

strike price. Because the sale price of the Portfolio Calls should exceed the purchase price of the Portfolio Puts, an amount of cash will be generated ("Net Premium") which SG Cowen will use to purchase over-the-counter cash-settled options tied to the performance of a securities market index ("Index Options").⁵ The Independent Agent will also solicit competitive offers from at least three Unaffiliated Bidders and SG Paris to sell these Index Options to SG Cowen. The Portfolio Puts, Portfolio Calls and Index Options (collectively, the "Derivatives") will be European-style options, and will all expire on the same day ("Termination Date").

4. The Independent Agent will solicit bids or offers for each Derivative pursuant to procedures adopted by the Board and communicated to the Independent Agent as set forth in condition 1 below. No bidder, including SG Paris, will have access to any bids until after the respective Derivatives have been purchased or sold. SG Cowen may not purchase a Portfolio Put or Index Option from or sell a Portfolio Call to SG Paris on behalf of an SG Trust unless two bona fide bids have been received for the relevant Derivative from Unaffiliated Bidders. The purchase or sale of a Derivative in a transaction with SG Paris will be subject to approval by the Board, including a majority of Independent Trustees.

5. SG Cowen will deposit with each relevant SG Trust the Reference Securities, the obligations under the Portfolio Calls, the Portfolio Puts, the Index Options, and an amount of cash for operational expenses (collectively, the "Portfolio"). Except in the event of the bankruptcy or insolvency of the writer of a Portfolio Put or Index Option, the SG Trust will hold each component of the Portfolio until the Termination Date. Certain future SG Trusts may also hold a separate guarantee of principal provided by a bank or insurance company that would provide additional protection in the event that a writer of a Portfolio Put defaulted.⁶

⁵ The Index options may be based on indices that are broad-based, narrow-based, sector specific, customized, or based on the performance of a single security. The value of any index will be publicly disseminated throughout the trading day on each day that the American Stock Exchange ("AMEX") is open for normal trading.

⁶ No guarantee would be purchased from an affiliate of SG Cowen unless applicants first obtained a separate order of exemption permitting such a purchase, the Commission issued one or more exemptive rules that would permit such a purchase, or the guarantee were structured in a manner that complied with, among other things, the then-current interpretations of the Commission and its staff regarding sections 12(d)(3) and 17(a) of the Act.

6. During the initial offering, shares of an SG Trust ("Shares") will be sold to the public at a price equal to the net asset value per share, as determined by or under the direction of the Board, plus a sales load and an amount intended to compensate SG Cowen for the organizational expenses of the relevant SG Trust.⁷ Shares will be listed on the AMEX, and will subsequently trade at market prices. Applicants state that the secondary market value of the Shares is expected to depend primarily on market interest rates, market volatility, and the value of the Index Options. Each SG Trust will calculate the net asset value of its Shares on a weekly basis in accordance with procedures adopted by the Board.

7. Applicants state that an SG Trust will protect principal primarily through the use of the Portfolio Puts. Applicants indicate that the combination of the Portfolio Puts and Portfolio Calls will effectively eliminate any possibility of gain or loss on the Reference Securities. Applicants state that the potential return on the investment in an SG Trust is therefore derived solely from the performance of the Index Options. Applicants believe that structuring the SG Trusts in this manner will offer investors certain advantages over other types of principal protected products, including certain tax and performance benefits.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other required investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that, among other provisions,

⁷ SG Cowen will retain a portion of the Net Premium as compensation for organizing, structuring, and paying the operational expenses of an SG Trust. In addition, the Portfolio will include an amount of cash to be periodically disbursed to SG Cowen to cover structuring, organization and ongoing expenses of the SG Trust. Any expenses in excess of the cash amount will be borne by SG Cowen; any cash in excess of the actual expenses will be retained by SG Cowen. These expenses will be disclosed in advance in the prospectus for each SG Trust.

the acquired company does not impose a sales load of more than 1.5%. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

2. An SG Trust will invest in shares of QQQs or other ETFs in reliance on section 12(d)(1)(F). Applicants request an exemption under section 12(d)(1)(J) from section 12(d)(1)(F)(ii) so that the SG Trusts may offer shares to the public with a sales load that exceeds 1.5%. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to shares of any SG Trust will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules applicable to a fund or funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the aggregate sales charges would not exceed the limit that otherwise lawfully could be charged at any single level. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

B. Section 12(d)(3) of the Act

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3-1 under the Act exempts certain transactions from the prohibition of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in rule 12d3-1(c), provides that the exemption provided by the rule is not available when the issuer of the securities is the investment adviser, promoter, or principal underwriter of the investment company, or an affiliated person of those entities. In addition, rule 12d3-1(b)(3) does not permit a registered investment company to invest more than five percent of the value of its total assets in securities of an issuer that derived more than 15% of its gross revenues from securities related activities. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly