

SEC Stays Approval of Quadruple-Leveraged ETF

September 26, 2017

On May 25, 2017, the SEC stayed a May 2 order issued by the Division of Trading and Markets, acting for the SEC pursuant to delegated authority, that would have permitted the listing and trading of shares of the first "quadruple-leveraged" exchange-traded products (ETPs). The stay puts the May 2 order on hold pending review by the SEC. The SEC also gave the public until June 15, 2017, to provide additional comments.

The release announcing the stay did not describe the SEC's rationale for doing so, but the action follows closely on the heels of the appointment of the SEC's new chair, Jay Clayton, on May 4, 2017. Whether the stay is an indication of Chair Clayton's views is unclear.

On June 13, 2017, NYSE Arca, Inc. (Exchange), which had proposed the listing and trading of shares of the ForceShares Daily 4X US Market Futures Long Fund and ForceShares Daily 4X US Market Futures Short Fund (the Funds), filed a comment letter expressing its strong belief that its proposal is consistent with the Securities Exchange Act of 1934 and that the SEC should affirm the May 2 order. In support, the Exchange asserted that concerns about the complexity and risks associated with inverse and leveraged ETPs are "appropriately addressed" by extensive risk disclosures provided by the Funds. The Exchange also asserted that sales of Fund shares would be subject to extensive sales practice obligations, and that trading in Fund shares would be subject to surveillance both by the Exchange as well as FINRA.

Notwithstanding the stay, on July 31, 2017, the Exchange filed a proposal seeking permission to list four ProShares quadruple-leveraged exchange-traded funds.

As of this writing, the SEC has not removed the stay of the May 2 order or acted on the ProShares proposal.

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