

Rule S7-26-22

Dear Sir or Madam,

Commission, thank you for the time and the chance to comment. In relation to your question #56: long-term mutual funds should have been one of the select few allowed to become an ETF. ETFs encourage mutual funds to convert to ETFs as it is, the exemption you're granting them along with the nudging questions appears an enticement. ETFs should not be encouraged, rather, they should have the most stringent regulation requirements on them instead of the loose oversight they currently enjoy. In other words, you absolutely should not take any action or grant any exemptive relief to facilitate the conversion of mutual funds to ETFs, and they shouldn't be exempt from the rule in the first place. Yes ETFs becoming the most predominant form of open-end fund affects the need to impose swing trading, but so does the very liquidity provisioning you constantly accommodate, if not out right push, for. Yes ETFs becoming the most predominant form of open-end fund is harmful to investors, and not just those invested in them. How? They act as tools for pyramiding phony liquidity, which at its core is scheduling failures-to-deliver using exemptions provided to market-making activity (see XRT and GME volume along with failures to deliver Jan/Feb 2021). This was something the SEC staff learned in their report on Equity and Options Market Structure Conditions in Early 2021. You "observed a large spike in net redemptions of nearly 6 million shares in XRT on January 27, which may be consistent with short selling activity", getting the data from the NSCC. You don't explain what this means or how the shorting mechanism would even theoretically work. I feel if you delved into this topic further you would stop treating ETFs like they're anything other than SPAC's slightly more attractive sybling (if only SPAC would have learned to be more discrete, am I right).

Let me learn you something, as of the evening of Feb 4th, 2023, there were 9,891 publicly available N-PORT records which held GME, or a derivative of GME, and out of all of those months XRT's Jan 2021 Total Realized Gains per Total Net Asset was the 3rd highest month (the two months that 'outperformed' them was by Transamerica's "DeltaShares® S&P 400 Managed Risk ETF", the two months before they closed their doors) and was 221st most for Total Realized Gains. Their average Net Assets for that N-PORT filing was \$567,387,432, their Realized Gain for Jan 2021 was \$249,564,139. You really should have included XRT's Jan 28th redemption numbers, it certainly would have been nice to have more insight as to why XRT's chart looked the way it did that day (shown in figure on following page, where the black lines show when GME was getting LULD halted, the prevailing pattern being crashes of XRT along with GME however XRT rises once the halt is in place, only to crash along with GME again once it's un-halted and re-halted). Trading over 30 million shares when they only had 8.15 million outstanding, dwarfing the average volume for XRT.

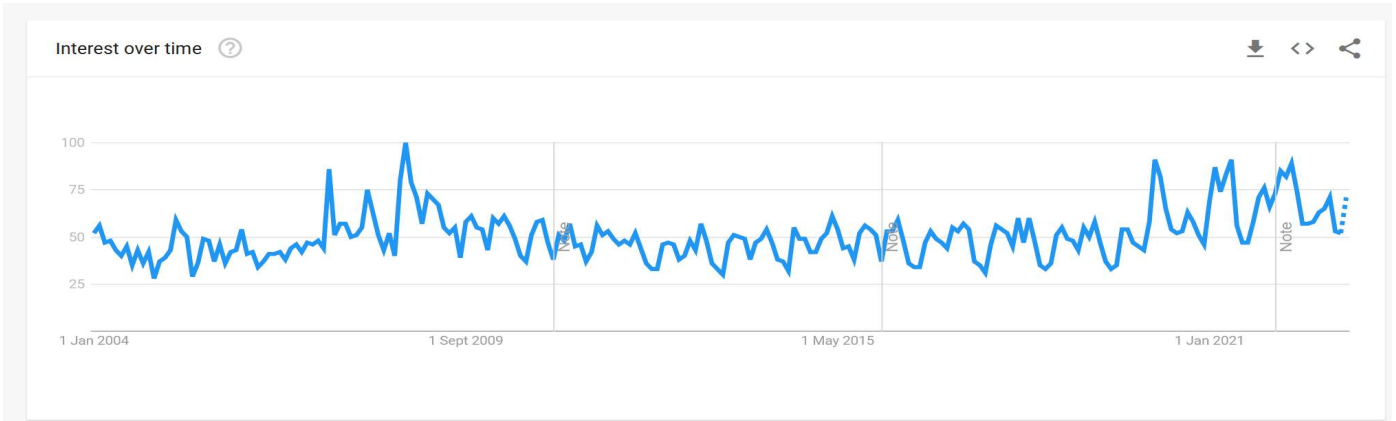
I understand you think it's okay to do this because XRT's short interest was, on average, over 100% of the float for XRT's entire 2020, and even higher Jan 2021, but the only possible way those trades are done is having two separate entities, one being on the buy side, the other on the sell. How exactly do you explain the convenience of suddenly having another party to match with, millions of times over? Opportunistic algorithmic arbitrage? That's the lamest excuse when the consequences are so dire and never actually addressed by you (for example, it's at the least abuse of the exemption given to market-makers, using an ETF solely for the liquidity provisioning of one of the underlying shares in the basket; one security being 'activated' with scheduled FTDs in order to affect another another security, which happens to also be in the ETF basket thus manipulating their own ETF's price). Luckily other people have gone into the consequences. But then again, you were warned time after time through comments and testimony (for example, Harold Bradley and Robert E. Litan in Oct 2011: <https://www.kauffman.org/wp-content/uploads/2019/12/etfsandthepresentdangertocapitalformation.pdf>) yet you continue letting ETFs become more egregious, e.g. non-transparent and single-stock.

Richard B. Evans, Oğuzhan Karakaş, Rabih Moussawi and Michael Young have in their paper "Phantom of the Opera: ETF Shorting and Shareholder Voting" (https://www.ecgi.global/sites/default/files/working_papers/documents/phantomfinal_1.pdf). They refer to it as "operational shorting" and explain clear fraudulent business tactics by using ETFs as the middleman from votes being side-lined due to creating ETF shares without providing the underlying basket of shares (these are the "phantom" ETF shares). Guess they even note XRT's ridiculous short interest going back many years.

Andrew A. Bogan, Brendan Connor, and Elizabeth C. Bogan at <http://boganassociates.com/whitepapers.html> talked about XRT and dangers of ETFs back in 2010.

This whole liquidity provisioning isn't good. Just look at Google trends for the term "Liquidity"; notice how it was relatively stable aside from spikes Aug 2007, Oct 2008, Mar 2020, Feb 2021, May 2021, Feb 2022, Apr 2022; not the best of times. The time it peaked in Feb 2021 is because of the GME run-up caused by institutions trading their IOUs between one another.

Rule S7-26-22



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Now, aside from all this, I agree the N-PORT should be filed more often, especially since it was your plan initially to do this (I'm unsure why you feel it okay that the public should be made to endure stale data, though). I'd urge the 15 day reporting period if not weekly. I'd urge the lag for the public to 15 days if not weekly.

You seem to acknowledge the benefit to the public of having the information and thus it should outweigh concerns of predatory behavior (on pg. 202) yet it very quickly slips your mind as it becomes part of your consideration as to why the 60 day waiting public waiting period is necessary (pg. 203). You really think this is where the front-running is going to happen? That's laughable because the rebalancing days are planned and announced way ahead of time... Look at all the ETFs which have closed over the past year, that wouldn't be because they rebalanced during a bull market then it reversed on them? The point is, they are indifferent to the gains and losses, which makes absolutely no sense as a business model in the first place. For example, XRT's average Realized Gain (without their Jan 2021 figure of \$249,564,139) is -\$1,046,895 for the 35 months they held GME.

Copy-cattng of fund strategies is made absolutely moot by the very opportunistic algorithmic arbitrage referred to earlier – that's clearly part of the game. Unless of course you think someone is trading between two of their own accounts and that's how all the liquidity was created in Jan 2021. So, no, investors shouldn't be taking a hit for them to be transparent (which is used by all sites explaining what ETFs as a selling point), because they're already taking when these ETFs are used against them.

Nontransparent ETFs should have all the reporting all the same.

I agree with all your N-CEN proposals, like detailing DLPs, LMMs, RMMs, CLPs. You should also raise the cap on items which have a "top ten" qualification. Like C.16 "Brokers".

Thanks for your time.