FORCESHARES LLC

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June 13, 2017

VIA ELECTRONIC SUBMISSION

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:

ForceShares LLC ("ForceShares") appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission ("Commission") in response to the order staying the above referenced rule change by NYSE Arca.

ForceShares believes that 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.

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.

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[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.

ForceShares commends the staff of Trading and Markets as well as Corporation Finance for performing a very detailed and thorough analyses of both the rule change as well as the registration statements of the proposed Funds. Indeed, there was ample time devoted to reviewing the proposed rule change and to solicit comments from the public. The staff of NYSE Arca and ForceShares worked together on multiple rounds of constructive comments from the staff of Trading and Markets to ensure that the Funds conformed to all associated regulations.

Comments

ForceShares intends to compete in a segment of the exchange-traded products industry that has long been controlled by two competing sponsors. ForceShares intends to create new, innovative financial products that conform to the appropriate regulations for their investment strategies.

1. *The proposed Funds conform to the Securities Act of 1933.*

   The Funds that ForceShares intends to sponsor will be commodity pools, and as such, will abide by the provisions set forth in the 1933 Act. The Funds *will not* be mutual funds or Exchange-Traded Funds and *will not* be offered pursuant to the Investment Company Act of 1940. The 1933 Act clearly allows for continuously offered public commodity pools that engage in derivatives trading, which includes our proposed Funds.

2. *The proposed Funds support the Commission's position regarding derivative use in its proposed new rule 18f-4 (File No. S7-24-15).*

   On December 11, 2015, the Commission published and sought comments for a proposed new rule on the Use of Derivatives by Registered Investment Companies and Business Development Companies (proposed new rule 18f-4 for the Investment Company Act of 1940). In published commentary (see excerpts below), the Commission specifically acknowledged that the use of derivatives, especially in the format of funds similar to those proposed by ForceShares, would be better suited if offered pursuant to the 1933 Act.

   > *"Funds that do not wish to rely on the proposed rule may wish to consider deregistering under the Investment Company Act, with the fund's sponsor and offering the fund's strategy as a private fund or as a public (or private) commodity pool, which do not have statutory limitations on the use of leverage."*[2]

   As suggested by the excerpt above, ForceShares is registering its Funds as commodity pools, pursuant to the 1933 Act.

   > *"In the event that a fund is unable to operate under the proposed rule's aggregate exposure limit, the fund's sponsor and/or investment adviser may choose to: (1) offer the fund as a private fund or (public or private) commodity pool; (2) liquidate the fund's assets and deregister the fund under the Act; or (3) merge the fund into another fund. We estimate that the average cost associated with such actions would range from $ 30,000 to $150,000,*

[2] See Release No. IC-31933; File No. S7-24-15, page 105

per fund, depending on the particular actions taken by the fund (or its sponsor or investment adviser)"[3]

We specifically note in the second excerpt above that the Commission: a) again, reinforces the concept of registering such funds as commodity pools, and b) went as far as to estimate the costs of operating a commodity pool that is unable to comply with the leverage limits of its proposed rule.

3. *The proposed Funds intend to use exchange-listed and centrally cleared derivatives as the primary investment instruments.*

   Exchange-listed and centrally cleared futures and options contracts mitigate counterparty credit risk as well as broader systemic risk. Each Fund seeks to achieve its investment objective under normal market conditions primarily by investing in such instruments.

4. *The proposed Funds intend to employ a hedging strategy that protect the Funds from having obligations greater than their net assets.*

   Each Fund has a secondary investment objective designed to prevent a Fund's net asset value from going to zero by using a proprietary methodology, as published in the offering documents (see "The Offering—Other Trading Policies of the Fund—Options on Futures Contracts".). This transparent methodology is an innovation for such fund types.

5. *The proposed Funds intend to use investment instruments that are among the most liquid in the world.*

   The Funds' primary investment instruments are traded on the Chicago Mercantile Exchange®[4] ("CME"), specifically, S&P 500® and E-Mini®[5] S&P 500® futures contracts. According to the CME's exchange volume report for 2016, the E-Mini® S&P 500® traded 472,678,663 contracts, while the S&P 500® traded 2,237,877 contracts.[6] The combined volume of both contracts represented over $50 trillion in notional value traded for that year, muting any concern regarding liquidity for the proposed new Funds.

6. *The proposed Funds use leverage that is far below what is currently available to individual and institutional investors alike in the futures market.*

   An E-Mini® S&P 500® futures contract has an initial margin of $4,400 for a contract with a notional value currently of $121,000, which means each contract has a leverage ratio of over 27X compared to the proposed Funds that are seeking to provide leverage of 4X.[7] In essence, the Funds offer deleveraged exposure to comparable futures strategies.

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[3] See Release No. IC-31933; File No. S7-24-15, page 289

[4] CME® and Chicago Mercantile Exchange® are registered trademarks of Chicago Mercantile® Exchange Inc. (the "CME®").

[5] E-Mini™ is a trademark of the CME.

[6] CME historical trading volume is available on www.cmegroup.com.

[7] The closing price for the S&P500® price index as of June 5, 2017 was 2,436.10. According to the CME®'s contract specifications: i) the contract size for the E-Mini® S&P 500® futures is $50 multiplied by the index level, and ii) the margin requirement is $4,400. At the current index level, the notional value of each contract is approximately $121,000, which means that the notional value is over 27 times greater than the margin requirement.

7. *Preventing the launch of the Funds will simply cause individual investors to seek leverage via futures directly and outside of the SEC's purview, rather than in the hedged and systematized method proposed.*

   Investors of all sizes can easily access the futures markets by way of many online brokerage platforms. Although those brokers offer equity trading, and are therefore subject to FINRA (and eventually SEC) regulation, their futures trading is not. The Funds allow investors to access comparable strategies within an SEC regulated environment.

8. *Preventing the launch of the Funds perpetuates the unlevel playing field unintentionally created where no other firm can compete with "grandfathered" leveraged product issuers, and denies investors the benefits of increased competition and innovation.*

   The segment in the exchange-traded product industry for leveraged and inverse products is currently dominated by two issuers that offer products pursuant to the Investment Company Act of 1940. Our understanding is that no new entrants will be granted approval to compete with the existing issuers for similar, or even identical products. Further, those existing issuers are allowed to solidify their positions in the industry by continuing to offer new leveraged and inverse products – free from competition and to the detriment of investors.

9. *Delaying the launch of the Funds unfairly harms ForceShares.*

   Every day that the ForceShares Funds are delayed provides incumbent competitors with an unfair benefit and allows them to catch up by preparing copycat products.[8] It would be detrimental to ForceShares now that it has blazed the trail of a thorough regulatory review process, only to have such competitors enjoy a speedier and less costly approval of their own products.

10. *Existing exchange-traded products offer exposure to underlying benchmarks with much greater volatility.*

    There are currently 221 leveraged and inverse leveraged exchange-traded products in the US with aggregate assets under management of approximately $38 billion.[9] There are leveraged exchange-traded products on underlying equity indexes, volatility, commodities, etc., many of which have underlying references and benchmarks with historical volatility that is much greater than the benchmark of the proposed Funds. For example, there currently exists a Gold Miners 3X leveraged fund (symbol NUGT) that has its underlying benchmark, the NYSE Arca Gold Miners Index (GDMNTR), with annualized volatility that is over four times greater than that of the S&P 500® index.[10] Therefore, the volatility of NUGT, an existing 3X leveraged fund, would still be much greater than the volatility of the proposed 4X leveraged Funds. It is also important to note that NUGT was issued pursuant to the 1940 Act as an exchange-traded fund ("ETF"), and not as a commodity pool as ForceShares currently proposes.

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[8] See Form S-1 Registration Statement by ProShares Trust II, dated May 8, 2017, at the following link: https://www.sec.gov/Archives/edgar/data/1415311/000119312517162594/d379630ds1.htm

[9] Source: www.XTF.com

[10] Annualized volatility was calculated using the daily closing prices from January 1 – June 5, 2017 of the unleveraged ETFs tracking those respective indexes, i.e., GDX and the SPDR® S&P 500® Trust (symbol SPY).

Summary

ForceShares commends the staff for its thorough review of NYSE Arca's proposed rule change. The proposed Funds have been structured specifically to meet or exceed the associated regulatory requirements, and are in line with the Commission's position on derivative use for financial products. Further, the Funds' structure is simple, well-documented and transparent, and the proposed incremental increase in leverage from existing leveraged products does not unduly increase the risk to investors. We ask that the Commission lift its stay on the approval and allow competition and innovation to prevail.

Sincerely,

ForceShares LLC

Kris Wallace
Member

cc: The Honorable Jay Clayton, Chair
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner
Heather Seidel, Acting Director,
David Shillman, Associate Director