

November 7, 2011

Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Release No. IC-29776; File No. S7-33-11
Use of Derivatives by Investment Companies Under the Investment Company Act of 1940

Dear Ms. Murphy:

ETP Resources, LLC (“ETP Resources”) appreciates the opportunity to comment on the Securities and Exchange Commission’s concept release regarding issues related to the use of derivatives by investment companies. ETP Resources is a management consulting firm founded by James Simpson, who has long been a leader in the development of innovative exchange-traded products. Throughout the early 2000s he was involved in listing, trading and regulating exchange-traded products at the American Stock Exchange and had been a regular participant in training of SEC staff and issuers on such products. Since 2006 he has been dedicated to exchange-traded product development, sales and marketing.

As a general matter, ETP Resources believes that the commission should be more precise with regard to the securities it refers to as “ETFs”, or “Exchange-Traded Funds”, by instead referencing those exchange-traded products that are typically registered under the Investment Company Act of 1940 (“1940 Act”), particularly, “Portfolio Depositary Receipts”¹, “Index Fund Shares”², and “Managed Fund Shares”³. We believe that this will help regulators and investors avoid confusing these security types with other exchange-traded products that are not registered under the 1940 Act such as Trust Issued Receipts, Commodity-Based Trust Shares, and Partnership Units, for example, which are frequently misidentified as “ETFs” by media sources, broker-dealers, data service providers and self-regulatory organizations (“SROs”), and to better address how each security type differs with respect to its usage of derivatives.

1. See NYSE Amex Rule 1000(b) for the definition of Portfolio Depositary Receipts. See also Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (SR-AMEX-92-18) (approving, among other things, the adoption of listing standards for Portfolio Depositary Receipts).

2. See NYSE Amex Rule 1000A(b) for the definition of Index Fund Shares. See also Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR-AMEX-95-43) (approving, among other things, the adoption of listing standards for Index Fund Shares).

3. See NYSE Amex Rule 1000B for the definition of Managed Fund Shares. See also Securities Exchange Act Release No. 57514 (March 17, 2008), 73 FR 15230 (March 21, 2008) (SR-AMEX-2008-02) (approving, among other things, the adoption of listing standards for Managed Fund Shares).

For instance, the implementation of new rules concerning the usage of derivatives by issuers of “ETFs”, including issuers of Portfolio Depositary Receipts because they are registered under the 1940 Act, would miss the point that all US-listed Portfolio Depositary Receipts are prohibited from using derivative securities by their exemptive relief and typically hold a portfolio of securities consisting of substantially all of the securities in substantially the same weighting as the component securities in the benchmark index that they track.

Also, the Commission asks, “How do ETFs use derivatives?” We believe that you will find that the usage of derivatives securities differs greatly between Index Fund Shares (perhaps using derivatives to reduce tracking error from its benchmark index) and Managed Fund Shares (perhaps using derivatives to generate returns greater than a certain benchmark), and therefore we suggest these security types should be analyzed differently with regard to derivatives usage and disclosure.

There are several operational issues unique to exchange-traded products registered under the 1940 Act that differ from traditional open-end funds that should be considered with regards to derivatives usage including, limitations imposed in the exemptive relief process, the publication of a Portfolio Composition File (“PCF”) by the National Securities Clearing Corporation used by authorized participants in the creation and redemption of shares on a daily basis, the calculation of an Indicative Optimized Portfolio Value (“IOPV”) designed to approximate the value of the exchange-traded product throughout the trading day, the surveillance of trading activity in the exchange-traded product as well as the trading activity of the underlying portfolio securities, daily disclosure of holdings information on a publicly-available website, and an exchange’s initial and continued listing rules.

We recommend the Commission take these unique operational issues into consideration with regards to usage of derivatives by exchange-traded products registered under the 1940 Act.

We also recommend the Commission consider different exchange-traded products registered under the 1940 Act individually rather than grouping them all together.

We also strongly recommend that the Commission move to improve the transparency of exchange-traded products with regard to their structure and usage of derivatives by the prompt publishing of form 19b—4(e), required to be filed by SROs when listing a new derivatives security using generic listing standards.

These filings made by SROs, when available on the EDGAR System, can be used by investors, broker-dealers, data service providers, analysts and self-regulatory organizations to properly identify exchange-traded products and then better understand their usage of derivative securities.

Since 2000 several types of exchange-traded products have been approved for generic listing standards (including both 1940 Act and non- 1940 Act securities). SROs that list such securities under generic listing standards are required to file Form 19b-4(e) with the Commission describing the type of security to be listed. In many instances, this form is the only source of such information available to investors, and for several years the Commission has failed to keep up with the scanning and posting of these forms to the EDGAR System. In addition, our own requests and appeals for such information through FOIA requests were declined repeatedly despite the fact that the amendment approving the use of Form 19b-4(e) and generic listing standards by SROs stated that information would not be confidential and would be publicly available from the Commission upon request.

We believe that the prompt publication of Form 19b-4(e) will help improve transparency and lead to more consistent regulation of exchange-traded products.

Thank you for the opportunity to submit these comments and for your consideration. Please feel free to contact us if you have any questions.

Sincerely,

James A. Simpson