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Invested in America

August 28, 2026

Via e-mail to rule-comments@sec.gov

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

Re: File No. S7-2026-24: SEC Request for Comment on Novel ETFs

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the SEC's Request for Comment on Novel ETFs (the "Request").[2] The Request seeks public comment on exchange-traded funds ("ETFs") that "invest in innovative asset classes or engage in novel investment strategies" ("Novel ETFs"). The stated purpose of the Request is to assess whether further action is necessary with respect to Novel ETFs in order to better protect investors, maintain fair and efficient markets, and facilitate capital formation.

SIFMA generally supports the SEC staff's efforts to address the challenges highlighted in the Request. SIFMA AMG likewise generally supports this objective and is submitting a separate comment letter to the SEC from the fund sponsor/asset manager perspective and from the authorized participant/market maker perspective, including ETF market making best practices.

The comments expressed herein are from the perspective of broker-dealers ("BDs") and registered investment advisers ("RIAs") that recommend and provide investment advice about Novel ETFs (as well as exchange-traded products ("ETPs")), and otherwise make available Novel ETFs and ETPs, to clients and customers. Notably, a number of the questions and themes raised in the Request are substantially similar to those raised in FINRA's complex products

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] 91 Fed. Reg. 40647 (July 2, 2026), https://www.govinfo.gov/content/pkg/FR-2026-07-02/pdf/2026-13423.pdf.

notice and request for comment in 2022.[3] Accordingly, some of SIFMA's responses to FINRA's 2022 notice bear reemphasis here.[4] We respectfully submit the following additional comments and recommendations for your consideration.

Executive Summary

- The existing regulatory regime for transactions in Novel ETFs that are recommended by BDs, or advised by RIAs, is sufficient to protect investors; special enforcement focus on Novel ETFs is unwarranted.

- All ETFs should be subject to the same regulatory regime and review process, focused not on novelty but on the complexity of, and the level of risk and unique types of risk associated with, the particular ETF.

- Retail investors' understanding of the features of ETFs (including Novel ETFs) would be enhanced by a transparent naming convention.

- The staff's product review of new ETFs should proceed on a case-by-case basis and the staff should use its existing regulatory tools to take additional time to answer material legal or other questions that remain open regarding the new ETF.

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1. The existing regulatory regime for transactions in Novel ETFs that are recommended by BDs, or advised by RIAs, is sufficient to protect investors; special enforcement focus on Novel ETFs is unwarranted.

The existing regulatory regime for BD and RIA investment advice and recommendations with respect to Novel ETFs is sufficient to protect investors. "[B]oth [Reg BI] for broker-dealers and the fiduciary standard for investment advisers … are drawn from key fiduciary principles that include an obligation to act in a retail investor's best interest and not place their own interests ahead of the investor's interest."[5] Under both Reg BI for BDs and the fiduciary standard for RIAs, when providing investment advice about or recommending a Novel ETF, the broker or adviser must *not only* understand the relevant risks and features him/herself, *but also* have a reasonable basis to believe that the investment advice or recommendation is in the best interest of the particular client or retail customer, based upon their investment profile and the potential risks, rewards and costs associated with the investment advice or recommendation.

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[3] FINRA Notice 22-08, *Complex Products and Options* (Mar. 2022), https://www.finra.org/rules-guidance/notices/22-08. FINRA defines a complex product as "a product with features that may make it difficult for a retail investor to understand the essential characteristics of the product and its risk…." *Id.* at p. 3.

[4] SIFMA comment letter to FINRA re: Complex Products (May 2022), https://www.sifma.org/advocacy/letters/finra-complex-products-and-options.

[5] SEC Staff Bulletin: *Standards of Conduct for Broker-Dealer and Investment Advisers Conflicts of Interest* (Aug. 2022), https://www.sec.gov/about/divisions-offices/division-trading-markets/broker-dealers/staff-bulletin-standards-conduct-broker-dealers-investment-advisers-conflicts-interest.

In addition, FINRA requires BDs to implement heightened supervisory and compliance procedures in order to recommend complex products (including Novel ETFs that may be deemed complex products) to retail investors.[6] Thus, with respect to advised or recommended transactions in Novel ETFs, the existing regulatory regime is sufficient to protect investors and thus, we recommend against additional SEC and/or FINRA regulation for these particular types of transactions.

We likewise reject the suggestion that Novel ETFs (or ETFs generally) should be subject to special enforcement focus.[7] No other discrete securities product category is the subject of special enforcement focus and there is no regulatory record or other basis in fact to suggest that advised or recommended transactions in Novel ETFs (or ETFs generally) are regularly or disproportionately being made in violation of advisers' fiduciary duty or brokers' Reg BI obligations. Accordingly, the SEC should avoid a regulation by enforcement approach to Novel ETFs and should instead pursue normal course regulatory examination and enforcement with respect to Novel ETFs on par with and without differentiation from other securities product categories.[8]

2. All ETFs should be subject to the same regulatory regime and review process, focused not on novelty but on the complexity of, and the level of risk and unique types of risk associated with, the particular ETF.

The Request broadly defines Novel ETFs as ETFs that "invest in innovative asset classes or engage in novel investment strategies." SIFMA believes that novelty is not particularly relevant in this context. Thus, it would be inadvisable to create a bifurcated regulatory regime, one for Novel ETFs and one for all other ETFs. Rather, the differentiation of greatest concern to retail investors is whether an ETF presents heightened risks, such as ETFs that:

- are complex (i.e., have features that are difficult for retail investors to understand);[9] and/or
- are high risk (i.e., leveraged, concentrated, speculative, etc.); and/or
- carry risks that are unique to the particular ETF.

As a result, SIFMA believes that all ETFs should be subject to a single, uniform, consistent regulatory regime and review process that focuses on clearly identifying – for the benefit of both retail investors and financial advisors – the material risks associated with the particular ETF and

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[6] FINRA Notice 12-03, *Heightened Supervision of Complex Products* (Jan. 2012), https://www.finra.org/rules-guidance/notices/12-03.

[7] SEC Investor Advisory Committee, *Recommendation on Single Stock ETFs and Leveraged ETFs* (Jun. 2023), https://www.sec.gov/files/spotlight/iac/20230622-recommendation-single-stock-etfs-and-leveraged-etfs.pdf (recommending enforcement focus on ETFs and cited in the Request at Question 7, footnote 16).

[8] The SEC should also continue to promote retail investor education about Novel ETFs and other ETFs and ETPs that may be complex and/or high risk. *See, e.g.*, SEC Office of Investor Education and Advocacy, *Statement on Single-Stock Levered and/or Inverse ETFs* (Jul. 2022), https://www.investor.gov/statement-single-stock.

[9] *See* footnote 3 and accompanying text.

prominently disclosing them. This process is certainly of greater urgency with respect to ETFs that are complex, high risk, and/or carry product specific risks, but SIFMA believes that the current regulatory regime and review process is capable of achieving this objective.

3. Retail investors' understanding of the features of ETFs (including Novel ETFs) would be enhanced by a transparent naming convention.

All ETFs (including Novel ETFs) should have a consistent and transparent naming convention. The naming convention should make clear whether the product is registered under the Investment Company Act of 1940 (the "1940 Act") and thereby subject to extensive disclosure requirements, mandatory oversight by a board of directors, and regulation regarding custody, diversification, and use of leverage (i.e., *all* ETFs), or whether the product is not an investment company and thus not subject to the protections of the 1940 Act (i.e., *most* ETPs).

The naming convention should also identify the underlying asset class type for the ETF, whether it be, e.g.: securities-based index; crypto assets; commodity-focused instruments; single-stock strategies; heightened leverage; blockchain-enabled opportunities; private assets; event contracts; and/or a combination of the above. The asset class categorization should be included as part of both the SEC or exchange filing and approval process for all new ETFs, and should include a regulatory role for the SEC or exchange to review and verify the asset class type(s) selected by the sponsor. Asset class categorization would facilitate a firm's ability to nimbly block certain ETFs from being made available for sale, or part of a transfer of assets into the firm, where the firm has operational or other concerns about the particular ETF.

Finally, the naming convention should be designed to alleviate investor confusion by helping retail investors distinguish between ETFs that are simple, low-risk, buy-and-hold products, and ETFs and ETPs that may be complex and/or high-risk. Such a transparent naming convention would allow both retail investors and financial advisors to compare similar products across different issuers in an accurate manner. It would also help retail investors to better understand the most material features and risks of the ETF, and advisers and brokers to educate themselves about these products, thereby enhancing their competency to provide best interest advice and recommendations to their clients and customers about these products.

4. The staff's product review of new ETFs should proceed on a case-by-case basis and the staff should use its existing regulatory tools to take additional time to answer material legal or other questions that remain open regarding the new ETF.

The staff's review of new ETFs should continue to proceed on a case-by-case basis and the staff should use its existing regulatory tools to take additional time to answer material legal or other questions that remain open regarding the new ETF. For example, SIFMA believes this can be accomplished by: (1) requesting registrants to delay effectiveness until such issues are resolved, (2) utilizing the tools contained in Rule 485(c)(1) or Section 8(d) of the Securities Act of 1933 if these questions cannot be resolved in a timely manner, or (3) providing interpretive guidance regarding matters the staff believes present heightened risk for retail investors.

When a new ETF goes effective while material legal or other questions remain open, such questions are essentially passed along to BDs and RIAs; indeed, given that BDs and RIAs are required to understand the relevant risks and features of products when making recommendations or providing investment advice, it is paramount that material legal or other questions be fully addressed and answered during the review process. Otherwise, BDs and RIAs are subject to unnecessary legal and regulatory risk with respect to recommended and advised transactions involving such new ETFs, which could delay or derail their ability to bring new and innovative products to market. Accordingly, we recommend that all material legal and other questions be resolved prior to effectiveness.

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We appreciate the opportunity to comment on the Request. If you have any questions or comments, please contact the undersigned at 202-962-7300.

Sincerely,

Kevin M. Carroll

Kevin Carroll
Deputy General Counsel
Securities Industry and Financial Markets Association

cc: The Honorable Paul S. Atkins, Chairman
The Honorable Hester M. Peirce, Commissioner
The Honorable Mark T. Uyeda, Commissioner