

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77942; File No. TP 16-8)

May 27, 2016

Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to SPDR Series Trust and SPDR Dorsey Wright Fixed Income Allocation ETF Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

By letter dated May 27, 2016 (the “Letter”), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for SPDR Series Trust (the “Trust”), on behalf of the Trust, SPDR Dorsey Wright Fixed Income Allocation ETF (the “Fund”), any national securities exchange on or through which shares issued by the Fund (“Shares”) may subsequently trade, State Street Global Markets, LLC (the “Distributor”), and persons or entities engaging in transactions in Shares (collectively, the “Requestors”), requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended (“Exchange Act”), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 25,000 shares (“Creation Units”).

The Trust is registered with the Securities and Exchange Commission (“Commission”) under the Investment Company Act of 1940, as amended (“1940 Act”), as an open-end management investment company. The SPDR Dorsey Wright Fixed Income Allocation ETF will seek results that correspond generally to the performance, before fees and expenses, of the Dorsey Wright Fixed Income Allocation Index (the “Index”). In doing so, the Fund will, under normal circumstances, invest at least 80% (but typically substantially all) of its total assets in the four ETFs that comprise the Index (the “Underlying ETFs”).<sup>1</sup> In light of the Index’s composition,

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<sup>1</sup> At any given time, the underlying Index will be composed of four SPDR ETFs from a universe that currently consists of 21 eligible SPDR ETFs that each invest in a different sub-asset class in the fixed

the Fund intends to operate as an "ETF of ETFs." Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner substantially identical to the Underlying ETFs.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV"), and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on NASDAQ Stock Market LLC or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the "Listing Exchange");
- All Underlying ETFs in which the Fund invests will either meet all conditions set forth in one or more of the ETF class relief letters,<sup>2</sup> will have received individual relief from the

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income market. While the Fund typically will invest substantially all of its assets in the four Underlying ETFs, the Fund may also invest in instruments not included in the Index, such as convertible securities, variable rate demand notes, commercial paper, structured notes, swaps, options and futures contracts, which the Fund may use in seeking performance that corresponds to its Index and in managing cash flows.

<sup>2</sup> See, e.g., Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006) regarding class relief for exchange-traded index funds; Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006) regarding commodity-based investment vehicles; Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie, Farr & Gallagher LLP (April 9, 2007) regarding class relief for fixed income exchange traded funds; or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007) regarding class relief for combination exchange-traded funds.

Commission, will be able to rely on individual relief even though they are not named parties (for example, a no-action letter), or will be able to rely on applicable class relief for actively-managed ETFs;<sup>3</sup>

- All of the components of the Index will have publicly available last sale trade information;
- The intra-day proxy (or “indicative”) value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Listing Exchange, the Fund’s custodian, through the National Securities Clearing Corporation, will make publicly available the list of the names and the numbers of securities of the Fund’s portfolio that will be applicable that day to creation and redemption requests;
- The Listing Exchange or other market information provider will disseminate (i) continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share, and (ii) every 15 seconds throughout the trading day, a calculation of the intra-day indicative value of a Share;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between the Fund’s market price and its NAV;

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<sup>3</sup> See Division of Market Regulation Staff Legal Bulletin No. 9, as revised on September 10, 2010, with respect to Rules 101 and 102 of Regulation M, and Securities Exchange Act Rel. No. 67215 (June 19, 2012), with respect to Rule 10b-17.

- The arbitrage mechanism will be facilitated by the transparency of the Fund’s portfolio and the availability of the intra-day indicative value, the liquidity of securities held by the Fund, and the ability to acquire such securities, as well as arbitrageurs’ ability to create workable hedges; and
- A close alignment between the market price of Shares and the Fund’s NAV is expected.

### Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.<sup>4</sup> However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares and the Fund as described in more detail below.

### Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other

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<sup>4</sup> While ETFs operate under exemptions from the definitions of “open-end company” under Section 5(a)(1) of the 1940 Act and “redeemable security” under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.<sup>5</sup>

#### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and

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<sup>5</sup> Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and, therefore, would not violate that rule.

the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

#### Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.<sup>6</sup>

#### Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

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<sup>6</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based upon the representations in the Letter, that the provision of the notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b-17.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

IT IS FURTHER ORDERED, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter, and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to transactions in the Shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Listing Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Listing Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors and, consistent with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on this exemptive relief are directed to the antifraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule

10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemptive relief.

This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Robert W. Errett  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(6) and (9).