rule-comments@sec.gov

Proposed Rule -- Use of Derivatives by Registered Investment Companies and Business Development Companies

File Number S7-24-15

Dear Sir/Madam:

I am an individual that invests in the stock market for retirement purposes and to help support my family. I submit these comments solely in my personal capacity, and I do not work for and am not connected with any participant in the securities industry. I am submitting these comments in reference to the SEC's proposed regulation to ban public investment in certain 2X and 3X leveraged index funds. I was unaware of this proposal until this week. I understand that the comment period has expired, but I hope you will consider my comments anyway.

As one might suspect, depriving consumers of investment opportunities has invariably worked well for big business but not for consumers. Not so long ago in the 1970's, interest rates were capped at 4% for bank savings accounts, and 0% for bank checking accounts. The only way a consumer could obtain market returns was to invest $100,000 or more. When interest rates went through the roof, consumers that could afford the minimum deposit amount would spend their payday lunch hour schlepping to the local money market fund office to obtain a 15% to 20% return on their money. (Consumers could not then wire funds hither and yon at little or no cost.) Money market funds are more "complicated" and risky than bank accounts, but fortunately regulators resisted using this as a pretense to bow to industry pressure to "protect" consumers by taking away the money market investment opportunity.

Similarly, adjustable rate mortgages were also illegal in the 1980's, in part due to their "complexity." It is not difficult to see that high interest fixed rate mortgages do not "protect" consumers when interest rates decline. Of course, consumers can understand the difference between adjustable and fixed rate mortgages. They also understand that interest rates can go up and can go down, and they know how these fluctuations will affect whatever decision they make. Ultimately, regulators decided to allow lenders to offer these mortgages to the public.

The opening of the stock market to small investors is another significant recent advance. Stock transactions that used to cost over $100 now cost less than $10. This presumably creates more market volatility and "computer trading," as now consumers can to trade stocks as freely as anyone else. While this may be perceived as a bad development in some ways, due in part to these new consumer benefits, regulators have not tried to somehow re-instate higher fees.

There are winners and losers as a result of each of these developments, but because of the creation of new consumer choices, consumers have generally wound up on the winning side.

Like other garden-variety investments that were once illegal or prohibitively expensive for consumers (but legal and affordable for wealthy entities), hedging transactions can indeed be complicated. This is the apparent rationale of the SEC effort to selectively ban their public availability, beginning with 2X and 3X leveraged index funds. Yet, the inexpensive availability of hedging opportunities has created a consumer-friendly revolution by allowing consumers and small businesses to afford to protect their investments and business transactions. Farmers can now easily access crop futures arrangements that shelter them from a possible downturn in crop prices. Small businesses that engage in international transactions can now easily protect themselves from fluctuations in currency exchange rates. Adjustable rate obligations can now be hedged with fixed rate obligations to protect against interest rate fluctuations when appropriate. At least one stock market guru has suggested that investors should add an index "short" fund to their portfolio as a hedge against downturns in the stock market.[1] These fundamental but extremely important transactions have been available to big businesses for centuries; now, small players can afford to protect themselves as well.

Obviously, the general availability of these investment opportunities harms those who used to provide them on a private basis to wealthy entities for a much higher price. Predictably, big business and Wall Street would love to take the multi-billion market created by 2X and 3X index funds off the table and put it into their own pockets, and they could then provide these opportunities privately at a much higher cost. (Assuming the SEC does not also ban these transactions to "protect" wealthy private entities.) For 2X and 3X funds, broader consumer choice, while a good thing for consumers, is a bad thing for any business that could otherwise monopolize these services for its own profit.

Sadly, the SEC's proposed regulation appears to be another anti-consumer initiative in the longstanding securities industry feud against any and all commercial stock index funds. Almost invariably, index funds allow consumers to obtain higher returns for lower fees. These funds have consistently outperformed a very large percentage of actively-managed funds for far less cost. Warren Buffet recently touted index funds as the best investment vehicle for retirees.

Based on this, one might assume that index funds would be a staple ingredient in any company's 401(k) (or similar) retirement investment fund offerings. But until lawsuits recently compelled fund fiduciaries to provide index fund opportunities, index funds were deliberately kept *out* of these plans. Arguably, as a result of this valuable tax-subsidized high fee/low return monopoly, millions of retirees now have less money to make ends meet. Without question, these retirees were deprived of an investment opportunity that should have been available.

This is just one of many examples that illustrate that the securities industry does not support consumer choice when it stands in the way of personal profit. Similarly, it is safe to assume that its motives for wanting to bar leveraged index fund investment opportunities have nothing to do with consumer protection, and everything to do with creating their own lucrative multi-billion dollar private monopoly over these attractive investments.

2X and 3X index funds are not difficult to comprehend. Like actively managed funds that use sophisticated hedging strategies (which, for whatever reason, have been excluded from

[1] James Glassman, *Safety Net: The Strategy for De-Risking Your Investments in a Time of Turbulence*.

the SEC's regulatory attack), there are few investors – large or small -- who fully understand how these hedging strategies are implemented. As with every other fund, however, how exactly this intricate day-to-day financial maneuvering is accomplished is irrelevant, so long as investors understand the fund's general investment methodology and objectives. Accordingly, the SEC still permits consumers to invest in funds that engage in these hedging practices.

Presumably, the SEC is not arguing that consumers do not understand how 1X stock index funds work. If this is the case, before investing in 2X and 3X index funds, the additional thing that a consumer needs to know is either (1) how to multiply the return of the relevant index by two or three; or (2) if multiplication is too challenging, the investor could add this number to itself two or three times. Fortunately, these operations can be performed on most calculators.

Like stocks generally, sometimes a stock index goes up, and sometimes a stock index goes down. In the case on 2X and 3X funds, this result is multiplied. (See detailed explanation in paragraph above.) This profound phenomenon, however, is also not beyond the ken of individual stock investors.

The SEC criticizes these funds from a long term investment perspective. One of the most popular of these funds (which indexes the S&P) has increased about 30% over the past three years, which I assume is in the ballpark with its peers. This is better than some investments, and worse than others. It is certainly higher than the return on a bank deposit or a Treasury bill over the same period. The SEC does not explain how such a return is so bad that – as to consumers – these investments should be abolished.

I have no doubt that these leveraged funds can be volatile. (I suspect they are 2X or 3X more volatile than 1X index funds, for example.) They are not the most volatile stock or commodities investments that exist, however. Moreover, this volatility is generally based on a broad market and is easily understood. If public investment opportunities are now to be eradicated based on possible volatility, the SEC will be a very busy agency, and it will wind up with very little to regulate.

As may be apparent, although I am a small investor, I do invest in these funds. I am no stock market genius, but it is mind-numbingly simple to understand how these funds function. Although I am not like the day trader in your example, I have been fortunate to have made money on these investments over the past 3 – 4 years, while I understand that I may be less fortunate in the future. Absent these investments, my daughter would have been unable to afford the down payment on the house she just purchased.

It is startling and unfortunate that the SEC, the securities industry, and even consumer "protection" entities are supporting the push to limit my investment choices by regulating these funds out of existence.

Sincerely,

A Concerned Investor