be amended to automatically suspend or delay the effectiveness of a registration statement for a Novel ETF when a material pre-launch or at-launch change occurs.
- **Suspensions:** Whether to expand the Commission's authority to suspend post-effective amendments or whether the usage of Rule 6c-11 by an ETF should be conditioned upon compliance with Rule 485.
- **ETF Disclosure:** Whether heightened disclosure requirements should apply to Novel ETFs and if the Commission should consider any additional reforms to help facilitate innovation while protecting investors.

---

## Comment Period

---

Comments may be submitted electronically via the SEC's internet comment form at <https://www.sec.gov/comments/s7-2026-24/request-comment-novel-etfs#no-back> or by email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov) (referencing File Number S7-2026-24).

---

## For More Information

---

We are available at any time to answer questions, discuss scenarios, and provide guidance. If you would like further information concerning the matters discussed in this article, please contact a member of the Investment Management Group or visit us online at [chapman.com](http://chapman.com).

---

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice and no attorney-client relationship is created. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

© 2026 Chapman and Cutler LLP. All rights reserved. Attorney Advertising Material.