UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT of 1934
Release No. 34-84676 / November 29, 2018

In the Matter of the NYSE Arca, Inc. **For an Order Granting the Approval of** 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 (SR-NYSEArca-2016-120)	**REQUEST FOR ADDITIONAL COMMENT**

On October 17, 2016, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a 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 ("ForceShares ETPs") under Commentary .02 to NYSE Arca Equities Rule 8.200. On November 4, 2016, the proposal was published for comment in the Federal Register.[3] On December 14, 2016, the Division of Trading and Markets, for the Commission pursuant to delegated authority, extended the time period for Commission action on the proposed rule change.[4] On February 1, 2017, the Division of Trading and Markets, for the Commission pursuant to delegated authority, instituted proceedings to determine whether to

1 15 U.S.C. 78s(b)(1).

2 17 C.F.R. § 240.19b-4.

3 See Securities Exchange Act Release No. 79201 (October 31, 2016), 81 FR 76977 (November 4, 2016) (SR-NYSEArca-2016-120).

4 See Securities Exchange Act Release No. 79550 (December 14, 2016), 81 FR 92892 (December 20, 2016).

approve or disapprove the proposed rule change.[5] On April 20, 2017, NYSE Arca submitted Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as modified by previous amendments.[6] No comments on the proposed rule change were received. On May 2, 2017, the Division of Trading and Markets, for the Commission pursuant to delegated authority,[7] approved the proposed rule change, as modified by Amendment No. 3 ("May 2, 2017 Order").[8]

On May 12, 2017, the Secretary of the Commission notified the Exchange that pursuant to Rule 431 of the Commission's Rules of Practice,[9] the Commission would review the delegated action and that the May 2, 2017 Order was stayed until the Commission ordered otherwise.[10] On May 25, 2017, the Commission issued an order scheduling filing of statements on review ("May 25, 2017 Order"), in which the Commission ordered that any party or other person may file any additional statement by June 15, 2017. The Commission further ordered that the May 2, 2017 Order shall remain stayed pending further order of the Commission. The Commission received six comment letters in response to the May 25, 2017 Order that support approval of the proposed rule change.[11]

In response to the May 25, 2017 Order, one commenter cited a working paper from staff of the Federal Reserve Board regarding the impact of leveraged and inverse exchange-traded products ("ETPs") on the underlying market, and quoted the following statements from the paper: (a) "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" and (b) "[l]everaged 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

---

5 See Securities Exchange Act Release No. 79914 (February 1, 2017), 82 FR 9625 (February 7, 2017).

6 Amendment No. 3 replaced and superseded the proposed rule change as modified by Amendment No. 2. Amendment No. 2 had previously replaced and superseded the proposed rule change as modified by Amendment No. 1. Amendment No. 1 replaced and superseded the original filing in its entirety.

7 17 C.F.R. § 200.30-3(a)(12).

8 See Securities Exchange Act Release No. 80579 (May 2, 2017), 82 FR 21443 (May 8, 2017).

9 17 C.F.R. § 201.431.

10 See letter to Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange, from Brent J. Fields, Secretary, Commission, dated May 12, 2017, available at https://www.sec.gov/rules/sro/nysearca/2017/34-80770-letter-from-secretary.pdf.

11 See letters to Brent J. Fields, Secretary, Commission, from Boris Ilyevsky, dated June 5, 2017; Kris Wallace, Member, ForceShares LLC, dated June 13, 2017; Douglas M. Yones, Head of Exchange Traded Products, New York Stock Exchange, dated June 13, 2017; Jonathan Yao, CEO, SogoTrade, Inc., dated June 14, 2017; and Kris Wallace, Member, ForceShares LLC, dated July 24, 2017 ("ForceShares Letter"); and letter to Commission, from James J. Angel, Associate Professor of Finance, Georgetown University, dated July 10, 2017.

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."[12]

The Commission believes that questions and concerns remain regarding the potential systemic impact of the ForceShares ETPs. In particular, the amount of rebalancing activity for a leveraged or inverse ETP increases significantly as the ETP's leverage ratio and net assets increase. Moreover, the rebalancing activities of both leveraged and inverse ETPs are in the same direction as the movement in the reference asset (i.e., they sell when the market is going down and buy when the market is going up), which could potentially further exacerbate market movements, particularly during periods of high market volatility. Because the ForceShares ETPs would have 4X and -4X leverage, they would have greater rebalancing activities than existing ETPs that have lower leverage ratios per dollar of net assets under management. In particular, there are questions concerning whether rebalancing activities of the ForceShares ETPs could potentially result in significant additional market volatility as compared to existing ETPs, and interfere with fair and orderly markets. This raises a potential concern that the listing and trading of shares of the ForceShares ETPs may not be consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to protect investors and the public interest.

The Commission notes that another working paper from staff of the Federal Reserve Board suggests that the rebalancing activities of leveraged and inverse ETPs increase volatility in the underlying securities.[13] In particular, that working paper suggests that the rebalancing activities of leveraged and inverse ETPs in response to a large market move, especially in periods of high volatility, could pose market risks.

The Commission invites additional written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. In particular, the Commission requests that interested persons provide additional written submissions of their views, data, and arguments with respect to the market impact issue identified above (including the market impact issue discussed in the Ivanov and Lenkey Paper and the Tuzun Paper), as well as any other comments they wish to submit regarding the proposed rule change. In particular, the Commission seeks comment, including, where relevant, any specific data, statistics, or studies, on the following:

---

12 See ForceShares Letter at 5 (quoting Ivan T. Ivanov and Stephen L. Lenkey, Are Concerns About Leveraged ETFs Overblown? (Finance and Economics Discussion Series, Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington, D.C., Working Paper 2014-106) ("Ivanov and Lenkey Paper")).

13 See Tugkan Tuzun, Are Leveraged and Inverse ETFs the New Portfolio Insurers? (Board of Governors of the Federal Reserve System, Working Paper May 28, 2014)) ("Tuzun Paper").

1. Would the rebalancing activities of the ForceShares ETPs impact daily volatility of the portfolio holdings, the underlying index, or the underlying names comprising the index (together "underlying assets")?[14] If so, how?

2. How much additional end-of-day trading volume in the underlying assets would the ForceShares ETPs potentially add? How much volume has existing leveraged and inverse ETPs added to end-of-day trading in their underlying assets?

3. Would the trading activity relating to the ForceShares ETPs exacerbate market movements or market volatility? Why or why not?

4. What type of hedging exposure is expected to arise from trading activity in these products?

5. How would this hedging exposure change or otherwise react to significant down market moves? For example, how might such hedging exposure be adjusted?

6. Would the listing and trading of shares of the ForceShares ETPs change the current leveraged and inverse ETP market? If so, how?

7. Do investors have access to information sufficient to fully understand the operation and risks of the ForceShares ETPs?

IT IS ORDERED that by December 20, 2018, any party or other person may file any additional statement.

By the Commission.

Eduardo A. Aleman
Assistant Secretary

---

[14] As explained in Amendment No. 3 to the proposed rule change, under normal market conditions, each ForceShares ETP may invest in Standard & Poor's 500 Stock Price Index Futures contracts ("Big S&P Contracts"), E-Mini S&P 500 Futures contracts ("E-Minis" and, together with Big S&P Contracts, "Primary S&P Interests"), swap agreements referencing Primary S&P Interests or the S&P 500 Index, over-the-counter forward contracts referencing Primary S&P Interests, options on Primary S&P Interests, and certain "Cash Equivalents." For more information regarding the ForceShares ETPs, see Amendment No. 3, available at https://www.sec.gov/comments/sr-nysearca-2016-120/nysearca2016120-1714666-150363.pdf.