MID CAP SPDR purchaser on the same terms as required by the AMEX rule.

13. During the first two years of operation, the Trustee will be paid a "Trustee's Fee" of 12/100 of 1% of the Trust's net asset value annually. Thereafter, the Trustee's Fee will vary from 10/100 to 14/100 of 1% per annum, depending on the net asset value of the Trust. The Trustee may waive all or a portion of the Trustee's fee. The Trustee also will receive a Transaction Fee directly from investors in connection with certain creations and redemptions of Creation Units to defray securities settlement costs. The Transaction Fee will vary from \$250 to \$1500 per Creation Unit depending upon the number of Creation Units the investor creates or redeems. An additional amount not to exceed three times the Transaction Fee will be charged to investors who purchase and redeem via the DTC rather than the continuous net settlement system of NSCC, to cover the increased expense associated with settlement outside the NSCC clearing process. The Sponsor may modify or waive the Transaction Fee for certain lot-size creations or redemptions. Any increase of the Transaction Fee will be subject to a maximum of 20/100 of 1% of the value of a Creation Unit at the time of creation or redemption, as the case may be. All variations in the Transaction Fee will be imposed in compliance with rule 22d-1, as if it were a sales load. The Trustee also will receive as compensation any benefit derived from holding funds of the Trust in non-interest bearing accounts.

14. The Trust will make quarterly distributions of an amount representing the dividends accumulated on portfolio securities during such quarter, net of fees and expenses. Additional distributions will be made to the minimum extent necessary to comply with certain provisions of the Internal Revenue Code and to avoid the imposition of excise taxes imposed by section 4982 of the Code. The Trust also intends to make available the DTC book entry Dividend Reinvestment Service through which investors may have their dividend distributions reinvested in MID CAP SPDRs. The Trust's prospectus will disclose that brokerage commissions, if any, incurred in obtaining the Index Securities necessary to create additional MID CAP SPDRs with the cash from these distributions will be an expense of the Trust.

15. Beneficial owners of MID CAP SPDRs will have no voting rights with respect to the securities held by the Trust. The Trustee will have the right to vote all of the voting stocks in the Trust.

The Trustee will vote the Trust's shares in the same proportion as all other shares of the security are voted. If this arrangement is not permitted, the Trustee shall abstain from voting.

16. Applicants assert that MID CAP SPDRs afford significant benefits in the public interest. MID CAP SPDRs, which track non-S&P 500 securities, will broaden the trading, investing, and hedging opportunities available to investors by tracking an alternative segment of the domestic equity securities market, stocks with mid-range capitalizations. Applicants believe that MID CAP SPDRs enhance the choices available to investors and provide a cost-effective mechanism for investing in the targeted market segment. Further, the Trust should be able to track the S&P MidCap 400 Index more closely than other basket products that must allocate a portion of their assets for cash redemptions. In addition, MID CAP SPDRs will provide a low-cost marketbasket security that, unlike open-end index funds, can be traded at negotiated prices throughout the business day.

Applicants' Legal Analysis

- 1. Applicants request an order granting an exemption from sections 4(2), 14(a), 17(a)(1), 17(a)(2), 22(d), 22(e), 24(d), and 26(a)(2)(C) and rule 22c-1 and permitting them to engage in affiliated transactions otherwise prohibited by section 17(d) and rule 17d-1. Applicants represent that the relief requested herein is substantially similar to that granted in the application concerning the Standard and Poor's Depositary Receipts ("SPDRs"), a similar instrument that tracks the S&P 500 Index.²
- 2. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Because MID CAP SPDRs are not individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT. Applicants note that beneficial owners of MID CAP SPDRs wishing to redeem may purchase additional MID CAP SPDRs and tender the resulting Creation Unit for redemption. Moreover, because the market price of MID CAP SPDRs will be disciplined by arbitrage opportunities, beneficial owners should be able to sell MID CAP SPDRs at approximately net asset value.
- 3. Section 22(d), among other things, prohibits a dealer from selling a redeemable security that is being

currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its net asset value. Secondary market transactions in MID CAP SPDRs will take place at negotiated prices (generally the current bid/offer price quoted on the AMEX), not at a current offering price described in the prospectus, and not at a price based on net asset value. Thus, purchases and sales of MID CAP SPDRs by dealers in the secondary market will not comply with section 22(d) and rule 22c-1. Accordingly, applicants have requested an exemption from these two provisions.

4. The concerns sought to be addressed by section 22(d) and rule 22c-1 with respect to pricing are equally satisfied by the proposed method of pricing MID CAP SPDRs. While there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been enacted (a) to prevent dilution caused by certain risklesstrading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) to assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants believe that none of these purposes will be thwarted by permitting MID CAP SPDRs to trade in the secondary market at negotiated prices. First, secondary market trading in MID CAP SPDRs, because it does not involve the Trust as a party, cannot result in dilution of a beneficial owner's investment. Second, to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand and interest rates, not as a result of unjust or discriminatory manipulation. Therefore, secondary market trading in MID CAP SPDRs will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of MID CAP SPDRs and their net asset value remains narrow.

5. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer

² See SPDR Trust, Series 1, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (October 26, 1992) (order) ("SPDR Order").