

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
APPROPRIATIONS
COMMERCE
HEALTH, EDUCATION,
LABOR, AND PENSIONS

October 19, 2022

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

Re: Regulatory Notice 22-08 Complex Products and Options

Dear Vice President and Deputy Corporate Secretary Mitchell,

I write to you today to comment on the Regulatory Notice soliciting feedback on the current regulatory framework for complex products.

I am concerned after hearing from a constituent in Wisconsin who feels they were sold leveraged and inverse exchange traded funds (ETFs) without fully understanding the risks these complex products posed. This has an unfortunate potential for substantial losses in retirement savings for similar investors. As such, I urge you to fully enforce Regulation Best Interest to ensure that investment advisers no longer recommend these complex, higher-cost products to investors for whom lower-cost alternatives could achieve their same investment objectives.

I am concerned that retail investors may not be fully aware of the risks and fees that can accompany these complex products. One of my main concerns with complex products is that many new or inexperienced investors may be holding on to leveraged and inverse ETFs for longer than one trading day, which increases their chance of losing more value than they expected. In addition to these risks, investors must pay a brokerage commission each day on the rebalancing transactions are made, increasing costs for investors while earning more in fees for advisers and their employers.

Research has shown that simply increasing disclosures and education to retail investors will not prevent them from making unwise investments. Therefore, it is imperative that FINRA enforce Regulation Best Interest to ensure that all parties fully comply with the rule.¹ Furthermore, FINRA itself has warned retail investors several times over the last decade about the risks of

¹ Consumer Federation of America, [Letter Re: Regulatory Notice 22-08 Complex Products and Options](#), Pages 11-12. May 9, 2022.

investing in leveraged and inverse ETFs, making it apparent that a more hands-on approach to enforcement is needed.²

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Tammy Baldwin". The signature is written in a cursive, flowing style.

Tammy Baldwin
United States Senator

² Press Release, FINRA, "[FINRA, SEC Warn Retail Investors About Investing in Leveraged or Inverse ETFs.](#)" [August 18, 2009.](#)