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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**

Ms. Countryman:

Cboe Global Markets, Inc. ("Cboe") appreciates the opportunity to provide comments in response to the Securities and Exchange Commission's ("SEC" or "Commission") Request for Comment on Novel ETFs.[1]

Cboe's listing exchange, Cboe BZX Exchange, Inc. ("BZX"), is a national securities exchange that lists ETFs, including ETFs that the Commission has characterized as "novel." As a listing exchange, BZX has first-hand experience with the regulatory processes and challenges that the Request for Comment addresses.

This letter focuses on three topics from the Request for Comment that are of particular importance to Cboe and on which BZX has direct, practical experience: (1) the scope of amendments permitted under Rule 485(a)[2] of the Securities Act of 1933, (2) the need for clarity that automatic effectiveness under Rule 485(a) means there are no material outstanding SEC staff comments, and (3) the definition of "Novel ETFs" and related implementation considerations.

1. *<u>Clearer guidelines on Rule 485(a) amendments and auto-effectiveness timelines would benefit issuers, exchanges, and investors.</u>*

An effective registration statement is a legal prerequisite for an ETF to list and begin trading on a national securities exchange. Exchanges therefore have a direct and immediate interest in clarity regarding when a registration statement becomes effective and whether any conditions or outstanding issues could affect that determination.

Under current practice, issuers may make material changes to a registration statement and obtain auto-effectiveness under Rule 485(a) within the 60- or 75-day waiting periods. Cboe has observed that some changes made through this process could reasonably be characterized as changes in investment strategy (for example, modifying an ETF's stated investment objective or principal

1 Request for Comment on Novel ETFs, Release Nos. 33-11426; 34-105808; IC-36228; File No. S7-2026-24 (June 30, 2026) available at https://www.sec.gov/files/rules/other/2026/33-11426.pdf.

2 17 CFR §230.485(a).

investment strategies). Such changes raise the question whether auto-effectiveness without additional Division of Investment Management ("IM") review is in investors' best interests. These practices may also frustrate investors' ability to make informed investment decisions: at the time material strategy changes become effective, investors may have limited notice and no meaningful opportunity to evaluate their continued interest in the product. Moreover, these practices may create regulatory arbitrage opportunities: issuers can effectively implement material strategy changes through the Rule 485(a) process while bypassing the more rigorous review that would accompany a new registration statement, creating uncertainty for listing exchanges and underscoring the need for clearer standards.

Cboe supports clearer guidelines on what types of amendments an issuer may make via Rule 485(a) and obtain auto-effectiveness. In the absence of such clarity, Cboe supports explicit standards requiring that material investment strategy changes be effected through a new Rule 485(a) filing rather than a Rule 497 sticker supplement. This approach gives IM adequate review time through an established process. Critically, this must be paired with an objective standard for what constitutes a "material" change to an investment strategy, so that sponsors and exchanges have certainty regarding their obligations.

2. *Automatic effectiveness under Rule 485(a) should mean there are no material outstanding SEC staff comments.*

Cboe strongly supports clarity that when a registration statement becomes automatically effective under Rule 485(a), this should mean there are no material outstanding SEC staff comments on the filing. All parties—including exchanges, sponsors, and market participants—must know whether material comments remain outstanding prior to the day the registration statement is scheduled to become auto-effective. This is not simply a policy preference but inherent to what auto-effectiveness means. A registration is not truly auto-effective if there are unresolved material issues that the Commission staff are concerned about. Clarifying this would meaningfully improve transparency for listing exchanges, sponsors, and market participants alike while also reinforcing the integrity of the auto-effectiveness framework.

Timing is a critical issue under the current framework because exchanges and sponsors must make binding commitments before effectiveness can be fully confirmed. Exchanges typically send notices to market participants at least two business days prior to an ETF launch, and they need certainty regarding registration statement effectiveness well before that date. Sponsors, too, face timing pressures: seeding of the ETF typically occurs the day before launch, meaning sponsors must commit capital before the listing date based on their understanding that the registration statement will be effective. Under the current framework, however, there is no formal mechanism to confirm that material SEC staff comments have been resolved in advance of the auto-effectiveness date. Exchanges have no direct visibility into the status of SEC staff comments, and while sponsors generally work cooperatively with exchanges to share relevant information, the absence of a clear regulatory signal creates unnecessary uncertainty for all parties. This is particularly challenging when an exchange and issuer are working on expedited timelines leading to the launch of an ETF: exchanges may not have confirmation that comments have been addressed until shortly before a scheduled launch, leaving little time to adjust if issues arise.

This dynamic places listing exchanges such as BZX in a difficult position. When an ETF sponsor notifies BZX that its registration statement has become effective and the sponsor is ready to list, BZX must determine whether the product can begin trading. If uncertainty remains about whether material comments have been fully resolved, BZX faces a difficult choice: delay listing pending further clarification or proceed with listing based on incomplete information. This is especially challenging because first-to-market timing is of critical importance for many ETF sponsors and even more so for novel funds, where a brief delay can have adverse competitive consequences. Neither outcome serves investors, sponsors, or the integrity of the listing process.

This uncertainty unnecessarily places listing exchanges in the position of making judgments about registration statement effectiveness that are outside their purview. Exchanges are not well-positioned to independently assess whether SEC staff review is complete or whether material comments remain outstanding—that determination properly belongs to the Commission. A clear regulatory signal would benefit all parties: sponsors would have certainty about their registration status, exchanges would have confidence in their listing decisions, and investors would benefit from a more orderly process.

Related to this point, issuer reliance on auto-effectiveness should be predicated on the issuer having received assurance from the SEC that any Commission comments have been cleared to the SEC's satisfaction. Cboe also supports earlier engagement between the Division of Investment Management and the Division of Trading and Markets on ETFs that may raise listing-related questions. A product may satisfy the technical requirements of Rule 6c-11 but still raise separate Trading and Markets considerations, such as whether market makers can efficiently value and hedge the ETF to support effective arbitrage, or whether existing surveillance arrangements are adequate. Where such questions exist, earlier coordination would allow them to be identified and addressed before a registration statement becomes effective, helping to ensure that sponsors and exchanges have a clearer path to bringing products to market.

Cboe believes that the Commission should clarify that automatic effectiveness under Rule 485(a) carries a clear regulatory meaning: that the SEC staff review process is complete and no material comments remain outstanding. At minimum, there should be a clear indication whether material SEC staff comments have been addressed by at least two business days prior to an ETF's scheduled launch date, aligning with the timeline on which exchanges must notify market participants. This simple but important adjustment would reduce uncertainty for exchanges and sponsors alike, ensure that automatic effectiveness carries the significance that market participants expect, and promote confidence in the listing process for the benefit of issuers and investors.

3. *Any Commission action addressing "Novel ETFs" should be narrow, objective, prospective, and clearly defined.*

Since the adoption of SEC Rule 6c-11 in 2019, ETFs have experienced tremendous growth, and ETF sponsors have increasingly sought to provide exposure to innovative strategies. To date, these include ETFs focused on crypto assets, commodity-focused instruments, single-stock strategies, heightened leverage, blockchain-enabled opportunities, private assets, event contracts, and combinations of the foregoing (e.g., 2x single-stock ETFs). The Request for

Comment groups this amalgamation of divergent products under the heading "Novel ETFs" but, as an information-gathering exercise rather than a formal rulemaking, does not offer a precise definition of the term.

While a precise definition may not be necessary for purposes of the Request for Comment itself, Cboe believes that any formal action that emerges from this process should define "Novel ETFs" carefully. Many ETFs that exist today hold the very types of assets or employ the very strategies that the Commission lists. Given the breadth of the Commission's description, it is unclear which future ETFs would fall within the scope of a "Novel ETF" designation, or whether existing ETFs could retroactively be treated as "Novel ETFs" and whether such existing ETFs would be subject to new requirements.

Cboe does not believe that any formal Commission action should establish a broad, static definition of "Novel ETFs." This position parallels Cboe's view, expressed in its May 2022 response[3] to FINRA Regulatory Notice 22-08,[4] that drawing the line on what is deemed "complex" —or here, "novel"—would be unproductive, as products once considered novel (e.g., crypto ETFs, commodity futures ETFs) are now well-established and widely held.[5] A static definition cannot accommodate the natural evolution of financial products and would inevitably become stale or overinclusive.

If any definitional framework is adopted, Cboe strongly advocates that it be narrow, objective, and prospective. Specifically:

- The definition should be tied to structural characteristics, such as transparent pricing, liquidity, robust disclosure, and effective surveillance, rather than broad asset-class labels that capture large swaths of existing, well-understood products.

- Only ETFs that raise genuinely new concerns regarding transparent pricing, liquidity, disclosure, or surveillance, where those concerns are not already addressed by existing regulatory frameworks, should fall outside the generic listing standards that exchanges have adopted for Rule 6c-11-compliant ETFs. All others should continue to be governed by Rule 6c-11 and eligible for generic listing.

- Consideration must be given to what happens when ETFs once considered "novel" mature into established products. Any definitional framework should include an objective mechanism or criteria for an ETF to "graduate" from heightened treatment back to standard regulatory processes.

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3 See Cboe comment letter, available at: https://www.finra.org/sites/default/files/NoticeComment/Cboe%20Global%20Markets%2C%20Inc._Angelo%20Evangelou_5.9.2022_Options%20and%20Complex%20Products%2020220509.pdf.

4 See FINRA Regulatory Notice 22-08, FINRA Reminds Members of Their Sales Practice Obligations for Complex Products and Options and Solicits Comments on Effective Practice and Rule Enhancement.

5 Products once considered novel (e.g., crypto ETFs, commodity futures ETFs) are now well-established and widely held. As of August 2026, BZX alone lists 31 crypto-based ETFs, 349 single-stock ETFs, and 355 leveraged ETFs.

Cboe supports Rule 6c-11's current framework, which defines structural ETF characteristics to support arbitrage without restricting asset classes or strategies. Rule 6c-11 has delivered meaningful benefits for listing exchanges: it has significantly reduced the volume of product-specific Section 19(b)(4) filings, provided greater timing clarity for ETF launches, and enabled exchanges to develop generic listing standards that allow compliant ETFs to list efficiently. Exchanges such as BZX have implemented generic listing standards (e.g., BZX Rule 14.11(l)) that rely on Rule 6c-11 eligibility. Any amendments to Rule 6c-11 should account for the cascading effects on these exchange generic listing standards. Narrowing Rule 6c-11 eligibility would undo many of these efficiencies and require potentially costly and time-consuming product-specific Section 19(b)(4) filings for ETFs that currently list under generic standards. The Commission should consult with listing exchanges before proposing amendments that could fundamentally alter the generic listing framework.

Similarly, Cboe recognizes that the Commission's ability to delay effectiveness of a Novel ETF on its own initiative could be beneficial where the Commission identifies specific concerns with a particular Novel ETF. However, it should be made clear that the Commission's authority to delay effectiveness applies only to ETFs that qualify as "Novel ETFs" under whatever definition is adopted, and not to other "plain vanilla" ETFs that have long operated within the established regulatory framework.

If the Commission contemplates amending Rule 485(a) to extend the auto-effectiveness timelines for Novel ETFs, Cboe believes it is essential that those timelines be clearly defined and consistently applied, with transparent criteria so that sponsors and exchanges can plan accordingly. Regulatory uncertainty regarding different treatment for "novel" products would replicate the very problem of informal staff discretion that has created challenges under the current framework.

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Cboe thanks the Commission for the opportunity to provide a response to its Request for Comment on Novel ETFs and welcomes the opportunity to discuss these views further with the Commission or its staff.

Sincerely,

s/Patrick Sexton

Patrick Sexton
EVP, General Counsel, and Corporate Secretary
Cboe Global Markets, Inc.