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November 7, 2011

VIA ELECTRONIC MAIL AND U.S. MAIL

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Use of Derivatives by Investment Companies under the Investment Company Act of 1940, File Number S7-33-11

Dear Ms. Murphy:

State Street Global Advisors ("**SSgA**")[1] has reviewed the concept release (the "**Concept Release**")[2] issued by the Securities and Exchange Commission ("**SEC**" or "**Commission**") and fully supports the Commission's efforts to review the use of derivatives by management investment companies ("**funds**") registered under the Investment Company Act of 1940, as amended (the "**1940 Act**"). Derivatives, defined broadly as instruments whose value is based on the value of another instrument, have become important investments for funds, including exchange traded funds ("**ETFs**"), allowing portfolio managers the flexibility to pursue their investment objective through instruments that are more targeted to their investment goals and/or more efficient from a cost and exposure standpoint. SSgA strongly believes that fund shareholders benefit from the availability of these instruments and that when used properly, derivatives do not pose excessive risks to fund shareholders.

The Concept Release poses significant questions relating to the use of derivatives by funds and the regulation of such investments. We have had the opportunity to review the draft letter submitted by the Investment Company Institute and are in broad agreement with the points raised in their letter; however, as a leader in the marketplace for ETFs, we have special perspective into the unique issues raised by ETFs and we therefore appreciate this opportunity to share our views on ETFs and their investments in derivatives. As set forth in more detail below, we believe that ETFs should be permitted to invest in derivatives to the extent permitted by the 1940 Act provided the ETFs offer transparency into such investments.

As a threshold matter, we believe that guidance in this area is warranted and timely. As noted in the Concept Release, the Commission staff has deferred consideration of any new exemptive

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1 SSgA Funds Management, Inc., ("**SSgA FM**") a U.S. registered investment adviser, and other affiliates of State Street Corporation, make up SSgA, the investment management arm of State Street Corporation. As of September 30, 2011, SSgA serves as investment adviser to funds with over $175 billion in ETF assets, including the SPDR S&P500 ETF Trust (ticker: SPY), the original ETF.

2 Use of Derivatives by Investment Companies under the Investment Company Act of 1940, File Number S7-33-11

applications relating to ETFs that would make significant investments in derivatives. This moratorium has created an unfair competitive advantage for ETF providers who were fortunate enough to receive the relief necessary to launch ETFs that invest in derivatives. In addition, this unlevel playing field has created a market for institutions that have received the relief necessary to sponsor derivative-based ETFs. We strongly believe that clear guidance applicable to all ETF sponsors is necessary to cure the competitive advantage/disadvantages currently existing in the market and to promote competition among ETF sponsors.

ETF Investment in Derivatives

The Primary Concern for ETF-Specific Regulation Should be Designed to Enable Arbitrage Opportunities

The primary difference between ETFs that are registered investment companies and traditional mutual funds is that the shares of the ETF can be purchased on a secondary market at prices that may differ from the ETF's net asset value ("**NAV**"). From a management perspective, ETFs operate almost identically to traditional mutual funds. Notably, ETFs are subject to the substantive provisions of the 1940 Act, and therefore ETF shareholders enjoy the same level of protection associated with traditional mutual funds. As a result, to the extent ETFs are subject to regulation in addition to the requirements of the 1940 Act and the rules promulgated thereunder, such regulation should be designed to address this primary difference: that shareholders may purchase shares at a premium/discount.

Unlike the prices for transactions with traditional mutual funds, which are conducted at the mutual fund's NAV, the prices for ETF shares on the secondary market are governed by supply and demand for the shares of the ETF. Consequently, the market prices for ETF shares may differ from the ETF's NAV, but these market prices are organically held close to the ETF's NAV by two market processes: (i) arbitrage opportunities for Authorized Participants ("**APs**")[3] (and other market participants); and (ii) market making activities of lead market makers and/or other market participants. AP's benefit from the arbitrage of ETF shares by purchasing or selling ETF shares when their price moves below or above the prices of the ETF's corresponding holdings. These transactions either (i) satisfy excess demand (where APs create ETF shares and sell them to the market) and reduce ETF market prices or (ii) eliminate excess supply (where APs buy ETF shares from the market and redeem them to the ETF) and increase ETF prices. Market makers and other market participants enable this process by providing the necessary liquidity for the arbitrage transactions to take place. Through this arbitrage process, the market price of ETF shares is typically held close to the ETF's NAV.

In both cases, the transparency of the ETF's holdings is critical to the process. APs are only able to arbitrage an ETF to the extent the AP can determine the value of the ETF's underlying holdings and indentify premiums and discounts through the trading day. Likewise, market makers and other market participants are able to provide liquidity to the extent they are able to know the underlying value of the ETF and therefore enter into corresponding hedging

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[3] ETFs transact only with certain large institutions that have entered into an agreement with the ETF governing the transaction process. These institutions are known as Authorized Participants, and transact directly with the ETF at NAV in "creations" and "redemptions" in large blocks of shares, generally 50,000 shares.

transactions.[4] Thus, as long as market participants can know, value and trade the instruments held by the ETF, the ability to arbitrage the market price and the NAV will organically ensure minimal premiums and discounts.

Transparency Enables Arbitrage and Minimizes Premiums/Discounts – Even for ETFs investing in Derivatives

The requirement for transparency is already a part of ETF regulation and has been included as a condition in all exemptive orders granted by the Commission since the original order for SPDR Trust Series 1 (now the SPDR S&P500 ETF Trust)[5]. Specifically, ETFs must disclose the identity of their portfolio securities daily and arrange for intra-day disclosure such that market participants are able to understand the principal investment strategies of the ETF and engage in informed trading. This condition is consistent in all ETF exemptive orders, whether passive equity ETFs or active fixed income ETFs, and requires an ETF to "provide full portfolio disclosure so that the intraday value of [the ETF] can accurately be calculated, market participants will be ale to understand the principal investment strategies of [the ETF], and informed trading of the [ETF]'s shares may occur."[6] As long as an ETF provides sufficient information for APs and market participants to value the ETF's derivative investments, they should be able to identify premiums and discounts and/or make markets just as with ETFs that invest directly in securities. In fact, although the Commission has deferred consideration of exemptive relief for new ETFs that would invest significantly in derivatives, the Commission has issued orders permitting certain sponsors to launch such ETFs, and these ETFs have operated as designed, providing investors with intra-day liquidity at nominal premiums and/or discounts.

Provided ETFs offer sufficient transparency, their investment in derivatives should not raise any additional concerns, and most derivative investments can be readily priced by APs and/or market participants. For example, forward contracts, futures and options traded on an exchange have readily available prices. Negotiated swaps could be valued by APs and market makers so long as the swap was based on an observable instrument and the ETF disclosed sufficient information regarding its terms, such as notional value, return streams moving in each direction, spread, and time period. Certain derivative investments with exotic call features and/or reference assets may be more difficult to price and trade than standardized investments, but as long as the material terms of such investments were disclosed, APs and market makers would still be able to arbitrage and make markets in the ETF shares, continuing to foster narrow premiums and discounts.

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4 In order to effectively provide liquidity, market makers seek to maintain a balanced book of trade as to minimize their exposure to any one investment / investments. With respect to ETFs, this means that the market marker will typically enter into transactions in underlying shares to offset their own transactions in ETF shares.

5 In the Matter of SPDR Trust, Series One, SEC Rel. No. IC-18959, September 17, 1992 (Notice); SEC Rel. No. IC-19055, October 26, 1992 (Order).

6 ProShares Trust, et al; SEC Rel. No. IC-28696, April 14, 2009 (Notice); SEC Rel. No. IC-28724, May 12, 2009 (order) (providing exemptive relief to offer ETFs that invest in long and short positions).

Shareholder Disclosure Issues

We acknowledge that certain ETFs investing primarily in derivatives may have created investor confusion issues and contributed to the Commission's moratorium on issuing new exemptive orders for ETFs investing in derivatives. We do not believe that any potential confusion was caused by the ETF investing in derivatives, but rather by the complex nature of the product itself (e.g., offering levered or inverse exposure on a daily basis versus investment term). Provided an ETF includes appropriate fulsome disclosure of its investment strategy and risks, the fact that it invests in derivatives should not be the source of any investor confusion and would not raise risks (other than premium/discount spreads discussed above) in addition to those created by a traditional mutual fund making the same investments.

Conclusion

For the reasons set forth above, we strongly believe that the Commission, either by class or individual exemptive relief, permit ETFs to invest in derivatives to the extent permitted by the 1940 Act provided the ETF provided sufficient information about its derivative investments that APs and market makers could trade in the portfolio. At a minimum, we request that the Commission resume consideration of exemptive relief for ETFs investing in derivatives.

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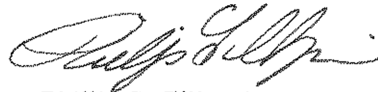
We appreciate the opportunity to comment on the Concept Release and commend the Commission for its efforts in reviewing funds' use of derivatives. If you have any questions about our comments, please contact the undersigned at 617.664.4050.

Sincerely Yours,



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