

Dear Sir/Madam:

The proposed rule would likely not survive a legal challenge. It requires “broker dealers and investment advisers to exercise due diligence on retail investors before approving retail investor accounts to invest in leveraged/inverse funds.” The SEC does not have legal authority to require investors to be accredited to invest in securities registered with financial authorities, and Congress would not have the Constitutional authority to pass a law mandating or authorizing it. That would amount to requiring people to get government approval to invest in choice assets. In no class of legal investment would a state interest be compelling enough to override the individual’s Constitutional right to invest his own money in them. Note the difference here with current (legal) accreditation rules, which grant privileges, not create a prohibition, i.e., they allow securities to gain investors without being registered.

The damage that this rule would do to individuals is extensive. Presumably, it is meant to apply to individuals who are not already wealthy. It would therefore shut out many individuals who would have used these types of investments to lift themselves financially. While not all investors use their freedom wisely, many do. This regulation seems like an attack on the middle class. It blocks an important path to upward mobility, slamming that door callously in their faces, while the wealthy continue to enjoy access and increase their wealth. This is a recipe for more social instability. People have come to expect access to these types of securities as a right, and it is a right.

The proposed rule also creates a formal upper limit on leverage (3X). While there is not a market need for anything higher for the foreseeable future, blanket limits should be avoided where possible, and they appear unnecessary because funds can adjust to circumstances quickly. For example, Direxion just changed investment objectives of many of its funds in order to deleverage in the wake of current market conditions. It is better for the SEC to maintain the emphasis on catching and weeding out dubious filings on a case-by-case basis prior to approval.