LEGG MASON
GLOBAL ASSET MANAGEMENT

Joseph A. Sullivan
Chairman & Chief Executive Officer
[redacted]

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The Honorable Mary Jo White
Chair
U.S Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Securities Exchange Act Release No. 77117 (February 11, 2016) (File No. SR-NYSEARCA-2016-08)(Notice of Filing of Proposed Rule Change 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 (the "19b-4 Application")

Dear Chair White:

On behalf of Legg Mason, Inc., I appreciate this opportunity to express our support of the 19b-4 Application related to Precidian's ActiveShares process, and also to encourage approval of Precidian's related Exemptive Application.[1]

Legg Mason is a global asset management company and one of the largest in the United States, with aggregate assets under management globally of $650 billion. Acting through our subsidiaries, we provide investment management and related services to over 150 U.S. registered mutual funds and closed-end funds, comprising $165 billion in assets. In the United States, through our subsidiaries, we are also the second largest provider of retail separately managed account strategies ("SMAs") with $54 billion of assets.[2]

In conjunction with the rapid growth of assets in exchange traded funds, we have been hearing from our own clients about their increasing interest in using exchange traded funds as a vehicle for accessing our investment management capabilities.

Our clients, as well as unaffiliated investment advisers, are attracted to the structural and cost attributes of ETFs as compared with the traditional mutual fund structure. These include cost savings related to reduced transfer agency fees and associated account maintenance expenses, enhanced tax efficiency that also increases portfolio management flexibility, ability to transact intraday in fund shares, and enhanced returns from a more fully invested portfolio with reduced cash holdings that would otherwise be needed to meet redemptions.

[1] See Precidian ETFs Trust, et al., File No. 812-14405 (Application for an Order under Section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from Sections 2(a)(32), 5(a)(1) and 22(d) of the Act and Rule 22c-1 under the Act, under Sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under Section 12(d)(1)(J) of the Act for an exemption from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act) (the "Exemptive Application").
[2] All data is as of March 31,2016.

Because of these advantages, and to the extent we are able to provide a broader array of investment strategies through ETFs, we strongly believe our clients will derive benefit from access to Precidian's ActiveShares process, as will other investment advisers for their clients.

Within Legg Mason, we have spent considerable time engaging with our portfolio managers across our investment affiliates, accounting for a wide array of asset classes and investment strategies, focusing on the opportunities and challenges of delivering active strategies through ETFs.

In this regard, we have focused purposefully on SMAs as a point of comparison because they offer clients similar potential cost and other advantages, as well as tax efficiencies. Our SMAs already provide a high degree of portfolio holdings transparency, and we are comfortable with such transparency because it is our clients who have access to the daily holdings of their SMA portfolios.

However, this transparency does not extend to the wider market place (other than to SMA sponsors who are generally subject to legal restrictions regarding their use of that information). Unlike mutual funds, SMAs are generally accessible only to higher net worth investors because of the account-size minimums that apply. As a result, for the broader population of individual investors, ETFs are the primary alternative for gaining cost and tax advantages over traditional mutual funds.

After reviewing alternative paths with our portfolio managers, we concluded that only a portion of our investment strategies can be delivered using a conventional active ETF structure requiring full portfolio transparency, those being primarily within some of the fixed income asset classes that we manage today. However, for many of our active equity strategies, the requirement for full transparency broadcasted to the general market place (as opposed to full transparency to our clients) causes significant concerns. Our primary concern resides with the very real potential for front running by short term traders, a consequence that would be detrimental to our clients and the investment returns they realize.

Our clients have expressed a strong desire for us to protect their investments from front running risk over the modest benefit that daily transparency provides to them, and our ability to protect funds from this risk not only preserves the integrity and returns of the portfolio but also helps mitigate their concerns.

The Commission has long recognized that too frequent portfolio holdings disclosure has the potential to harm mutual fund investors. In February 2004, the Commission adopted a requirement that investment companies (mutual funds and ETFs) disclose their full portfolio holdings quarterly with a 60-day lag, stating:

> [S]ome commenters, including individual investors and investor advocacy groups, suggested that portfolio disclosure be required even more frequently, such as monthly, or that the proposed delay for filing the quarterly disclosure be shortened to 30 days... We have determined to adopt the proposed requirement for quarterly disclosure of portfolio holdings with a 60-day delay. We are not requiring more frequent portfolio disclosure...or a shorter delay, because we take seriously concerns that frequent

portfolio holdings disclosure and/or a shorter delay for the release of this information may expand the opportunities for predatory trading practices that harm fund shareholders.[3]

The concerns recognized by the Commission in 2004 have not diminished and, indeed, have increased as trading technology has advanced. As explained to the Commission in another context in 2013, commenting on a rulemaking petition to shorten the reporting deadlines in the rules under Section 13(f) of the Securities and Exchange Act of 1934, the Investment Company Institute stated:

> [A]ny premature disclosure of information regarding fund trades can lead to frontrunning of those trades, adversely impacting the price of the stock that the fund is buying or selling. Numerous market participants conduct trading strategies utilizing sophisticated techniques that seek to ascertain from available information the existence of large buyers (or sellers) in the market and to buy (or sell) ahead of the large orders with the goal of capturing a price movement in the direction of the large trading interest...[E]arlier or more frequent disclosure of this information would provide another crucial "piece of the puzzle" to those who intend to profit from fund orders. Generally speaking, the more current the disclosure, the easier and more profitable frontrunning will be to the detriment of fund shareholders...While funds have been concerned about frontrunning for years, that concern has increased as strides in technology have allowed better identification of, and execution against, fund trading strategies...These developments, in turn, have made funds that are interested in buying and selling large positions more vulnerable to abuse by market participants that seek to trade in front of their orders.[4]

In view of our concerns about front running that a conventional active ETF would present, we undertook to meet with a number of firms that were creating solutions to address this problem and we carefully analyzed their methodologies and concluded that Precidian's ActiveShares would provide the best overall solution.

The Precidian structure permits our portfolio managers to manage active ETFs using their proprietary strategies without being susceptible to front running by other managers or investors, while still offering the benefits of active ETFs to clients, including:

- the ability to trade shares throughout the day at known prices,
- lower fund operating expenses (primarily in the form of lower transfer agency costs and overall portfolio transaction costs) and
- improve tax efficiency.

...all of which will positively impact yields and net investor returns.

In January of this year, our confidence in ActiveShares resulted in Legg Mason becoming a shareholder of Precidian. We believe that ActiveShares is the right model for our

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[3] *Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies.* Investment Company Act Release No. 26372 (Feb. 27, 2004)

[4] Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated April 30, 2013

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GLOBAL ASSET MANAGEMENT

clients and for the industry and we wanted to provide support to Precidian so that ActiveShares can be broadly available

As you consider Precidian's 19b-4 Application and the related Exemptive Application, I would welcome the opportunity to meet in person to provide additional perspective on why this is important to our clients and our industry, and to answer any questions you may have for me or Legg Mason.

Very truly yours,

Joseph A. Sullivan
Chairman and Chief Executive Officer

cc: Kara M. Stein
Commissioner
U.S. Securities and Exchange Commission

Michael S. Piwowar
Commissioner
U.S. Securities and Exchange Commission

David Grim
Director, Division of Investment Management
U.S. Securities and Exchange Commission