



AMERICANS FOR LIMITED GOVERNMENT

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March 24, 2020

VIA ELECTRONIC FILING

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: 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, Release No. 34-87607;I A-
5413;IC-33704; File No. S7-24-15

Dear Secretary Countryman,

President Donald Trump has made ending overly paternalistic or downright economically damaging regulations one of the bulwarks of his administration with a success record second to none in rolling back the expanded administrative state. Yet, in spite of this administration emphasis, the Securities and Exchange Commission is considering an Obama era regulation which is so extreme that the former president's own SEC rejected moving forward with it.

The regulation would deny independent investors access to currently available trading alternatives designed to allow them to hedge risks against market volatility unless they passed a test and were deemed qualified by a financial services provider.

At its core, the current regulatory proposal would impose unprecedented new burdens on investment advisors and brokers for publicly traded ETF's that allow investment in inverse and leveraged funds. These funds provide individual middle-class investors the same ability to hedge market conditions that bigger players have. These investment instruments, which have existed for use by investors for years, provide opportunities for investors to diversify their portfolios. Like all investments, there are risks involved and they are all rightfully disclosed to investors under current Securities and Exchange Commission rules.¹

Under the new regulation, the brokers and advisors are being given a novel responsibility — one they have never before had — of having to determine whether an investor is capable of understanding a publicly traded financial product before allowing that investor to purchase that product.

The net result is that the proposed SEC regulation would create a massive disincentive for these investment tools to be offered to individual investors, effectively denying even the most sophisticated person access to effective, proven methods of mitigating risk.

If the SEC truly believes that the transparency about the risks of these types of investments is unclear or too mild, then they should and can address the language of those disclosures. But to require brokers

¹ <https://www.washingtontimes.com/topics/securities-and-exchange-commission/>

advisors to collect unprecedented information and decide whether a client is capable of making their own decision is a dangerous expansion of government authority that even the Obama SEC chose not to move on and would be an irresponsible and downright damaging to the overall market.

The end result is that many investment firms will no longer offer these types of investment options. This means that the private investor who will be effectively denied access to investment vehicles which are commonly used by institutional investors as a means of levelling out the risk of investments.

SEC Commissioners Hester M. Peirce and Elad Roisman made the point that should this regulation go into effect, these funds may be denied to middle-class investors in a comment on the regulation, writing about the test which the brokerage or advisory firms would have to administer to investors in order to determine if they should be allowed to utilize these funds,

“The release does not specify how we expect brokerage or advisory firms to assess investors’ answers to these questions. Yet, the proposed rules would direct them to make a “reasonable” determination as to whether the investor is suited for trading geared products. By providing so little information about the result we are aiming to achieve, we worry that such a requirement will either become a meaningless check-the-box exercise or a regulatory deterrent for brokers and advisers to offer these ETFs on their menus at all.”

In addition to the these commissioners, the proposal has been criticized by leading conservative experts and organizations as a dangerous expansion of government oversight of the investment industry that will needlessly harm investors and our economy.ⁱ

This heads you lose, tails you lose likelihood will have the effect of brokerages washing their hands of even offering these investment options and denying middle-class investors access to the same tools as their more well-healed counterparts.

The SEC comment period for this proposed regulation ends on March 24, with the Commission making a determination of whether to move forward with this draconian rule a few months afterward. Rather than denying investors access to sophisticated investment options, the SEC would be well-served to address transparency requirements to ensure that all investors have the risks laid out clearly for them, so they can make adult decisions about their own portfolios. In the end, the essential component of stock market investing is that the investors should be free to make their own decisions and it would be a grievous mistake to upend this basic principle with potentially disastrous consequences resulting from the regulatory precedent.

Sincerely,

A handwritten signature in black ink that reads "Rick Manning". The signature is written in a cursive, slightly slanted style.

Rick Manning
President
Americans for Limited Government
www.getliberty.org

ⁱ <https://heritageaction.com/blog/letter-to-sec-on-leveraged-inverse-funds>