State Street Financial Center
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August 16, 2012

VIA ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: NASDAQ and NYSE Arca Market Maker Incentive Programs (File Nos. SR-NASDAQ-2012-043 and SR-NYSEArca-2012-37)

Dear Ms. Murphy:

State Street Global Advisors, an affiliate of State Street Corporation, has been a leader in the exchange traded fund ("ETF") marketplace since the launch of the SPDR Trust, Series 1 in 1993. Consequently, we support and encourage innovations that promote market quality and efficiency for ETFs. We are therefore responding to the Commission's request for additional comments in the SEC order[1] instituting proceedings to determine whether to approve or disapprove the proposed NASDAQ Market Quality Program ("MQP") and NYSE Arca Fixed Incentive Program ("Fixed Incentive Program") (collectively, the "Programs") – the exchanges' proposed market maker incentive programs.

We have had the opportunity to review drafts of the comment letter being prepared by the Investment Company Institute ("ICI") in response to the request for additional comments, as well as the letters filed by the ICI on the Programs when they were first proposed.[2] We generally support the approach suggested by the ICI in those letters. Most significantly:

- We strongly support establishing objective performance standards - NYSE Arca should establish objective performance standards for lead market makers ("LMMs") participating in the Fixed Incentive Program. We believe that any financial incentive

[1] Securities Exchange Act Release No. 67411 (July 11, 2012), 77 FR 42052 (July 17, 2012) ("Release").

[2] *See* Letters from Ari Burstein, Senior Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated May 3, 2012 (NASDAQ MQP) and June 7, 2012 (NYSE Arca Fixed Incentive Program). The letters can be found on ICI's website at http://www.ici.org/pdf/26142.pdf and http://www.ici.org/pdf/26227.pdf.

should be tied to measures that demonstrate improved liquidity and/or tighter spreads for ETFs.

- We strongly support establishing additional eligibility criteria – NYSE Arca should limit the type of products permitted into the Fixed Incentive Program based on liquidity levels or trading volume requirements. We support efforts to improve efficient market making for new and smaller ETFs, but believe standards should be established that would remove or restrict ETFs from participating in the Program at specified volume or liquidity thresholds.
- We strongly support establishing higher performance standards - NYSE Arca should impose higher performance standards on LMMs participating in the Fixed Incentive Program. We believe that requiring heightened performance standards to receive the Optional Incentive Fee also may provide a greater incentive for LMMs to make better markets in ETFs.

We agree with the ICI that these recommendations would help address conflict of interest concerns and may provide a greater incentive for market makers to make better markets in ETFs. We believe that increasing liquidity and tighter spreads is a benefit to ETF shareholders that should be encouraged and supported.

Rule 12b-1 Fees

The Release contains a brief discussion of Rule 12b-1 under the Investment Company Act of 1940, as amended. Specifically, the Release states that an ETF's board of directors should evaluate the fees paid under the Programs to determine that such payments would be in compliance with Rule 12b-1. We strongly encourage the Commission to take this opportunity to clarify that neither MQP Fees nor Optional Incentive Fees are payments made by or on behalf of an ETF in connection with the distribution of its shares, and therefore do not represent the use of an investment company's assets to finance distribution that would be governed under Rule 12b-1. While the payments encourage efficient trading and liquid markets for ETF fund shares, they are not payments for distribution of such shares.[3] In fact, while the goals of the MQP Fees and Optional Incentive Fees are consistent with improving the overall ETF shareholder experience, increased liquidity and reduced spreads are not at all tied to asset flows into an ETF.[4] Thus, we see no cause for, value or investor protection purposes in suggesting that these fees are not merely operational expense of an ETF or its sponsor.[5]

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3 Although not clearly articulated in the 1980 adoption of Rule 12b-1, since there was no secondary market in shares of open-end funds until 1993, we do not believe "the sale of shares" on the secondary market is distribution related. Rather, we believe the clear intention was that distribution fees were those fees for services primarily intended to result in an increase in a fund's assets through the sale of shares by that fund.

4 As clearly articulated by NASDAQ, the MQP is primarily intended to establish quality markets for ETFs, not to increase the assets of the ETFs. *See also* Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ, dated July 6, 2012, at 20 (arguing that payment of MQP credits is not primarily intended to result in the sale of fund shares, but rather "the clear intent is to establish a quality market for products").

5 We expect that MWP Fees and Optional Incentive Fees will be paid by ETF sponsors or their affiliates.

If you have any questions on our comment letter, please feel free to contact me at (617) 664-2043 or Lance C. Dial at (617) 664-2426.

Sincerely,

James E. Ross
Global Head, SPDR Exchange Traded Funds
State Street Global Advisors

cc: The Honorable Mary L. Schapiro
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
The Honorable Daniel M. Gallagher

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