

**VIA EMAIL AND FEDERAL EXPRESS**

November 7, 2011

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Re: *Use of Derivatives by Investment Companies under the Investment Company Act of 1940* (August 31, 2011, Release No. IC - 29776, File No. S7-33-11) (the “Concept Release”)

Dear Ms. Murphy:

NYSE Euronext is pleased to submit this letter in response to the U.S. Securities and Exchange Commission’s (the “Commission”) concept release on the use of derivatives by investment companies registered under the Investment Company Act of 1940 (the “Investment Company Act”). NYSE Euronext operates three national securities exchanges registered under Section 6 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including the New York Stock Exchange LLC, NYSE Arca, Inc. and NYSE Amex LLC. We commend the Commission for its thoughtful approach toward determining whether regulatory initiatives or guidance are warranted in the current regulatory regime for investment companies.

Our comments are focused on the use of derivatives by exchanged-traded funds registered under the Investment Company Act (“ETFs”). In the Concept Release, the Commission asked for information regarding whether an ETF’s use of derivatives raises unique investor protection concerns under the Investment Company Act.

*Are there Unique Investor Protection Concerns for ETFs that use Derivatives?*

As the Commission knows, the primary difference between ETFs and other types of investment companies relates to how market participants obtain liquidity for their shares of the fund. Unlike mutual funds (but like many closed-end funds) investors obtain liquidity through an exchange. The mechanism for ETFs buying and issuing shares however is



different from a traditional closed-end fund in that it involves Authorized Participants who interface with the issuer in facilitating purchases and sales of the ETF. Another difference between most other registered funds and ETFs is that exchanges have listing requirements that relate to an ETF's structure, such as the instruments in which it may invest and the characteristics of its tracking index (for example, the number, type and relative weights of the index components). Finally, listing standards also require the exchange or an independent third party to disseminate every 15 seconds an indicative intraday value (IIV) or indicative optimized portfolio value (IOPV) for the ETF that is based on current information regarding the ETF's portfolio assets. This requirement for frequent pricing provides greater transparency to investors on valuation of the ETF's portfolio.

We do not believe that any of the aforementioned differences between ETFs and other registered funds raise unique investor protection concerns about the use of derivatives by ETFs. The use of Authorized Participants for shares issued by the Fund is unrelated to the Fund's portfolio and does not have any bearing on the use of derivatives. The fact that ETFs are subject to more regulation than other registered funds because of listing requirements should be a cause of comfort, not concern. Finally, the additional transparency available on valuation for ETFs should again be a positive rather than a negative factor in considering investor protection.

Section 6(b)(5) of the Securities Exchange Act of 1934, as amended, requires that listing standards be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to, and perfect the mechanism of a free and open market; and in general, to protect investors and the public interest. We believe that the existence of such standards helps ensure that ETFs that use derivatives do not raise unique investor protection concerns that would justify different regulatory treatment from other ETFs.

Finally, as the Commission is also aware, ETFs and other registered funds are subject to the same regulations under the Investment Company Act, including, but not limited to the provisions governing leverage, concentration, diversification and valuation. Given the uniform regulatory framework, we believe that the inclusion of derivatives in ETFs do not raise unique investor protection concerns so long as the composition of an ETF is consistent with the provisions of the Investment Company Act.



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We appreciate the opportunity to comment on the Concept Release and look forward to working with the Commission on these matters. Please feel free to contact the undersigned at (212) 656-2039 with any questions regarding our comments.

Very truly yours,

*Janet McHinnery*