Todd J. Broms
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VIA ELECTRONIC SUBMISSION

June 27, 2016

Brent J. Fields
Secretary, U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Adopt NYSE Arca Equities Rule 8.900 to Permit Listing and Trading of Managed Portfolio Shares and to Permit Listing and Trading of Shares of Fifteen Issues of the Precidian ETFs Trust (Order) (Release No. 34-77845; File No. SR-NYSEARCA-2016-08)[1]

Dear Mr. Fields:

I write to state my support for the views and conclusions on the Proposal expressed by Gary L. Gastineau in the comment letters he submitted on March 10, 2016 (March Gastineau Letter)[2] and June 13, 2016 (June Gastineau Letter).[3] I also wish to rebut certain comments of Daniel J. McCabe in letters responding to the Order dated June 13, 2016 (June 13 McCabe Letter)[4] and June 15, 2016 (June 15 McCabe Letter).[5]

As described in the Gastineau Letters, the Proposal is seriously flawed and should not be approved. Among the principal reasons are: (a) the proposed selective disclosure of confidential Fund holdings information to Trusted Agents for trading on behalf of Confidential Account holders in violation of federal securities law; (b) the unreliability of the Funds' proposed method for ensuring secondary market trading efficiency and the likelihood that the Shares will trade at significantly wider bid-ask spreads and/or more variable premiums/discounts than existing ETFs

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[1] The Order relates to a request by NYSE Arca, Inc. (Exchange) to permit the listing and trading of Managed Portfolio Shares (Shares) and the listing and trading of Shares of 15 series (Funds) of the Precidian ETFs Trust (Trust) (File No. SR-NYSEARCA-2016-08 dated January 27, 2016) (Filing), which relates to a request by the Trust and other parties for exemptive relief from various provisions of the Investment Company Act of 1940, as amended (Exemptive Application) (File No. 812-14405 dated September 21, 2015). In this letter, the Filing and the Exemptive Application are treated as elements of a single proposal (Proposal) and the various filing parties are referred to as the "Applicants." For a description of the Proposal, please refer to the Filing and the Exemptive Application. Unless otherwise noted, the capitalized terms used herein have the same meanings as in the Filing and the Exemptive Application. As background, among other interests, I am co-founder of Managed ETFs™ LLC (Managed ETFs). Intellectual property developed by Managed ETFs and subsequently sold to an affiliate of Eaton Vance Corp. (Eaton Vance) forms much of the basis for the new NextShares™ exchange-traded managed funds (NextShares), the first of which were launched by Eaton Vance in the first quarter of 2016. Because NextShares may be competitive with the Shares and because I have a retained economic interest, my views may be considered subject to a conflict of interest. My comments are made in the public interest and, to the best of my ability, are not influenced by any conflict.

[2] See https://www.sec.gov/comments/sr-nysearca-2016-08/nysearca201608-2.pdf.

[3] See https://www.sec.gov/comments/sr-nysearca-2016-08/nysearca201608-8.pdf.

[4] See https://www.sec.gov/comments/sr-nysearca-2016-08/nysearca201608-7.pdf.

[5] See https://www.sec.gov/comments/sr-nysearca-2016-08/nysearca201608-9.pdf.

that themselves demonstrate trading deficiencies; (c) the likelihood that the Funds' trading performance will be especially poor during periods of market stress and volatility; (d) concerns that the security of confidential Fund information disseminated to Trusted Agents and other Confidential Account service providers cannot be assured; (e) potentially significant added Fund costs and risks in connection with the calculation, verification and dissemination of VIIVs and associated Fund warranties; (f) the potential for frequent Share trading halts; (g) the likely incidence of erroneous Share trades and the absence of an Exchange program to detect and appropriately remediate erroneous trades; (h) the potential for reverse engineering of a Fund's portfolio holdings through analysis of VIIVs and other Fund information; (i) the significant risk that the Internal Revenue Service will deny the purported tax benefits of the Funds' distinctive in-kind redemption program; and (j) the costs, risks and uncertainties of broker-dealers serving as Fund Authorized Participants and market makers in meeting their compliance obligations with respect to securities traded on their behalf through Confidential Accounts. On an overall basis, the Proposal falls far short of meeting the statutory standard that approval is necessary or appropriate in the public interest and consistent with the protection of investors.

In the June 13 McCabe Letter, Mr. McCabe responds to the questions posed in the Order addressing the efficiency of the Shares' arbitrage process by repeating the unsubstantiated claims set forth in the Filing and the Exemptive Application that the proposed dissemination of VIIVs and the ability of market makers to build hedging portfolios and trade in Basket Instruments through Confidential Accounts will enable the Funds to trade on a comparable basis to ETFs that disclose their full holdings each Business Day. In plain contradiction to the descriptions of the Confidential Account arrangement in the Filing and the Exemptive Application, Mr. McCabe asserts that "all trading decisions" and "all execution" with respect to trading in Creation Basket instruments through Confidential Accounts will be made by the beneficial owner of the Confidential Account, ignoring the critical role of third-party Trusted Agents in directing and overseeing all trading through Confidential Accounts.

Although not acknowledged by Mr. McCabe, the proposed Confidential Account arrangement through Trusted Agents will impose significant incremental costs and risks on market makers and will severely limit their opportunities for profitable trading in Creation Basket instruments in comparison to conventional ETF market making. Taken together with the deficiencies of VIIVs as intraday price signals, the limitation that market makers can trade in Creation Basket instruments only on a blind basis through Confidential Accounts overseen by third parties will significantly curtail effective market making in the Funds' Shares, causing the Shares to trade at notably wider bid-ask spreads and more variable premiums and discounts than otherwise similar ETFs whose holdings are fully transparent The lack of holdings transparency and market makers' forced reliance on transactions through third parties will make the Shares particularly susceptible to poor trading performance during periods of market stress and volatility.

In responding to the VIIV-related questions posed in the Order, the June 13 McCabe Letter asserts that the Funds will offer "full pricing transparency" and provide "more accurate information" than the IIVs disseminated by existing ETFs. Mr. McCabe does not address the many deficiencies in the proposed VIIV calculation and dissemination process identified in the

Gastineau Letters, and also chooses to ignore the critical distinctions in the role of VIIVs for the Funds versus how IIVs are used for existing ETFs.

As described in the Gastineau Letters, disseminating timely and accurate VIIVs is a key requirement for the Funds to trade efficiently; whereas for existing ETFs, IIVs have little or no relevance to trading efficiency. The relevant comparison for VIIVs is not versus the IIVs of existing ETFs, but rather the independently derived real-time estimates of underlying fund value that ETF market makers use to identify arbitrage opportunities and manage their risk of holding ETF positions today. Because existing actively managed ETFs (and most index ETFs) provide full daily disclosure of their current portfolio, their market makers have access to far better information about the current value of Fund holdings than the proposed VIIVs would provide. Compared to the internal valuations that ETF market makers can now generate internally, the proposed VIIVs would provide intraday valuations that are significantly less precise, less robust, less continuous, less timely, more prone to errors, more subject to agency risks and would expose market makers to potentially unrecoverable losses in the event of erroneous VIIVs. Market makers' forced reliance on VIIVs to determine intraday Fund valuations will surely translate into the Funds trading at wider bid-ask spreads and more variable premiums and discounts to NAV than similar existing ETFs. The lack of transparency of Fund holdings and the resulting loss of market maker control over their internal valuation process will also make the Funds especially prone to poor trading performance during periods of market stress and volatility.

In response to the questions in the Order addressing the potential to reverse engineer Fund holdings, the June 13 McCabe Letter references the analysis included in the Exemptive Application (the Ricky Cooper Study) that concludes that "it *seems rather unlikely* [emphasis added] that the Precidian ETF construction methodology will result in a product that can be reverse engineered for purposes of front running."[6] In Mr. McCabe's retelling, the conclusions of the Ricky Cooper Study "confirm" the inability of accurately determining a Fund's portfolio constituents and "show conclusively" that a Fund's portfolio constituents and weights could not be reverse engineered with any confidence. In my judgment, the narrowly focused analysis of the Ricky Cooper Study does not begin to "show conclusively" that reverse engineering of Fund holdings based on disclosed VIIVs and other available Fund information would be impossible under all conditions. As recommended in the Gastineau Letters, I believe that, as a condition for approval, the Applicants should be required to conduct, and publicly report, additional research studies that more fully address the potential to reverse engineer Fund holdings over a full range of foreseeable circumstances.

In responding to the question in the Order addressing selective disclosure, the June 13 McCabe Letter comments that "use of trusted agents and executing broker dealers is a common practice that has been employed for decades with no deleterious effects on the capital markets. Mutual funds, closed-end funds, hedge funds, ETFs and others, consistently rely upon broker dealer agents acting as fiduciaries to execute trades *on their behalf* [emphasis added] and in a manner that ensures confidentiality." Mr. McCabe fails to note the key distinction that, in the proposed arrangement, Trusted Agents would not trade for the account of the subject Fund as is consistent

[6] The Ricky Cooper Study is also included as an attachment to the June 13 McCabe Letter.

with the common market practice of broker-dealers executing trades on behalf of clients based on a client's own confidential information. What is proposed here is something entirely different: trading based on confidential Fund information by Trusted Agents acting on behalf of other market participants (i.e., Authorized Participants and market makers), rather than for the benefit of the Fund itself. Although Mr. McCabe seeks to gloss over that distinction, the federal securities laws do not. As stated in the June Gastineau Letter, the proposed trading by Confidential Account holders based on selectively disclosed material Fund information violates foundational principles of federal securities law, the provisions of Rule 10b5-l and the purposes of the Form N1-A Amendments adopted by the Commission in 2004 and applicable to all ETFs and other open-end funds.

In responding to the questions in the Order addressing compliance by broker-dealers with their net capital, books and records, and related requirements in respect of securities positions traded on their behalf on a blind basis through Confidential Accounts, Mr. McCabe offers unsubstantiated assurances that, for broker-dealers serving as Fund Authorized Participants and market makers, (a) the publication of the "Maximum Net Capital Haircut on the daily Pro Rata Basket" and the dissemination of VIIVs as proposed will enable them to maintain required minimum levels of net capital and (b) their recordkeeping requirements could be satisfied by Trusted Agents undertaking to retain, and provide to the Commission upon demand, the required records with respect to broker-dealer positions held through Confidential Accounts. As noted in the June Gastineau Letter, broker-dealers face additional FINRA obligations for which compliance would appear to be problematic with respect to positions held by them through Confidential Accounts.

The June 13 McCabe Letter concludes by suggesting that Mr. Gastineau's comments should be discounted because he is subject to a conflict of interest. Having worked closely with Gary for many years, I feel compelled to state that I have found him always to be an exceptionally forthright, thoughtful, diligent, thorough and explicit individual and to always operate with the highest integrity. His comments should be viewed in that light and treated with high regard. Mr. Gastineau should be considered an "expert's expert" on the subject matter of the Proposal in particular, and exchange-traded products generally. Any suggestion that Gary would operate in a manner to misrepresent reality to advance his personal interests is simply untrue.

Regarding the June 15 McCabe Letter, the described "growing body of evidence" of broad industry support for the Proposal is both significantly overstated and irrelevant to the Commission's evaluation of the Proposal. Mr. McCabe fails to note that the "early adoption" of the original Precidian proposal by the listed fund sponsors was followed, in each case, by withdrawal of the application for exemptive relief filed by the sponsor after the Commission issued notice of its intent to deny approval of the first Precidian exemptive application in 2014. More significantly, the claimed industry backing is not relevant to the Commission's consideration of the Proposal. Taken on its merits, I believe the Proposal is seriously flawed, does not meet the statutory standard to be necessary or appropriate in the public interest and consistent with the protection of investors, and should not be approved.

I wish to thank the Commissioners and staff of the SEC for considering my views and opinions.

Sincerely,

TJ Broms

Todd J. Broms, Chief Executive Officer
Broms & Company LLC