

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27963; 812-13372]

SPA ETF Trust and SPA ETF Inc.; Notice of Application

August 31, 2007

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of open-end management investment companies, to issue shares (“Shares”) that can be redeemed only in large aggregations (“Creation Units”); (b) secondary market transactions in Shares to occur at negotiated prices; (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (“Securities Act”); and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

Applicants: SPA ETF Trust (the “Trust”) and SPA ETF Inc. (the “Adviser”).

Filing Dates: The application was filed on March 14, 2007 and amended on July 13, 2007.

Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail.

Hearing requests should be received by the Commission by 5:30 p.m. on September 25, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants, c/o Day Pitney, One Canterbury Green, Stamford, CT 06901.

For Further Information Contact: Keith A. Gregory, Senior Counsel at (202) 551-6815, or Julia Kim Gilmer, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-0102, telephone (202) 551-5850.

Applicants' Representations:

1. The Trust is registered as an open-end management investment company and is organized as a Delaware statutory trust authorized to issue multiple series. The Trust intends to offer and sell shares of multiple separate series (each an "Index Fund" or "Fund"). The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act") and will serve as the investment adviser to each Index Fund. In the future, the Adviser may enter into sub-advisory agreements with other investment advisers to act as "sub-advisers" with respect to particular Index Funds. Any sub-adviser will be registered under the Advisers Act or exempt from registration. Foreside Fund Services, LLC ("Distributor"), a broker-

dealer registered under the Securities Exchange Act of 1934 (the “Exchange Act”), will serve as the principal underwriter and distributor for the Index Funds.

2. Each Index Fund will hold certain securities (“Portfolio Securities”) selected to correspond generally to the price and yield performance, before fees and expenses, of a specified equity securities index (each an “Underlying Index”). No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, the Distributor, promoter or any sub-adviser to an Index Fund. The Underlying Indexes for each Index Fund that will be initially offered (the “Initial Index Funds”) are: (i) MarketGrader 40 Index, (ii) MarketGrader 100 Index, (iii) MarketGrader 200 Index, (iv) MarketGrader Small Cap 100 Index, (v) MarketGrader Mid Cap 100 Index, and (vi) MarketGrader Large Cap 100 Index. The Trust may offer additional Index Funds in the future based on other Underlying Indexes (“Future Index Funds,” and together with the Initial Index Funds, “Index Funds”). Any Future Index Funds will (a) comply with the terms and conditions of any order granted pursuant to the application and (b) be advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser.

3. The investment objective of each Index Fund will be to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of its Underlying Index. Intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. An Index Fund will utilize either a “replication” or “representative sampling” strategy which will be disclosed with regard to each Index Fund in its

prospectus (“Prospectus”).¹ An Index Fund using a “replication” strategy will invest in substantially all of the Component Securities in its Underlying Index in approximately the same weightings as in the Underlying Index. An Index Fund using a “representative sampling” strategy will invest in some, but not all of the relevant Component Securities.² Applicants anticipate that an Index Fund that utilizes a “representative sampling” strategy will not track the performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index in the same weighting as the Underlying Index. Applicants expect that each Index Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5 percent.

4. Shares of the Index Funds will be sold in Creation Units of at least 100,000 Shares. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Trust and Distributor (“Authorized Participant”). An Authorized Participant must be either: (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (“NSCC”), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (“DTC”, and such participant, “DTC Participant”). Shares of each Index Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Adviser to correspond generally to the price and yield performance, before fees and expenses, of the relevant Underlying Index (the “Deposit Securities”), together with the

¹ Applicants represent that the Index Fund will normally invest at least 90% of its total assets in the component securities that comprise its Underlying Index (“Component Securities”). Each Index Fund also may invest up to 10% of its total assets in money market instruments, including repurchase agreements or other funds which invest exclusively in money market instruments, convertible securities, structured notes, swap agreements, options, and futures contracts, as well as in stocks not included in its Underlying Index, but which the Adviser believes will help the Index Fund track its Underlying Index.

² Under the “representative sampling” strategy, the Adviser will seek to construct an Index Fund's portfolio so that its market capitalization, industry weightings, fundamental investment characteristics (such as return variability, earnings valuation and yield) and liquidity measures perform like those of the Underlying Index.

deposit of a relatively small specified cash payment (“Cash Component”). The Cash Component is generally an amount equal to the difference between (a) the net asset value (“NAV”) (per Creation Unit) of the Index Fund and (b) the total aggregate market value (per Creation Unit) of the Deposit Securities.³ Applicants state that in some circumstances it may not be practicable or convenient for an Index Fund to operate exclusively on an “in-kind” basis. The Trust reserves the right to permit, under certain circumstances, a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. An investor purchasing a Creation Unit from an Index Fund will be charged a fee (“Transaction Fee”) to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase of Creation Units.⁴ The maximum Transaction Fees relevant to each Index Fund will be fully disclosed in the Prospectus of such Index Fund and the method of calculating the Transaction Fees will be disclosed in the Prospectus and/or statement of additional information (“SAI”). All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and it will be the Distributor's responsibility to transmit such orders to the Trust. The Distributor also will be responsible for delivering the Prospectus to those persons purchasing Creation Units, and for maintaining records of both the orders placed with it and the confirmations

³ The Trust will sell Creation Units of each Index Fund on any “Business Day,” which is defined to include any day that an Index Fund is open for business, including as required by section 22(e) of the Act. In addition to the list of names and amount of each security constituting the current Deposit Securities, it is intended that, on each Business Day, the Cash Component effective as of the previous Business Day, per outstanding Share of each Index Fund, will be made available. The Exchanges intend to disseminate, every 15 seconds, during their respective regular trading hours, through the facilities of the Consolidated Tape Association (“CTA”), an approximate amount per Share representing the sum of the estimated Cash Component effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per Share basis.

⁴ Where an Index Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of Shares.

5. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on the American Stock Exchange, LLC, (“Amex”), or another U.S. national securities exchange as defined in section 2(a)(26) of the Act (each, an “Other Exchange” and together with Amex, the “Exchanges”). It is expected that one or more member firms of a listing Exchange will be designated to act as a specialist and maintain a market for Shares on the Exchange (the “Exchange Specialist”). If The NASDAQ Stock Market, Inc. (“NASDAQ”) is the listing Exchange, one or more member firms of NASDAQ will act as a market maker (“Market Maker”) and maintain a market on NASDAQ.⁵ Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The Exchange Specialist, or Market Maker, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.⁶ Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

⁵ If Shares are listed on NASDAQ, no particular Market Maker will be contractually obligated to make a market in Shares, although NASDAQ's listing requirements stipulate that at least two Market Makers must be registered as Market Makers in Shares to maintain the listing. Registered Market Makers are required to make a continuous, two-sided market at all times or be subject to regulatory sanctions.

⁶ Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

6. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Index Fund, or tender such Shares for redemption to the Index Fund, in Creation Units only.⁷ To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) a portfolio of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted (“Fund Securities”), which may not be identical to the Deposit Securities required to purchase Creation Units on that date, and (b) a “Cash Redemption Payment,” consisting of an amount calculated in the same manner as the Cash Component, although the actual amount of the Cash Redemption Payment may differ from the Cash Component if the Fund Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

7. Neither the Trust nor any individual Index Fund will be marketed or otherwise held out as an “open-end investment company” or a “mutual fund.” Instead, each Fund will be marketed as an “exchange-traded fund,” an “investment company,” a “fund,” or a “trust.” All marketing materials that describe the method of obtaining, buying or selling Shares, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the

⁷ The Index Funds will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities (as defined below), including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act. As a general matter, the Deposit Securities and Fund Securities will correspond pro rata to the securities held by each Index Fund.

owners of Shares may purchase or redeem Shares from the Index Fund in Creating Units only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis:

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and 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 intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other

than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c-1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed

to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure 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.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Index Funds as parties and cannot result in dilution of an investment in Shares, and (b) 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. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants seek relief from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery

exemption provided by section 4(3) of the Securities Act.⁸

8. Applicants state that Shares are bought and sold in the secondary market in the same manner as closed-end fund shares. Applicants note that transactions in closed-end fund shares are not subject to section 24(d), and thus closed-end fund shares are sold in the secondary market without a prospectus. Applicants contend that Shares likewise merit a reduction in the unnecessary compliance costs and regulatory burdens resulting from the imposition of the prospectus delivery obligations in the secondary market. Because Shares will be listed on an Exchange, prospective investors will have access to information about the product over and above what is normally available about an open-end security. Applicants state that information regarding market price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information will be published daily in the financial section of newspapers. In addition, the Trust also intends to maintain a website that will include the Prospectus and SAI, the relevant Underlying Index for each Index Fund and additional quantitative information that is updated on a daily basis, including daily trading volume, closing price, the NAV for each Index Fund and information about the premiums and discounts at which the Index Fund's Shares have traded.

⁸ Applicants state that they are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases Shares from the Trust or an underwriter. Applicants further state that the Prospectus will caution broker-dealers and others that some activities on their part, depending on the circumstances, may result in their being deemed statutory underwriters and subject them to the Prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from an Index Fund, breaks them down into the constituent Shares, and sells those Shares directly to customers, or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. Each Index Fund's Prospectus will state that whether a person is an underwriter depends upon all of the facts and circumstances pertaining to that person's activities. Each Index Fund's Prospectus will caution dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

9. Applicants will arrange for broker-dealers selling Shares in the secondary market to provide purchasers with a product description (“Product Description”) that describes, in plain English, the relevant Index Fund and the Shares it issues. Applicants state that a Product Description is not intended to substitute for a full Prospectus. Applicants state that the Product Description will be tailored to meet the information needs of investors purchasing Shares in the secondary market.

Section 17(a)(1) and (2) of the Act

10. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such person (“second-tier affiliate”), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines an affiliated person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by the other person and (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Index Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Index Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an “Affiliated Fund”). Applicants state that if Creation Units of an Index Fund are held by twenty or fewer investors, including an Exchange Specialist or Market Maker, some or all of such investors

will be 5% owners of the Index Fund, and one or more investors may hold in excess of 25% of the Index Fund. Such investors would be deemed to be affiliates of the Index Fund. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons that are affiliated persons or second-tier affiliates of the Index Funds solely by virtue of: (a) holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Index Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds, to effectuate in-kind purchases and redemptions.

11. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from purchasing or redeeming Creation Units through “in-kind” transactions. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons of an Index Fund, or the second-tier affiliates described above, to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Index Fund.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Index Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Index Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

2. As long as the Trust operates in reliance on the requested order, the Shares will be listed on an Exchange.

3. Neither the Trust nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from the Index Fund and tender those shares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable, and that owners of Shares may purchase those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only.

4. The website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Index Fund: (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition the Product Description for each Index

Fund will state that the website for the Trust has information about the premiums and discounts at which Shares have traded.

5. The Prospectus and annual report for each Index Fund also will include: (a) the information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Index Fund): (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

6. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon
Deputy Secretary