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ICA Section 12(d)(2)
ICA Section 12(d)(3)

March 24, 2016

Douglas J. Scheidt
Associate Director and Chief Counsel
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Index-Based Funds and Sections 12(d)(2) and 12(d)(3) of the Investment Company Act of 1940

Dear Mr. Scheidt:

We request assurances that the Division of Investment Management of the U.S. Securities and Exchange Commission (the "Commission") will not recommend any enforcement action to the Commission under Sections 12(d)(2) and 12(d)(3) of the Investment Company Act of 1940, as amended (the "1940 Act"), if our "index fund" client, consistent with its investment objective and restrictions, invests such that it may (i) own more than 10% of the total outstanding voting stock of an insurance company and/or (ii) purchase more than 5% of an outstanding class of equity securities of an issuer that, in its most recent fiscal year, derived more than 15% of its gross revenues from securities related activities (an "Equity Issuer"). We believe that such investments, as described herein, are consistent with the protections that Sections 12(d)(2) and 12(d)(3) are intended to provide.

I. SPDR Series Trust and the SPDR S&P Dividend ETF

SPDR Series Trust, a registered open-end investment company under the 1940 Act, currently offers a number of investment portfolios that seek to track the performance of specified market sectors represented by various indexes sponsored by index providers that are not affiliated with the funds or the funds' investment adviser, SSGA Funds Management, Inc. ("SSGA FM"). One such Fund, the SPDR S&P Dividend ETF, a portfolio of the SPDR Series Trust, is referred to in this letter as the "Fund."

The Fund's shares are listed for trading on the NYSE Arca, Inc. The shares trade on the NYSE Arca, Inc. at prices based on a current bid/offer market, which may differ from the shares' net asset value. The Fund will issue and redeem shares, called Creation Units, at net asset value in

exchange for the securities that comprise the Index.[1] A Creation Unit is comprised of individually non-redeemable, exchange-traded shares. For the twelve month period ended January 31, 2016, Fund shares have traded in the range of $68.41 to $79.82, and the net asset value per share has ranged from $68.38 to $79.79. Because the ability to redeem Creation Units provides an arbitrage opportunity whenever the market price differs from the net asset value per share, the market price tends to closely track the net asset value per share.

The investment objective of the Fund is to seek to provide investment results that, before fees and expenses, correspond generally to the total return performance of an index that tracks the performance of publicly traded issuers that have historically followed a policy of making dividend payments. The index the Fund tracks is the S&P High Yield Dividend Aristocrats Index (the "Index"). The Index is designed to measure the performance of the highest dividend yielding S&P Composite 1500 Index constituents that have followed a managed-dividends policy of consistently increasing dividends every year for at least 20 consecutive years. Companies in the Index include, among others, insurance companies[2] and financial service firms that derive a substantial portion of their revenues from securities related activities.[3] The Index is sponsored by Standard & Poor's Financial Services LLC (the "Index Provider") which is not affiliated with the Fund or the Adviser. The Index Provider determines the composition of the Index, relative weightings of the securities in the Index and publishes information regarding the market value of the Index. As of January 31, 2015, the issuers of the stocks in the Index had a minimum individual market capitalization of $2.1 billion, with an average of $37 billion; their minimum daily dollar trading volume was $8 million, with an average of $179 million.

Stocks within the Index are weighted by indicated yield (annualized gross dividend payment per share divided by price per share) and weight-adjusted each quarter. To prevent the Index from being concentrated in only a few names, the methodology incorporates limits so that no individual stock represents more than 4% of the Index weight. To be included in the Index, a stock must also have a minimum float market capitalization of $2 billion and have a 3-month average daily value traded above $5 million. The Index components are reviewed annually in January for continued inclusion in the Index and re-weighted quarterly in April, July and October. A component stock may be removed from the Index if, among other factors, (i) during the January rebalancing, dividends did not increase from the previous year, or (iii) at any time during the year, a company is removed from the S&P Composite 1500 Index.

The Fund is not managed according to traditional methods of "active" investment management involving the buying and selling of securities based upon economic, financial and market analyses and investment judgment. Instead, the Fund, utilizing an indexing investment approach, attempts to approximate the investment performance of the Index by investing in a portfolio of stocks with generally the same risk and return characteristics of the Index. Until recently, the Fund was managed using a replication strategy, whereby SSGA FM sought to hold all of the constituents of

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1 The SPDR Series Trust structure of an open-end investment company issuing non-redeemable exchange-traded shares is permitted by an SEC exemptive order. *SSgA Funds Management, Inc., et al.*, Investment Company Act Rel. Nos. 27809 (Apr. 30, 2007) (Notice of Application) and 27839 (May 25, 2007) (Order).

2 Insurance companies currently represented in the Index include, among others: People's United Financial Inc.

3 "Securities related activities" is defined as "a person's activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940, as amended, or as an investment adviser to a registered investment company." Rule 12d3-1(d)(1).

the Index in approximately the same proportion as the Index. As the Fund has grown in size and encountered the regulatory restrictions of Sections 12(d)(2) and 12(d)(3) that limit the percentage amount an investment company may own of the outstanding securities of an issuer that is engaged in a securities-related activities or is an insurance company, SSGA FM began to employ a sampling strategy for the Fund. Through the use of the sampling strategy, SSGA FM uses quantitative analysis to select securities, including securities in the Index, outside of the Index and derivatives that have a similar investment profile (in terms of key risk factors, performance attributes and other economic characteristics) as the relevant Index or components of the index. These include industry weightings, market capitalization, and other financial characteristics of securities. The quantity of holdings in the Fund is based on a number of factors, including asset size of the Fund.

Although SSGA FM currently uses a sampling strategy for the Fund, SSGA FM typically purchases and maintains positions in the stock of insurance companies and issuers engaged in securities-related activities only in the approximate proportion that the stock represents in the Index. Some of the issuers represented in the Index either are insurance companies or derive a substantial portion of their revenues from securities-related activities. The most efficient and accurate way to manage the Fund consistent with its investment objective (*i.e.,* track the Index) would be to acquire securities of these issuers in the same proportion as these issuers represent in the Index. However, as discussed in more detail below, these investments may implicate Sections 12(d)(2) and/or 12(d)(3). Consequently, the Fund may be required to adjust the proportion of its investment in an insurance company or securities-related issuer in order to continue to comply with Sections 12(d)(2) and (3), which has the potential to increase the Fund's tracking error. SSGA FM does not make any investment decisions so as to (i) reward any issuers engaged in securities related activities for selling shares of the Fund or (ii) control any insurance company.

II. Legal Analysis

A. Section 12(d)(2)

Section 12(d)(2) generally prohibits an investment company from purchasing or otherwise acquiring any security issued by an insurance company if, as a result of the purchase or acquisition, the investment company (and any company or companies controlled by it) will own more than 10% of the insurance company's total outstanding voting stock. Although "the legislative history relating to Section 12(d)(2) is somewhat sparse . . . the explanation [for its incorporation] indicates an intent to prevent continuing control of an active insurance company by an investment company."[4] As a result of the limitations contained in Section 12(d)(2) and the increasing size of the Fund, the Fund may not be able to invest in insurance companies to the extent that is necessary for it to track the Index, because doing so would result in the Fund owning more than 10% of an insurance company's total outstanding voting stock.

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4 *In the Matter of Inter-Canadian Corporation*, Investment Company Act Rel. No. 2751 (July 28, 1958). *See also* 3 TAMAR FRANKEL & ANN TAYLOR SCHWING, THE REGULATION OF MONEY MANAGERS, MUTUAL FUNDS AND ADVISERS 22-60 (2nd ed. 2009) ("In 1940, the SEC, and both the securities industry and the insurance industry, agreed that it was undesirable for investment companies to own and control insurance companies. Management may be tempted to convert investments of insurance reserves to investments for profits, and thereby endanger the financial stability of insurance companies. Depending on who is dominant, insurance or investment companies may "dump" worthless securities on each other.").

The Commission has "interpreted Section 12(d)(2) as prohibiting control of an insurance company by an investment company but permitted acquisition of stock of an insurance company upon assurance that there would be no control."[5] The Fund has a non-fundamental investment restriction that prevents it from investing in the securities of companies for the purpose of exercising management or control. Since the Fund is an "index fund," the composition of its portfolio securities is, even with a sampling strategy, essentially non-volitional. As indicated above, the Fund's investment objective is to seek to provide investment results that, before fees and expenses, correspond generally to the total return performance of the Index. Although SSGA FM currently uses a sampling strategy, it has limited discretion to choose portfolio securities or the amount of such securities to be purchased as it is obligated to seek to track the performance of the Index. With respect to the Fund's holdings, SSGA FM generally only deviates from the securities in the Index in order to comply with requirements of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") and/or the 1940 Act. Absent these restrictions, however, SSGA FM anticipates that the Fund would hold all of the securities that constitute the Index. As noted above, the most efficient and accurate way to manage the Fund consistent with this objective would be acquire the securities of these issuers in the same proportion as these issuers represent in the Index. But for the limits of Section 12(d)(2), SSGA FM would purchase the outstanding voting stock of an insurance company and maintain its position in the stock in the same approximate proportion that such stock represents in the Index. Thus, it is virtually impossible for the Fund to purchase securities of an insurance company with the intent to control the insurance company. Notwithstanding the Fund's non-fundamental investment restriction, the Fund will not exercise a controlling influence over the management or policies of the insurance company and will either: (a) vote its shares in the insurance company as directed by an independent third party, or (b) vote its shares in the insurance company in the same proportion as the vote of all other holders of the insurance company's shares.

B. Section 12(d)(3)

Section 12(d)(3), with limited exceptions, prohibits an investment company from acquiring any securities issued by a securities-related business, such as a broker, dealer, underwriter or investment adviser. "While the reasons for Congress prohibiting investment company investments in securities-related businesses are not addressed in much detail in the Act's legislative history, it appears that Congress had two purposes. First, Congress wished to limit, at least to some extent, the exposure of registered investment companies to the entrepreneurial risks peculiar to securities-related businesses."[6] "A second purpose appears to have been to prevent potential conflicts of interest and reciprocal practices."[7]

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5 *In the Matter of Investors Syndicate of America, Inc.*, Investment Company Act Rel. Nos. 1401 (Jan. 18, 1950) and 2722 (June 4, 1958).

6 *Exemption of Acquisitions of Securities by Persons Engaged in Securities Related Businesses.* Investment Company Act Rel. No. 19204 (Jan. 4, 1993) (Proposing Amendments to Rule 12d3-1) [hereinafter RELEASE 19204].

7 *Id.* The Commission also has suggested that Congress had "apparent liquidity concerns" it sought to address by enacting Section 12(d)(3). *Exemption for Acquisition by Registered Investment Companies of Securities Issued by Persons Engaged Directly or Indirectly in Securities - Related Businesses.* Investment Company Act Rel. No. 13725 (Jan. 17, 1984) (Adopting Amendments to Rule 12d3-1) [hereinafter RELEASE 13725]. To the extent liquidity is a Commission concern, the component stocks of the Index, which are components of the S&P Composite 1500 Index, are some of the most liquid securities in the world -- with an average daily dollar trading volume of $179 million.

Rule 12d3-1, however, exempts some acquisitions from Section 12(d)(3). The Rule permits investment companies to acquire, among other securities, securities of a business "that, in its most recent fiscal year, derived more than 15% of its gross revenues from securities related activities" provided certain conditions are met.[8] These conditions include subparagraph (b)(1)'s requirement that the investment company not own more than 5% of the outstanding securities of a particular class of equity securities of an issuer that engages in securities related activities. As the Fund increases in size and is unable to comply with this 5% limitation, it may not be able to rely on the Rule. As a result, the Fund may not be able to invest directly in Equity Issuers to the extent that is necessary for it to most accurately track the Index consistent with the limitations contained in Section 12(d)(3) and Rule 12d3-1, because to do so would result in the Fund owning more than 5% of the outstanding securities of a particular class of equity securities of an issuer that engages in securities related activities. The Fund intends to comply with the Rule's other requirements.

1. Entrepreneurial Risks

In 1940, most issuers that engaged in securities related activities were organized as privately held general partnerships. By investing in these businesses, investment companies exposed themselves to potential losses that are not present in other types of investments; if a business failed, the investment company as a general partner was held accountable for the partnership's liabilities.[9]

The Commission has acknowledged that the concern regarding the unusual risks of investments in issuers that engage in securities related activities "is adequately addressed by prohibiting the acquisition of general partnership interests."[10] Paragraph (c) of Rule 12d3-1, which effectively precludes an investment company from acquiring general partnership interests in a broker, dealer, registered investment adviser, or underwriter, adequately addresses Congress's concerns regarding an investment company's exposure to the entrepreneurial risks of investing in issuers that engage in securities related activities. Today, in any event, this concern is largely theoretical since virtually all large securities firms are organized as corporations, not general partnerships.[11]

2. Conflicts of Interest and Reciprocal Practices

The 5% limitation of subparagraph (b)(1), as well as the Rule's other quantitative conditions, is designed to "minimize the potential for conflicts of interests and reciprocal practice by preventing an investment company from acquiring a significant stake in any particular broker or dealer."[12] The Fund's investments, as a practical matter, do not raise these concerns.

The Commission has been concerned, in particular, that an investment company might purchase the securities of a broker-dealer, not based on the merits of the investment, but as a reward for

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8 Rule 12d3-1(b).

9 RELEASE 19204, *supra; Investment Trusts and Investment Companies: Hearing before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3rd Sess. 243 (1940) (testimony of David Schenker, Chief Counsel, Investment Trust Study).

10 RELEASE 19204, *supra.*

11 *See* Anita Raghavan, *Why Is Goldman Sachs Seeking to Go Public? It's a Capital Question,* WALL ST. J. (Aug. 7, 1998) at A1 (noting that, at the time, Goldman Sachs was Wall Street's last major private partnership).

12 RELEASE 19204, *supra.*

selling the investment company's shares.[13] The Fund's investment objective and policies help address the concern that the Fund would purchase securities of a broker-dealer as a reward for selling Fund securities. As indicated above, since the Fund is an "index fund," the composition of its portfolio securities is, even with a sampling strategy, essentially non-volitional. As also indicated above, the Fund's investment objective is to seek to provide investment results that, before fees and expenses, correspond generally to the total return performance of the Index, the components of which are determined by the Index Provider. Although SSGA FM currently uses a sampling strategy, it has limited discretion to choose portfolio securities or the amount of such securities to be purchased as it is obligated to seek to track the performance of the Index. With respect to the Fund's holdings, SSGA FM generally only deviates from the securities in the Index in order to comply with requirements of the Internal Revenue Code and/or the 1940 Act. Absent these restrictions, however, SSGA FM expects that the Fund would hold all of the securities that constitute the Index. But for the restrictions of Section 12(d)(3) and Rule 12d3-1, SSGA FM would not exercise investment discretion with respect to Equity Issuers, but would purchase the stock of an Equity Issuer and maintain its position in the stock in the same approximate proportion that such stock represents in the Index. Thus, even the mere potential for the Fund to reward a broker-dealer for selling Fund securities is extremely remote.

The Commission also has expressed its view that an investment company also might direct brokerage to a broker-dealer in which it had an investment to enhance the broker-dealer's profitability or to assist it in financial difficulty even if the broker-dealer did not offer best execution.[14] This would be inconsistent with SSGA FM's obligation, under the federal securities laws, to seek to obtain best execution in purchasing or selling the Fund's portfolio securities. However, as a practical matter, it would be difficult for SSGA FM to direct brokerage either to reward a broker-dealer for selling the Fund's shares or to enhance the broker-dealer's profitability and still seek to obtain best execution. When selecting broker-dealers (including affiliated broker-dealers) to execute the purchase and sale of portfolio securities, SSGA FM's policy is to choose the broker-dealer deemed most capable of providing the services necessary to obtain the most favorable execution and does not take the sales of Fund shares into account. SSGA FM considers the full range of brokerage capabilities applicable to a particular transaction when making this determination, which may include, but is not limited to: prompt and reliable execution, price, commission, ability and willingness to aggregate trades, market making capabilities, access to markets and trading venues, broker financial strength and stability, reliable and accurate communications and settlement processing, use of automation, administrative ability, underwriting and provision of information on a particular security or market in which the transaction is to occur and counterparty diversification. In addition certain matters may influence the relative importance that SSGA FM places upon any of these factors, including but not limited to: the nature and characteristics of the order or transaction. (*e.g.* size of order, market impact of order, limits or other instructions relating to the order); the characteristics of the financial instrument(s) or other assets which are the subject of that order. (*e.g.* whether the order pertains to an equity, fixed income, derivative or convertible instrument); or whether the transaction is a 'delivery versus

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13 *Acquisition by Registered Investment Companies of the Equity Securities of Foreign Securities Firms.* Investment Company Act Rel. No. 17096, n.11 (Aug. 3, 1989) (Proposing Amendments to Rule 12d3-1).

14 RELEASE 13725, *supra*, n.7.

payment' or 'over the counter' transaction as the creditworthiness of the broker-dealer, and settlement capabilities may be given a higher relative importance in the case of 'over the counter' transactions.

If the Fund invests in an Equity Issuer, the Fund will not (1) use that Equity Issuer as the executing broker for any Fund transactions, and (2) acquire the securities issued by that Equity Issuer in an amount exceeding the approximate proportion that the issuer represents in the Index. Further, if the Fund owns more than 5% of the value of outstanding securities issued by persons that engage in securities related activities (with the exception of Equity Issuers),[15] the Fund will comply with the provisions of section 17(e) of the 1940 Act and rule 17e-1 thereunder when using that issuer, or any affiliated person of that issuer, as a broker for the purchase or sale of any security in the Fund's portfolio. Similarly, if the Fund uses any affiliated person of an Equity Issuer as the executing broker for any Fund transactions, the Fund will also comply with the provisions of section 17(e) of the 1940 Act and rule 17e-1 thereunder. The Fund's compliance with those provisions in these circumstances would provide adequate safeguards against the reciprocal practices and conflicts of interest that Section 12(d)(3) was intended to address.

Moreover, any brokerage executed through a broker-dealer in the Index would likely be *de minimis* in relation to the broker-dealer's trading activity. Due to the Fund's investment objective, it would be extremely unlikely that the amount of brokerage transactions (even if not de minimis) that the Fund could direct to any broker-dealer that is included in the Index would have any significant effect on the market value or profitability of the broker-dealer. Therefore, it is extremely unlikely that these transactions would have any meaningful effect on the market value or profitability of a broker-dealer. In addition, because the Fund only permits purchases and redemptions of its securities in Creation Units (except in limited circumstances where the purchase and redemption will include cash), the need for the Fund to trade portfolio securities and direct brokerage is greatly diminished. The amount of brokerage transactions resulting from purchase and redemption requests for Creation Units is greatly diminished because generally the shares of the Fund are purchased and redeemed in-kind. Based on the experience of similar products on the market, the vast majority of trading activity for the Fund will be with its exchange-traded securities -- where individual investors will direct brokerage.[16] Once again, the incentive for questionable business practices is insignificant.

C. Legal Precedent

In a series of no-action letters, the Division gave assurances in the context of Rule 12d3-1(c) prohibiting an investment company from acquiring a security issued by its investment adviser, promoter or principal underwriter, or one of their affiliated persons.[17] The Division's assurances

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15 This would include issuers that engage in securities related activities, but derive 15% or less of their gross revenue from those securities related activities.

16 We should note that the Fund may execute securities trades with *affiliated* broker-dealers. Section 17(e) of the 1940 Act; Rule 17e-1; *Kidder Peabody Investment Trust* (pub. Avail. May 14, 1993). It, therefore, seems illogical that the Fund could not execute securities trades with *non-affiliated* broker-dealers.

17 *The Victory Stock Index Fund* (pub. avail. Feb. 7, 1995); *Kidder Peabody Investment Trust* (pub. avail. May 14, 1993); *Dreyfus Index Fund* (pub. avail. Mar. 31, 1992); *IBM Mutual Funds, Inc.* (pub. avail. May 18, 1990). In reliance on the Division's views expressed in the no-action letters, we are not requesting assurances to permit an Index Fund to purchase shares of State Street or an affiliated person of State Street.

were based on the fact that the open-end investment companies were "index-funds" making certain non-volitional purchases of securities to replicate the performance of a broad-based index, such as the S&P 500. Those letters dealt with potentially egregious conflicts of interest and reciprocal practices. They addressed the situation of an investment company purchasing securities of its own investment adviser or an affiliated person of the adviser.[18] This goes to the heart of the 1940 Act's policy of preventing investment company portfolio securities from being selected in the interest of insiders rather than the investment company's shareholders.[19]

In a separate no-action letter, the Division gave assurances in the context of Rule 12d3-1(b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in the securities of an issuer that engages in securities related activities.[20] Subparagraph (b)(3) of the Rule addresses potential conflicts of interest and reciprocal practices of investment companies with persons who traditionally have *not* been considered insiders, but who nevertheless may have some possible influence over an investment company's practices. Subparagraph (b)(1), at issue in the present case, addresses the same potential conflicts of interest. Similar to the previous no-action letter, the possibility of questionable business practices is virtually non-existent with the Fund because of how its investments are structured:

- The Fund's investment objective is to seek to provide investment results that, before fees and expenses, correspond generally to the total return performance of the Index.
- The Fund will comply with its stated investment objectives and policies.
- The Fund will purchase and maintain any position in an Equity Issuer only in the approximate proportion that the issuer's stock is represented in the relevant index except insofar as may be necessary for the Fund to retain its status as a regulated investment company as defined in Subchapter M of the International Revenue Code.[21]
- The Fund will comply with all of the provisions of Rule 12d3-1 except subparagraph (b)(1).
- If the Fund owns more than 5% of the value of outstanding securities issued by persons that engage in securities related activities, the Fund will comply with the provisions of Section 17(e) and Rule 17e-1 when using that issuer, or any affiliated person of that issuer, as a broker for the purchase or sale of any security in the Fund's portfolio.

As in the previous no-action letters, here we are requesting that the Division provide no-action assurances regarding a provision of Rule 12d3-1 that raises few concerns, with investments that are structured with sound safeguards.

We are unaware of the Division having given prior assurances in the context of Section 12(d)(2) prohibiting an investment company from acquiring any security issued by an insurance company if, as a result of the acquisition, the investment company will own more than 10% of the insurance company's total outstanding voting stock. Section 12(d)(2) is intended to prevent continuing control of an active insurance company by an investment company. We believe that the structure of the Fund's investments reduces the possibility of the Fund controlling an insurance company÷.

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18 This appears to have been the basis for the Division declining to take a no-action position under subparagraph (c) of Rule 12d3-1 where a unit investment trust proposed to invest up to 10% of its assets in the securities of companies that were affiliated persons of the trust sponsors. *Defined Asset Funds* (pub. avail. Aug. 17, 1992).

19 Section 1(b)(2) of the 1940 Act.

20 *Select Sector SPDR Fund and Diamonds Trust* (pub. avail. July 6, 2000).

21 The Fund will not direct brokerage transactions to enhance a broker-dealer's profitability or assist a broker-dealer during financial difficulty.

- The Fund's investment objective is to seek to provide investment results that, before fees and expenses, correspond generally to the total return performance of the Index.
- The Fund has a non-fundamental investment policy to "not invest in the securities of a company for the purpose of exercising management or control, provided that the Trust may vote the investment securities owned by the Fund in accordance with its views."
- The Fund will comply with its stated investment objectives and policies.
- The Fund will purchase the outstanding voting stock of an insurance company and maintain its position in the stock in the same approximate proportion that the insurance company's stock is represented in the relevant index except insofar as may be necessary for the Fund to retain its status as a regulated investment company as defined in Subchapter M of the International Revenue Code.[22]

III. Conclusion

In the past, the Commission has issued exemptive orders to permit open-end investment company and unit investment trust "index funds" to acquire stock of issuers engaged in securities related activities under certain conditions.[23] Generally, the funds in those examples have investment policies that require them to make certain investments; the investment advisers to those funds do not make discretionary investment decisions. We believe that substantially similar safeguards are present with the structure of the Fund's investments. We also believe that a similar analysis is appropriate here with respect to the Fund's investments in insurance companies. In addition, in light of the no-action positions the Division has taken regarding subparagraphs (b)(3) and (c) of Rule 12d3-1, we believe that the Division should reach the conclusion that no-action assurances are appropriate here.

The Commission has acknowledged that while Section 12(d)(3) "may have been designed to protect investment companies ..., evidence indicates that today the Section often prevents investment companies from making investments that may be in the best interests of their shareholders."[24] Given that the Fund is an index-based fund, we believe that the Fund's investments in index constituents are in the best interests of Fund shareholders. We also believe that the investments, as structured, are consistent with the protections Sections 12(d)(2) and 12(d)(3) are intended to provide. Accordingly, we request that the Division provide assurances that it will not recommend any enforcement action to the Commission if the Fund's investments exceed the limits of Sections 12(d)(2) and 12(d)(3), as described in this letter.

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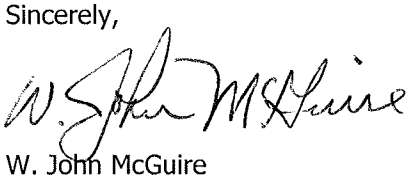
22 The Fund will not acquire the securities issued by an insurance company in an amount exceeding the approximate proportion that the issuer represents in the Index.

23 *See, e.g., PFL Endeavor Target Account*, Investment Company Act Rel. Nos. 23241 (June 5, 1998) (Notice of Application) and 23298 (July 1, 1998) (Order); *John Nuveen & Co. Inc.,* Investment Company Act Rel. Nos. 22492 (Feb. 4, 1997) (Notice of Application) and 22545 (Mar. 5, 1997) (Order).

24 RELEASE 13725, *supra.*

If you have any questions regarding this letter, please contact me at (202) 373-6799 or Beau Yanoshik at (202) 373-6133.

Sincerely,



W. John McGuire

cc: Joshua Weinberg, Esquire