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SEC Seeks Public Comment on Novel Exchange-Traded Funds

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KEY POINTS

- ETF sponsors, asset managers, institutional investors, private equity sponsors, and broker-dealers should review the Request and consider submitting comment letters.
- The SEC issued a request for public comment on June 30, 2026, seeking input on exchange-traded funds that invest in innovative asset classes or employ novel investment strategies (Novel ETFs).
- The Request focuses on three areas: investment company status under the Investment Company Act of 1940, regulation of Novel ETFs, and improvements to the registration process.
- The public comment period closes August 31, 2026, 60 days after the Request's July 2, 2026, publication in the Federal Register.
- The SEC's review signals a regulatory posture under Chairman Paul S. Atkins aimed at facilitating capital formation and market innovation while maintaining investor protections.

OVERVIEW

On June 30, the Securities and Exchange Commission (SEC) issued a request for public comment (the Request) on exchange-traded funds (ETFs) that seek to invest in innovative asset classes or employ novel investment strategies (Novel ETFs). The Request signals the SEC's intent to examine and potentially reshape the regulatory framework governing a rapidly evolving segment of the ETF market.

The Request was published in the *Federal Register* on July 2, 2026. Comments must be received on or before August 31, 2026.

BACKGROUND

The U.S. ETF market has experienced remarkable growth over the past several years, expanding from approximately $4 trillion in 2019 to more than $12 trillion at the end of 2025. As ETFs have grown in scale and complexity, so too have the strategies they employ — from cryptocurrency-linked products to funds using options overlays, leverage, and other sophisticated investment techniques.

Against this backdrop, the SEC is seeking to ensure that its regulatory framework keeps pace with market developments while continuing to protect investors and preserve fair, orderly, and efficient markets.

WHAT THE SEC IS ASKING

The Request focuses on three primary areas:

1. Investment Company Status – Whether and how certain Novel ETFs should be treated as investment companies under the Investment Company Act of 1940, and the implications of that classification.
2. Regulation of Novel ETFs – How the SEC should regulate ETFs employing innovative strategies or investing in nontraditional asset classes, including what safeguards or disclosures may be appropriate.
3. Registration Process – How the registration and review process for Novel ETFs can be made more consistent, transparent, and efficient to support continued innovation without sacrificing investor protections.

WHY THIS MATTERS

The Request reflects a broader shift in the SEC's posture toward market innovation under the current SEC leadership — one that seeks to facilitate capital formation and market development while maintaining core investor protections. For market participants, this is a meaningful opportunity to shape the rules that will govern next-generation ETF products.

Specifically, this development is relevant to:

- ETF sponsors and asset managers developing or considering novel fund structures.
- Institutional investors and fund-of-funds that allocate to ETFs using complex strategies.
- Private equity and investment fund sponsors exploring ETF wrappers for alternative strategies.
- Broker-dealers and market makers active in ETF trading and distribution.

NEXT STEPS AND CONSIDERATIONS

Market participants and other interested stakeholders should consider the following:

- Review the full Request for Comment and identify issues directly relevant to their business or investment strategies.
- Prepare and submit comments by August 31, 2026, within the 60-day comment window. Comment letters are public and can be an effective way to engage with the SEC on issues of significance to your organization.
- Monitor rulemaking developments that may follow the comment period, which could include proposed rules, exemptive relief, or updated staff guidance affecting Novel ETF structures.

For questions about how the SEC's review of Novel ETFs may affect your organization, contact our Investment Management Practice Group. Our attorneys regularly advise ETF sponsors, asset managers, and market participants on SEC regulatory matters and fund structure considerations.

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