

October 12, 2017

VIA ELECTRONIC SUBMISSION

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: SR-NYSEArca-2017-36

Dear Mr. Fields:

Precidian Funds LLC (“Precidian”) would like to take this opportunity to respond to the negative comment letters received to date. Sadly, but not surprisingly, all of the negative letters originated from “competitors” who have an economic interest in seeing the proposed rule change not approved, or individuals with close ties to them. The negative comment letters essentially fall into two groups, the Eaton Vance letters, from Gary Gastineau, Todd Broms and James Angel,<sup>1</sup> and the Blue Tractor letter, from Terence Norman.<sup>2</sup>

It is abundantly clear that both Eaton Vance and Blue Tractor Group are using the public comment process as an opportunity to try to delay or derail the proposed rule change in order to protect their economic interests in what they believe may be competitive products. These transparent attempts to hide behind “public interest and protection of investors,” when the only goal is the protection of their own self-interests, is unhelpful and detrimental to the healthy vetting of new product structures by the SEC and the investing public.

It is important to note that many of the “concerns” raised in the Eaton Vance letters and the Blue Tractor letter have been made previously, such as reverse engineering, regulatory concerns, and market making, all of which have been addressed with the SEC by members of Precidian, prominent leaders in the asset management industry, representatives of the market making community, ETF custodians, and the two largest national stock exchanges.

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<sup>1</sup> Mr. Gastineau discloses that he helped develop the intellectual property sold to Eaton Vance that forms the basis for the Next Shares™ products launched by Eaton Vance, he retains an economic interest in Next Shares, and Eaton Vance staff assisted in the preparation of his letter. Mr. Broms likewise discloses that he helped develop the intellectual property for, and retains an economic interest in, Next Shares™. Both Mr. Gastineau and Mr. Broms also disclose that they co-authored a paper with Dr. Angel in 2016. While Dr. Angel states that all opinions in his letter are strictly his own, and does not disclose any conflict of interest, we believe it is relevant that Mr. Gastineau and Dr. Angel have been co-authors on a number of papers dating back over 20 years.

<sup>2</sup> Mr. Norman writes in his capacity as founder of Blue Tractor Group, LLC, which he states has filed for exemptive relief with the Commission under the Investment Company Act of 1940 for what he calls the Shielded Alpha<sup>SM</sup> ETF structure.

Precidian has taken great pains and incurred considerable costs, over a period of years, to address the concerns of the SEC and have willingly limited the proposal to an investment universe of U.S.-listed securities in order to provide for proof of concept. The ETFs listed in the rule proposal, which would use Precidian's structure, create no systemic risk. Like all existing ETFs, the ETFs using the Precidian structure will reflect the price of the underlying portfolio securities, not impact the pricing of those securities. Should there be any shortcomings in the Precidian structure, it will result in an inability to attract assets, not some unforeseen consequence to investors or the markets. The potential benefits to investors and asset managers on the other hand, are myriad and include:

- The ability for investors to self-determine price
- Unlimited entry and exit points
- More tax-efficient structure than '40 Act mutual funds
- Real-time information on manager performance reflected in market pricing;
- More flexibility for managers to implement portfolio changes
- Potential for cost savings to manager and investors
- Cost savings and increased tax efficiencies will create potential for increased returns (Concern of increased cost to investors through wider spreads ignores the fact that many current actively-managed investment vehicles require retail investors to pay front or back-end loads in excess of 400bps.)
- Eliminating a competitive disadvantage by providing active managers with a more efficient vehicle to compete head-to-head with index ETF sponsors
- ETF structure spreads liquidity throughout the day rather than execute all trades market on close, benefiting investors, managers and exchanges alike.

Finally, adopters of Precidian's structure include some of the largest and most well-respected asset managers in the world. Their respective decisions to adopt Precidian's structure came after significant periods of vetting, involving all aspects of the ETF ecosystem (custodians, exchanges, market making community, broker dealers, customers, etc.). Reverse engineering, market making, customer demand, confidentiality, regulatory concerns, industry need for an ETF solution, investor and manager benefits were all addressed to their satisfaction. They, like Precidian, recognize the changing demands of investors and the constant need for innovation to benefit investors and managers in a constantly changing global investment landscape.

Thank you for the opportunity to submit this letter and for your consideration of these comments. Questions regarding these comments may be directed to the undersigned.

Sincerely,

Mark Criscitello  
Chairman, Precidian Funds LLC