



May 9, 2022

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Submitted online via <https://www.finra.org/rules-guidance/requests-for-comments/submission>

RE: Complex Products and Options (Regulatory Notice 22-08)

BlackRock, Inc. (together with its subsidiaries, “BlackRock”)¹ respectfully submits the following comment letter in response to the Regulatory Notice, “[Complex Products and Options](#)” (“the Notice”). The number of products available to investors has grown substantially over the last decade.² Not only has the breadth of products increased, but the complexity of products available has increased as well. Recent market events have underscored the importance of ensuring that products available to investors—especially retail investors—are clearly identified in a manner that helps investors understand the very different risks and considerations that these increasingly complex products may pose.³

BlackRock is supportive of FINRA’s efforts to increase awareness around the risks and structural features of complex products. However, FINRA should not advance sales practices relating to “complex products” before there is a clear, consistent definition of the term or a clear categorization of exchange-traded products (ETPs) that may have differing risks and complexities.

Additionally, we believe that any rulemaking should align with the disclosure-based regime that governs US markets today, rather than occur through some of the suitability tests and other methods proposed in the Notice. For that reason, we support a clear categorization of different types of ETPs to empower investors and the professionals who engage with them (including advisers and broker-dealers) to complete a more thorough due diligence process when investing in these products.

¹ BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers, and other financial institutions, as well as individuals around the world.

² For example, the number of exchange traded products (ETPs) in the US has grown from 1,370 at the end of 2011 to over 2,900 at the end of 2021. Source: Markit, BlackRock, as of December 31, 2021.

³ For example, on March 16, 2022, a levered exchange traded product that aims to deliver three times the inverse of the performance of the FTSE China 50 Index plunged 63% (its largest intraday drop) following the index’s largest gain since 2008. Source: Bloomberg, “[Bearish ETF That Bets Against China Stocks Drops 63% in a Day](#),” March 2022



Growth of exchange traded products (ETPs)

The ETP market has grown substantially, with assets under management in US-listed ETPs up from \$71 billion in 2000 to \$7.2 trillion as of December 31, 2021.⁴ Along with this growth in assets, the US market has also experienced a growth in the number of ETPs available to investors, up from 95 to more than 2,900 over the same period.⁵

As the number of ETPs has increased, so too has the number of more structurally complex products, including ETPs with different risk profiles and more narrowly tailored investment objectives. As cited in the Notice, examples of these products include defined outcome exchange-traded funds (ETFs) and ETPs that seek to provide a leveraged or inverse return of their benchmark. Importantly, retail investors are increasingly transacting in these products. For example, retail investors represented 16% and 14% of total ETP trading volume in 2020 and 2021, respectively, but accounted for 44% and 31% of all levered and inverse ETP volume over the same period.⁶ Eight of the top 20 ETPs traded by retail investors (as a percentage of total retail trading activity) in 2020 were levered ETPs.⁷

We believe that broad retail participation in our public markets is beneficial for investors and the broader markets ecosystem. However, it is critical that these investors have a clear understanding of the inherent risks and structural features of the products available to them. This is especially crucial at a time when retail investors are increasingly participating in financial markets. Between January 2020 and August 2021, 37 million new brokerage accounts were opened by individual investors in the US—an increase of nearly 60%.⁸ This growth means almost 95 million individual Americans—32% of the population—now qualify as retail investors.⁹

Defining and enhancing requirements for “complex” products

ETPs have been transformational for investors, democratizing access to the world’s investment markets and allowing individual investors to enjoy the benefits of diversified portfolios that institutional investors have recognized for decades. However, as more complex strategies and exposures become available, it is important that different risks and structural features are clearly identified to retail investors. For this reason, BlackRock previously proposed a solution for a portion of the market. In May 2020, a coalition of leading asset managers, including BlackRock, submitted letters to the New York Stock Exchange (NYSE), Nasdaq, and Cboe Global Markets (Cboe) requesting the exchanges’ support in implementing an ETP classification system to empower investors to make more informed decisions.¹⁰

In the Notice, FINRA does not offer a clear definition of “complex,” but rather cites previous Notices that address a wide swath of investment vehicles as examples of what may constitute a “complex” product. The imposition of guardrails, suitability tests, or the like without a clear categorization of the different types of ETPs or a unified definition of “complex” across the industry could create confusion,

⁴ Source: Bloomberg, Markit, BlackRock, as of December 31, 2021

⁵ Source: Bloomberg, Markit, BlackRock, as of December 31, 2021

⁶ Source: SEC 605 Reports, Markit, BlackRock, as of December 31, 2021

⁷ Source: SEC 605 Reports, Markit, BlackRock, as of December 31, 2021

⁸ The Economist, “*Just how mighty are active retail traders?*,” August 2021

⁹ The Economist, “*Just how mighty are active retail traders?*,” August 2021

¹⁰ Available at: <https://www.blackrock.com/corporate/literature/publication/letters-to-exchanges-regarding-etp-classification-051320.pdf>



instead of clarity, for investors. For example, a product that is considered “complex” under one platform’s definition may not be considered “complex” by another, potentially meaning that whether an investor benefited from protective disclosure would be dependent on which broker held the account. Additionally, it could have unintended consequences on investor behavior where an investor may conduct “platform arbitrage” by seeking out platforms with a definition they deem to be the most favorable.

While we could support appropriate sales practices if a unified definition or classification system were in place, the solutions proposed in the Notice, such as position limits or knowledge checks, may limit investor choice and have unintended consequences for markets and investors. We believe that any approach taken should instead be consistent with the disclosure-based framework that governs markets today.

We thank FINRA for the opportunity to comment on this Notice. We appreciate and support the effort to address complex products and better protect investors and we welcome any additional questions or further discussion.

Sincerely,

Samara Cohen
Managing Director, Chief Investment Officer of ETF and Index Investments

Samantha Merwin
Head of ETF Markets Advocacy

Samantha DeZur
Managing Director, Global Public Policy