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## *Investment Companies*

### **SPDR Trusts Gain '40 Act Relief For Indexes Including Long, Short Positions**

**A** series of exchange-traded funds operating under certain SEC exemptive orders won't risk enforcement action if they track indexes that include both long and short positions in securities, even though the applications for exemptive relief don't specifically discuss that possibility (*SPDR Series Trust*, SEC No-Action Letter, avail. 6/24/15).

The staff of the Securities and Exchange Commission's Division of Investment Management granted SPDR Series Trust and SPDR Index Shares Funds the requested relief from Sections 2(a)(32), 5(a)(1), 17(a) and 22(d) of the 1940 Investment Company Act June 24.

**Exemptive Applications.** In seeking no-action relief, W. John McGuire, Morgan Lewis & Bockius LLP, Washington, explained that none of the applicable applications for exemptive relief specifically discusses the possibility of funds tracking indexes that include both long and short positions in securities.

He assured the staff that each long/short fund will comply with the representations and conditions in the applicable order and that there will be daily transpar-

ency on each fund's website by disclosing pertinent information. Additionally, he reminded the staff that he wasn't aware of any position that required exchange-traded funds (ETFs) to issue shares in aggregations of any minimum number of shares and sought confirmation that the commission would not object if shares were issued in smaller amounts than described in the applicable order.

Granting the requested relief, the staff said it would not recommend any enforcement action if the trusts include Long/Short Indexes in the definition of the term "Index" and also stated that it didn't object to the trusts issuing shares of funds in large aggregations that are smaller than the amounts described in the applications (i.e. less than 50,000 shares). It said that its response concerns enforcement action only, and expresses no legal conclusions on the questions presented. It also noted that any facts or representations different from those presented in counsel's letter may require a different legal conclusion.

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To see counsel's letter, visit: <http://www.sec.gov/divisions/investment/noaction/2015/spdr-series-trust-062915-etf-incoming.pdf>.

To see the SEC determination, visit: <http://www.sec.gov/divisions/investment/noaction/2015/spdr-series-trust-062915.htm>.