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July 24, 2017

VIA EMAIL

rule-comments@sec.gov
Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 2549-1090

Re: File No. SR-NYSEArca-2016-120
Comment on Proposed Rule Change to List and Trade Shares of the ForceShares Daily 4X US Market Futures Long Fund and ForceShares Daily 4X US Market Futures Short Fund Under Commentary .02 to NYSE Arca Equities Rule 8.200

Dear Mr. Fields:

This letter is submitted by ForceShares LLC ("ForceShares") to provide supplemental comments regarding the above-referenced proposed rule change by NYSE Arca, Inc. On Friday, July 7, 2017, ForceShares and its partners met with Commission representatives in order to discuss the proposed rule change and related matters. As requested, ForceShares is providing further commentary addressing the topics raised during those meetings.

Background

ForceShares has sought regulatory approval to sponsor new commodity pools with the primary investment objective to seek daily investment results, before fees and expenses, that correspond to approximately four times the daily performance ("Long Fund") and four times the inverse of the daily performance ("Short Fund") of the closing settlement prices for lead month Standard & Poor's 500®[1] Stock Price Index Futures contracts (the "Benchmark"). ForceShares intends for the Funds to be listed on NYSE Arca, a registered and regulated national securities exchange, and for the Funds' primary investments to be listed futures and options contracts that are traded on a regulated designated contract market and cleared on a designated clearing organization.

In a prior comment letter dated, June 13, 2017, ForceShares outlined its rationale for why the Commission should lift the order staying the rule change and allow much needed innovation and competition into this segment of the exchange-traded products industry where only two out of more than one hundred sponsors of financial products are allowed to compete. ForceShares' products have been structured and filed such that they will be fully compliant with all applicable regulations.

[1] S&P®, S&P 500®, SPDR®, Standard & Poor's® and Standard & Poor's 500® are registered trademarks of Standard & Poor's® Financial Services LLC.

Comments

The following topics were discussed during our meeting.

- *Why 4X and not a higher leverage amount?*

  ForceShares and its partners have, by way of their collective experience in the fields of exchange-traded product development and marketing, electronic exchanges, brokerage, and market making, decided on 4X leverage specifically to address problems among existing leveraged funds. Existing 2X leveraged funds are traded on margin, resulting in additional expenses for investors. The proposed products could help investors avoid buying on margin in order to achieve that level of leverage that they currently want, while avoiding the associated borrowing cost.

  Upon review of several online brokers' websites, we note that the following brokers currently allow 2X leveraged ETFs to be traded on margin: Schwab, Scottrade, Merril Edge, E*Trade, Interactive Brokers,[2]. Although the actual dollar amount of margin trading in specific ETFs is confidential to each broker, we can infer using data reported by the NYSE that substantial fees are assessed to margin positions. As of May 2017, the NYSE reported $540 billion in margin debt.[3] A typical margin client can expect to pay margin fees in excess of 6%.[4]

  The ForceShares product will therefore reduce expenses for investors while producing the same amount of leverage that they currently employ.[5]

- *Should there be limits on leverage?*

  We can appreciate how our proposal for an incremental change in leverage could be viewed as a gateway for products with even greater leverage. With respect to a 4X leveraged product, our position is that: a) individual investors are already buying 2X leveraged products on margin and achieving the same level of leverage of the proposed products but at a much greater cost, and; b) individual investors are already actively trading products with much greater leverage, such as equity options and futures.

  We also understand queries as to whether future proposals may consider greater leverage. However, our proposal is for 4X leverage and nothing greater. We do not believe that our proposal should be a platform for evaluating the merits of potential future products. The stay order in this case brings the Commission a step closer to merit-based regulation, where it may become involved in comparing products (e.g., equity options vs. leveraged funds) for investors. We suggest that any analysis of subsequent proposals should employ a procedural framework that that has been subject to notice and comment, that considers the liquidity and volatility of

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[2] See the following websites: http://www.schwab.com/public/schwab/investing/accounts_products/investment/margin_accounts; https://www.scottrade.com/knowledge-center/investment-education/trading-topics/margin-trading-loans/margin-requirements-for-leveraged-etfs.html; https://olui2.fs.ml.com/publish/content/application/pdf/GWMOL/ME-Margin-Handbook.pdf; https://us.etrade.com/e/t/estation/help?id=1302010000; https://www.interactivebrokers.com/en/index.php?f=marginnew&p=stk

[3] See NYSE website: http://www.nyxdata.com/nysedata/asp/factbook/viewer_edition.asp?mode=table&key=3153&category=8

[4] See https://www.interactivebrokers.com/en/index.php?f=1340 for a summary of most major online broker-dealers.

[5] The proposed products will charge an investment advisory fee that will be similar to existing 2X leveraged products.

the underlying asset classes for proposed products, and that is based on traditional standards of disclosure and transparency.

With that said, we agree that proposals for greater leverage may require additional evaluation, but we do not think it is reasonable to make the ForceShares proposal the case study for other products yet to be imagined. We believe our proposal complies with all required regulations, and even with the spirit of the proposed new rule 18f-4 for the Investment Company Act of 1940. ForceShares should not be tasked with defending the merit of products that it is not proposing.

- *How does ForceShares respond to criticism in the press?*

It should be noted that there has been ample time and multiple opportunities for public comment, and no negative comment letters were received. In fact, we were humbled to see a comment from Dr. James Angel, renowned expert in investments and capital markets, support the staff's decision to approve the proposed products.[6] Nevertheless, we do note that certain people have used their position in media to criticize the proposed product and we would like to address that criticism. We have identified the following points:

a) Investors could be hurt by holding the products for longer periods of time, increasing their chances for losing principal.

We note that the proposed products have single day investment objectives, and there are several sections in the draft prospectus, with bolded text, highlighting the risks of holding shares for longer than one day (i.e., risks of compounding). Nevertheless, one article provided its own example of the negative effects of compounding *over an entire year*, which clearly contradicts the proposed products' primary investment objective. It is obvious that holding any investment, whether it's a single stock, unleveraged or leveraged ETP, that exhibits substantial volatility over time would be subject to the effects of compounding. Indeed, most of the criticism of the product is premised on investors not observing the stated primary investment objective, and actually doing the exact opposite.

Furthermore, in one article, inappropriate comparisons are made to far more volatile products, such as gold mining stocks and Brazilian stocks, both of which exhibit volatility levels that are many multiples greater than the S&P500. In fact, as Dr. Angel points out in his comment letter, there are many individual stocks that have annualized volatility that is already greater than the estimated volatility of the proposed products.

b) The disclosures in the offering documents use examples that are not clear.

There are virtually unlimited "what if" scenarios that can be constructed to demonstrate the impact of daily compounding and volatility, and the offering documents for our proposed products provide three such scenarios. We note some criticism regarding the historical volatility level selected for the tables that summarize that impact.

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[6] See SEC website: https://www.sec.gov/comments/sr-nysearca-2016-120/nysearca2016120-1844079-155110.pdf

ForceShares had selected a volatility level that is greater than recent volatility exhibited by the S&P500 index, but lower than a long multi-year volatility calculation. We intend to update the offering documents to demonstrate the effects of compounding based on volatility levels of recent history (i.e., the most recent five years), which, as of July 19, 2017 is approximately 12.31%.[7] In any event, this concern relates to a draft offering document, and not whether NYSE Arca should be permitted to adopt its proposed rules.

- *Who would use the products and why?*

  We have identified several uses for the proposed products. Some of these are general use cases for leveraged products in general, and others are specific to the proposed products. The goal here is to demonstrate that there are various use cases for investors of all types, and even though the products do not discriminate against individual investor usage, clearly, there are many benefits for the non-professional.

  a) Futures substitutes. The notion of having a liability to contribute more capital to an investment after you buy it (i.e., paying variation margin) can be alarming to individual investors. Investors in securities are accustomed to risk that does not exceed the amount they paid for their investment. In other words, with leveraged ETPs, what they paid is the most they can lose, unlike with futures. Further, longer term investors in leveraged ETPs avoid ongoing roll costs of futures as well as marking their positions to market for taxes.
  b) Shorting substitutes. Investors use leveraged inverse ETPs as substitutes for short positions; they avoid the costs and risks of shorting because they are getting short exposure via a long position in an inverse product.
  c) Hedging alternatives. Investors use leveraged ETPs to easily construct short term portfolio hedges in the same account that holds their securities.
  d) Margined 2X product substitutes. The ForceShares product yields the cost savings as described earlier.
  e) Options substitutes. Individual investors could benefit from the internal hedge as opposed to using options, which can easily expire worthless. Individual investors are able to easily buy options in a traditional brokerage account. There is a significant chance for an options position expiring out-of-the-money and therefore becoming worthless. In other words, there exists today a marketplace where millions of instruments are traded on a daily basis, and where the probability of a significant number of them going to zero is very high.

  The proposed products also intend to use listed derivatives as their primary holdings as opposed to over-the-counter swaps. Listed derivatives are traded on regulated exchanges, centrally cleared, and avoid the counterparty credit risk associated with off-exchange swaps.

[7] Historical volatility was calculated using daily closing prices for the S&P500 index between July 20, 2012, and July 19, 2017.

- *Is there evidence that investors read prospectuses?*

Research in this area appears to be limited, however, we can cite an important finding from Siegel & Gale's report that was submitted to the Commission on February 9, 2012.[8] Its findings led to the following conclusion on whether investors read fund annual reports:

> *Ninety-one percent of the "homework group" recalled having received a fund annual report and 74% said they read or scan some or all of it. Eighty-six percent of the "online survey" group recalled having received a fund annual report and, of the respondents who recalled having received a fund report, 97% said they read or scan some or all of it.*

We suggest that this finding, although focused on mutual funds, is indicative of investor awareness of materials provided by fund sponsors.

As we discussed in our meeting, we believe it is relatively easy for someone to simply criticize a proposed product without undertaking some form of research or due diligence. With that said, we think it is important to cite research from the Federal Reserve Board regarding leveraged ETFs. Authors Mr. Ivan T. Ivanov & Mr. Stephen L. Lenkey, in their paper from the Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs Federal Reserve Board found:

a) "That capital flows substantially reduce the need for ETFs to rebalance when returns are large in magnitude and, therefore, mitigate the potential for these products to amplify volatility. We also show theoretically that flows can completely eliminate ETF rebalancing in the limit."
b) "Leveraged and inverse ETFs have received heavy criticism based on the belief that they exacerbate volatility in financial markets. We show that concerns about these types of products are likely exaggerated. Empirically, we find that capital flows considerably reduce ETF rebalancing demand and, therefore, mitigate the potential for ETFs to amplify volatility. Our analysis has relevant and timely policy implications, as regulators are reportedly considering changes to how ETFs are regulated."[9]

[8] See https://www.sec.gov/comments/s7-08-15/s70815-3.pdf, page 10.
[9] See https://www.federalreserve.gov/econresdata/feds/2014/files/2014106pap.pdf

Summary

We very much appreciated our meetings at the SEC, and we thank you for this opportunity to have discussed certain items regarding the proposed products. We take seriously our commitment to building innovative investment solutions for investors of all types. Our hope is that this additional letter demonstrates our willingness to communicate and cooperate such that the primary focus of our proposal is to introduce innovation and competition where it is sorely needed. We respectfully request that the stay be lifted on the approval that was granted for the above referenced proposed rule.

Sincerely,

ForceShares LLC

Kris Wallace

Kris Wallace
Member

cc: The Honorable Jay Clayton, Chair
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner