MFDF
Trusted Insight for Independent Oversight

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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

Dear Ms. Countryman:

MFDF[1] welcomes the opportunity to comment on the Securities and Exchange Commission's ("SEC") recent request for comment ("the Request") regarding Novel ETFs.[2] As we discuss below, many of our members serve as independent trustees and directors of existing ETFs, including ETFs that the Commission's Request characterizes as "novel." We and our members therefore have a distinct interest in how the Commission's approach to the regulation of ETFs continues to evolve.

MFDF is an independent association for independent directors of mutual funds, ETFs, closed-end funds, and other registered investment companies ("RICs"). MFDF helps independent directors navigate an evolving regulatory environment and steward shareholders' investments. MFDF provides tailored educational resources and facilitates peer-to-peer networking, with offerings that include webinars, white papers, and interactive conferences.

As we discuss below, we believe that it is of fundamental importance for the Commission to better delineate what types of traded vehicles are eligible for RIC status under the Investment Company Act of 1940 (the "Act") and which fall under other regulatory schemes. Such clarity would place independent fund directors in a better position to effectively oversee those funds that qualify as RICs and provide investors with reassurance of knowing their interests are represented by a fund's board.

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1 MFDF's current membership includes over 1059 independent directors, representing 141 fund groups. Each member group selects a representative to serve on MFDF's Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by MFDF's Board of Directors, although it does not necessarily represent the views of all members in every respect.

2 *See* Request for Comment on Novel ETFs, Release Nos. 33-11426, 34-105808 and IC-36228, File No. S7-2026-24, 91 Fed. Reg. 40,647 (July 2, 2026) ("Request")

Clarity for investors also would be enhanced by limiting the vehicles that can call themselves "ETFs" only to funds that are registered under the Act. Last, the Commission should consider requiring disclosure of material unresolved staff comments to the fund's board before the fund's registration statement becomes effective.

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I. The Commission Should Clearly Define What is (and What is not) an ETF

The director community is – as it always has been – committed to providing effective oversight of the RICs they serve. This certainly includes ETFs that are registered under the Act relying on Rule 6c-11 or separate exemptive relief. Independent directors undertake their responsibilities to help protect the interests of fund shareholders. Independent directors are thus key to ensuring that fund investors get what they pay for and play a key role in deepening the trust that investors place in RICs.

Directors recognize that numerous other tradeable vehicles, broadly described as "exchange-traded products," are not registered under the Act, either because, like exchange-traded commodity pools, they invest primarily in assets other than securities or because, like exchange-traded notes, they are debt obligations of the sponsor rather than a pooled investment vehicle. In either case, while these products may offer investor protections via other sources, they generally lack independent boards and the other protections of the Act.

There are a handful of reasons a fund sponsor may elect RIC status and launch a product as an ETF rather than embracing another type of investment vehicle. While not an exhaustive list, these considerations include tax implications, marketing strategies, the issuance of shares, and, importantly, access to the retail investor. As the Commission is keenly aware, many in the fund industry are looking for innovative ways to provide retail investors with exposure to a variety of different assets and investment strategies. The ETF structure provides sponsors with a known and trusted vehicle for retail investors, compared to other less-familiar product structures.

Fund industry developments over the past decade clearly demonstrate the importance of the Request. As this process proceeds, the Commission should definitively determine whether there are assets that cannot be held in the portfolio of a registered ETF, irrespective of whether the ETF holds them directly, through a wholly-owned subsidiary or by other means.[3] We also recognize that certain of these products may raise other questions unique to ETFs, including their impact on the arbitrage mechanism and the contents of the creation and redemption baskets employed by a vehicle that invests in such instruments.

Importantly, fund boards and independent directors are not and should not be responsible for determining whether the funds that they oversee qualify to register under the Act – that responsibility belongs primarily to fund management and fund counsel. Without clear guidance from the Commission, boards may be asked to oversee products whose status is unclear under the Act, bringing potential complexities to oversight of the fund and weakening transparency for investors. While fund boards are perfectly able to oversee funds that use complex assets to implement a specific investment strategy, directors are not in a position to determine an investment company's status under the Act.

While we do not express a view on what types of instruments should be eligible to be included in a fund's portfolio, we encourage the Commission to clearly delineate what investment strategies and instruments qualify for RIC status and which do not. Providing clarity around RIC status would benefit boards in their oversight function as well as shareholders by delineating which products offer the regulatory protections of the Act and which do not.

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We also believe that the Commission should use this opportunity to place limits on the ability of tradeable vehicles to call themselves ETFs – in particular, we urge the Commission to limit the use of the name "ETF" to products that are registered under the Act. All investors should be able to easily determine what regulatory structure covers an investment that they are considering. While we certainly do not oppose the availability of other types of tradeable investment vehicles and strategies to investors, the name "ETF" conveys simply and directly to investors that the product is a fund regulated under the Act and (with the exception of a limited number of index-based UITs) provides the additional benefits of oversight by an independent board.

[3] There are obviously substantial differences between, for example, commodity-focused instruments, cryptocurrencies and other crypto instruments and event contracts and other products offered via prediction markets that may impact their appropriateness for inclusion in the portfolio of an ETF or other RIC.

II. Other Regulatory Issues

The Commission also raises in its Request the issue of material unresolved staff comments. In addressing this issue, the Commission can take steps that would greatly aid boards in their oversight of new and novel ETFs – the Commission should require that material unresolved staff comments that are relevant to the board's oversight be disclosed to the fund's board before the fund's registration statement becomes effective. While an independent board routinely likely receives these comments currently, making clear that the board must receive them would be a significant benefit to independent directors tasked with overseeing newer and more novel strategies. Limiting this disclosure to investors rather than providing it to boards earlier in the governance process would, on the other hand, leave boards in a disadvantaged position.

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We would welcome the opportunity to discuss these comments in more detail. Please feel free to contact David Smith, MFDF's General Counsel, at David.smith@mfdf.org or 202-507-4491 or Carolyn McPhillips, MFDF's President, at Carolyn.mcphillips@mfdf.org or 202-507-4493.

Sincerely,

David B. Smith Jr.
Executive Vice President
and General Counsel