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Via Electronic Submission
October 1, 2018
Mr. Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: Exchange Traded Funds (File No. S7-15-18)

Dear Mr. Fields:

ProShare Advisors LLC (together with its affiliated entities, "ProShares") welcomes this opportunity to comment on the Securities and Exchange Commission's (the "SEC" or the "Commission") proposed Rule 6c-11 (the "Proposed Rule" or "Rule 6c-11") relating to exchange-traded funds ("ETFs").[1]

We applaud the Commission's efforts to streamline the ETF launch process and believe that the Proposed Rule, if adopted as proposed, would largely advance the public policy goals expressed by the Commission in the Proposal. Proposed Rule 6c-11 establishes a regulatory framework for ETFs that generally is well-tailored to those specific features of ETFs that differentiate them from other open-end investment companies and effectively addresses the investor protection considerations that flow from those specific features.

There is one aspect of the Proposed Rule, however, which we urge the Commission to reconsider. As proposed, the relief provided by Rule 6c-11 would not be available to ETFs that "seek, directly or indirectly, to provide returns that exceed the performance of a market index by a specified multiple, or to provide returns that have an inverse relationship to the performance of a market index, over a fixed period of time."[2] We believe this exclusion from the ability to rely on

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[1] *Exchange-Traded Funds*, Investment Company Act Release Number 33140, 83 Fed. Reg. 37332 (Jul. 31, 2018) (the "Proposal").

[2] *See* paragraph (c)(4) of the Proposed Rule. The Proposal uses the term "leveraged ETFs" to describe ETFs that "seek, directly or indirectly, to provide returns that exceed the performance of a market index by a specified multiple, or to provide returns that have an inverse relationship to the performance of a market index, over a fixed period of time." *See* Proposal at note 7. As explained in further detail below, the use of the term "leveraged ETFs" to describe funds that seek a designated multiple or inverse of a market index return for a specified period, typically daily, is potentially confusing insofar as (1) not all "leveraged ETFs" are in fact leveraged (funds that seek the simple inverse of an index return do not necessarily employ any leverage) and (2) many other types of ETFs also employ leverage, in many cases to a greater extent than ETFs that fall within the Proposal's definition of "leveraged ETF." We therefore use the term

the Proposed Rule is unwarranted and inconsistent with the public policy rationale that informs the Proposed Rule as a whole.

I. Executive Summary

Geared ETFs Have a Long and Proven Track Record. Leveraged and inverse mutual funds ("Geared Funds") were first launched in the United States in 1993. The first Geared ETFs were launched by ProShares in 2006. Geared ETFs can provide distinct benefits to investors. They can be used to obtain precise investment exposure and help implement a variety of investment strategies designed to enhance returns, manage risk, reduce volatility and increase diversification.[3] Geared ETFs are mature, time-tested investment products that have a strong track record of achieving their stated investment objectives in a variety of market conditions. They have performed as designed, and have done so in a manner consistent with how they should be expected to perform, as extensively communicated in prospectuses and marketing and educational materials.

In all respects relevant to the Proposed Rule—the issuance, sale, trading and redemption of shares—Geared ETFs are structured and operated in the same manner as other types of ETFs. The arbitrage mechanism, the efficient operation of which constitutes a core focus of the Proposed Rule, works in the same manner for Geared ETFs as it does for the active and index ETFs covered by the Proposed Rule.

The Exclusion of Geared ETFs is Unwarranted and Anticompetitive. The Proposal suggests two reasons for excluding Geared ETFs from the relief provided by the Proposed Rule.

First, the Proposal suggests that Geared ETFs' use of derivatives may raise issues under Section 18 of the Investment Company Act of 1940 (the "1940 Act").[4] In fact, Geared ETFs' use of derivatives does not differ in any relevant way from the use of derivatives by other ETFs and mutual funds—except, perhaps, that Geared ETFs offer greater transparency and consistency than the vast majority of other funds regarding the purposes and extent to which they use derivatives. The Proposed Rule would not exclude any other type of ETF based on use of derivatives, including even ETFs that make more extensive use of derivatives and leverage than Geared ETFs, or ETFs developed in the future that might employ novel, and not yet known, investment strategies. The use of derivatives by Geared ETFs, therefore, does not constitute a rational basis for their exclusion from the Proposed Rule. If the Commission believes that it should address issues relating to investment companies' use of derivatives, the appropriate place to do so would be in a rule or interpretive guidance that applies uniformly to all registered open-end investment companies.

Second, the Proposal cites concerns about whether the fact that most Geared ETFs have a daily investment objective and rebalance their portfolios to maintain a consistent leverage ratio "can result in performance that differs significantly from some investors' expectations of how

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"Geared ETFs" to refer to the ETFs proposed for exclusion from Rule 6c-11. Additional issues relating to the scope of the proposed exclusion are addressed in Appendix A and elsewhere herein.

[3] Our experience is that Geared ETFs typically are used as only a small part of an investor's overall portfolio to implement specific investment strategies.

[4] The Proposal states: "Leveraged ETFs, and their use of derivatives, also may raise issues under section 18 that we are evaluating as part of our broader consideration of the use of derivatives by registered funds and business development companies." Proposal at 30.

index investing generally works."[5] Our experience is that investors in these products can and—in light of the extensive disclosures they receive and the wealth of relevant investor education materials, press coverage and other information readily available to them—generally do understand how they should be expected to perform and the distinction between Geared ETFs and other products.

Moreover, given the rapid and ongoing evolution of index-based investing towards more sophisticated and specialized approaches—a trend which the Commission recognizes in the Proposal[6]—we question whether "some investors' expectations of how index investing generally works" constitutes a coherent standard for excluding some ETFs but not others from the Proposed Rule. As more fully explained below, we believe that matters relating to investor understanding are more appropriately addressed through the Commission's disclosure rules and guidance than through proposed Rule 6c-11, which is narrowly focused on certain specific operational aspects that are common to all ETFs.

Broader policy considerations also argue in favor of including Geared ETFs in the Rule. The Proposal's exclusion of Geared ETFs from Rule 6c-11 conflicts with the Commission's stated purpose of creating "a consistent, transparent, and efficient regulatory framework for ETFs and . . . facilitat[ing] greater competition and innovation among ETFs."[7] Including Geared ETFs in the rule would open the market to new sponsors, facilitating greater competition, which ultimately would inure to the benefit of investors.

We urge the Commission, therefore, to reconsider the Proposed Rule's exclusion of Geared ETFs.[8]

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[5] The Proposal states: "The strategy that leveraged ETFs pursue requires them to rebalance their portfolio on a daily basis in order to maintain a constant leverage ratio. This daily reset, and the effects of compounding, can result in performance that differs significantly from some investors' expectations of how index investing generally works." Proposal at 29 (footnotes omitted).

[6] In the Proposal, the Commission noted that "[t]he proliferation of highly customized, often methodologically complex, indexes has blurred the distinction" between index-based and actively managed ETFs. Proposal at 26. The Commission stated that "it would be unreasonable to create a meaningful distinction within the rule between index-based and actively managed ETFs given the evolution of indexes over the past decade." Id.

[7] Proposal at 1.

[8] The Proposal sought comments on a number of specific questions relating to Geared ETFs, which appeared beginning on page 32 of the Proposal. This letter is broadly responsive to the first two of those questions:

> Do commenters agree that it is appropriate for proposed Rule 6c-11 to include a condition that an ETF may not seek, directly or indirectly, to provide returns that exceed the performance of a market index by a specified multiple, or to provide returns that have an inverse relationship to the performance of a market index, over a fixed period of time?
>
> Alternatively, do commenters believe that the structure and operation of Leveraged ETFs do not raise issues that warrant our excluding them from a rule of general applicability related to the structure and operations of ETFs?

While the body of this letter does not address at length the other questions on which the Proposal sought comments, certain sections of this letter are responsive to many of those questions. Appendix A hereto provides short responses to certain of those questions along with cross-references to sections of this letter supporting each response.

II. Discussion

A. Introduction to ProShares

ProShares, founded in 1997, offers a wide variety of ETFs and mutual funds. ProShares offers funds, for example, that provide exposure to companies with a history of dividend growth, to companies changing the retail landscape as consumers move toward online shopping and to corporate bonds with a built-in hedge against the effect of rising interest rates. ProShares is also the world's largest provider of Geared Funds and Geared ETFs, currently managing over 170 such funds with approximately $30 billion in net assets. ProShares launched its first Geared ETF in 2006, and today manages over 250 mutual funds and ETFs with approximately $37 billion in assets.

B. Introduction to Geared ETFs

Geared ETFs typically seek returns, before fees and expenses, that correspond to a stated multiple (*e.g.*, 2x) or inverse (*e.g.*, -1x) of the performance of an underlying index.[9] The vast majority of these funds have a daily investment objective, meaning they aim to deliver the stated multiple (or inverse) of the return of their underlying index (before fees and expenses) from the beginning until the end of each investment day, not for any other period.[10] In all respects relevant to the Proposed Rule—the issuance, sale, trading and redemption of shares—Geared ETFs are structured and operated in the same manner as other types of ETFs.

1. <u>Geared ETFs Have a Proven Track Record and Broad Market Acceptance</u>.

Geared Funds were first introduced in the United States in 1993. The first Geared ETFs in this country were launched by ProShares in 2006. Today, Geared Funds and/or Geared ETFs are available in the United States, Canada, Mexico and Israel and in nine European and five Asian countries. Globally, more than $75 billion is invested in Geared Funds and Geared ETFs, with more than $42 billion invested in the United States alone.

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[9] Leveraged funds seek to deliver "magnified" or "leveraged" exposure to their underlying index and are designed to produce positive daily returns when the daily returns of their underlying index are positive. Inverse funds seek to deliver "short" or "inverse" exposure to their underlying index, and are designed to produce positive daily returns when the daily returns of their underlying index are negative. Geared ETFs currently are limited by existing SEC exemptive orders to stated multiples of up to + 3x or – 3x the returns of an underlying index. Note that, for simplicity, we refer throughout this letter to a Geared ETF's underlying "index," although a Geared ETF's investment objective may reference a market benchmark, such as a commodity reference rate, that may not constitute an "index," as that term is commonly understood, or a "market index" as that term is used in the Proposed Rule.

[10] Fund performance for these purposes is based on the Net Asset Value per share ("NAV") of a fund, which typically is calculated at the end of each business day. References herein to an "investment day," "single day" or "trading day" refer to the period of time from the calculation of NAV on one business day to the calculation of NAV on the next business day. Note, while the ProShares' Geared Funds and ETFs have daily investment objectives, some other Geared Funds and ETFs have monthly investment objectives.

Leveraged and inverse funds, including Geared ETFs, have a strong track record of performing in a manner consistent with their stated investment objectives. They have operated successfully for 25 years in a variety of market conditions, including the financial crisis.[11]

2. Geared ETFs are used to Implement a Range of Investment Strategies.[12]

Geared ETFs are "investment tools" that are used to implement a myriad of strategies. Geared ETFs are used to enhance returns, manage risk, reduce volatility and increase diversification. They typically represent a small part of an investor's overall portfolio and are held on a short-term basis.

While Geared ETFs are frequently used as part of trading strategies to seek to profit from short-term movements in a specific market segment, they are often used for other purposes. Geared ETFs are bought to obtain exposure to a segment of the market, while putting less money at risk or providing capital for another investment that might help diversify a portfolio. A principal use of inverse ETFs is to hedge or protect investments from losses.[13]

ProShares emphasizes in investor communications, marketing materials, on its website and in presentations that, in cases where a strategy involves holding a Geared ETF with a daily investment objective for periods longer than one day, the investor should manage his or her investment by closely monitoring the performance of the Geared ETF over time and potentially rebalancing his or her holdings to maintain the investor's target level of exposure.[14]

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[11] In short, Geared Funds and ETFs perform as designed, and do so in a manner consistent with their public statements about how investors should expect them to perform. In fact, Geared ETFs have a *longer* history of successful operation than do actively managed ETFs (2006 vs. 2008).

[12] The statements made herein regarding the benefits, uses, operations, strategies and risks of Geared ETFs generally are equally applicable to Geared Funds, except to the extent such statements relate to the structure and operation of ETFs specifically, such as the creation and redemption process, secondary market trading and arbitrage activity.

[13] While ProShares has not endorsed or promoted such uses, some have suggested that long-term retirement-oriented investment strategies might usefully incorporate a significant leveraged equity component. *See, e.g.*: Ian Ayres (William K. Townsend Professor, Yale Law School) and Barry Nalebuff (Milton Steinbach Professor, Yale School of Management), *Diversification Across Time*, John M. Olin Center for Studies in Law, Economics, and Public Policy (October 4, 2010), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1687272; Jason S. Scott and John G. Watson, *The Floor-Leverage Rule for Retirement*, Stanford Institute for Economic Policy Research (May 7, 2013), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1961791.

[14] A daily investment objective does not mean that Geared ETFs cannot be used successfully for periods longer than one day, though, as discussed herein, their performance over longer periods of time should be expected to differ from their stated multiple times the return of their underlying index. Specifically, while Geared ETFs generally can be expected to underperform the stated multiple of their underlying index during periods of higher index volatility, they generally can be expected to outperform the stated multiple of their underlying index during periods of lower index volatility. As an example, conditions generally favorable to Geared ETFs with long strategies have prevailed in the U.S. equity markets for the past several years. During this period, based on 5-year trailing annualized NAV returns as of June 30, 2018, 95% of the top 20 performing mutual funds and ETFs in the United States were Geared ETFs. Based on 10-year trailing annualized NAV returns as of June 30, 2018, 60% of the top 20 performing mutual funds and ETFs in the United States were Geared ETFs. (Performance information is based on Morningstar data.) We share this information not to tout performance (as during periods of relative high volatility we would expect the results to be quite different), but to demonstrate that, under certain market conditions, it may be appropriate to hold Geared ETFs for longer periods. We therefore strongly disagree with the Financial Industry Regulatory Authority's ("FINRA") 2009 statement that "inverse and leveraged ETFs that are reset daily typically are unsuitable for retail investors who plan to hold them for longer than one trading session." *See* FINRA Regulatory Notice 09-31, Non-

3. Geared ETFs Provide Potential Benefits Versus Alternative Approaches.

While investors can pursue the strategies discussed above using a variety of investment products, Geared ETFs offer several potential advantages as compared to other means of pursuing similar strategies.

- *Limited Risk of Loss*. Geared ETFs limit an investor's risk of loss to the amount invested in the fund. Many of the other tools investors can use to obtain leverage or to take short positions do not offer that same limit on risk. An investor who takes a short position in a security, for example, has a theoretically infinite risk of loss. Additionally, when an investor obtains leverage by borrowing money to purchase securities, the investor's risk includes the obligation to repay the amount borrowed as well as the risk of loss on the securities purchased with the borrowed money.

- *Consistent Daily Exposure to an Underlying Index*. The daily investment objective of each ProShares Geared ETF is designed to enable the ETF to maintain consistent exposure to a designated underlying index each trading day.[15] These funds adjust, or "rebalance", their portfolio holdings each day in order to maintain the designated level of exposure (*e.g.*, 2x) to their index. Without this daily rebalance, gains and losses on investments would cause the fund's exposure to its index to fluctuate above or below the fund's stated daily multiple (or inverse). Other products used to access leveraged strategies may not share this feature, and the level of their exposure may fluctuate from day-to-day.

- *Convenient*. Geared ETFs are listed and traded on national securities exchanges and accordingly offer the convenience of pursuing a leveraged or inverse strategy through the purchase of a single security and enable investors to monitor or trade their investment as they deem appropriate. Other tools for pursuing a leveraged or inverse strategy may not share these features.

- *Cost Effective*. Investments in Geared ETFs may be more cost effective than other alternatives, such as direct borrowings to purchase other securities or ETFs.

4. Daily Investment Objective.

As noted, Geared ETFs generally have a daily investment objective. It is important to note that it is not possible to create an ETF that continuously offers its shares and provides a set level

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Traditional ETFs (June 2009) ("FINRA Notice 09-31") at note 1 and surrounding text. It is simply incorrect to suggest that the daily investment objective of Geared ETFs means these products are necessarily unsuitable for investors who intend to hold them for longer than a single day. In light of the performance characteristics provided above, and in light of investor access to prospectuses, marketing materials, educational materials, press coverage and other readily accessible information detailing the nature of Geared Funds' investment objectives, operations and risks, FINRA's singling out of Geared ETFs appears to apply a suitability standard to these funds that is arbitrarily different than that applied to other investment products.

[15] *See* section II.B.4 below.

of leverage (*e.g.*, 2x) to each investor who may enter and exit the fund at any time.[16]

A fund desiring to provide a multiple or inverse exposure to an index can take either of two approaches, each of which will produce different outcomes. A fund can set its initial level of exposure (*e.g.*, 2x) at inception and either (1) adjust its exposure thereafter on a periodic basis (*i.e.*, daily) to maintain a fixed level of daily exposure, or (2) allow its level of exposure thereafter to float over time above or below the initial level.

The first approach, which is the one generally used by Geared ETFs (what the Proposal calls a "daily reset"), is designed to enable Geared ETFs to maintain a level of exposure (*e.g.*, 2x) to their underlying index that is consistent from day to day. This approach enables investors to know the leveraged (or inverse) exposure the fund will seek to provide each trading day. Over periods longer than a day, the return of each day (*e.g.*, 2x) is compounded and, as a result, will not necessarily reflect the one-day leverage multiple (*e.g.*, 2x) of the fund.

Under the second approach, a fund's portfolio would not be rebalanced. The leverage embedded in a fund like this would be initially set at a specified level at inception (*e.g.*, 2x) and thereafter would float from day-to-day based on market movements. The level of leverage the fund would offer investors could be considerably lower or higher than the level set at inception, and a fund with initial leverage of 2x could, for example, go to less than 1x or greater than 10x.[17] An investor purchasing shares at any time other than fund inception would receive a different multiple for the life of his or her investment in the fund (unless and until the fund is rebalanced). Only investors buying into the fund on the initial day of its operation would receive the fund's initial set multiple (*e.g.*, 2x).[18]

We believe that the first approach above (daily reset) is the more conservative approach since it prevents a fund's leverage from deviating—potentially significantly—over time from its specified multiple.

5. <u>The Daily Investment Objective of Geared ETFs is Understandable, Clearly Disclosed and</u>

[16] For example, assume a 2x fund with $100 in net initial assets and $200 initial exposure to its underlying index. The fund will earn $20 if the underlying index rises 10% ($200 x .10). At this point the fund has $220 of exposure ($200 + $20) and $120 of net assets ($100 +$20). If the fund does not rebalance its exposure in advance of the next trading day, its leverage to the underlying index will be less than 2x ($220 exposure/$120 net assets = 1.83x leverage). In order to provide 2x returns it needs $240 in exposure to the underlying index (2 x $120). Over time, absent daily rebalancing, the leverage ratio would likely continue to diverge from the target leverage ratio of 2x. Thus, absent rebalancing, investments made into such an ETF on days other than its first day of operation (or a rebalance date, if any) are not likely to have 2x exposure to the underlying index, but will instead have exposure subject to the changing and unpredictable leverage ratio of the fund over time.

[17] We are aware, for example, of a non-daily reset exchange-traded note that, in general terms, sought to provide short exposure to the S&P 500 Index and, at one point, had a leverage factor of -12x.

[18] ETFs pursuing this second approach would be permitted to rely on Rule 6c-11, if adopted as proposed, notwithstanding that (i) their use of derivatives and leverage could be greater than that of many Geared ETFs, and (ii) these funds would have distinct performance and risk characteristics as a result of *not* rebalancing on a daily basis that investors should understand before investing.

Widely Known by Investors.

Our experience is that investors in Geared ETFs can, and generally do, understand the daily investment objective and performance characteristics of these products. The consequences of a daily investment objective and rebalancing are: first, the fund seeks to produce the targeted return for each trading day and for no other period; second, the return of the fund for longer periods generally is higher during periods of relative low volatility in its underlying index and lower when index volatility is higher. When volatility is extreme, these effects can be very significant. While these characteristics differentiate Geared ETFs from conventional index-based funds,[19] the concepts are understandable and our experience generally is that investors do, in fact, understand them.

The characteristics described above are clearly and prominently disclosed in ProShares' prospectuses and in informational and other materials on ProShares' website.[20] ProShares' prospectuses and other materials also include charts showing the impact on fund performance of specific levels of volatility.[21]

Beyond the information in fund prospectuses, investors have a range of resources readily available to them that provide substantial information about Geared ETFs. These resources are available through a number of means, including sponsor, financial adviser and other market participant educational materials, websites, media and scholarly articles, and materials made available directly from regulators. For example, since the inception of Geared ETFs, there have been hundreds, perhaps thousands, of articles, blog posts, broadcast segments and similar communications from media in the U.S. and around the world discussing these funds, their objectives and the potential impact of volatility. The wide availability and easy access to such information helps ensure that investors understand how Geared ETFs work.

C. The Exclusion of Geared ETFs from the Proposed Rule is Unwarranted

1. In all Relevant Respects, Geared ETFs are Structured and Operated in the Same Manner as Other Types of ETFs.

As stated in the Proposal, Rule 6c-11 is designed to address those features of ETFs that differentiate them from other open-end investment companies and necessitate specific relief under

[19] Most index mutual funds and ETFs have an investment objective that is ongoing or "perpetual", meaning they seek to deliver the return of the index they track over any time period.

[20] For example, the currently effective prospectus for the ProShares Ultra S&P500 Fund states: "**The return of the Fund for periods longer than a single day will be the result of its return for each day compounded over the period. The Fund's returns for periods longer than a single day will very likely differ in amount, and possibly even direction, from the Fund's stated multiple (2x) times the return of the Fund's Index for the same period. For periods longer than a single day, the Fund will lose money if the Index's performance is flat, and it is possible that the Fund will lose money even if the level of the Index rises.** Longer holding periods, higher index volatility and greater leverage each exacerbate the impact of compounding on an investor's returns." This disclosure is presented prominently; the quoted language begins at the third sentence of the fund's summary prospectus and appears in bold type as indicated.

[21] While it is, of course, not possible to predict in advance the degree to which volatility will impact the returns of a Geared ETF held over time, we believe that investors can understand—consistent with our disclosures—the essential point that volatility will impact returns.

the 1940 Act to allow their operation.[22] With respect to those features, Geared ETFs are structured and operated in the same manner as other ETFs that would be able to rely on the Proposed Rule. Like other ETFs, Geared ETFs (i) are structured as open-end investment companies, (ii) are transparent on a daily basis (i.e., they publish creation and redemption baskets and portfolio holdings and disseminate an intra-day portfolio value file on a daily basis), and (iii) accept creations and redemptions using the same operating mechanisms as other ETFs. The arbitrage mechanism, the efficient operation of which constitutes a core focus of the Proposed Rule, works in the same manner for Geared ETFs as it does for the active and index ETFs covered by the Proposed Rule.[23]

2. <u>The Use of Leverage and Derivatives is Not an Appropriate Basis on which to Exclude Geared ETFs from Rule 6c-11</u>.

The Proposal states that "Leveraged ETFs, and their use of derivatives, also may raise issues under section 18 that we are evaluating as part of our broader consideration of the use of derivatives by registered funds and business development companies."[24] We do not believe that the manner and extent to which Geared ETFs employ derivatives and leverage differentiate them (in any categorical way) from other ETFs that use derivatives and leverage, except that Geared ETFs use leverage in a manner that may be more easily understood than is the case with many other current ETFs and mutual funds and, potentially, new ETFs that in the future could rely on the Proposed Rule.[25]

Geared ETFs are hardly alone among ETFs or mutual funds in making extensive use of leverage and derivatives.[26] In fact, many funds make greater use of leverage than Geared Funds.[27]

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[22] The Commission described the rulemaking in precisely these terms: "ETFs possess characteristics of both mutual funds, which issue redeemable securities, and closed-end funds, which generally issue shares that trade at market-determined prices on a national securities exchange and are not redeemable. Because ETFs have characteristics that distinguish them from the types of investment companies contemplated by the Act, they require exemptions from certain provisions of the Investment Company Act in order to operate." Proposal at 8.

[23] For the reasons set forth in this section, and developed further herein, we find the suggestion from a commenter on the Proposal that the Commission should amend Rule 35d-1 to preclude Geared ETFs from using "ETF" or "Exchange Traded Fund" in their names to be entirely unwarranted. Such an approach would serve only to confuse investors and muddle the existing regulatory framework applicable to ETFs and fund naming conventions.

[24] Proposal at 30.

[25] We note that proposed Rule 18f-4 clearly contemplated that +2x/-2x Geared ETFs would be able to operate under that proposed rule, while other types of mutual funds and ETFs might not be able to comply with the rule. *Use of Derivatives by Registered Investment Companies and Business Development Companies*, Investment Company Act Release No. 31933, 80 Fed. Reg. 80884 (December 28, 2015).

[26] *Use of Derivatives by Registered Investment Companies*, SEC Division of Economic and Risk Analysis (December 2015) (reporting that, based on a random sample of funds in 2015, 32% of registered funds held one or more derivative instruments and average fund notional derivatives exposure (among all funds, including those that did not use derivatives) was 20% of NAV, with 11% of funds having exposures equal to or greater than 50% of NAV. In addition, 73% of what the staff defined as "alt strategy" mutual funds used derivatives with more than half of such funds having notional exposures of greater than 50% of NAV. In addition, a large percentage (27%) of "alt strategy" funds sampled had 150% or greater aggregate exposure to derivatives.

[27] A 2016 survey conducted by the Investment Company Institute covering over 6,000 mutual funds and representing 80% of mutual fund industry assets found that, as of the 2015 year end, 173 funds with $338 billion in net assets had notional exposure to derivatives at or above 300% of net assets, under the definition of the notional exposure contained

While Geared ETFs use derivatives to produce leverage, their use of derivatives is clearly disclosed, and they have a strong track record of delivering performance that is consistent with their stated investment objectives. Other types of mutual funds and ETFs, by contrast, may use leverage or derivatives in a manner that may not be fully or clearly disclosed or that may fluctuate (perhaps significantly and unexpectedly) from day to day.[28]

The Proposed Rule excludes ETFs that seek to provide a "specified multiple" of a market index "over a fixed period of time."[29] In doing so, the Proposed Rule singles out, with no principled justification, Geared ETFs, while ignoring the myriad of other ways ETFs might employ leverage and derivatives to a greater extent and with less transparency than Geared ETFs.[30]

In addition, as proposed, Rule 6c-11 would exclude Geared ETFs while permitting other ETFs whose leverage multiple (i) may fluctuate from day to day because their leveraged exposure is not reset on a daily (or other periodic) basis to a specified multiple, or (ii) may vary within a range of unspecified multiples (*e.g.*, up to a specified amount, within a range of specified amounts, or in response to a specific event). Under the Proposed Rule, a fund sponsor could, for instance, offer ETFs that:

i. State their investment objective as seeking to outperform an index through the use of an unspecified level of leverage and then use whatever degree of leverage the investment adviser chooses. The adviser could choose, for example, to: (i) keep leverage at 2x or 3x every day (even though not required by its objective to do so); (ii) allow it to fluctuate; or (iii) adjust it each day based on the adviser's market view. *Such ETFs potentially could be levered well beyond 3x.*

ii. Start at a specified multiple (*e.g.*, 2x) but not reset over a fixed period of time; such ETFs could terminate or reset at unspecified future dates once the leverage reaches a certain level (*e.g.*, 4x).

iii. Use leveraged (or inverse) strategies to achieve a "defined outcome" (such as a "cap" on returns, which potentially could be leveraged, or a "floor" on losses) in response to market conditions or other factors.

These examples illustrate the lack of conceptual coherency in an approach to comprehensive ETF regulation that singles out Geared ETFs for exclusion, but not other ETFs that make extensive use of leverage and derivatives. There is simply no meaningful distinction between

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in proposed Rule 18f-4. *Letter from David W. Blass, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, Securities and Exchange Commission* (March 28, 2016), available at: https://www.sec.gov/comments/s7-24-15/s72415-114.pdf

[28] For example, in early 2018 it was reported that a mutual fund designated as a "preservation and growth" fund was unexpectedly liquidated in response to significant losses as a result of trades in volatility-related derivatives contracts.

[29] Proposed Rule 6c-11(c)(4). A "fixed period of time" presumably would encompass the "single day" investment objective of most Geared ETFs.

[30] In fact, as discussed herein, because of their clearly specified leverage (or inverse) multiples and investment objectives "over a fixed period of time," Geared ETFs are *more transparent* and *easier* to understand than certain other ETFs that would be permitted to operate in reliance on the Proposed Rule.

the strategies used by Geared ETFs and the strategies used by other ETFs that employ derivatives or leverage that justifies excluding Geared ETFs from the Proposed Rule.

Geared ETFs deploy leverage in a manner that is clearly disclosed and that resets to a predetermined level each trading day. The use of leverage by other ETFs, in contrast, can vary significantly as a result of market movements or the discretion of investment managers. The consistency of Geared ETFs' use of leverage, enabled by daily rebalancing, should give the Commission comfort, given that such funds can (and do) describe to investors, with clarity and specificity, how and to what extent they intend to use leverage. [31]

In addition, the use of derivatives by Geared ETFs has no bearing on the policy considerations relevant to Rule 6c-11's treatment of shares issued by ETFs as "redeemable securities" within the meaning of Section 2(a)(32) of the 1940 Act, nor does it present concerns under Section 18 of the 1940 Act that are materially different from those relating to the use of derivatives by other ETFs and mutual funds. Thus, there is no reason that Rule 6c-11 should single out Geared ETFs, whether to address considerations relating to Section 18 of the 1940 Act or otherwise.

To the extent the Commission is concerned about the use of derivatives by investment companies, including Geared ETFs, we believe that the limitations on the use of derivatives under existing Commission and staff guidance are sound and sufficient. In any event, Rule 6c-11 is not the appropriate place for any expansion or clarification of such limits, which should in any case apply uniformly to all registered open-end investment companies.[32]

3. <u>The Use of a Daily Investment Objective is Not an Appropriate Basis to Exclude Geared ETFs from Rule 6c-11</u>.

The Proposal notes that daily rebalancing and the effects of compounding can result in performance that differs from "some investors' expectations of how index investing generally works."[33] As discussed in section B.5 herein, our overall experience is that investors in Geared ETFs can and do understand the daily investment objective and performance characteristics of these products. All types of ETFs have distinguishing features that investors should understand before making an investment decision. In recent years, for example, a wide variety of quite

[31] Concerns regarding the use of leverage by Geared ETFs and other investment products have, in our view, been unduly amplified as a result of certain misconceptions. For example, Geared ETFs are sometimes mischaracterized as having higher volatility than all "plain vanilla" investments. In fact, the volatilities of Geared ETFs are often very similar to those of other exchange-traded securities, such as many common stocks. "The volatilities of leveraged ETFs are often very similar to those of ordinary common stocks. This is because the underlying indices are well diversified and thus have lower risk than individual securities due to the well-known risk-reducing properties of diversification." James Angel, Ph.D., CFA and Associate Professor of Finance at Georgetown University. Comments to the Securities and Exchange Commission's proposal on the Use of Derivatives by Registered Investment Companies and Business Development Companies. March 28, 2016. https://www.sec.gov/comments/s7-24-15/s72415-170.pdf

[32] If the Commission determines to adopt Rule 6c-11 while retaining the exclusion of Geared ETFs and subsequently adopts a rule or guidance of general applicability relating to investment company use of derivatives, we urge the Commission to consider including Geared ETFs under Rule 6c-11 at that time.

[33] Proposal at 29.

complex strategies have been offered through ETFs.[34] Each of these products presents distinct elements of complexity and risk, some of which may not be intuitive or generally understood by investors, and such products may vary widely in the level and clarity of their disclosure of these risks. The Proposal also would facilitate the introduction of a wide range of new and innovative ETF strategies, many of which could have unique features that would require disclosure and investor education. Singling out only Geared ETFs for exclusion from Rule 6c-11—but not any other types of ETFs that pursue potentially more complicated and less transparent strategies—in our view is unwarranted.

Daily rebalancing is an element of a Geared ETF's investment objective and strategy. The Proposed Rule does not exclude any other type of ETF on the basis of investment objective or strategy. Indeed, the Proposal expressly *rejects* the notion that differences in investment objective or strategy between actively managed ETFs and index-based ETFs should lead to different treatment of those two types of ETFs under the Proposed Rule. Instead, the Proposal focuses on the operational similarities between those types of products, notably the effectiveness of the arbitrage mechanism.[35]

For these reasons, the fact that Geared ETFs have a daily investment objective is not an appropriate basis to exclude Geared ETFs from the relief that the Proposed Rule provides to other ETFs.

4. <u>Potential Concerns About Investor Understanding of Geared ETFs are Best Addressed through the Existing Disclosure and Suitability Regimes</u>.

A core principle of the U.S. federal securities laws is that the SEC advances its mission of protecting investors primarily by requiring full and fair disclosure of material facts.[36] We believe that any questions regarding investors' expectations for, or understanding of, Geared ETFs are best addressed through the existing disclosure-based framework, as they would be for any other ETF or mutual fund that might be pursuing a less traditional investment objective and present non-standard risks.[37] Moreover, given the rapid and ongoing evolution of index-based investing towards more sophisticated and specialized approaches—a trend which the Commission

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[34] For example, "smart beta" funds often track indices based on multiple factors or complex algorithms designed, in some cases, to achieve positive results only in certain defined market environments. Other ETFs pursue complex strategies, such as long-short, put-write, managed futures, covered call, "defined outcome," momentum, market neutral momentum, market neutral anti-beta and volatility strategies, to name only a few.

[35] In explaining why the Proposed Rule treats actively managed ETFs and index-based ETFs identically, the Proposal states that actively managed and index-based ETFs "function similarly with respect to operational matters, despite different investment objectives and strategies, and do not present significantly different concerns under the provisions of the Act from which the proposed rule grants relief." Proposal at 24. The same general observations can be made with respect to Geared ETFs, which have operated without significant operational issues that would warrant their exclusion from the Proposed Rule, and with effective arbitrage mechanisms.

[36] "The SEC does not pass upon the merits or give its approval to any securities offered." SEC Office of Investor Education and Advocacy, Investor Bulletin on Regulation A. (February 6, 2017). "The SEC does not evaluate the merits of offerings, nor do we determine if the securities offered are 'good' investments." SEC Division of Corporation Finance, Fast Answers on Registration under the Securities Act of 1933 (Sept. 2, 2011).

[37] As required by Form N-1A, an ETF's registration statement must "clearly disclose the fundamental characteristics and investment risks of the Fund." General Instruction C.1 (a).

recognizes in the Proposal[38]—we question whether "some investors' expectations of how index investing generally works" constitutes a coherent standard for excluding some ETFs but not others from the Proposed Rule.

i. ProShares supports robust disclosure and provides extensive disclosure and educational materials to investors; additional information is readily available from media and other sources

The first description of any ProShares Geared ETF an investor will read when opening to the very first page of a fund's summary prospectus includes bolded text stating:

1. **The fund seeks investment results for a single day;**
2. **The return of the fund for periods longer than one day will very likely differ from its stated multiple times the performance of its index for that period;**
3. **The fund should be used only by knowledgeable investors;**
4. **Shareholders should actively manage and monitor their investments, perhaps as frequently as daily;** and (for funds using leverage)
5. **The fund is riskier than similarly benchmarked ETFs that do not use leverage.**

In addition, all of ProShares' Geared ETFs also include a table highlighting the effects of compounding on fund performance under specific market conditions (including different index volatilities) that an investor might experience over time. An investor will encounter this disclosure before he or she reaches the disclosure of the fund's historical performance information (it is not, in other words, "buried in the fine print").

The broad use of Geared ETFs since their inception over ten years ago seems to be signaling that investors understand the way Geared ETFs are designed to operate. ProShares launched the first Geared ETFs in 2006, and the Commission staff and FINRA issued their joint investor alert (expressing concern that individual investors may be confused about the performance objectives of Geared ETFs) in 2009, when Geared ETFs were still a relatively new category of investments.[39] Since that time, the number of Geared ETFs and the amounts invested in such products have increased substantially, reflecting the growth in investor demand and interest.[40] As would be expected with any new product type or strategy, as Geared ETFs have become a mature category of investment product, we believe investor understanding has increased commensurately.

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[38] In the Proposal, the Commission noted that "[t]he proliferation of highly customized, often methodologically complex, indexes has blurred the distinction" between index-based and actively managed ETFs. Proposal at 26. The Commission stated that "it would be unreasonable to create a meaningful distinction within the rule between index-based and actively managed ETFs given the evolution of indexes over the past decade." Id.

[39] *See* Office of Investor Education and Advocacy, SEC, Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors Investor Alert and Bulletins (Aug. 1, 2009), available at http://www.sec.gov/investor/pubs/leveragedetfs-alert.htm; FINRA Notice 09-31.

[40] Assets under management in U.S. Geared ETFs have grown from $0 in 2006 to $29 billion at the end of 2009 and to $36 billion at the end of August 2018. The number of Geared ETFs in the United States has increased from 133 at the end of 2009 to 185 at the end of August 2018.

In addition to benefiting from longer experience with these products, the market's understanding has been significantly enhanced over the years by the vigorous efforts of product sponsors like ProShares to educate investors and intermediaries about Geared ETFs. Not only do all marketing materials and offering documents for ProShares' Geared ETFs provide prominent disclosure of their risks, but the ProShares website includes hyperlinks to a number of educational papers and landing pages that provide details on how Geared ETFs work and their principal risks. The media also continues to be an important source of information about Geared ETFs and their benefits, risks and appropriate uses. Media outlets of many types have written extensively about the benefits and risks associated with Geared ETFs and similar funds.[41]

The Proposed Rule assumes that compliance with the existing disclosure-based framework is adequate to inform investors with regard to any number of complex ETF strategies existing today, or any novel ETF strategies that may be developed in the future in reliance on the Proposed Rule, with one exception: *their use of leverage must not be a specified and consistent multiple over a specific period of time* (*i.e.*, the strategy used by Geared ETFs). While the Proposed Rule evidences the Commission's confidence in the strength of the disclosure regime for other types of ETFs, it categorically excludes, without any rational basis, Geared ETFs that operate successfully today and that currently offer investors clear and comprehensive disclosure.

ii. Geared ETFs are already subject to appropriate suitability standards

The educational materials, third party publications and prospectus disclosures discussed above all provide investors who use Geared ETFs with access to clear and comprehensive information about their investment objectives and performance. In addition, guidance from FINRA and the SEC directed toward brokers dealing with retail customers has consistently reminded brokers of the suitability requirements relating to the sale of Geared ETFs. This guidance has focused the attention of brokers and financial advisers on their responsibility to consider the individual needs, goals and sophistication of their customers when advising on a potential investment in a Geared ETF.

FINRA has for a number of years treated Geared ETFs, among other types of ETFs and mutual funds, as complex products subject to an enhanced suitability standard. FINRA's suitability rules require that brokers use reasonable efforts to obtain information regarding a customer's financial status and investment objectives when making recommendations to customers. In addition to these basic requirements, with respect to recommendations of complex products, including Geared ETFs, FINRA currently mandates heightened supervision and has endorsed the adoption of formal written procedures governing the supervision of such recommendations.[42] Specifically, FINRA requires brokers who recommend complex products to (i) carefully assess a client's investment experience, financial sophistication and risk tolerance, (ii) undergo extensive product-specific training and (iii) consider whether less complex or costly products could achieve the same objective for the customer. We believe that the existing suitability framework is effective in protecting against the sale of Geared ETFs to retail investors for whom they would be inappropriate.

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[41] *See* section II.B.5 herein, noting the extensive media coverage of, and availability of information about, Geared ETFs.

[42] FINRA Regulatory Notice 12-03, Heightened Supervision of Complex Products (January 2012).

5. <u>Excluding Geared ETFs from the Proposed Rule Would Have an Anticompetitive Effect and is Inconsistent with the Proposal's Stated Goals</u>.

The Proposed Rule's exclusion of Geared ETFs is not only unwarranted (for the reasons stated above), it is also anticompetitive, contrary to the Commission's stated goal of facilitating greater competition and innovation among ETFs. If Rule 6c-11 were adopted as proposed, prospective market entrants seeking to launch Geared ETFs would be, at least, delayed, since they would be required to invest significant time, effort and resources to obtain an exemptive order from the Commission with no guarantee of success.[43]

We support the Commission's commitment to fostering innovation and competition and generally agree with the Commission's stated desire to "level the playing field for [ETF] market participants."[44] The Proposed Rule's exclusion of Geared ETFs fails to advance this goal for this segment of the market, however, without, in our view, any discernable benefit.

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Once again, we appreciate the opportunity to comment on these important matters. Should you have any questions or wish to discuss any aspect of our comments, please feel free to contact me at [redacted] or [redacted].

Sincerely,

Richard F. Morris

General Counsel

Cc: The Honorable Jay Clayton
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Kara M. Stein

Dalia Blass, Director
Sarah ten Siethoff, Associate Director
Division of Investment Management

[43] Not only does the Proposed Rule's exclusion of Geared ETFs fail to level the playing field as between existing and potential new sponsors of Geared ETFs, but it represents a missed opportunity to level the playing field between Geared ETFs and other ETFs that pursue complex investment strategies. As noted above, many new types of ETFs with complicated or innovative investment strategies have emerged in recent years, and ETFs pursuing as yet unknown strategies would be permitted by the Proposed Rule, some of which could make more extensive and potentially less transparent use of leverage and derivatives than Geared ETFs. Yet only Geared ETFs are singled out for exclusion under the Proposed Rule.

[44] Proposal at 16.

Appendix A

Responses to Commission Questions Regarding Geared ETFs

The Proposal sought comments on a number of specific questions relating to Geared ETFs, beginning on page 32 of the Proposal (the "Commission Questions"). This Appendix provides short responses to certain of the Commission Questions along with cross-references to sections of this letter supporting each response. Note that we have not responded to every Commission Question regarding Geared ETFs.

• *Do commenters agree that it is appropriate for proposed Rule 6c-11 to include a condition that an ETF may not seek, directly or indirectly, to provide returns that exceed the performance of a market index by a specified multiple, or to provide returns that have an inverse relationship to the performance of a market index, over a fixed period of time?*

For the reasons set out in this letter, we do not agree that it is appropriate for Rule 6c-11 to contain any such condition.

• *Alternatively, do commenters believe that the structure and operation of leveraged ETFs do not raise issues that warrant our excluding them from a rule of general applicability related to the structure and operations of ETFs? If so, are there any conditions specific to leveraged ETFs that should be part of the rule? For example, should we permit leveraged ETFs to operate in reliance on the rule but prohibit a leveraged ETF that exceeds a specific multiple of the performance, or inverse performance, of a market index? If so, what multiple should we use? For example, ETFs currently may not seek investment results over 300% of the return (or inverse of the return) of the underlying index. Should we maintain the status quo with respect to the maximum amount of leveraged market exposure that leveraged ETFs may obtain (i.e., 300%)? Should we limit ETFs to a higher or lower multiplier? If so, what multiplier and why?*

For the reasons set out in this letter, we do not believe that the structure and operation of Geared ETFs (or any other aspect of such products or the use of such products) raise any issues that warrant excluding them from a rule of general applicability related to the structure and operations of ETFs.[1] We do not believe that any conditions specific to Geared ETFs should be part of the Proposed Rule, nor do we believe that the Proposed Rule should place any limit on the specific performance multiple a Geared ETF might seek.[2] Nevertheless, if the Commission were determined to include a specific limit on the multiplier that could be used by a Geared ETF, we believe that a limit of +/-3X would have the strongest basis under current Commission and staff guidance, since this is the maximum stated multiple permitted by the Commission's exemptive orders applicable to Geared ETFs.

[1] *See, e.g.,* section II.C.1, 2 and 3 of this letter, addressing the structural and operational features of Geared ETFs compared to other ETFs.

[2] *See, e.g.,* section II.C.2 of this letter.

• *Does the proposed rule's use of ''a fixed period of time'' effectively describe the daily reset mechanism in leveraged ETFs? Are there other descriptions we should use? Could an ETF seek to provide returns that are a multiple, or inverse, of an index without this limitation? For example, would such an ETF be able to operate without the daily (or other periodic) reset? Would such an ETF raise the same investor protection issues as the leveraged ETFs that we are proposing to exclude from relying on proposed rule 6c–11? Would they raise other investor protection issues? If so, what issues and why?*

We believe that the Proposed Rule's use of a "fixed period of time" is an adequate (though vague and indirect) reference to the reset mechanism used by Geared ETFs. However, we believe the definition as a whole is inappropriate given the Commission's stated policy rationale for excluding these funds from the rule. For the reasons set out in this letter, this definition serves to exclude only Geared ETFs from the ability to rely on the Proposed Rule, with no coherent justification and no discernible benefit. In general, an ETF could not provide returns that consistently are a stated multiple or inverse of an index without specifying a period of time over which the fund will seek to provide such returns.[3]

• *Does the proposed rule prevent an ETF from circumventing this limitation by embedding leverage in an index or through any other means?*

We are uncertain whether the language of paragraph (c)(4) of the Proposed Rule achieves the Commission's desired intentions. For example, paragraph (c)(4) refers to ETFs that seek to "provide returns that exceed the performance of a market index by a specified multiple . . .." The ProShares Geared ETFs, however, have the investment objective of seeking daily investment results, before fees and expenses, that correspond to (rather than "exceed") the specified multiple or inverse of the relevant index. Additionally, the meaning of the term "market index" is not defined and is not entirely clear; certain custom or other indexes that a sponsor of leveraged or inverse ETFs might develop or select as an ETF's benchmark may not necessarily be "market" indexes. Furthermore, a fund sponsor could design a leveraged or inverse ETF that seeks to provide a leveraged or inverse return of some benchmark other than an index. There appears to be no rational basis for permitting ETFs that seek a multiple or inverse of the return of a benchmark other than a "market index" to rely on the Proposed Rule, while prohibiting leveraged or inverse ETFs based on a "market index" from doing so. This is a further illustration that, as discussed above, the Proposed Rule arbitrarily singles out Geared ETFs, while ignoring the many other types of ETFs (current and future, and whether or not seeking returns that bear some specified relationship to a benchmark) that make extensive use of leverage, often to a greater extent and with less transparency than Geared ETFs.[4]

• *Proposed rule 6c–11 does not seek to address any concerns raised under section 18 of the Act by leveraged ETFs. Do commenters agree that this is appropriate? Should we consider additional conditions in rule 6c–11 for leveraged ETFs designed to address concerns raised under section 18 or other investor protection concerns raised by their strategies? If so, what conditions? Should we provide any relief to these ETFs under section 18 of the Act?*

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[3] *See* section II.B.4 and section II.C.2 of this letter.

[4] *See* id.

We believe it is appropriate that the Proposed Rule, which is a rule of general applicability related to the structure and operations of ETFs, does not seek to address concerns under Section 18 of the 1940 Act. Geared ETFs do not present concerns under Section 18 that are materially different from those relating to the use of derivatives by other ETFs and mutual funds under Section 18. Thus, there is no reason that Rule 6c-11 should include additional conditions for Geared ETFs designed to address any considerations relating to Section 18.[5]

• *Should we propose as part of a future rulemaking that leveraged ETFs be subject to additional requirements, particularly for retail investors?*

We do not believe that subjecting Geared ETFs to additional requirements in a future rulemaking, for retail investors or otherwise, is warranted or sensible. We believe the current system of full and fair disclosure is working effectively and provides appropriate protection, for both institutional and retail investors.[6]

• *The Commission understands that leveraged ETFs typically provide enhanced disclosure of the risks of investing in the ETF. Do investors understand leveraged ETFs better today than they did when Commission staff and FINRA jointly issued an investor alert expressing the concern that individual investors may be confused about the performance objectives of leveraged ETFs? For example, are investors more likely to be aware that leveraged ETFs are typically designed to achieve their stated performance objectives on a periodic basis (e.g., daily)? Do investors understand that leveraged ETFs may not achieve those performance objectives over the long term?*

We believe investors in Geared ETFs can and, in light of the information they receive (through prospectus disclosure, educational materials, marketing materials and regulator pronouncements), generally do understand how such funds should be expected to perform and the differences between Geared ETFs and other products. As would be expected with any new product type or strategy, as Geared ETFs have become a mature category of investment product, we believe investor understanding has increased commensurately.[7]

• *Leveraged ETFs typically include charts in their disclosures that explain the potential impact of compounding to an investor's returns. Should we amend Form N–1A to require leveraged ETFs to include such a chart to better explain the impact of compounding? Are there other disclosures that we should require leveraged ETFs to provide? If so, what are they?*

We do not believe that rigid, formulaic disclosure requirements are more effective than the principles-based approach generally pursued under the federal securities laws. We believe that the existing disclosure regime is working effectively for Geared ETFs and that amendments to Form N-1A specific to these funds would not be necessary or prudent.[8]

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[5] *See* id.

[6] *See* section II.C.4 of this letter, outlining the protections offered under the existing disclosure and suitability frameworks applicable to Geared ETFs.

[7] *See* section II.C.4.i of this letter, detailing the extensive disclosures currently made by Geared ETFs.

[8] *See* id.

• *Should we propose rules governing leveraged ETF marketing materials to address concerns that leveraged ETFs may be marketed to investors that do not have an appropriate risk tolerance to invest in these products or that lack understanding of leveraged ETFs' strategies and risks? For example, should we require leveraged ETFs to include prescribed cautionary disclosures regarding these strategies and risks?*

We do not believe that additional rules governing Geared ETF marketing materials are warranted. Geared ETFs already typically make extensive disclosures in marketing materials of the key features and risks of these products. The existing regulatory framework under which Geared ETFs are currently operated and offered provides substantial and effective investor protections.[9]

[9] *See* section II.C.4 of this letter, outlining the protections offered under the existing disclosure and suitability frameworks applicable to Geared ETFs.