

May 8, 2020

VIA ELECTRONIC SUBMISSION
rule-comments@sec.gov

Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: File No. S7-24-15

Dear Ms. Countryman:

We appreciate the opportunity to respond to the request by the U.S. Securities Exchange Commission (“*Commission*”) for comments on the above-referenced release (“*Proposing Release*”).¹ The Commission initially requested comments by March 23, 2020, but subsequently has extended that period.²

Executive Summary

The Proposing Release introduces an approach to regulating the use of derivatives by funds that raise “senior security” concerns under Section 18 of the Investment Company Act of 1940 (“*1940 Act*”) through new rule 18f-4 thereunder (“*Proposed Rule 18f-4*”). The Proposing Release also has introduced new Rule 151-2 under the Securities Exchange Act of 1934 and new Rule 211(h)-1 under the Investment Advisers Act of 1940 (together, the “*Proposed Sales Practice Rules*”) that would impose duties on brokers and investment advisers that sell and recommend leveraged/inverse investment vehicles.

Innovator Capital Management (“*Innovator*”) is likely to be significantly and adversely impacted by the adoption of Proposed Rule 18f-4 and the Proposed Sales Practice Rules in their current form. Innovator seeks to sponsor certain enhanced defined-outcome exchange-traded funds (“*Enhanced Defined-Outcome ETFs*”) that, although technically may fall within the definition of “leveraged/inverse investment vehicle” in the Proposed Sales Practice Rules, perform nothing like leveraged/inverse funds and exhibit none of the characteristics that give rise to the Commission’s concerns about leveraged/inverse funds. To the extent that the Proposed Sales Practice Rules are imposed on the Enhanced Defined-Outcome ETFs, Innovator believes that it will be difficult (if not nearly impossible)

¹ [Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers’ Transactions in Certain Leveraged/Inverse Investment Vehicles](#), Exchange Act Release No. 87,607, Investment Advisers Act Release No. 5413, Investment Company Act Release No. 33,704, 85 Fed. Reg. 4446 (January 24, 2020).

² See <https://www.sec.gov/sec-coronavirus-covid-19-response>



to offer such investment products to important segments of the investing community. Many broker-dealers and investment advisers simply will not go through the processes prescribed by the Proposed Sales Practice Rules, and take on the related increased compliance risks, for the sole purpose of offering their clients shares of the Enhanced Defined-Outcome ETFs. Moreover, because the Enhanced Defined-Outcome ETFs don't behave like leveraged/inverse funds currently in the marketplace and don't present similar risks or performance characteristics, investors would not receive any additional protection if the Proposed Sales Practice Rules were applied to purchases or sales of Enhanced Defined-Outcome ETFs.³

Accordingly, Innovator requests that the Commission consider the following two possible modifications to the definition of "leveraged/inverse investment vehicle" in the Proposed Sales Practice Rules, each of which would allow for the appropriate exclusion of the Enhanced Defined-Outcome ETFs from that definition:

1. "Leveraged/inverse investment vehicle means a registered investment company (including any separate series thereof), or commodity- or currency-based trust or fund, that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time, that is less than one year."
2. "Leveraged/inverse investment vehicle means a registered investment company (including any separate series thereof) that cannot otherwise meet the relative VaR test or the absolute VaR test, as those terms are defined in 17 CFR Part 270.18f-4, or commodity- or currency-based trust or fund, that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time."

Background

The Existing Defined-Outcome ETFs

Innovator currently sponsors a series of exchange-traded funds that utilize an option strategy that produce predetermined investment outcomes over a fixed time period (an "*Outcome Period*") based upon the performance of a benchmark ("*Benchmark*") (collectively, the "*Defined-Outcome ETFs*"). In the case of these funds,⁴ the fixed period is one year (e.g., July 1 to June 30) and the Benchmark upon which the funds' outcomes are based broad-based and well-known indexes, e.g., the S&P 500 Price Return Index ("*S&P 500*").

³ We note that investors in the Enhanced Defined-Outcome ETFs will have available to them tailored and heightened disclosure in prospectuses and statements of additional information, including that which has been adopted and incorporated with respect to the currently offered Defined-Outcome ETFs (defined herein). Moreover, because the Enhanced Defined-Outcome ETFs would not qualify as exchange-traded funds eligible to operate under Rule 6c-11 under the 1940 Act (due to the application of paragraph (c)(4)), and the amendment to Rule 6c-11 that would remove the provision excluding leveraged/inverse ETFs from the scope of that rule one year following the publication of a final rule in the Federal Register, Innovator would still be in need of an exemptive application to operate for that one-year period and, thus, subject to any additional conditions imposed by the Commission.

⁴ The first funds comprising the Defined-Outcome Series, Innovator S&P 500 Buffer ETF – July, Innovator Power Buffer ETF – July and Innovator S&P 500 Ultra Buffer ETF – July were launched and listed for trading in August 2018. Since that time, over 40 Defined-Outcome ETFs have launched. See http://www.innovatoretf.com/pdf/product_list.pdf.



The Defined-Outcome ETFs' investment strategy provides shareholders with participation in any gains experienced by a Benchmark over the course of the Outcome Period, subject to a cap on upside returns (a "*Cap*"), and a predetermined buffer (a "*Buffer*") against Benchmark losses for the Outcome Period. These defined outcomes may be achieved by purchasing and selling call and put FLEXible EXchange Options ("*FLEX Options*") to create layers within a fund's portfolio. Each FLEX Option has the same reference asset (*e.g.*, S&P 500) and expiration date (*e.g.*, June 30, 2020). However, each FLEX Option has a specifically selected strike price. Due to the customizable nature of FLEX Options that allows for specific strike prices to be selected for the same reference asset and expiration date, when each of the FLEX Options expires on the last day of the Outcome Period, the Defined-Outcome ETFs are expected to achieve an investment return that works within the applicable Buffer and Cap investment parameters.⁵

The Enhanced Defined-Outcome ETFs

Enhanced Defined-Outcome ETFs would provide the potential for upside returns in excess of, and/or a multiple of, an underlying Benchmark while providing risk exposures comparable to or less than those of the Benchmark. Like the Defined-Outcome ETFs, the Enhanced Defined-Outcome ETFs would hold a series of FLEX Options on a Benchmark to establish the defined outcome parameters. By changing the strike prices and composition of FLEX Options described above for an Enhanced Defined-Outcome ETF's portfolio, an Enhanced Defined-Outcome ETF would seek to provide enhanced outcomes (an "*Enhancement Level*") on the upside of the Fund's Benchmark (*e.g.*, 2x) over the course of an Outcome Period.

The Enhanced Defined-Outcome ETFs Do Not Raise Leveraged/Inverse Concerns

The Commission's concerns regarding leveraged/inverse funds – outlined in both the adopting release to Rule 6c-11⁶ and in the Proposing Release [to Rule 18f-4 and the Sales Practice Rules] – can be distilled to: (i) the effect of compounding on leveraged returns;⁷ (ii) magnified downside risk exposures for investors;⁸ (iii) the perceived inability of retail investors to understand these related fund performance erosion characteristics and the related risks;⁹ and (iv) the investor protection purposes and concerns underlying section 18 of the Act.¹⁰

The Effect of Compounding on Leveraged Returns

To maintain their leveraged investment objectives, leveraged/inverse funds rebalance their exposure to their market index or benchmark (typically each day) by adding to, or subtracting from, their

⁵ For a discussion of all aspects of the Defined-Outcome ETFs, see <http://www.innovatoretfs.com/define/>

⁶ See generally [Exchange-Traded Funds, Investment Company Act Release No. 33646 \(Sept. 25, 2019\) \(Oct. 24, 2019\)](#) ("Rule 6c-11 Adopting Release").

⁷ See Rule 6c-11 Adopting Release at footnote 70 and accompanying text. See also Proposing Release at n. 310 and accompanying text.

⁸ *Id.*

⁹ See Rule 6c-11 Adopting Release pages 26-33 generally. See also Proposing Release at pages 181-183

¹⁰ Rule 6c-11 Adopting Release at p. 30.



positions.¹¹ When fund shares are held beyond the reset period, the laws of compounding can cause the investor's performance experience to deviate from that which the investor might expect. It is thus very possible (particularly in volatile markets) that an investor will have an unexpected outcome over any extended period of time despite the leveraged/inverse fund meeting its objective each day, or each month, as the case may be.

The Enhanced Defined-Outcome ETFs would not experience this result, except at the single annual reset date. Because the Enhanced Defined-Outcome ETFs will utilize Outcome Periods of at least one year, investors will not be exposed to the detriments of daily or other short-term compounding. Rather, the returns received will match the return of the annual Outcome Period. Clearly, the longer the fixed period, the lesser the risk of compounding. We believe that when fund rebalances occur no more frequently than annually, the impact of compounding is significantly diminished, if not nearly eliminated.

Magnified Risk Exposures for Investors

One of the most important characteristics of leveraged/inverse funds is that magnified returns reflect a multiple of a Benchmark, whether it moves up or down; that is, the leverage always applies, and it always applies equally in both directions. We believe this potential for magnified losses is a key characteristic of a leveraged/inverse fund.

Unlike leveraged/inverse funds, the Enhanced Defined-Outcome ETFs will utilize strategies that produce asymmetrical returns, where upside performance is enhanced but downside loss is one-to-one with the Benchmark, or may contain a buffer against losses over the Outcome Period. By purchasing option positions, the funds are designed to deliver similar downside outcomes to the underlying Benchmark, or less if they employ a buffer. Significantly, the Enhanced Defined-Outcome ETFs have no multiple downside performance potential over an Outcome Period, and in no event will losses exceed the losses of the applicable market Benchmark over the Outcome Period.

For example, Innovator is proposing to create the Innovator Enhanced and Buffered S&P 500 ETF (the "*Enhanced & Buffered ETF*"). This fund will have: (i) a one-year Outcome Period, (ii) offer 2x exposure to the S&P 500 up to a Cap set on the first day of the Outcome Period, and (iii) a 10% Buffer for the Outcome Period. Unlike a leveraged/inverse fund, the downside risk exposure for the fund over an Outcome Period is not equivalent to the upside potential. In fact, the fund will have less risk exposure than the market in that the fund will buffer investors from the first 10% decline in the market if they hold through the Outcome Period.

To help illustrate the significant difference in risk of the Enhanced & Buffered S&P 500 ETF compared to a leveraged/inverse fund, Chart 1 below compares the actual returns, for the annual period of March 29, 2019 through March 31, 2020, of the ^SPEB01, Cboe S&P 500 2x Up 1:1 Down 10% Buffer Index (Enhanced & Buffered ETF) with: (a) the ProShares Ultra S&P 500 ("*ProShares Ultra*"), which resets daily and provides 2x the S&P 500 return and (b) the S&P 500. Chart 2 below compares the actual returns, for the annual period of March 29, 2019 through March 31, 2020, of the ^SPEG01, Cboe S&P 500 3X Up 1:1 Down Enhanced Growth Index (Ultra Enhanced ETF) with: (a) the ProShares

¹¹ All current leveraged/inverse ETFs rebalance their portfolios daily; all current leveraged/inverse mutual funds rebalance their portfolios daily, except for a suite of thirteen Direxion mutual funds that rebalance their portfolios monthly.



UltraPro S&P 500 (“ProShares UltraPro”), which resets daily and provides 3x the S&P 500 return and (b) the S&P 500.

Chart 1: Performance Comparison of Cboe S&P 500 2x Up 1:1 Down 10% Buffer Index, ProShares Ultra S&P 500 [2x] and the S&P 500.

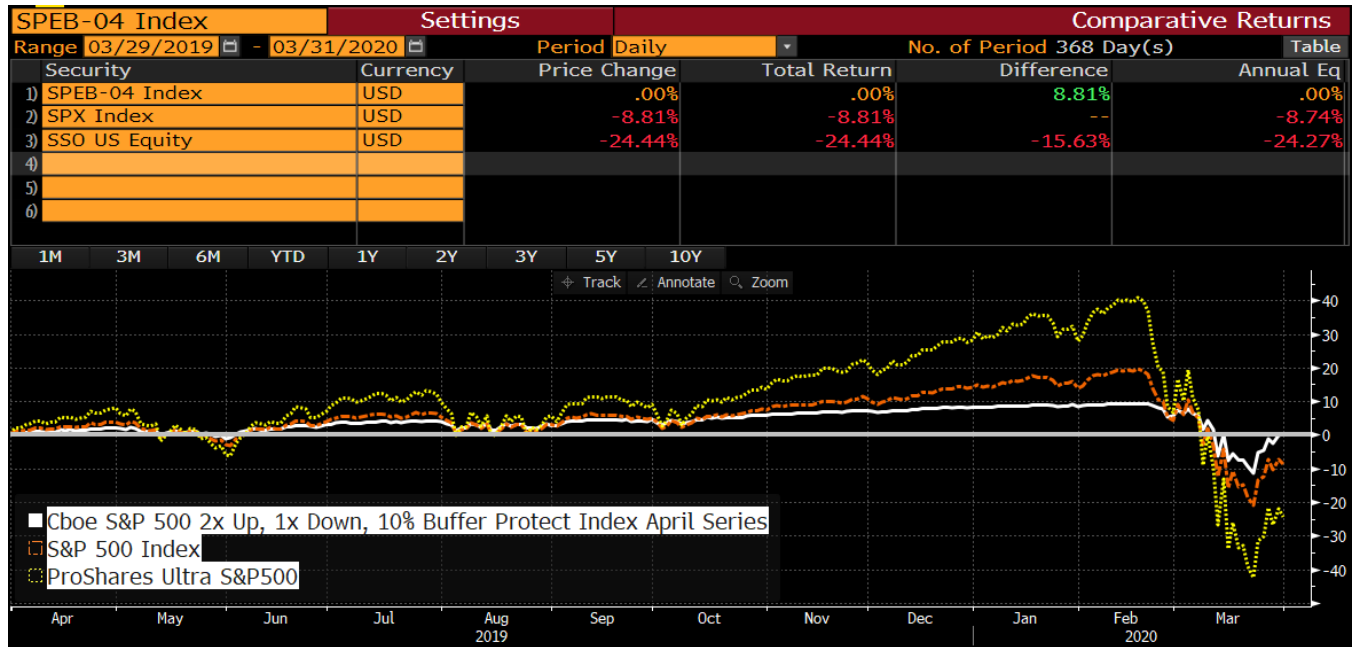
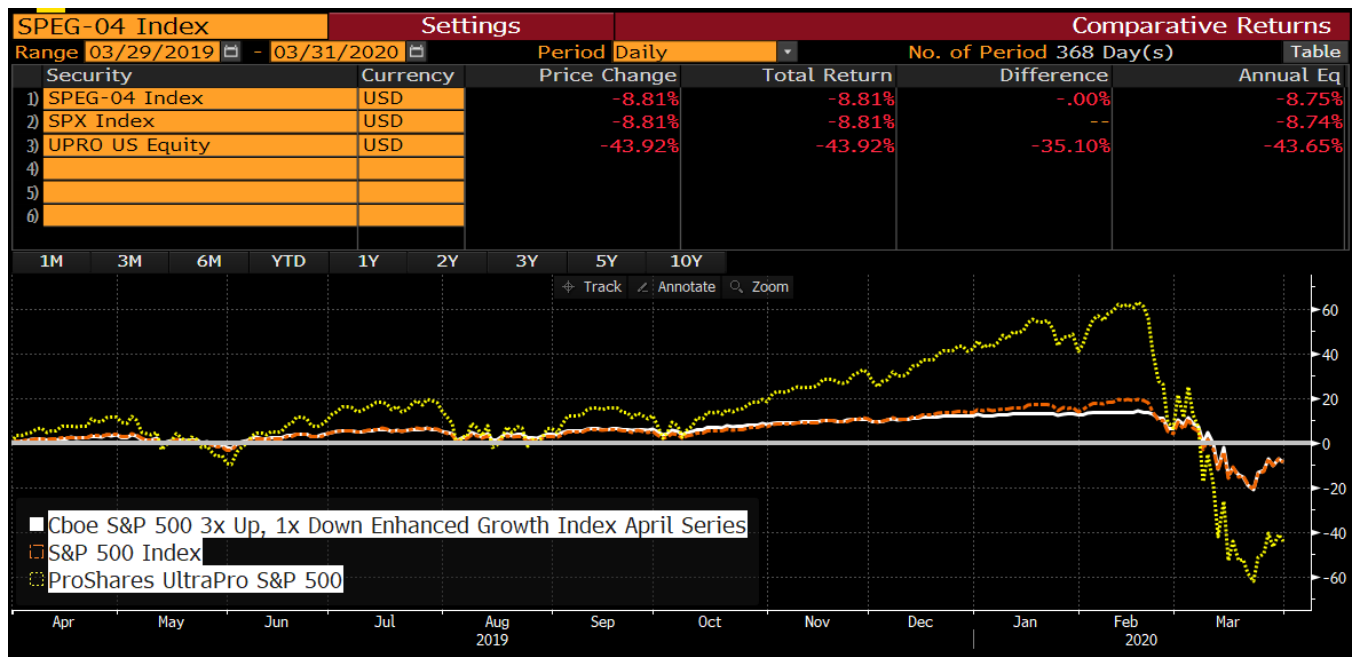


Chart 2: Performance Comparison of Cboe S&P 500 3x Up 1:1 Down Enhanced Growth Index, ProShares UltraPro S&P 500 [3x] and the S&P 500.





The charts demonstrate that, while the Enhanced & Buffered ETF and Ultra Enhanced ETF have the potential to provide above market outcomes, they would not expose investors to above market risks for investors who hold their investment throughout an Outcome Period and behave nothing at all like the comparative leveraged/inverse ETFs. In addition, because the funds reset only annually, the impact of performance decay due to compounding is effectively eliminated, resulting in an investment performing as would be expected by investors over the Outcome Period. While the ProShares Ultra and ProShares UltraPro are designed to provide 2x and 3x the market returns, respectively, the daily reset and compounding greatly affects the funds' ability to deliver that return over a one-year period. In addition, since the ProShares Ultra and ProShares UltraPro subject investors to 2x and 3x the market's downside exposure on a daily basis, respectively, the leveraging effect magnified the risk and negative impact on returns during market downturns. This further impacts the ability of the ProShares Ultra and ProShares UltraPro to deliver expected long-term results, in contrast to the Enhanced Defined-Outcome ETFs where no such impact is observed.

The Inability of Retail Investors to Understand the Performance Erosion Characteristics of the Funds and the Related Risks, Notwithstanding Adequate Disclosure

The leveraged/inverse ETF exclusion in Rule 6c-11 was put in place, at least in part, because of the perception that certain investors (in particular, long-term investors) were not able to appreciate the impact of *daily* resets and compounding on their investment results and the risks associated with owning a leveraged/inverse fund. For all the reasons previously cited, we believe the Enhanced Defined-Outcome ETFs do not present these issues. With Outcome Periods of at least a year, and information constantly available about the current Outcome Period and the available buffers and caps, we believe investors will be able to understand the potential benefits and risks of these funds. The Enhanced Defined-Outcome ETFs will provide the same disclosures to investors that the current Defined-Outcome ETFs do, will add enhanced disclosure as appropriate and as requested by the staff and will operate in a substantially similar manner. Innovator has worked extensively with the Commission staff to develop both the registration statement and website disclosures regarding the current Defined-Outcome ETFs and would follow that template for the Enhanced Defined-Outcome ETFs.

Concerns Raised Under Section 18 of the Act

In approving Rule 6c-11, the Commission believed that it was “premature to permit sponsors to form and operate [Leveraged] ETFs in reliance on [Rule 6c-11] without first addressing the investor protection purposes and concerns underlying section 18 of the Act.”¹² The Commission concluded that it “should complete its broader consideration of the use of derivatives by registered funds before considering allowing [Leveraged] ETFs to rely on the rule.”¹³ Through Proposed Rule 18f-4 and the Sales Practice Rules, the Commission has proposed a way to address these issues.

We note, however, that the Flex Options that would be used by the Enhanced Defined-Outcome ETFs don't necessarily raise Section 18 concerns. In the proposed Section 18 exemptive rulemaking that preceded the current rulemaking, the Commission noted that not all derivative instruments or positions would raise issues under Section 18:

¹² Rule 6c-11 Adopting Release at p. 30.

¹³ *Id.*



Many derivatives transactions entered into by a fund, such as futures contracts, swaps, and written options, involve leverage or the potential for leverage in that they enable the fund to participate in gains and losses on an amount of reference assets that exceeds the fund's investment, while also imposing a conditional or unconditional obligation on the fund to make a payment or deliver assets to a counterparty. Other derivatives transactions, such as purchased call options, provide the economic equivalent of leverage because they expose the fund to gains on an amount in excess of the fund's investment but do not impose a payment obligation on the fund beyond its investment.¹⁴

An option is the right to buy or sell an asset. There are two basic types of options, a "call option" and a "put option." A call option gives the holder the right (but does not impose the obligation) to buy the underlying asset by or at a certain date for a certain price. The seller, or "writer," of a call option has the obligation to sell the underlying asset to the holder if the holder exercises the option. A put option gives the holder the right (but does not impose the obligation) to sell the underlying asset by or at a certain date for a certain price. The seller, or "writer," of a put option has the obligation to buy from the holder the underlying asset if the holder exercises the option. The price that the option holder must pay to exercise the option is known as the "exercise" or "strike" price. The amount that the option holder pays to purchase an option is known as the "option premium," "price," "cost," or "fair value" of the option.

A purchased call or put option may create economic leverage, but not the type of indebtedness leverage that elicits Section 18 concerns. On the other hand, a written option may create an indebtedness leverage because for a relatively small up-front payment made by a fund (or no up-front payment), the fund contractually obligates itself to one or more potential future payments (or an obligation to deliver an asset) until the contract terminates or expires. However, any indebtedness leverage that might arise from a written option can be neutralized if the writer of the option continues to own the underlying asset that must be delivered as a result of the transaction or buys and continues to hold an equivalent call or put option that offsets the potential liability created by the written option.

In order to provide the Enhanced Level and Buffer, the Fund purchases a series of put and call Flex Options. As the purchaser of these Flex Options, the Fund is obligated to pay a premium to the seller of those Flex Options. However, the strategy is designed so that any premiums that the Fund is obligated to pay are offset by premiums it receives in connection with the selling of Flex Options. On the first day of the Outcome Period when the Fund enters into its other Flex Options positions, the portfolio managers will calculate the amount of premiums that the Fund will owe and will then go into the market and sell a FLEX Option with terms that entitle the Fund to receive a premium in an amount equal to the amount that the Fund would otherwise owe. The Cap is the strike price of that sold Flex Option. The strike price is determined based upon prevailing market conditions at the time the Fund enters into the FLEX Options, most notably current interest rate levels, S&P 500 Price Index volatility and dividend yield, and the relationship of put and calls on the underlying FLEX Options. In addition, for any written (sold) Flex Options entered into by the Fund, throughout the time period the Fund has an

¹⁴ See Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 31933 (Dec. 11, 2015) [80 FR 80883 (Dec. 28, 2015)] ("*Derivatives Proposing Release*") at p.12; available at: <https://www.sec.gov/rules/proposed/2015/ic-31933.pdf>



obligation created by a written Flex Option to make a future payment, the Fund will also own a corresponding put or call Flex Option that entirely offsets and covers that obligation. As a result, there are no amounts required to be segregated under Section 18 (which is the case currently with the Defined-Outcome ETFs) and the amount potentially owed on a written Flex Option can never exceed the value of the Flex Option purchased to offset that obligation. Accordingly, the Funds will both purchase and write (sell) Flex Options, but they would be bought and sold in such a way that would give rise only to economic leverage, not indebtedness leverage.

The Definition of “Leveraged/Inverse Investment Vehicle” in the Proposed Sales Practice Rules Should be Modified

Innovator will be able to successfully offer to retail investors the Enhanced Defined-Outcome ETFs – which, as noted above, do not raise leveraged/inverse fund concerns – only if the definition of “Leveraged/Inverse Investment Vehicle” in the Proposed Sales Practice Rules is modified.

Accordingly, Innovator requests that the Commission consider the following two possible changes to the definition of “leveraged/inverse investment vehicle” in the Proposed Sales Practice Rules, each of which would allow for the appropriate exclusion of the Enhanced Defined-Outcome ETFs from that definition.

Option 1: Limiting the “Period of Time” to Less Than One Year

Under the Proposed Sales Practice Rules, a fund will be captured under the definition of “leveraged/inverse investment vehicle” if it seeks leveraged/inverse returns over any predetermined period of time. However, the principal leveraged/inverse fund concern – that an investor may form a naïve expectation of long-term performance – comes about due to reset periods that are relatively short in nature, *e.g.*, one day or one month. Analytical support for this concern is provided in the DERA staff paper that accompanied Proposed Rule 18f-4 and the Proposed Sales Practice Rules,¹⁵ which begins with the statement: “Leveraged exchange-traded funds...seek to generate returns that are equal to a multiple, inverse or inverse multiple of the return on a particular index or benchmark over a short period of time [emphasis added], typically one trading day.” The paper then goes on to analyze the theoretical and empirical returns for leveraged/inverse funds using only a daily reset model. It does not analyze to what degree an investor might experience returns of leveraged/inverse funds that reset at longer periods. Nor are we aware of any academic literature that studies the impact of leveraged/inverse fund performance where the fund resets only after a long period. And again, we note that no existing leveraged/inverse fund rebalances in excess of one-month period.

Accordingly, we believe that the definition of “leveraged/inverse investment vehicle” adopted by the Proposed Sales Practice Rules should apply only to leveraged/inverse funds that rebalance over short periods. In that regard, the Commission could consider a short period to be at least that which currently serves as the rebalance period for existing leveraged/inverse funds, *i.e.*, equal to or less than one month. The question then is how long could a period between rebalances be and still be deemed to be a short period. We believe that the Commission could reasonably set that outside term at six months, but we are, nevertheless, suggesting a period double that – one year. At one year, a reasonable investor can be expected to re-evaluate his or her investment, which is consistent with the disclosure regime outlined by

¹⁵ U.S. Securities and Exchange Commission’s Division of Economic and Risk Analysis, *Economics Note: The Distribution of Leveraged ETF Returns* (November 2019).



the federal securities laws in which an annual period for updating investors on disclosure and performance is used, e.g., annual reports, annualized fees, annualized performance and annual updates of a fund's prospectus.¹⁶

We suggest, then, that the Commission consider modifying the definition of “leveraged/inverse investment vehicle” as follows:

“Leveraged/inverse investment vehicle means a registered investment company (including any separate series thereof), or commodity- or currency-based trust or fund, that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time, that is less than one year.”

Option 2: Excluding Registered Investment Companies that Can Meet a VaR Test

Under Proposed Rule 18f-4, a registered open-end investment company may invest in certain derivatives as long as it complies with the conditions of the rule. A fund must either (i) comply with a “relative VaR test” or, alternatively, an “absolute VaR test,”¹⁷ or (ii) comply with the Proposed Sales Practice Rules if it falls within the definition of “leveraged/inverse investment vehicle.”¹⁸ If the fund meets the definition of a leveraged/inverse investment vehicle under the Proposed Sales Practice Rules and meets relevant conditions under Rule 18f-4 (e.g., seeks to return no more than 300% of the performance (or inverse performance) of a market index), the fund will be able to operate as an exchange-traded fund under Rule 6c-11 under the 1940 Act.

In proposing this “alternative” for leveraged/inverse funds, the Commission explained that “[m]ost leveraged/inverse funds could not satisfy the limit on fund leverage risk in [the proposed rule] because they provide leveraged or inverse market exposure exceeding 150% of the return or inverse return” of a market index. Thus, the Commission acknowledged that most leveraged/inverse funds will have relative VaR’s well in excess of 150%, but also considered that some leveraged/inverse funds could have a relative VaR of 150% or less (e.g., those that pursue returns that are 1.5x or 1.25x of an index). We believe that in order for the leveraged/inverse fund path to be a true alternative to VaR test compliance, the VaR tests should delineate threshold percentages, below which, a fund may comply and no longer be deemed a leveraged/inverse investment vehicle. That may require that the Commission accept that certain funds which pursue 1.25x or 1.5x returns will not be leveraged/inverse investment vehicles; or it may require that the Commission alter those tests, i.e., revise the relative VaR test to

¹⁶ See also, U.S. Securities and Exchange Commission, [*Financial Navigating in the Current Economy: Ten Things to Consider Before You Make Investing Decisions*](#) (“Many financial experts recommend that investors rebalance their portfolios on a regular time interval, such as every six or twelve months.”)

¹⁷ Proposed Rule 18f-4 defines “value-at-risk” or “VaR” to mean “an estimate of potential losses on an instrument or portfolio, expressed as a percentage of the value of the portfolio’s net assets, over a specified time horizon and at a given confidence level.” VaR is a measure of the risk to a portfolio from its investments in derivatives. Under proposed Rule 18f-4, a fund generally must comply by implementing a relative VaR test to ensure that its VaR does not exceed 150% of the VaR of its designated reference index. Under proposed Rule 18f-4, a fund’s VaR test must use a 99% confidence level and a time horizon of 20 trading days to determine the VaR. Such test must be based on at least three years of historical market data. And it must “take into account and incorporate all significant, identifiable market risk factors associated with a fund’s investments.”

¹⁸ Rule 18f-4 does not itself define “leveraged/inverse fund” or any related term.



implicate a percentage threshold that is less than 125%. In either event, Innovator believes that the ability to pass a VaR test should allow it to avoid the alternative path prescribed for leveraged/inverse investment vehicles.

Accordingly, as an alternative to the first option discussed above, we suggest that the Commission consider modifying the definition of “leveraged/inverse investment vehicle” as follows:

“Leveraged/inverse investment vehicle means a registered investment company (including any separate series thereof) that cannot otherwise meet the relative VaR test or the absolute VaR test, as those terms are defined in 17 CFR Part 270.18f-4, or commodity- or currency-based trust or fund, that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time.”

Conclusion

The Enhanced Defined-Outcome ETFs can offer investors the opportunity to participate meaningfully in any upside that an index experiences over its Outcome Period but also be protected through Buffers over that Outcome Period, which is ostensibly has a risk mitigating effect. These ETFs exhibit little to none of the common regulatory concerns associated with leveraged/inverse funds and investors would gain nothing from the imposition of the Proposed Sales Practice Rules. We think the modifications suggested in this letter would allow for these funds to avoid application of the extreme (and inapplicable) Proposed Sales Practice Rules and also allow for the Commission to preserve the proposed regulatory scheme.

* * *

If you have any questions or comments in connection with the foregoing, please contact me, or our counsel, Barry Pershkov of Chapman and Cutler LLP at [REDACTED] Morrison Warren of Chapman and Cutler LLP at [REDACTED] or Walt Draney of Chapman and Cutler LLP at [REDACTED]

Sincerely,

Bruce Bond
Chief Executive Officer and Co-Founder
Innovator Capital Management



cc: The Honorable Walter J. Clayton, III
 The Honorable Allison H. Lee
 The Honorable Hester M. Peirce
 The Honorable Elad L. Roisman
 Dalia O. Blass, Director, Division of Investment Management
 Brett W. Redfearn, Director, Division of Trading and Markets
 John Southard, Co-Founder Innovator Capital Management
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