

ACT SEA  
SECTION 16(a)  
RULE \_\_\_\_\_

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF CORPORATION FINANCE

PUBLIC  
AVAILABILITY 5/6/99

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

May 6, 1999  
Select Sector SPDR Trust  
File No. 812-10662

Your letter dated April 27, 1999, requests the views of the Divisions of Corporation Finance and Investment Management as to the application of Section 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") to shares issued by the Select Sector SPDR Trust ("Trust") in its nine separate investment portfolios ("Fund" or "Funds").

FACTS

The Trust is a registered open-end management investment company ("open-end fund") that currently consists of nine Funds. Each Fund seeks to invest in a portfolio of equity securities consisting of all of the component securities ("Component Securities") of a specified market sector index ("Index" or "Indices").<sup>1</sup> Collectively, the Indices include all of the securities that comprise the Standard & Poor's 500 Composite Index and each security is allocated to one and only one Index.<sup>2</sup> Each Fund's shares ("Shares") are registered with the Commission under Section 12 of the Exchange Act and are listed and traded on the American Stock Exchange.<sup>3</sup>

According to your letter, each Fund attempts to approximate the investment performance of its benchmark Index by investing in a portfolio of stocks that seeks to replicate the relevant Index through the use of quantitative analytical procedures. Each Fund will maintain a policy to

<sup>1</sup> The Funds currently offered by the Trust are (followed by the respective Index): The Basic Industries Select Sector SPDR Fund (Basic Industries Select Sector SPDR Index); The Consumer Services Select Sector SPDR Fund (Consumer Services Select Sector SPDR Index); The Consumer Staples Select Sector SPDR Fund (Consumer Staples Select Sector SPDR Index); The Cyclical/Transportation Select Sector SPDR Fund (Cyclical/Transportation Select Sector SPDR Index); The Energy Select Sector SPDR Fund (Energy Select Sector SPDR Index); The Financial Select Sector SPDR Fund (Financial Select Sector SPDR Index); The Industrial Select Sector SPDR Fund (Industrial Select Sector SPDR Index); The Technology Select Sector SPDR Fund (Technology Select Sector SPDR Index); and The Utilities Select Sector SPDR Fund (Utilities Select Sector SPDR Index).

<sup>2</sup> The Component Stocks are assigned to a respective index by an Index Compilation Agent, subject to specified criteria. According to your letter, Merrill Lynch, Pierce, Fenner & Smith Inc., which is unaffiliated with the Trust, serves as Index Compilation Agent. Each Index is weighted based on the market capitalization of each of its Component Stocks, subject to certain asset diversification requirements.

<sup>3</sup> Additional information regarding the Trust is provided in the Commission's notice of the Trust's request for certain exemptions that are necessary to permit the creation and operation of the Trust. See Investment Company Act Release Nos. 23492 (Oct. 20, 1998) (Notice) and 23534 (Nov. 13, 1998) (Order).

remain as fully invested as practicable in the Component Securities and must invest at least ninety-five percent of its total assets in Component Securities. Unlike similar products, however, there may be instances in which a Component Security is not held by a Fund, or the Component Security is weighted differently from the Index. In addition, each Fund retains the option of investing up to five percent of its assets in a wide range of financial instruments, including, but not limited to, securities not in its relevant Index, structured notes, exchange-traded stock index futures, and repurchase agreements.

Shares of each Fund are issued in aggregations of creation units ("Creation Units").<sup>4</sup> In consideration for the purchase of a Creation Unit, the purchaser generally must deposit with the Fund a designated portfolio of equity securities that substantially replicates or represents the respective Index, plus a cash component.<sup>5</sup> Although the Shares are not individually redeemable, their holders have the right to redeem Shares in aggregations of Creation Units or multiples thereof. The redemption proceeds of a Creation Unit generally consist of a designated group of securities, as announced by the custodian of the Trust for the date of the redemption request, plus a cash component, less a transaction fee.

## ANALYSIS

Section 16 of the Exchange Act was designed to prevent the unfair use of inside information by corporate insiders for their own investment purposes. Ownership Reports and Trading By Officers, Directors and Principal Security Holders, Release No. 34-28869 (Feb. 8, 1991). Section 16(a) requires each officer, director and beneficial owner of greater than ten percent of any class of equity security registered pursuant to Section 12 of the Exchange Act (collectively "insiders") to file a statement with the Commission disclosing the number of shares of all equity securities beneficially owned, as well as reports regarding changes in that ownership. Section 16(b) permits the issuer, or a security holder suing on behalf of the issuer, to bring an action against insiders to recover all short-swing profits realized from any purchase and sale, or any sale and purchase, of the security within any period of less than six months. The insiders of the Funds, unlike insiders of other open-end funds, are subject to the requirements of Section 16 because the Shares of the Funds are registered under Section 12 of the Exchange Act.

You represent that the nature of the securities issued by the Funds obviates the need for insiders to report transactions in Shares pursuant to Section 16(a). In support, you state that the trading price of the Shares, which you believe are liquid and price-efficient, move in "near-precise" correlation to, and do not materially deviate from, the per share NAV of the relevant Fund.<sup>6</sup> You cite the combination of intra-day liquidity and the Trust's creation and redemption features as

---

<sup>4</sup> Each Creation Unit consists of 50,000 Shares.

<sup>5</sup> The cash component is designed to equalize differences between the market value (per Creation Unit) of the designated portfolio of securities and the proportionate net asset value ("NAV") of the Fund.

<sup>6</sup> You represent that, from December 22, 1998, the date upon which Shares of the Funds began trading, through April 9, 1999, the largest deviation between the daily closing price of any Select Sector SPDR Share and the daily NAV (per Share) of its respective Fund was +1.46% per Share (i.e., a premium of 1.46%).

creating potential arbitrage opportunities that mitigate pricing inefficiencies. You state that these features distinguish the Shares from other securities registered under Section 12, such as closed-end investment company ("closed-end fund") shares, which are market-priced and often trade at a discount to NAV. Finally, you state that, because the Shares trade at prices that are closely correlated to NAV, there is no risk that an insider could engage in the type of abuse that Section 16 is designed to prevent.

Section 16 generally applies to shares of closed-end funds and not to shares of open-end funds.<sup>7</sup> Although we are aware of no legislative history on this point, Congress may have reasoned that the investor protections provided by Section 16 were unnecessary in the context of shares of open-end funds because those funds trade at fixed prices, *i.e.*, at NAV. The distinction drawn by Congress between open-end and closed-end funds may be based on the view that the ability to exploit inside information is, at least in part, a function of the discrepancies that may exist between market price and NAV. An Insider of an open-end fund generally would not be able to exploit inside information by buying or selling shares of the fund on the basis of an anticipated change in the shares' value because an open-end fund is required to price its shares, and effect redemptions and sales of its shares, at NAV.<sup>8</sup> See PDR Services Corp. (pub. avail. June 29, 1998) (staff would not recommend enforcement action under Section 16(a) if insiders do not file reports under that provision with respect to DIAMONDS); PDR Services Corp. (pub. avail. Jan. 23, 1997) (same, with respect to SPDRs and MidCap SPDRs).

Based on the facts and representations in your letter, we would not recommend enforcement action to the Commission under Section 16(a) of the Exchange Act if insiders of the Funds do not file reports under Section 16(a). In reaching this position, we note particularly your representation that each Fund's Shares have traded and will continue to trade at prices that do not materially deviate from the relevant Fund's NAV. If any Fund's Shares begin to trade at prices that materially deviate from NAV, the relief granted in this letter no longer would be available. This position is based on the facts and circumstances set forth in your letter. Any different facts or circumstances may require a different conclusion. This response expresses the Divisions' position on enforcement action only and does not express any legal conclusion on the question presented.

---

<sup>7</sup> Section 30(h) of the Investment Company Act of 1940 subjects officers, directors, ten percent shareholders, and certain other affiliates of registered closed-end funds to the same duties and liabilities as those imposed by Section 16 of the Exchange Act.

<sup>8</sup> The value of a fund that trades at fixed prices can be affected only by a change in the value of its portfolio because the value of the fund is required to reflect the value of the fund's portfolio securities. See Rule 22c-1 under the Investment Company Act of 1940.

In this letter and in PDR Services Corporation (pub. avail. Dec. 14, 1998), the Divisions have stated their views as to whether insiders and five percent beneficial owners of exchange-traded products, such as Shares issued by the Funds, must file ownership reports under Sections 16(a) and 13(d) of the Exchange Act, respectively. Having stated our views, the Divisions will not respond to further requests for no-action relief in this area unless the request presents a novel or unusual issue.



Anne M. Krauskopf  
Special Counsel  
Office of Chief Counsel  
Division of  
Corporation Finance



Evan Geldzahler  
Senior Counsel  
Office of Chief Counsel  
Division of  
Investment Management

# GORDON ALTMAN BUTOWSKY WEITZEN SHALOV & WEIN

TELEPHONE: (212) 626-0800

114 WEST 47TH STREET

WRITER'S DIRECT DIAL NUMBER

FACSIMILE: (212) 626-0799

NEW YORK, N.Y. 10036-1510

MARJORIE SYBUL ADAMS  
THEODORE ALTMAN  
SAMUEL L. BARKIN  
MITCHELL S. BERKEY  
JORDAN L. BLEZNICK  
DAVID M. BUTOWSKY, P.C.  
STEPHEN E. ESTROFF  
DANIEL A. ETNA  
RONALD M. FEIMAN  
RAYMOND S. FERSKO  
JEFFREY M. GUSOFF  
STEPHEN A. HELMAN  
RICHARD M. HERVEY  
PAUL RICHARD KARAN  
JONATHAN KLEIN

IRVING H. PICARD  
BONNIE D. PODOLSKY  
JOEL A. PORETSKY  
ELLIS L. REEMER  
MICHAEL B. REUBEN  
DOUGLAS S. RICH  
ROBERT A. ROBERTSON\*  
VICTOR J. ROCCO  
KEITH L. SCHATKIN  
BARRY D. SHALOV  
STUART M. STRAUSS  
BRUCE J. WEIN  
MARC WEITZEN  
LAWRENCE J. ZWEIFACH

COREY B. ACKERMAN  
DENNIS M. BRESNAN  
JENNIFER L. BUCHMAN  
KRISTEN Y. CHANG\*  
ALEXIS G. DORFMAN  
PATRICK J. DUSSOL  
AMOS S. EDELMAN  
TODD R. EISNER  
DIANA L. ERBSEN  
DAVID L. FRANKEL  
YEVGENY FUNDLER\*  
JEFFREY S. GERON  
GREG D. GORDON  
ERIKA D. GORRIN  
S. ZOE GRAY  
INNES GUMNITSKY  
SHARON L. ITKIN  
JON D. KAPLON  
THOMAS C. KLANDERMAN  
INA J. KURCZ

LEWIS J. KWEIT  
ALAN M. LEVINE  
JESSE A. LYNN  
JILL S. MONOSON  
ELAINE S. MOSHE  
HANH M. NGUYEN  
STEPHANIE E. PAULOS  
BRYNN D. PELTZ  
MARIA J. PETTI  
ALIX S. PUSTILNIK  
ERIC D. SACKS  
BRUCE J. SCHANZER  
GEORGE M. SILFEN  
JERRY L. SMITH  
JOSHUA S. SOHN  
LISA A. STANCATI  
GEORGE VUOSO  
JILLIAN WALSH  
ADRIENNE M. WARD  
GRETCHEN N. WERWAISS

OF COUNSEL

RICHARD CASHMAN  
JILL COBERT-ALVAREZ  
C. LEONARD GORDON

DENNIS H. GREENWALD  
ANDREW N. HEINE, P.C.  
JAVIER HERNANDEZ

April 27, 1999

\*ADMITTED IN TEXAS

Division of Corporation  
Finance  
Securities and Exchange  
Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Division of Investment  
Management  
Securities and Exchange  
Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: Request for Exemptive, Interpretive or No-Action Relief from Section 16 of the Securities Exchange Act of 1934

Dear Ladies and Gentlemen:

The Select Sector SPDR® Trust (the "Trust") is an open-end management investment company which was organized as a Massachusetts business trust on June 10, 1998. The Trust currently consists of nine separate investment portfolios (each, a "Fund" and collectively the "Funds"). Each Fund invests in common stocks consisting of substantially all of the component securities of a specified market sector index. The initial specified market sector indexes are The Basic Industries Select Sector SPDR® Index, The Consumer Services Select Sector SPDR® Index, The Consumer Staples Select Sector SPDR® Index, The Cyclical/Transportation Select Sector SPDR® Index, The Energy Select Sector SPDR® Index, The Financial Select Sector SPDR® Index, The Industrial Select Sector SPDR® Index, The Technology Select Sector SPDR® Index and The Utilities Select Sector SPDR® Index, (hereinafter referred to individually, the "Index" and, collectively, the "Indexes"). The shares issued by each Fund are referred to herein as the "Shares." The Funds offered by the Trust are: The Basic Industries Select Sector SPDR® Fund, The Consumer Services Select Sector SPDR® Fund, The Consumer Staples Select Sector SPDR® Fund, The Cyclical/Transportation Select Sector

SPDR® Fund, The Energy Select Sector SPDR® Fund, The Financial Select Sector SPDR® Fund, The Industrial Select Sector SPDR® Fund, The Technology Select Sector SPDR® Fund and The Utilities Select Sector SPDR® Fund. The Trust will issue and redeem Shares of each Fund only in aggregations of 50,000 (referred to as "Creation Units"). The Shares of each Fund will be listed and traded on the American Stock Exchange LLC (the "Amex").<sup>1</sup>

The Trust on behalf of itself, its officers, directors and 10% holders of the Shares, the AMEX, the Funds and persons or entities engaging in transactions in Shares, as the case may be, requests that the Securities and Exchange Commission ("SEC") grant exemptive, interpretive or no-action relief from Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in connection with secondary market transactions in Shares, and the creation or redemption of Creation Units of Shares, as discussed below.<sup>2</sup>

### Select Sector SPDRs

The Funds. Each Fund is a separate investment portfolio of the Trust.<sup>3</sup> Each Fund's

---

<sup>1</sup> The Amex has filed a Form 19b-4 in order to obtain approval from the SEC of a proposed rule change to permit such listing.

<sup>2</sup> The SEC has previously granted to the AMEX exemptive or no-action relief under Section 16 of the Exchange Act with respect to the trading of SPDRs and MidCap SPDRs; see letter from Mark W. Green, Deputy Chief Counsel, Division of Corporate Finance and Barry A. Mendelson, Senior Special Counsel, Division of Investment Management, to Orrick, Herrington & Sutcliffe LLP, dated January 23, 1997. The SEC has also granted similar exemptive or no-action relief to The CountryBaskets<sup>SM</sup> Index Fund, Inc. with respect to the trading of CountryBaskets<sup>SM</sup>; see letter from Mark W. Green, Deputy Chief Counsel, Division of Corporate Finance and Barry A. Mendelson, Senior Special Counsel, Division of Investment Management, to Tuuli-Ann Ristkok, Donovan Leisure Newton & Irvine and Stephen K. West, Sullivan & Cromwell, dated January 23, 1997 and WEBS Index Fund, Inc. with respect to the trading of World Equity Benchmark Shares<sup>TM</sup>; see letter from Mark W. Green, Deputy Chief Counsel, Division of Corporate Finance and Barry A. Mendelson, Senior Special Counsel, Division of Investment Management, to Donald R. Crawshaw, Sullivan & Cromwell, dated September 23, 1997. Recently, the SEC granted the AMEX exemptive or no-action relief with respect to the trading of DIAMONDS<sup>TM</sup>; see letter from Mark W. Green, Associate Director, Division of Corporate Finance and Mercer E. Bullard, Assistant Chief Counsel, Division of Investment Management, to Orrick, Herrington & Sutcliffe LLP, dated June 29, 1998.

<sup>3</sup> For additional information, see Application for Orders (No. 812-10662) pursuant to Section 6(c) of the Investment Company Act of 1940 ("1940 Act") filed on May 12, 1997, as amended, granted on November 13, 1998 (the "Application"). In addition, see the registration statement for The Select Sector SPDR Trust (No. 333-57791 and No. 811-08837) on Form N-

(continued...)

investment objective is a fundamental policy and cannot be changed unless a majority of shareholders approve the change. Shares in Creation Unit size aggregation are purchased or redeemed, as the case may be, at the net asset value of the proportionate interest in the relevant Fund that such Shares represent.

The Indexes. Each stock included in an Index (the "Component Stocks") will be selected from a universe of companies represented by the S&P 500.<sup>4</sup> The nine Indexes together will include stocks of all of the companies represented in the S&P 500 and each of the stocks in the S&P 500 will be allocated to one and only one of the Indexes. Each of the nine Indexes which is the benchmark for a Fund is intended to give investors an efficient, modified market capitalization-based way to track the movement of baskets of equity securities of public companies that are components of the S&P 500 and are included in specific industry sectors. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch", the "index Compilation Agent"), in its capacity as the Index Compilation Agent, assigns the stock of each of the companies represented in the S&P 500 to a particular Index on the basis of such company's sales and earning composition and the sensitivity of the company's stock price and business results to the common factors that affect other companies in each Index. The Index Compilation Agent will consult with Standard & Poor's Corporation ("S&P") on the designation of a Component Stock to a particular Index; however, the final determination will be within the sole discretion of the Index Compilation Agent. S&P has sole control over the removal of stocks from the S&P 500 and the selection of replacement stocks to be added to the S&P 500.

A Component Stock removed from and added to the S&P 500 will be deleted from and added

---

<sup>3</sup>(...continued)

1A under the Securities Act of 1933, as amended, and the 1940 Act, filed on June 26, 1998, as amended by Amendment No. 1 filed on October 16, 1998 and Amendment No. 2 filed on November 16, 1998 (the "Registration Statement"). All statements contained herein relating to the Trust are qualified in their entirety by the Application and the Registration Statement.

<sup>4</sup> "S&P®", "Standard & Poor's 500®", "S&P 500®", "500", "Standard & Poor's Depository Receipts", "SPDRs®" and "Select Sector SPDR", "Select Sector SPDRs" and "Select Sector Standard and Poor's Depository Receipts" are trademarks of The McGraw-Hill Companies, Inc. and have been licensed for use in connection with the listing and trading of the Shares on the AMEX. The stocks included in each Select Sector Index (upon which the Select Sector SPDRs are based) were selected by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" and sometimes referred to as the "Index Compilation Agent") in consultation with Standard & Poor's Corporation ("S&P") from the universe of companies represented by the Standard & Poor's 500 Composite Stock Index ("S&P 500"). The composition and weighting of the stocks included in each Select Sector Index can be expected to differ from the composition and weighting of stocks included in any similar S&P 500 sector index that is published and disseminated by S&P. The Trust will use these trademarks and the Indexes pursuant to a sub-license agreement. The Trust, however, is not sponsored by or affiliated with Standard & Poor's, the AMEX or Merrill Lynch.

to the appropriate Index on the same schedule used by S&P for additions and deletions from the S&P 500. In the event of such a change, it will take approximately three Business Days<sup>5</sup> to be reflected in the portfolio composition of each Fund. Each Index is calculated and maintained by the American Stock Exchange Index Services Group ("ISG") using a modified "market capitalization" methodology. This design ensures that each of the Component Stocks within an Index is represented in a proportion consistent with its percentage to the total market capitalization of the such Index. Periodically, the Index Compilation Agent will supply ISG with sector designations for a number of stocks deemed likely candidates for replacement selection by the Standard & Poor's 500 Index Committee. If a replacement stock not on the current list is selected by the Standard & Poor's 500 Index Committee, ISG will ask the Index Compilation Agent to assign the stock to one of the nine sectors promptly. AMEX will disseminate information on this assignment and on consequent changes in the Index(es).

The Index Compilation Agent at any time may determine that a Component Stock which has been assigned to one Index has undergone such a transformation in the composition of its business that it should be removed from that Index and assigned to a different Index. In the event that the Index Compilation Agent notifies ISG that a Component Stock's Index assignment should be changed, the AMEX will disseminate notice of the change following its standard procedure for announcing index changes and will implement the change in the affected Indexes on a date no less than one week after the initial dissemination of information on the sector change to the maximum extent practicable. It is not anticipated that Component Stocks will change sectors frequently.

The value of the Indexes is calculated and disseminated by ISG. As of the market close on September 30, 1998, the weighting of each Index based on the capitalization of the stocks in the relevant Index and the number of Component Stocks represented in each Index was as follows:

| <u>List of the Indexes</u>  | <u>Weighting</u> | <u>Number of Component Stocks</u> |
|---|------------------|-----------------------------------|
| The Basic Industries Select Sector SPDR ("Basic Industries")      | 3.82%            | 58                                |
| The Consumer Services Select Sector SPDR ("Consumer Services")    | 5.69%            | 45                                |
| The Consumer Staples Select Sector SPDR ("Consumer Staples")      | 23.16%           | 69                                |
| The Cyclical/Transportation Select Sector SPDR ("Transportation") | 8.08%            | 69                                |
| The Energy Select Sector SPDR ("Energy")                          | 8.22%            | 33                                |
| The Financial Select Sector SPDR ("Financial")                    | 15.37%           | 75                                |
| The Industrial Select Sector SPDR ("Industrial")                  | 6.41%            | 35                                |
| The Technology Select Sector SPDR ("Technology")                  | 21.61%           | 77                                |
| The Utilities Select Sector SPDR ("Utilities")                    | 7.64%            | 39                                |
|   | 100.00%          | 500                               |

---

<sup>5</sup> A "Business Day" means any day on which the New York Stock Exchange is open for business.

Each Index is weighted based on the market capitalization of each of the Component Stocks, subject to the following asset diversification requirements: (i) the market capitalization-based weighted value of any single Component Stock measured on the last day of a calendar quarter may not exceed 24.99% of the total value of its respective Index; and (ii) with respect to 50% of the total value of the Index, the market capitalization-based weighted value of the lowest weighted Component Stocks must be diversified so that no single Component Stock measured on the last day of a calendar quarter represents more than 4.99% of the total value of its respective Index.

In order to insure that each Index and the Fund based upon it conform to the requirements for qualification of the Fund under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the Indexes are periodically rebalanced. Rebalancing will be the responsibility of ISG. If shortly prior to the last Business Day of any calendar quarter (a "Quarterly Qualification Date"), a Component Stock (or two or more Component Stocks) approaches the maximum allowable concentration, which for any single Component Stock is a value in excess of 24.99% of the total value of the Index and for 50% of the value of an Index the market capitalization based weighted value must be diversified so that no single Component Stock represents more than 4.99% of the total value of the Index (the "Asset Diversification Limits"), the percentage that such Component Stock (or Component Stocks) represents in the Index will be reduced and the market capitalization-based weighted value of such Component Stock (or Component Stocks) will be redistributed across the Component Stocks that do not closely approach the Asset Diversification Limits in accordance with the following methodology: First, each Component Stock that exceeds 24% of the total value of the Index will be reduced to 23% of the total value of the Index and the aggregate amount by which all Component Stocks exceed 24% will be redistributed equally across the remaining Component Stocks that represent less than 23% of the total value of the Index. If, as a result of this redistribution, another Component Stock then exceeds 24%, the redistribution will be repeated as necessary. Second, as necessary, with respect to the 50% of the value of the Index accounted for by the lowest weighted Component Stocks, each Component Stock that exceeds 4.8% of the total value of the Index will be reduced to 4.6% and the aggregate amount by which all Component Stocks exceed 4.8% will be distributed equally across all remaining Component Stocks that represent less than 4.6% of the total value of the Index. If, as a result of this redistribution, another Component Stock that did not previously exceed 4.8% of the Index value then exceeds 4.8%, the redistribution will be repeated as necessary until at least 50% of the value of the Index is accounted for by Component Stocks representing no more than 4.8% of the total value of the Index. If necessary, this reallocation process may take place more than once prior to a Quarterly Qualification Date to insure that the Index and the Fund portfolio based upon it conform to the requirements for qualification of the Fund as a regulated investment company.

No person presently associated with the Trust or any of the Funds is affiliated in any way with persons who determine the composition of the Indexes or will be so affiliated unless adequate internal policies and procedures of the index provider are in place to prevent such associated person's use of proprietary information regarding, or influence over, the content of the Indexes.

Method of Purchase. ALPS Mutual Fund Services, Inc. (the "Distributor") acts on an agency basis and is each Fund's principal underwriter as defined in Section 2(a)(29) of the Investment Company Act of 1940 ("1940 Act"). Shares are issued and sold only in Creation Units on a continuous basis through the Distributor at their net asset value next determined after receipt of an order in proper form. The Creation Unit of each Fund consists of 50,000 Shares. Creation Units of Shares may be purchased only by or through a participant in the clearing process ("Participating Party") through the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC") or a participant in The Depository Trust Corporation ("DTC") (a "DTC Participant" and together with the Participating Party, the "Authorized Participant"), that, in either case, has entered into an agreement with the Trust, the Distributor and the Transfer Agent, which sets forth the procedures to be followed in order to purchase or redeem Shares in Creation Unit aggregations. The consideration for creation of Creation Units of Shares generally consists of the deposit of a designated portfolio of equity securities constituting a substantial replication, or representation, of the particular Index (the "Deposit Securities") and an amount of cash computed as described below (the "Cash Component"). Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which represents the minimum investment amount for purchase of Shares of any Fund from the Trust. The Cash Component represents the difference between the net asset value of a Creation Unit and the Deposit Securities, and includes the Dividend Equivalent Payment. The "Dividend Equivalent Payment" enables each Fund to make a distribution of dividends on the next dividend payment date as if all the portfolio securities of the Fund had been held for the entire dividend period (the "Accumulation Period") net of expenses and liabilities for such period. The Accumulation Period begins on the ex-dividend date for each Fund and ends on the next ex-dividend date.

Creation Units of a Fund may be created in advance of receipt by the Trust of all or a portion of the applicable Deposit Securities. In these circumstances, the initial deposit will have a value greater than the net asset value of the Shares on the date the order is placed in proper form. In addition to the available Deposit Securities, cash must be deposited in an amount equal to the sum of (i) the Cash Component, plus (ii) 115% of the market value of the undelivered Deposit Securities (the "Additional Cash Deposit"). The order shall be deemed to be received on the Business Day on which the order is placed provided that the order is placed in proper form prior to 4:00 p.m., New York time, on such date and federal funds in the appropriate amount are deposited with the Trust's Custodian by 11:00 a.m., New York time, the following Business Day. If the order is not placed in proper form by 4:00 p.m., New York time, or federal funds in the appropriate amount are not received by 11:00 a.m., New York time, the next Business Day, then the order may be deemed to be rejected and the investor shall be liable to the Trust for losses, if any, resulting therefrom. An additional amount of cash shall be required to be deposited with the Trust, pending delivery of the missing Deposit Securities to the extent necessary to maintain the Additional Cash Deposit with the Trust in an amount at least equal to 115% of the daily marked to market value of the missing Deposit Securities. To the extent that missing Deposit Securities are not received by 1:00 p.m., New York time, on the third Business Day following the day on which the purchase order is deemed received by the Distributor or in the event a mark to market payment is not made within one Business Day following notification by the Distributor that such payment is required, the Trust may use cash on

deposit to purchase the missing Deposit Securities. Authorized Participants will be liable to the Trust for the costs incurred by the Trust in connection with any such purchases. These costs will be deemed to include the amount by which the actual purchase price of the Deposit Securities exceeds the market value of such Deposit Securities on the day the purchase order was deemed received by the Distributor plus the brokerage and related transaction costs associated with such purchases. The Trust will return any unused portion of the Additional Cash Deposit once all of the missing Deposit Securities have been properly received by the Custodian or purchased by the Trust and deposited into the Trust. In addition, a transaction fee of \$4,000 will be charged in all cases. The delivery of Creation Units of a Fund so created will occur no later than the third Business Day following the day on which the purchase order is deemed received by the Distributor.

Orders to create Creation Units of a Fund outside the clearing process must be delivered through a DTC Participant that has executed a participant agreement with the Distributor, the Trust and the Transfer Agent. A DTC Participant who wishes to place an order for creation of Creation Units of a Fund to be effected outside the clearing process need not be an Authorized Participant, but such orders must state that the DTC Participant is not using the clearing process and that such creation of Creation Units will instead be effected through transfer of Shares directly through DTC.

All orders to create Creation Units of Shares, whether through the clearing process (through a Participating Party) or outside the clearing process (through a DTC Participant), must be received by the Distributor no later than the closing time of the regular trading session on the New York Stock Exchange ("Closing Time") (ordinarily 4:00 p.m., New York time) in each case on the date such order is placed in order for the creation of Creation Units of Shares to be effected based on the net asset value of Shares of each Fund as determined on such date. The date on which an order to create Creation Units of Shares (or an order to redeem Creation Units of Shares) is placed is referred to as the "Transmittal Date". However, if the Custodian does not receive both the requisite Deposit Securities and the Cash Component by 11:00 a.m., New York time, and 2:00 p.m., New York time, respectively, on the next Business Day immediately following the Transmittal Date, such order will be canceled. Orders must be transmitted by telephone or other transmission method acceptable to the Distributor pursuant to procedures set forth in the Participant Agreement. In addition, the Authorized Participant may request the investor to make certain representations or enter into agreements with respect to the order e.g., to provide for payments of cash, when required. Severe economic or market disruptions or changes, or telephone or other communication failure, may impede the ability to reach the Distributor or an Authorized Participant. An order to create Creation Units of Shares through the clearing process is deemed received by the Distributor on the Transmittal Date if (i) such order is received by the Distributor not later than the Closing Time on such Transmittal Date and (ii) all other procedures set forth in the Participant Agreement are properly followed. Orders for creation that are effected outside the clearing process of the NSCC are likely to require transmittal by the DTC Participant earlier on the Transmittal Date than orders effected using the clearing process.

The Trust reserves the right to offer a "cash" option for sales and redemptions of Shares (subject to applicable legal requirements), although it has no current intention of doing so. As

described above, Shares may be issued in advance of receipt of Deposit Securities subject to various conditions including a requirement to maintain on deposit with the Trust cash at least equal to 115 % of the market value of the missing Deposit Securities. In each instance of such cash sales or redemptions, the Trust may impose transaction fees that will be higher than the transaction fees associated with in-kind purchases or redemptions. In all cases, such fees will be limited in accordance with the requirements of the SEC applicable to management investment companies offering redeemable securities.

State Street Bank and Trust Company (hereinafter sometimes referred to as "State Street"), in its capacity as the custodian of the Funds (the "Custodian"), in consultation with the Adviser (as defined below), makes available through the NSCC on each Business Day, immediately prior to the opening of business on the AMEX (currently 9:30 a.m., New York time), the list of the names and the required number of stocks constituting the Deposit Securities to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for each Fund. Such Fund Deposit is applicable, subject to any adjustments as described below, to effect creations of Creation Units of a given Fund until such time as the next-announced composition of the Deposit Securities is made available.

The identity and number of shares constituting the Deposit Securities required for a Fund Deposit for each Fund changes as rebalancing adjustments and corporate action events are reflected from time to time by State Street, as the adviser to the Funds (the "Adviser"), with a view to the investment objective of the Fund. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the securities constituting the relevant Index. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Cash Component to replace any Deposit Securities which may not be available in sufficient quantity for delivery or which may not be eligible for transfer through the clearing process or which may not be eligible for trading by an Authorized Participant or the investor for which the Authorized Participant is acting.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, the Custodian, through the NSCC, also makes available on each Business Day, the Dividend Equivalent Payment effective through and including the previous Business Day, per outstanding Share of each Fund.

The AMEX disseminates through the facilities of the Consolidated Tape Association the value of each Index, which amount represents on a per share basis the sum of the Dividend Equivalent Payment effective through and including the previous Business Day, plus the current value of the Deposit Securities on a per Fund basis every 15 seconds during regular AMEX trading hours. The Funds are not involved in or responsible for the calculation or dissemination of such amount, and make no warranty as to its accuracy.

The value of a Creation Unit of Shares varies from one Fund to another, but as of October 29, 1998 ranged from \$1,000,000 and \$1,400,000 (assuming the inclusion of all stocks in the relevant

Index in their exact weighting).<sup>6</sup> Due to the value of a Creation Unit in any of the Funds, it is expected that, generally, only institutions will purchase Creation Units from the Funds. Based on the initial expected values of a Creation Unit and the number of Shares per Creation Unit for each Fund (but without taking into account the effect of discounts from or premiums over their net asset value in the secondary market, which, in any event, are expected to be small), and assuming October 29, 1998 stock prices, it is anticipated that Shares of the Funds will commence trading on the AMEX at between \$17.00 and \$30.00 per Share.

**Distributor.** The Distributor will not distribute Shares in less than Creation Units, and it will not maintain a secondary market in the Shares. The Distributor may enter into selected dealer agreements with other broker-dealers or other qualified financial institutions for the sale of Creation Units of Shares ("Soliciting Dealers"). Such Soliciting Dealers may also be Participating Parties, DTC Participants and/or investor services organizations. The Board of Trustees of the Trust has adopted for each Fund a distribution plan pursuant to Rule 12b-1 under the 1940 Act. We note that although broker-dealers receive no sales charge, commission or concession from the Trust or the Distributor either in connection with creation of Creation Units of Shares or secondary market transactions in Shares, certain broker-dealers may receive compensation pursuant to investor services agreements for shareholder support and investor services (which may include compensation and sales incentives to the registered brokers or other sales personnel of the broker-dealer or other financial entity that is a party to an investor services agreement) from the Distributor pursuant to a Fund's Rule 12b-1 plan. Fees and reimbursement under the Rule 12b-1 plans are limited to a total of .25% per annum of the average net assets of a Fund. The Distributor's principal business address is 370 17th Street, Suite 3100, Denver, CO 80202.

**Redemption of Shares.** Creation Units of each Fund are redeemable only in Creation Unit size aggregations through State Street, as the transfer agent ("Transfer Agent"). Orders to redeem Creation Units of a Fund may only be effected by or through a Participating Party (with respect to redemptions through the Clearing Process) or a DTC Participant (with respect to redemptions outside

---

<sup>6</sup> In structuring each Fund, consideration was given to determining the appropriate price range for a Creation Unit size aggregation as well as the appropriate secondary market price ranges per Share. At the time that the Funds were being developed, it was decided one-tenth (1/10) of the value of its respective Index was most appropriate.

Moreover, in structuring the Shares, it was determined that the optimal price for a Creation Unit size aggregation was a range of \$1,000,000 to \$1,400,000. Such amount was deemed to be the size of a typical basket trade and high enough to avoid dealing in fractional shares in lesser weighted Component Stocks when creating and redeeming Creation Units. The size of a Creation Unit may be changed by a vote of the Trustees of the Trust.

As stated in the discussion about the trading market, the structural characteristics of the Shares have maintained a tight correlation between market price and the net asset value of each of the Funds contained within the Trust.

the Clearing Process). An order to redeem through the Clearing Process is deemed received on the date of transmittal if such order is received by the Transfer Agent prior to the Closing Time on the date of transmittal and all other procedures set forth in the Participant Agreement are properly followed. An order to redeem outside the Clearing Process is deemed received by the Transfer Agent on the date of transmittal if: (i) such order is received by the Transfer Agent no later than 4:00 p.m., New York time, on the Transmittal Date; (ii) such order is accompanied or preceded by the requisite number of Shares specified in the order, which delivery must be made through DTC to the Custodian no later than 11:00 a.m., New York time, on the next business day after the Transmittal Date; and (iii) all other procedures set forth in the Participant Agreement are followed.

With respect to each Fund, the Custodian, through the NSCC, makes available immediately prior to the opening of business on the AMEX (currently 9:30 a.m., New York time) on each day that the AMEX is open for business the list of names and the number of shares of each Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day ("Fund Securities"). Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit generally consist of Fund Securities as announced by the Custodian on the Business Day of the request for redemption, plus cash in an amount equal to the difference between the net asset value of the shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less the redemption transaction fee. In the event that the Fund Securities have a value greater than the net asset value of the Shares, a compensating cash payment to the Trust equal to the differential will be required to be arranged for by or on behalf of the redeeming investor by the Authorized Participant.

If the redeeming investor, through an Authorized Participant, is to receive its redemption proceeds in cash, the investor, through an Authorized Participant, will receive a cash payment equal to the net asset value of its Shares based on the net asset value of the Fund of the relevant Index next determined after the redemption request is received in proper form by the Transfer Agent, minus a redemption transaction fee specified for cash redemptions in the Trust's Prospectus (such fee would be equal to the fee for in-kind redemptions plus an additional fee because of the extra costs incurred by the Fund in connection with a cash redemption).

Orders to redeem Creation Units of a Fund outside the clearing process must be delivered through a DTC Participant that has executed a participant agreement with the Distributor, the Trust and the Transfer Agent. A DTC Participant who wishes to place an order for redemption of Creation Units of a Fund to be effected outside the clearing process need not be an Authorized Participant, but such orders must state that the DTC Participant is not using the clearing process and that such redemption of Creation Units will instead be effected through transfer of Shares directly through DTC. An order to redeem Creation Units of a Fund outside the clearing process is deemed received by the Transfer Agent on the Transmittal Date if (i) such order is received by the Transfer Agent not later than 4:00 p.m., New York time, on such Transmittal Date; (ii) such order is accompanied or preceded by the requisite number of Shares of a Fund specified in such order, which delivery must be made through DTC to the Custodian no later than 11:00 a.m., New York time, on the next

Business Day following such Transmittal Date; and (iii) all other procedures set forth in the participant agreement are properly followed.

Depository Trust Corporation. DTC serves as securities depository for the Shares. (The Shares may be held only in book-entry form; stock certificates will not be issued.) DTC, or its nominee, is the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or its participants (*i.e.*, securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations, some of whom (and/or their representatives) own DTC). Beneficial owners of Shares are not entitled to have Shares registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form and are not considered the registered holder thereof. The Trust understands that under existing industry practice, in the event the Trust requests any action of holders of Shares, or a beneficial owner desires to take any action that DTC, as the record owner of all outstanding Shares, is entitled to take, DTC would authorize the DTC Participants to take such action and that the DTC Participants would authorize the indirect participants and beneficial owners acting through such DTC Participants to take such action and would otherwise act upon the instructions of beneficial owners owning Shares through them. As described above, the Trust recognizes DTC or its nominee as the owner of all Shares for all purposes.

Accordingly, to exercise any rights of a holder of Shares, each beneficial owner must rely on the procedures of (i) DTC; (ii) DTC Participants; and (iii) brokers, dealers, banks and trust companies that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly, through which such beneficial owner holds its interests.

Management of the Funds. The Trust's Board of Trustees has responsibility for the overall management of the Funds. State Street as the Adviser and in such capacity, subject to the supervision of the Board of Trustees of the Trust, is responsible for the investment management of each Fund. As described in the Trust's Prospectus, the Funds are not managed according to traditional methods of "active" investment management, which involve the buying and selling of securities based upon economic, financial and market analysis and investment judgment. Instead, each of the Funds, utilizing a "passive" or indexing investment approach, attempts to approximate the investment performance of its benchmark index by investing in a portfolio of stocks that seeks to replicate the relevant Index through the use of quantitative analytical procedures. Each of the Funds, which have the policy to remain as fully invested as practicable in a pool of equity securities, invests at least 95% of its total assets in Component Stocks that comprise the relevant Index. Each Fund may invest its remaining assets in money market instruments or funds which reinvest exclusively in money market instruments (subject to applicable limitations under the 1940 Act), in repurchase agreements, in stocks that are in the relevant market but not the relevant Index, in convertible securities, structured notes, exchange traded stock index futures, exchange traded options on futures, stock or stock indexes, as well as options on the Shares. At present there are no exchange traded futures, options on the Indexes or options on the Shares but these investments may be available in the future.

The Adviser anticipates that, generally, each of the Funds will hold all of the securities which

comprise its specific Index. There may, however, be instances where a stock in the applicable Index is not held or is not held in the same weighting as in the Index. In certain instances, the Adviser may choose to overweight another stock in the Index, purchase securities not included within the Index which the Adviser believes appropriate to substitute for the Index securities or utilize various combinations of other available investment techniques in seeking to track accurately the benchmark index. To the extent that a Fund does not invest in every Component Stock of its applicable Index in the proportions dictated by the Index, it may not track the Index with the same degree of accuracy as a vehicle which does. The Adviser expects that, over time, the "tracking error" of a Fund relative to the performance of its benchmark index (adjusted for the effect of Fund expenses) will be less than 5%. A tracking error of 5% means that there is a 68% probability that the net asset value of each Fund will be within plus or minus 5% of the relevant Index level after one year, without modifying (or "rebalancing") a Fund's composition. Over time, the securities holdings of each Fund may be rebalanced to reflect changes in the characteristics of the relevant Index.

The Trading Market. The Shares will be listed and traded on the AMEX. Shares will be freely tradeable on the AMEX throughout the trading session. The price of Shares trading on the AMEX will be based on a current bid/offer market. The trading market on the AMEX affords investors the opportunity to assume and liquidate positions in Shares at their discretion, permitting them to take advantage of prices at any time of the trading day. This combination of intra-day liquidity with the Creation Unit purchase and redemption features creates potential arbitrage opportunities that, in turn, should mitigate pricing inefficiencies. This has also been historically the case, the Trust understands, with the Portfolio Depositary Receipts issued by the SPDR Trust, Series 1, the MidCap SPDR Trust, Series 1 and the DIAMONDS<sup>SM</sup> Trust, Series 1 (referred to herein as the "PDRs")<sup>7</sup> and World Equity Benchmark Shares ("WEBS").<sup>8</sup> The high degree of historical and expected correlation of net asset value and share prices contrasts with the case of shares of closed-end equity funds which, not having the redemption feature, typically trade at a material discount (and occasionally at a premium) to their underlying net asset values. Since the Shares have commenced trading, their prices have moved in near-precise correlation with the net asset value ("NAV") of the relevant Fund.<sup>9</sup> The structural characteristics of the Shares of each Fund are believed to provide investors with a liquid, price-efficient security that closely tracks the relevant Index.

---

<sup>7</sup> "PDR" <sup>SM</sup> is a service mark of PDR Services Corporation.

<sup>8</sup> "WEBS"<sup>SM</sup> is a service mark of Morgan Stanley, Dean Witter & Co.

<sup>9</sup> Since trading began through April 9, 1999, none of the Select Sector SPDR's have closed at a premium or discount greater than 1.5% of NAV. The maximum daily deviation for each of the Funds since inception is: for Basic Industries a 1.46% premium to NAV; for Energy a .78% discount to NAV; for Financial a .88% premium to NAV; for Industrial a 1.06% premium to NAV; for Technology a .96% discount to NAV; for Consumer Staples a .99% premium to NAV; for Consumer Services a 1.00% premium to NAV; for Utilities a 1.38% discount to NAV; and for Transportation a 1.15% discount to NAV.

By offering investors the ability to buy, in effect, a very small amount of a portfolio of equity securities of companies in a particular sector or group of industries, each Index allows index-based investing without a major investment of capital or the restrictions of an index-based, non-exchange traded, open-end fund. Each Fund provides retail and institutional investors with a "basket" investment representative of an industry sector. As noted above, the Shares are designed to provide investors with a highly liquid, price-efficient security that will closely track the relevant underlying Index.

#### Comparison of the Funds to the PDR Trusts, WEBS and CountryBaskets<sup>10</sup>

The SEC has granted relief in connection with the SPDR Trust, the MIDCAP SPDR Trust and the DIAMONDS<sup>SM</sup> Trust (referred to collectively as the "PDR Trusts")<sup>11</sup>, World Equity Benchmark Shares known as WEBS and The CountryBaskets Index Fund, Inc. (the fund and its securities referred to as "CountryBaskets") which is substantially similar to that requested for the Trust.

The Trust, the PDR Trusts, WEBS and CountryBaskets share a number of fundamental features. All represent registered investment companies with exchange listed and traded shares. All attempt to track the performance of specified indices which are compiled by experienced index compilers and to remain as fully invested as possible in the securities necessary to correspond to the specified index. All are characterized by issuing shares only in large Creation Unit size aggregations and principally on the basis of a deposit of securities reflecting the composition of the specified index and redeeming shares only in such Creation Unit size aggregations and principally on the basis of a delivery of securities reflecting the composition of the specified index. Although the Trust, the PDR Trusts, WEBS and CountryBaskets have different investment objectives and, as a result, may not necessarily be purchased by the same investors, the products are similarly structured with the view to attracting the same types of investors, viz., large institutions, in respect of the Creation Unit size aggregations of securities purchasable from and redeemable through the investment company, and retail and institutional investors in respect of the exchange-traded individual securities.

The Trust, the PDR Trusts, WEBS and CountryBaskets adopted somewhat different routes to arrive at these substantively similar ends. The PDR Trusts are unit investment trusts which invest in securities in accordance with the terms of their trust instruments; WEBS and the Trust are management investment companies (as was the CountryBaskets Fund) investing in securities based upon the investment decisions of the Adviser made in conformity with such fund's stated investment objective and investment policies.

---

<sup>10</sup> "CountryBaskets"<sup>SM</sup> is a service mark of Deutsche Morgan Grenfell Inc.

<sup>11</sup> "SPDRs"<sup>®</sup> and "MIDCAP SPDRs"<sup>®</sup>, are trademarks of The McGraw-Hill Companies, Inc. DIAMONDS<sup>SM</sup>, is a service mark of Dow Jones & Company, Inc.

The PDR Trusts invest on the basis of "full replication" of their respective indices: the SPDR Trust invests in all 500 stocks contained in the S&P 500 index, the MIDCAP SPDR Trust invests in all 400 stocks contained in the S&P MidCap 400 index and the DIAMOND Trust invests in all 30 stocks contained in the Dow Jones Industrial Average. Each series of the CountryBaskets Fund invested on the basis of "substantial replication" of its index. WEBS does not fully replicate its benchmark indexes; instead WEBS generally applies "portfolio sampling" or "optimization" techniques, by which each series of WEBS will invest in less than all of the securities in its benchmark index in a manner which is intended nevertheless to achieve the investment performance of the index within a range of expected tracking error, while at the same time improving the overall liquidity of the portfolio and reducing cost, as compared to a "full replication" portfolio. While the Trust will generally hold all of the securities which comprise a Fund's benchmark index, similar to the PDR Trusts and CountryBaskets, there may be instances in which a component security in the applicable Index is not held by such Fund or is not held in the same weighting as in the relevant Index. In certain instances, the Adviser may choose to overweight another stock in the Index, purchase securities not included within the Index which the Adviser believes are appropriate to substitute for the Index securities or utilize various combinations of options, futures and/or structured notes or other investment techniques in seeking to track accurately the benchmark Index.

Each Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" for purposes of the Internal Revenue Code.

## Section 16

We hereby request confirmation from the Division of Corporation Finance and the Division of Investment Management (the "Staff") of the SEC that the Staff will not recommend that the SEC take enforcement action if officers and directors of the Trust and beneficial owners of greater than ten percent of the outstanding Shares of any of the Funds do not comply with the reporting provisions of Section 16(a) of the Exchange Act.

Section 16 of the Exchange Act was designed to prevent the unfair use of inside information by corporate insiders for their own investment purposes.<sup>12</sup> Section 16(a) requires all officers and directors of an issuer with a class of equity securities registered pursuant to Section 12 of the

---

<sup>12</sup> The Senate Report accompanying the Exchange Act states that "among the most vicious practices unearthed at the hearings before the subcommittee was the flagrant betrayal of their fiduciary duties by directors and officers of corporations who used their positions of trust and the confidential information which came to them in such positions, to aid them in market activities. Closely allied to this type of abuse was the unscrupulous employment of inside information by large stockholders who, while not directors and officers, exercised sufficient control over the destinies of their companies to enable them to acquire and profit by information not available to others." S. Rep. No. 1455, 73d Cong., 2d Sess. 55 (1934).

Exchange Act, and beneficial owners of greater than ten percent ("ten percent holders") of any class of equity security registered pursuant to Section 12 of the Exchange Act, to file reports with the SEC. Section 16(b) permits the issuer or shareholders suing on behalf of the issuer to sue officers, directors, and ten percent holders to recover from such insiders short-swing profits realized from any purchase and sale, or any sale and purchase, of any equity security of such issuer within any period of less than six months. Section 16(c) prohibits officers, directors and ten percent holders from making short sales of such equity securities. Because Shares are registered pursuant to Section 12<sup>13</sup>, the provisions of Section 16 would arguably apply to officers and directors of the Trust and ten percent holders of the outstanding Shares of a Fund.<sup>14</sup>

It is only because of the requirement to register each class of Shares under Section 12 of the Exchange Act that the possible applicability of Section 16(a) comes into question.

The Trust believes that no regulatory purpose would be served by imposing the obligations and restrictions of Section 16 on officers and directors of the Trust or ten percent holders of the Shares of a Fund. There does not appear to be any significant informational advantage, or corresponding opportunity for abuse, that flows from being an officer or director of the Trust or from owning ten percent of the Shares of a Fund, with regard to the Shares, the identity and number of the underlying securities that comprise the Fund, or the underlying securities themselves.<sup>15</sup>

Since the Funds are "index" funds, there is no "inside information" that an insider could have

---

<sup>13</sup> Section 12(a) of the Exchange Act provides that before securities may be admitted to trading on a national securities exchange, they must be authorized for listing and registered under Section 12 of the Exchange Act. Thus, in order to qualify for listing on the AMEX, Shares must be registered under Section 12 of the Exchange Act.

<sup>14</sup> When Section 12 of the Exchange Act was amended in 1964 to extend its coverage, and correspondingly that of Section 16, subsection (g) of Section 12 specifically exempted all securities of registered investment companies. S. Rep. No. 379, 88th Congress, 1st Sess. (1963). Thus a publicly offered registered open-end fund, no matter how large in terms of assets or numbers of investors, was not made subject to Section 16 based upon a registration under Section 12(g). Closed-end funds, in contrast, are subject to Section 16 pursuant to Section 30(h) of the 1940 Act. But because of the requirement to register under Section 12 (b) of the Exchange Act if a class of securities of a company is to be listed on a national securities exchange, an open-end fund so listed could be deemed to become subject to Section 16.

<sup>15</sup> The rationale for granting relief from the requirements of Section 16 would appear to be the same in the case of officers and directors of the Trust as it would be for ten percent holders of the Shares of a Fund. Since it is possible that officers or directors of the Trust might invest in Shares, the Trust is requesting that the relief sought herein extend to them as well as ten percent holders. In our view, extending relief to officers and directors is particularly appropriate in light of the fact that Section 16 is not applicable to other open-end funds.

which might affect trading prices. Unlike other types of funds investing in a portfolio of equity stocks, the specific investments of which are not known at any given time (other than as reported semi-annually or, in some cases, quarterly) except to management, each Fund has an essentially transparent structure. As described above, the Funds are not "actively" managed, but instead utilize a "passive" or indexing investment approach, which attempts in the case of each Fund to approximate the investment performance of its benchmark index through substantial replication of the benchmark index. Each Fund normally invests at least 95% of its total assets in stocks or stock equivalents that are represented in the relevant benchmark index. Moreover, although the Funds may not always invest in all of the stocks in their respective benchmark indexes, the approximate<sup>16</sup> composition of a Fund's portfolio is publicly available on a daily basis, in order to enable investors to accumulate the necessary Deposit Securities to purchase a Creation Unit size aggregation of the Shares of a Fund. Thus, there is very little possibility of "inside information" about the composition of a Fund's portfolio.

In addition, officers and directors of the Trust, as well as ten percent holders of Shares of a Fund, have no more access to information regarding, or power to influence, the value of the Shares of the respective Funds, or any component security, than any other persons. The SEC staff has previously granted relief from Section 16(a) to asset-backed trusts, possibly on the grounds that ten percent holders in the trust have no more access to information regarding the trust than any other holder.<sup>17</sup> In requesting relief, the applicants noted that ten percent ownership in a pool of assets provides no potential to abuse inside information as to the prospective market value of the assets underlying the pool. The Shares of each Fund are analogous to these asset-backed trusts in this regard in that neither ten percent holders of a Fund's Shares nor officers and directors of the Trust have any opportunity, by virtue of their share holdings, officerships or directorships, to abuse inside information as to the prospective market value of the holdings of the various Funds. Thus, the Trust is of the view that there is no risk that such persons could engage in the type of abuse that Section 16 is designed to prevent. Indeed, a high degree of informational transparency surrounds the creation, redemption and trading of Shares. Consequently, the only factors materially affecting the value of the Shares of a Fund are fluctuations in the prices of the securities comprising the relevant Index, and all market participants have equal access to this information.

As noted, the market price of the Shares of each Fund is expected to be closely correlated

---

<sup>16</sup> The list of Deposit Securities for a particular Index published on a particular Business Day may differ slightly from the composition of a Fund's then current portfolio because of rounding or if the Adviser is in the process of rebalancing the portfolio or other similar limited circumstances.

<sup>17</sup> See, e.g., Bank One Auto Trust 1995-A, 1995 SEC No-Act. LEXIS 641 (August 16, 1995); Banc One Student Loan Trust, 1995 SEC No-Act. LEXIS 348 (March 1, 1995); EOCC Home Equity Loan Trust 1993-A, 1994 SEC No-Act. LEXIS 1 (January 4, 1994). No rationale for the relief granted is indicated in these letters.

with the net asset value of the Fund. This contrasts with shares of other trading vehicles such as closed-end equity funds, which often trade at a notable discount (and occasionally a premium) to their underlying net asset values. Those funds lack both the transparency of the Funds (they are actively managed and publish their portfolios infrequently -- typically quarterly -- and normally do not announce their net asset value more frequently than weekly) and the ongoing redemption feature. In such situations it may be rational to have a concern that persons may seek to profit from inside information concerning portfolio developments or other events that could affect net asset value and market price. For example, persons may take steps to narrow the spread between the market price of the fund's shares and their net asset value, and an officer, director or ten percent holder of such a closed-end fund could become aware of such efforts sooner than other holders. The transparency of the Funds, and the expected absence of a material deviation from net asset value for Shares<sup>18</sup>, would seem to eliminate any possibility of this scenario or this concern with respect to Shares.

For these reasons it is inappropriate to require officers and directors of the Trust or ten percent holders of the Shares of a Fund to file Section 16(a) reports with respect to Shares.

Indeed, the specter of compliance with Section 16(a) obligations may have an adverse impact on the effectiveness of a Fund to substantially replicate its benchmark index and lead to pricing inefficiencies. The potential for arbitrage activity disciplines the correlation between the trading price of a Share and a Fund's net asset value. To the extent that market participants are deterred from acquiring and redeeming Shares in Creation Unit size aggregations due to the possibility of having to file reports pursuant to Section 16(a), the correlation between the market price for Shares and the net asset value of the securities in the Fund might decrease.<sup>19</sup> This pricing inefficiency would be detrimental to the interests of the then current holders of Shares, who purchased Shares when the correlation was tight, and potential investors in Shares who are seeking a low-cost, efficient means of index-based investing. Moreover, to the extent certain investors limit their investments in Shares because of concerns about Section 16, the net assets of the Fund will be lower than they would otherwise be. This results in higher expense ratios for the Fund, which makes the Fund less attractive to potential investors and is a detriment to existing shareholders.

In these circumstances, there appears to be little risk that an officer or director of the Trust or a ten percent holder of a Fund's Shares could engage in the type of trading abuses that Section 16(a) of the Exchange Act was designed to prevent. In any event, even if there were "inside

---

<sup>18</sup> See Footnote 9 for the maximum deviation between the net asset value and the market price of the Shares for each of the Select Sector SPDR Funds during the three and one-half months period from December 22, 1998 through April 9, 1999.

<sup>19</sup> Section 16 would not preclude holders from engaging in "bona fide arbitrage", which is exempt from the provisions of Section 16 pursuant to Section 16(e) of the Exchange Act and Rule 16e-1 thereunder. The precise scope of Section 16(e) is unclear in light of the absence of case law interpreting Section 16(e). Accordingly, in any given case there could be a question whether a transaction or series of transactions constitutes "bona fide arbitrage".

information" available to officers, directors or ten percent holders of a Fund's Shares, there is little, if any, possibility of manipulation of the value of Shares or of the underlying securities held by the Fund.<sup>20</sup>

Moreover, the continuous creation, redemption and trading of Shares creates difficulties and burdensome obligations for holders of Shares to recognize promptly when their level of ownership exceeds ten percent of the then-outstanding Shares of a Fund, arguably triggering Section 16 obligations. While the Trust is aware of the number of Shares of each Fund outstanding on any given day, the Trust may not be aware of entities that have taken a substantial position in Shares through secondary-market transactions. Similarly, although holders of Shares know the extent of their holdings in a given Fund, they could find themselves having become ten percent holders of the Shares of a Fund because a redemption by some other holder of Shares of such Fund has reduced the total number of outstanding Shares of such Fund. Thus, potentially numerous shareholders would find it necessary constantly to monitor the number of outstanding Shares of a Fund in order to determine when Section 16 compliance is required.<sup>21</sup> Since these surveillance and monitoring obligations are onerous, an inadvertent violation of Section 16(a) is possible, with potentially extreme adverse effects on an investor's trading strategy should one or more trades trigger the provisions of Section 16(b). These compliance difficulties, taken in conjunction with the lack of potential for abuse of inside information, in our view, warrant relief from Section 16 with regard to the Shares.

Finally, Rule 16a-1(a)(5)(iii) promulgated under Section 16 exempts from beneficial ownership for purposes of Section 16 interests in securities comprising part of a broad-based, publicly-traded market basket or index of stocks approved for trading by the appropriate federal

---

<sup>20</sup> See letter from James F. Duffy, Senior Vice President and General Counsel, AMEX to Larry Bergmann, Associate Director, Division of Market Regulation, Securities and Exchange Commission initiating the letter from Nancy Sanow, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, to James F. Duffy, Senior Vice President and General Counsel, AMEX dated January 22, 1993 (regarding SPDRs) requesting relief from Rules 10b-6 and 10b-7 under the Exchange Act, among others, with regards to SPDRs on the grounds that "there would appear to be no potential for manipulating an individual Index Security by means of creation, redemption or secondary market trading in SPDRs".

<sup>21</sup> It is possible although not likely that the problem of the constantly shifting number of Shares outstanding of each Fund would not pose difficulties for investors, because Rule 13d-1(j), which governs the calculation of ten percent ownership for purposes of Section 16 (see Rule 16a-1(a)(1)), states that "...any person, in determining the amount of outstanding securities of a class of equity securities may rely upon information set forth in the issuer's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to this Act, unless he knows or has reason to believe that the information contained therein is inaccurate." Rule 13d-1(e). An investor in Shares would know that Shares were continuously being offered and redeemed and therefore that the number of outstanding securities was constantly fluctuating.

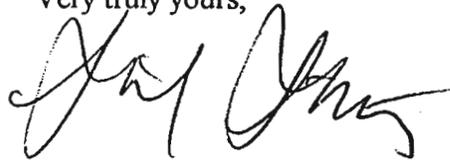
governmental authority. The adopting release states that this provision "has been added to make it clear that beneficial ownership of a broad-based, publicly-traded market basket or index security or future does not create a beneficial ownership interest in the component stocks. This provision clarifies that in such a case, the pecuniary interest in one component stock is too remote for the stock to be considered beneficially owned."<sup>22</sup> In an accompanying footnote, the SEC suggests that this exemption extends beyond component stocks. Footnote 51 states that "in essence, broad-based indices and baskets are outside the purview of Section 16, both with respect to the indices or baskets and their component securities."<sup>23</sup> The Trust believes that a logical extension of this principle would cover the Shares, which in the opinion of the Trust essentially represent interests in a basket and that Shares should therefore not be considered to be "equity securities of the Fund" for purposes of Section 16. The Trust also believes such a conclusion would be in harmony with the SEC's recent efforts to streamline the Section 16 regulatory scheme and broaden exemptions from short-swing profit recovery in circumstances where doing so is consistent with the statutory purposes underlying Section 16.<sup>24</sup>

As discussed above, it would not appear to serve any valid regulatory purpose to require officers and directors of the Trust or ten percent holders of the Shares of a Fund to file the reports required by Section 16(a). Furthermore, there appears to be little, if any, risk of abuse of inside information. Finally, the Staff has granted relief similar to that requested hereby to other entities that are similar in many respects to the Fund.<sup>25</sup>

#### Conclusion

Based on the foregoing, we respectfully request that the Staff advise the SEC to grant the relief requested herein. Should you have any questions please call Stuart M. Strauss at (212) 626-0842 or Elaine S. Moshe at (212) 626-0713.

Very truly yours,



---

<sup>22</sup> Exch. Act Rel. No. 28869 [1990-1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) P84,709, 81,254 (Feb. 8, 1991).

<sup>23</sup> Id., at n.51 (emphasis added).

<sup>24</sup> See Release Nos. 34-37260; 35-26524; IC-21997 (May 31, 1996).

<sup>25</sup> See WEBS Index Fund, Inc. (pub. avail. September 23, 1997), PDR Services Corporation (pub. avail. Jan. 23, 1997), CountryBaskets Index Fund, Inc. (pub. avail. Jan 23, 1997), PDR Services Corporation, 1998 SEC No-Act. LEXIS 672 (June 29, 1998) and PDR Services Corporation (pub. avail. June 29, 1998).