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Request for Comment on Novel ETFs
S7-2026-24

Commissioners:

The problems of Novel ETFs are of the SEC staff's own making.

There is nothing in the federal securities laws preventing prediction market ETFs, highly leverage ETFs (that can comply with the Var Test or are outside section 18), or non-U.S. listed reference assets. You are looking for a problem where none exists and all the outstanding issues can be resolved with appropriate disclosure. I appreciate the CFTC is rethinking prediction markets. However, there are current rules on the books that can be followed and so far, those markets seem to be operating as one would expect.

The Division of Investment Management's Chief Counsel Office is acting like a chicken with its head cut off.

- It changes its view of the law on a dime without telling the public. For example, in the context of rule 18f-4: first a single stock could not be a designated reference index; a year later it could be; another year later, it must be. It sharply changes its views without alerting the industry and all those it gave its out-of-date views to.
- It interprets the law to reach a desired policy outcome rather than conducting an honest interpretation of the statute and legislative history. At times it has stretched readings of the law beyond all bounds of reason.
- It gives conflicting advice to funds. Sometimes it says you must be perfectly aligned with a no-action letter; other times it says you are close enough; other times it says you are outside the letter but the letter is only one way to comply. How is the public supposed to know what positions apply when their interpretations are this fickle?
- It seems like all the no-action letters are going to law firms tied to the Blass family (Dalia Blass was the Division Director during Trump 45). This seems problematic.
- When CCO grants an application, it treats that first application as gospel and is dismissive of subsequent applications that may have different terms, even when those terms provide stronger protections. It refuses to innovate and prefers to keep its head in a hole.
- CCO reviews many applications in draft form or informally, despite the Commission's express statement that this is not appropriate except in the most exceptional circumstances. *See* IC-28476 (2008). If the staff is going to change

Commission policy, it should do so publicly so everyone has the benefit of that knowledge.

- CCO just moves at a glacial pace... and it seems every issue is worked on by the same 4 people.

The Division of Investment Management's Disclosure Review Office is toothless and creates many of its own problems.

- The problem of line jumping has existed since at least the 1990s. ETFs made it worse because there is no longer a fight for shelf space. It became completely unmanageable with the SEC's treatment of crypto futures funds. The staff did not let the first filers out the door, but ultimately caved and let later registrants launch instead. Most of the current timing pressures and fairness issues stem from this. One day the answer was no and the next day it was yes, and they did not even have the decency to go back to the registrants they had previously turned away. The change was not driven by a change in the law or by new arguments. It was simply arbitrary.
- Today, the staff tries to use moral suasion to keep order, but it is not working. Being first to market is what matters. That is why participants are not playing fair or maintaining order. There are no negative repercussions for being a bad actor (or an aggressive law firm). Heck most registrant use the Trump Administrations pro-business rhetoric to say they can do whatever it wants in the name of innovation.
    - The staff has tools but refuses to use them. When was the last time IM issued a stop order or a suspension? Never! Has it ever made a public reprimand or a finding that a filing is not in good order? No! Instead, the Disclosure Review Office cowers in the corner saying, "Please, don't hurt me."
- DRAO also has other issues.
    - These days they are rarely timely and rarely return phone calls.
    - They convey comments purportedly from the Chief Counsel or Analytics Office that they can't seem to convey or adequately explain.
    - Some examiners give dozens of comments, while others reviewing a similar filing give none.
    - Some examiners endlessly wordsmith filings.
    - Many examiners struggle to apply a basic reasonableness standard.

The SEC staff used to be the cream of the crop and an intellectually serious group. Now it is a collection of beaten-down attorneys who are largely checked out. It's a real shame.

Issues of course start at the top.

- Director Daly is not a '40 Act lawyer and tries to bring private fund mentality to a regulated space... and not in a good way.
    - He claims this is the most pro-innovative SEC, but so far as turned away the biggest 2 innovations in the ETFs space during his tenure. (binary option ETFs and highly leveraged ETFs).
    - I hear he is always listening, but in one larger group meeting, he showed up for 5 minutes of a 30-minute meeting and instead posted messages on LinkedIn.
    - I was on an industry call where he was screaming profanities because he could not get his camera to work.
- Chairman Atkins agenda is solely to support Trump and undo all things Gensler (his predecessor). He is a market regulator what barely believes in regulation. This is further emboldening funds to shirk the filing rules and test bounds of legality.
    - I bet this request for comment is something to placate the staff and some annoyed sponsors. This administration has no interest in taking away the express lane to innovation.
    - This administration picked Commissioners that hate regulating and believe the SEC's mantra should be *caveat emptor.*

Best,
Ylad Snikta

Vlad Snikta

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Vanessa A. Countryman

Secretary

Securities and Exchange Commission

100 F Street, NE

Washington DC 20549-1090

20549-1090