October 4, 2024

Natasha Vij Greiner
Director, Division of Investment Management
Securities and Exchange Commission 100 F Street, N.E.
Washington, D.C. 20549

Re: SPDR SSGA Apollo IG Public & Private Credit ETF
Investment Company Act of 1940 File No. 811-22542

Dear Ms. Greiner:

I am writing to raise concerns about the recent filing for the new ETF, SPDR SSGA Apollo IG Public & Private Credit ETF.[1] Specifically, this filing raises significant issues related to liquidity, valuation, and conflicts of interest. Accordingly, it merits close scrutiny as to whether such a proposed ETF complies with the Investment Company Act and its rules thereunder.

1. Liquidity Concerns

The SEC's liquidity risk management rule (Rule 22e-4 under the Investment Company Act) restricts funds from purchasing additional illiquid investments if more than 15 percent of their net assets are illiquid. An illiquid investment is an investment that the fund reasonably expects cannot be sold in current market conditions in seven calendar days without significantly changing the market value of the investment.[2] Based on the filing, it appears the fund might exceed this threshold.

The fund's plan to invest in privately-issued securities – described as "not traded on established markets, potentially illiquid, difficult to value, and subject to wide fluctuations in value"[3] – raises red flags. The filing explicitly acknowledges that "there can be no assurance that a trading market will exist at any time"[4] for these securities. These limitations on liquidity mean that the fund "may not be able to dispose of investments readily at a favorable time or prices (or at all) or at prices approximating those at which the Fund currently values them."[5] Thus, it is not reasonable to expect such assets could be sold in current market conditions in seven calendar days without significantly changing the market value of those assets.

The filing attempts to address these concerns by entering into a private agreement with Apollo to serve as a liquidity provider; however, such an agreement does not sufficiently mitigate these

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[1] Form N-1A, SSGA Act Trust, Securities Act File No. 333-173276, Investment Company Act of 1940 File No. 811-22542, September 10, 2024, https://www.sec.gov/Archives/edgar/data/1516212/000119312524216340/d878371d485apos.htm ["Filing"].
[2] SEC Final Rule, Investment Company Liquidity Risk Management Programs, Release Nos. 33- 10233; IC- 32315; File No. S7-16-15, October 13, 2016, https://www.sec.gov/files/rules/final/2016/33-10233.pdf
[3] Filing at 9.
[4] *Id*.
[5] *Id*. at 19.

liquidity concerns. The existence of a private agreement between two parties does not transform inherently illiquid assets into liquid assets. Rather, liquidity classification is intended to be a market-based analysis that must take into account the "relevant market, trading, and investment-specific factors, and also incorporate market depth considerations into this process."[6] There is good reason for applying a market-based analysis in this regard – if one party to the agreement is unable or unwilling to live up to their end of the bargain, the assets that were subjectively agreed to be liquid may immediately become objectively illiquid. The filing acknowledges this, stating, "if Apollo is unable to meet its contractual obligation to provide firm bids for AOS Investments, the Fund's assets that were deemed liquid by the Adviser may become illiquid."[7] Should this happen, the fund could be forced to engage in fire sales to meet its redemption obligations – a problem that the liquidity risk management rule is intended to address.

Moreover, if Apollo is unable to meet its contractual obligations, this will likely occur when liquidity is most needed – during stressed or adverse market conditions. In such a scenario, the fund's ability to sell illiquid assets at favorable times or prices (or at all) would be further compromised, putting additional strain on its liquidity. This situation draws parallels to the collapse of the auction-rate securities (ARS) market during the 2007-2008 financial crisis. At that time, investors relied heavily on investment banks to provide liquidity in order to prevent auction failures. However, as the banks faced their own liquidity and capital crises, they lost their risk appetite to prop up the auctions and they withdrew their support. Without the banks acting as the liquidity providers of last resort, auctions failed *en masse*, leaving investors unable to sell their ARS holdings. What had previously been considered highly liquid, "cash-like" assets suddenly became illiquid, causing significant financial hardship for tens of thousands of investors.[8]

Adding to these issues with maintaining liquidity, the filing also notes that Apollo has "agreed to purchase from the Fund any AOS Investment held by the Fund, *subject to a daily limit,* at a price at or above the quotations given by Apollo."[9] Because the agreement is not public, it is not clear what that daily limit will be or whether it will be sufficient to ensure the fund does not exceed the 15 percent illiquidity limit. If Apollo is only willing to purchase a small portion of assets in a day, the remaining assets which the fund may have deemed liquid by virtue of the liquidity agreement could immediately become illiquid. This further underscores the conclusion that a private agreement cannot transform an inherently illiquid asset into a liquid asset.

While I have raised questions about whether a liquidity guarantee will work in practice, in my view, the better question is whether the fund will be in compliance with the liquidity rule once it has more than 15 percent of net assets that would be illiquid without the guarantee. To the extent the fund exceeds the 15 percent threshold, it would be out of compliance with the liquidity risk management rule.

[6] Liquidity Risk Management Rule at 123.

[7] Filing at 8.

[8] *See* Marc L. Ross, The ARS Debacle, The Forgotten Crisis of 2008, Enterprising Investor, CFA Institute, January 31, 2017, https://blogs.cfainstitute.org/investor/2017/01/31/the-ars-debacle-the-forgotten-crisis-of-2008/; Craig McCann and Eddie O'Neal, Auction Rate Securities, Securities Litigation and Consulting Group, 2011, https://www.slcg.com/files/research-papers/SLCG-ARS%20Paper.pdf

[9] Filing at 48 (emphasis added).

However, to the extent a liquidity agreement does address liquidity concerns, the fund should be required to disclose the terms of the liquidity agreement so that investors can assess whether those terms provide confidence that Apollo will deliver on its agreement when liquidity is necessary. In an analogous context, money market funds are required to disclose in Form M-NFP if they are relying on third-party guarantees, and information relating to those guarantees.

2. Valuation Concerns

Under Section 2(a)(41) of the Investment Company Act, assets without readily available market quotations must be fair-valued by the board or its designee, subject to board oversight.[10] The determination of whether a market quotation is "readily available" is based on active market conditions for identical investments. These requirements are intended to ensure that "fair value determinations will be more likely to reflect a price that could be obtained in arm's length transactions with less bias."[11] However, in this filing, it appears that Apollo will play a central role in determining asset prices through its firm bids on AOS Investments. This raises concerns that Apollo's liquidity provision could distort the valuation process.

First, the filing acknowledges that market quotations will not be "readily available." The filing states, "Some portfolio holdings, potentially a large portion of the Fund's investment portfolio, may be valued on the basis of factors other than market quotations. This may occur more often in times of market turmoil or reduced liquidity."[12] Second, it appears that Apollo will determine the securities' prices when it provides bids for AOS Investments. The filing states that Apollo "is required to repurchase AOS Investments that the Fund has purchased *at the firm bid price offered by Apollo*."[13] It further states that Apollo has "agreed to purchase from the Fund any AOS Investment held by the Fund, subject to a daily limit, *at a price at or above the quotations given by Apollo*."[14]

Thus, by virtue of the liquidity agreement, it appears that Apollo will not be offering quotes in an arms' length capacity. In practice, Apollo may determine the assets' values that it purchases. For example, in times of market turmoil or reduced liquidity, Apollo would have an incentive to offer lower bids to re-purchase assets at a discount. The fund would then be in a difficult position of deciding whether to accept those bids in order to ensure sufficient liquidity or reject them and potentially fail to meet their redemption obligations. This process would undermine the independent valuation process required by the Act, raising concerns that valuation determinations by the board or its designee could become *pro forma*, which would be inconsistent with the Act. Selling assets at a discount would also prove that the fund's assets were illiquid, as the fund could not sell them within seven calendar days without significantly changing their market value.

For the valuation process to function properly, if the fund's board or its designee, acting in good faith, determines a different value for the fund's holdings than Apollo, and liquidity is needed,

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[10] SEC Final Rule, Good Faith Determinations of Fair Value, Release No. IC-34128; File No. S7-07-20, December 3, 2020, https://www.sec.gov/files/rules/final/2020/ic-34128.pdf

[11] *Id*. at 134.

[12] Filing at 8.

[13] *Id*. at 12 (emphasis added).

[14] *Id*. at 48 (emphasis added).

Apollo should be required to repurchase those holdings at the values determined by the fund, rather than at the prices Apollo is willing to pay.

3. Conflicts of Interest Concerns

Section 17(a) of the Act restricts certain transactions between an investment company and its affiliates, such as buying or selling securities between the two. This is meant to prevent self-dealing transactions that may benefit the affiliated person, at the expense of fund shareholders. Under Section 2(a)(3) of the Act, the term "affiliated person" is defined broadly to capture relationships where an individual or entity has the potential to exert control or influence over the management or operations of an investment company.

Because the liquidity agreement is not public, it is not clear what the specific nature of the relationship is between the fund and Apollo. If Apollo is not acting at arm's length in setting prices, as discussed above, it may exert control or influence over the fund's operations, potentially benefiting itself at the expense of the fund's shareholders. Such an arrangement would be inconsistent with the Act's protections against conflicts of interest.

Conclusion

Given the liquidity, valuation, and conflict of interest issues raised by this filing, the staff should carefully scrutinize this proposed ETF to ensure compliance with the Investment Company Act and its rules thereunder. Where the ETF would not comply with the Act, the issuer should be required to seek exemptive relief, with appropriate protective conditions, to ensure that the filing is consistent with investor protection and the public interest.

In a related matter, the filing highlights the importance of finalizing key provisions of the Commission's proposed rule to enhance open-end fund liquidity risk management.[15] Under the proposal's amended definition of illiquid investment, an investment whose fair value is measured using an unobservable input that is significant to the overall measurement may indicate that an active, liquid, and visible market for the investment does not exist. Given that a substantial portion of the fund's assets will likely be valued using such unobservable inputs and lack an active, liquid, or transparent market, these assets should be classified as illiquid, regardless of any private liquidity agreement.

Thank you for your consideration of my views.

Sincerely,

Micah Hauptman
Director of Investor Protection

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[15] Letter from CFA to the SEC, Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, February 14, 2022, https://www.sec.gov/comments/s7-26-22/s72622-20157315-325658.pdf