April 7, 2022

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FINRA Regulatory Notice 22-08

I appreciate FINRA's efforts to involve the public in the regulatory process and the opportunity to submit a public comment regarding Regulatory Notice 22-08. Over the past 15 years I have served in many positions directly involved in the proliferation of "complex" exchange-traded products, including trader, product developer, facilitating the approval process from an SRO/exchange, Chief Investment Officer, and Chief Executive Officer at an ETF issuer and sub-advisor. I currently hold minority interests in a handful of ETFs as either index provider or board advisor, and I plan to continue to innovate and advocate on behalf of investors and entrepreneurs in this space for years to come.

With this context, I would like to make three points for consideration:

1. Regulation is the enemy of innovation
2. Financial innovation is a net good
3. What you call complexity, I call sophistication

1. Regulation is the enemy of innovation

I began my career just before the Global Financial Crisis, and watched as financial product innovation and complexity were widely believed to be one of the key factors that led to the crisis. While many argue about whether the products themselves or negligent application of those products deserves more of the blame, most observers will agree that one post-GFC impact on our industry was the idea that financial product innovation is scary, dangerous, and needs to be stifled.

The regulatory zeitgeist since the Global Financial Crisis has been to slow innovation, to dismiss investors as unable to perform any due diligence or risk assessment, and to further entrench incumbents - even in the face of growing monopoly concerns.

As a product developer I have watched with great envy as product innovations in every other industry are celebrated, while being stifled in my own industry. And as a result, financial product innovation has stagnated.

Innovation, however, will not be held back. Just as regulators increased their grip on financial products, the one area of the financial system that slipped out of regulatory jurisdiction - cryptocurrency - has seen innovation, enthusiasm and excitement like we have never seen in the asset management industry in decades. Cryptocurrencies have attracted levels of human capital, monetary capital, and creative enthusiasm that we mainstream asset managers could never dream of. The lack of regulatory friction, I believe, has been a key driver in allowing innovation and enthusiasm to flourish.

2. Financial innovation is a net good

Every investor is unique with their own investment goals. For many clients cookie-cutter investment advice is entirely appropriate. For others, their goals will best be attained through more complex strategies. It is easy to dismiss those clients as overly aggressive gamblers, but in my experience the exact opposite is the case.

Many retirees in particular are seeking downside protection strategies, or other investments that mitigate market risk. Others may need to hedge against certain assets or scenarios. The asset management industry has never before had such a liquid and healthy derivative market from which they can create, optimize and customize better strategies for these investors. It would be a shame if we were to limit product creators to using only the blandest of ingredients.

While derivatives carry specific risks, mainstream investment strategies carry risks of their own. We still do not fully understand the ramification of an equity market that is increasingly being accessed through market-cap-weighted strategies. It is hard to argue that our equity markets have the same price friction they've had in the past when Gamestop, for example, traded at market capitalizations of both 1 Billion and 23 Billion in the same month.

Low cost passive investing has worked out very well for investors as fund flows have increased. Will there be an unwind in a scenario where fund flows reverse? Research on this topic is inconclusive, and as such it would be absurd for anyone to conclude that mainstream consensus investment strategies are definitively the right answer for all investors for an indefinite and uncertain future.

Regardless of which risks are more palatable to regulatory agencies, we need to consider whether the goal of eliminating investment risk outright is even appropriate. Can risk be truly eliminated, or is it just being moved from plain sight to hidden corners? A better framework might need to include just a dash of caveat-emptor and personal responsibility placed on investors and their advisors to perform due diligence and to take responsibility for the risks that come along with the rewards of investing.

Placing the onus of risk management entirely in the hands of product issuers and regulators will lead to even more investor complacency, which itself poses a far greater long term risk to those same investors. People will swim to deeper waters when waves appear calm.

These are the unintended consequences of regulatory efforts. Just as FINRA rules attempt to manage how aggressively fund managers may market their funds, which has created an environment where social media is void of sound advice from financial professionals and instead flooded by outrageous advice from unscrupulous marketers of products that happen to not fall under regulatory purview.

Further, by disincentivizing new and novel products, regulators are furthering the stranglehold that incumbent oligopoly asset management corporations hold on the industry. Given that corporate governance is managed by proxy voting, and that proxy voting is managed not by fund investors but by fund managers, regulators are directly contributing to the consolidation of corporate governance power at a time when they should be doing the opposite.

3. What you call complexity, I call sophistication

The notice states the following:

> "...like complex products, trading in options may pose risks if investors do not have the financial experience to understand options and options trading strategies."

If FINRA believes that to be the case, would it not make sense to allow investors to access those options-enhanced strategies not directly on their own, but through funds managed by professionals?

Where precisely are we setting the lowest common denominator for investor intelligence and understanding? Nobody is suggesting that investors shouldn't be allowed to purchase common shares of stock, but how many investors understand the intricacies of the balance sheet and economic risks of, say, an international bank? Is it not easier to understand how a covered-call strategy fund works than to understand whether a tech company's algorithms subject the company to antitrust lawsuit risk?

From complexity comes the opportunity to innovate, to stand out, and to provide better outcomes for investors. Strategies are being created that allow for more certainty of outcome and risk management in more efficient ways than have ever been accessible to investors before. We must foster that and incentivize that. Notice 22-08, unfortunately, presents a framework to stifle it.

Lastly, I'd like to close with a quote from SEC Commissioner Hester Peirce:

> "I reject the role of gatekeeper of innovation - a role very different from (and, indeed, inconsistent with) our mission of protecting investors, fostering capital formation, and facilitating fair, orderly, and efficient markets."

Thank you again for the opportunity to share these comments and for your transparency of process.

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