November 18, 2024

Natasha Vij Greiner
Director, Division of Investment Management
Securities and Exchange Commission
100 F St NE
Washington, DC 20549
Via Email: [redacted]

Re: Reject SPDR SSGA Apollo IG Public & Private Credit ETF

Dear Director Greiner,

United Food and Commercial Workers International Union (UFCW) represents over 1 million workers in retail, meatpacking and food processing industries across the country. UFCW urges the Securities and Exchange Commission to reject the registration application of SPDR SSGA Apollo IG Public & Private Credit ETF[1] ("ETF" or "Fund") because, based on available information, we believe this new product could violate current SEC regulations and pose potential risks to investors.

1. The ETF is not set up to meet SEC's liquidity risk management rule[2] that restricts the amount of illiquid assets ETFs can hold.

Under the liquidity risk management rule, a fund cannot have more than 15% of its net assets be illiquid. For the purposes of the regulation, illiquid assets are defined "as any investment that may not reasonably be expected to be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment."[3]

The registration statement acknowledges that the Fund will invest at least 80% of its net assets[4] in investment-grade public and private credit securities. According to the registration statement: "The Fund intends to invest

[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

[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] SEC Final Rule, Investment Company Liquidity Risk Management Programs, Release Nos. 33- 10233; IC- 32315; File No. S7-16-15, October 13, 2016, p.90 https://www.sec.gov/files/rules/final/2016/33-10233.pdf

[4] 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 p. 3

in private credit, which refers to a wide range of credit instruments, such as instruments that are directly originated, issued in private offerings, issued to private companies, and/or issued to borrowers by non-bank lenders (i.e., non-bank lending instruments), including asset-backed and corporate finance instruments sourced by Apollo (each, an 'AOS Investment')."[5]

The National Association of Insurance Commissioners issued a report which sums up the illiquid nature of private credit investments: "To compensate for the illiquidity and lack of a secondary market, private credit offers higher spreads and yields than traditional, public corporate bonds and loans."[6]

The ETF registration statement discloses illiquidity risks in private credit instruments, however there is no limit on the amount of private credit assets that can be held under the Fund's investment policy. For example:

- "Privately-issued securities are not traded on established markets and maybe illiquid, difficult to value and subject to wide fluctuations in value. Limitations on the resale of these securities may have an adverse effect on their marketability, and may prevent the Fund from disposing of them promptly at reasonable prices."[7]
- "The market for bank loans may not be highly liquid and the Fund may have difficulty selling them."[8]
- "Collateralized debt obligations are generally subject to many of the same risks of investing as debt securities and asset-backed securities, including credit, interest rate, valuation, **liquidity**, prepayment and extension risks."[9]

The ETF proposes to bolster liquidity by entering into a liquidity agreement with Apollo to "provide intraday, executable firm bids" on Apollo-originated investments. This agreement is not filed with the registration statement. Based on the limited information in the registration statement about the liquidity agreement, we do not believe Apollo's liquidity backstop results in the ETF's compliance with SEC's liquidity regulation.

SEC's regulations are intended to apply market-based analysis to the question of how assets are classified. The SEC explicitly adopted a more expansive illiquid investment definition because they want funds to review at least monthly "whether their investments are illiquid with respect to relevant market, trading, and investment-specific factors, and also incorporate market depth considerations into this process."[10] We do not believe that

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[5] Form N-1A, SSGA Act Trust, Securities Act File No. 333-173276, Investment Company Act of 1940 File No. 811-22542, September 10, 2024, p. 3 https://www.sec.gov/Archives/edgar/data/1516212/000119312524216340/d878371d485apos.htm

[6] Jennifer Johnson, Michele Wong, National Association of Insurance Commissioners Capital Markets Bureau, Private Credit Primer, July 2, 2024, p. 1 https://content.naic.org/sites/default/files/capital-markets-primer-private-credit.pdf

[7] 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 p. 9

[8] 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 p. 5

[9] 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 p. 6

[10] SEC Final Rule, Investment Company Liquidity Risk Management Programs, Release Nos. 33- 10233; IC- 32315; File No. S7-16-15, October 13, 2016, p.373 https://www.sec.gov/files/rules/final/2016/33-10233.pdf

relying on a single firm to provide liquidity for a range of assets for which little, if any secondary market currently exists[11] meets the market-based definition of liquidity.

Even if the SEC ignores the market-based intentions of the regulation for this application, we still do not believe that Apollo's agreement qualifies these Apollo-originated assets ("AOS Investments") as liquid, based on the following reasons.

First, it is clearly stated in the registration statement that "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."[12] Given that the parties cannot guarantee Apollo will be willing or able to always meet these obligations, and given that Apollo has no fiduciary duty to the ETF (see below), the SEC should not consider these assets liquid.

Second, the registration statement states that Apollo's liquidity backstop is limited. The filing says Apollo will buy the Apollo-originated assets at a price at or above Apollo's bid quotations "subject to a daily limit."[13] Since the agreement is not disclosed, it is unknown what the "daily limit" is. That means that some portion of these assets are not liquid, and if the portion above the daily limit exceeds 15% of the fund's net assets, the fund is out of compliance with the SEC rule.

Lastly, Apollo's bid quotations could undervalue the private assets to such a degree that "the sale or disposition significantly chang[es] the market value of the investment," the core of SEC's illiquidity definition. Therefore, Apollo's bid requirement does not by itself prevent asset devaluation as a result of illiquidity.

2. State Street and Apollo have a longstanding relationship which poses a potential conflict of interest and is not disclosed in the registration statement.

SSGA Funds Management, Inc., a wholly-owned subsidiary of State Street Corporation,[14] is the Investment Adviser for the ETF. According to the registration statement, "The Adviser is responsible for placing purchase and sale orders and providing continuous supervision of the investment portfolio of the Fund."[15] In that role, SSGA Funds Management has a fiduciary duty to the fund that could be complicated by State Street and Apollo's longstanding financial relationship. The relationship poses a potential conflict of interest in executing

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[11] Carmen Arroyo and Libby Cherry. "Apollo to Build Out Trading Desk for Private Credit Loans" Bloomberg, September 4, 2024. https://www.bloomberg.com/news/articles/2024-09-04/apollo-plans-to-build-out-trading-desk-for-private-credit-loans "Despite the recent rush to create a market where direct loans change hands, such deals are still relatively rare as lenders typically tend to hold the debt till maturity."

[12] 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 p.8

[13] 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 p.48

[14] 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 p. 26

[15] 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 p.46

the Investment Advisor role, and it was not disclosed in the registration statement. Their financial relationship includes the following:

State Street is a shareholder of Apollo, owning roughly $1.2 billion in Apollo stock as of May 2024.[16] Simply put, as a shareholder of Apollo, State Street may benefit if Apollo does not provide liquidity for the ETF during times of market stress, which would be detrimental to ETF investors.

State Street is one of the custodians for the assets of Apollo's insurance company, Athene Annuity and Life Assurance Company.[17] Apollo's insurance companies have $315 billion in invested assets and Apollo has $733 billion in total assets under management, far outstripping the potential size of the ETF.[18] State Street may covet being a custodian for more of Apollo's assets, which could impact how aggressively it enforces Apollo's liquidity agreement, for example.

State Street has advised at least 7 private pension plans to undertake pension risk transfer transactions with Apollo's Athene insurance group, resulting in Athene's acquisition of almost $30 billion in pension assets and liabilities.[19] Pension risk transfers are an important segment of Athene's growth, and by extension Apollo's, according to Apollo executives.[20] Currently, State Street is being sued by pension beneficiaries for allegations of breach of fiduciary duty for recommending Apollo's Athene to assume pension plan assets and obligations. State Street or Apollo's interests in these transactions may mean more to the companies than the ETF, and the existence of ongoing litigation over the question whether State Street fulfilled its fiduciary duty to third parties in Apollo-related transactions could pose potential conflicts of interest in their duties to ETF investors.

The registration statement does not disclose any potential conflicts of interest between State Street and Apollo, or the risks they may pose to ETF investors.

We believe these examples of State Street's ownership interest in Apollo and the litigation concerning Athene's pension risk transfer deals directly relate to the proposed ETF. State Street, as the fund's adviser, has obligations primarily to the fund and its investors. There are several instances in the registration statement that refer to its duty. Specifically, State Street is actively managing the fund, has the "ultimate responsibility"

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[16] Form 13-F Holdings Report. State Street Corp, May 15, 2024 https://investors.statestreet.com/filings-and-reports/sec-filings/sec-filings-details/default.aspx?FilingId=17541794

[17] Iowa disclosures, in our folder here: 61492.2024.L.Q2.P.O.2.4815087.pdf p. 26

[18] Athene Fixed Income Presentation, November 2024, p. 11-12, https://d1io3yog0oux5.cloudfront.net/_5fec93ac9abe930a41358e5516b24982/athene/db/2294/22459/presentation/Q3+2024+Fixed+Income+Investor+Presentation+Final.pdf

[19] We can confirm 7 instances in which State Street advised a company that ended up doing a PRT deal with Athene. The total liabilities transferred totaled $27.32 billion in those deals. The two largest deals were AT&T and Lockheed Martin that were $8 billion and $9.2 billion, respectively. The other cases include ATI, Bristol-Myers Squibb Co., JC Penny, Lumen Technologies, and Weyerhaeuser. This list is not necessarily exhaustive of all State Street advised PRT deals involving Athene. More information about each of these cases is available upon request.

[20] See, for example, Apollo 2023 Q3 earnings call where Scott Kleinmann a Co-President said "For pension group annuities, despite the low in activity in the third quarter, we see a solid pipeline of opportunities, including one deal that already closed in October. It's worth noting that this business now has generated $50 billion of cumulative volume since Athene entered the channel in 2017, leading the industry during that timeframe. Based on the momentum we see across Athene's business, we remain on pace to generate $60 billion-plus of total inflows this year." Apollo Global Management Q3 2023 Earnings Call, November 1, 2023, p.8 https://ir.apollo.com/financial-results

for the performance of the ETF, and can be sued for losses resulting from "a breach of fiduciary duty with respect to the receipt of compensation for services."[21] Additionally, State Street appoints the Board of Directors of the Fund which is supposed to govern the fund in the interest of shareholders.[22]

Apollo is not a fiduciary of the ETF. It is not an Advisor or Sub-Advisor to the ETF. Yet, Apollo sources private credit investments that it originates and prices for the ETF, impacting the value of investors' shares. The registration statement says clearly:

> "For the avoidance of doubt, Apollo is not a sub-adviser for the Fund. Apollo does not render advice of any kind or conduct any analyses or make any recommendations or selections with respect to investments considered by the Adviser for inclusion in the Fund's portfolio or any other potential investment opportunities for the Fund's or SSGA FM's benefit or consumption, nor does it perform any discretionary or any other asset management functions of SSGA FM or its affiliates."[23]

We believe there may be conflicts of interest that arise from the two parties' relationship that cannot be easily resolved and may adversely impact public investors.

3. Apollo has potential conflicts of interest within its own businesses that could affect Apollo's valuation of Apollo-originated assets in the public ETF and the pricing it offers in its liquidity pledge. These risks have not been disclosed in the Registration Statement.

The registration statement states that Apollo "is required to repurchase AOS Investments that the Fund has purchased at the firm bid price offered by Apollo."[24] Therefore only Apollo, not the board or State Street, is involved in valuing Apollo-originated assets. We believe this process violates the Investment Company Act because the act requires that "assets without readily available market quotations must be fair-valued by the board or its designee, subject to board oversight."[25] Nothing in the registration statement says that the ETF Board has the right to require an independent, arm's length valuation of Apollo's firm bid price or the assets themselves, and to enforce Apollo's liquidity obligation at a "fair-valued" price.

The requirement under the Investment Company Act that valuations for these illiquid assets be done at arms-length is meant to ensure that the valuation of assets can be arrived at through market transactions. This ETF is a good example of why the requirement should exist, because Apollo has incentives not necessarily aligned with the interest of ETF investors when it comes to valuing Apollo-originated assets.

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[21] 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 p.46
[22] 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 p.43
[23] 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 p. 28.
[24] 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 p.12
[25] Micah Hauptman. Letter to the SEC "Re: SPDR SSGA Apollo IG Public & Private Credit ETF Investment Company Act of 1940 File No. 811-22542." October 4, 2024. https://consumerfed.org/wp-content/uploads/2024/10/CFA-Letter-to-SEC-Re-Private-Credit-ETF.pdf

Apollo may have competing interests within its own business that could affect valuation. Apollo reported that it has a practice of originating issuance of asset-backed securities in one set of Athene subsidiaries, and then buying those asset-backed securities as invested assets for Athene's insurance companies.

As one example, in Athene's November 2024 investor presentation, the company notes: "~$33B of total 3Q'24 LTM deployment activity was comprised of investment grade credit directly originated by Apollo, at attractive spreads of approximately 230 basis points above comparably rated public corporate benchmarks."[26]

Apollo's Chief Financial Officer Martin Kelly describes what is unique about its business model, ultimately concluding "It's sort of eating your own cooking."[27]

> "Being able to control the production of interesting products that creates differentiated returns is one of the key successes that Athene has had a higher ROA than its peer set over the last decade."[28]

Mr. Kelly explained how:

> "…[T]he merger between Apollo the asset manager and Athene has created a massive benefit. In this portfolio of capital - the assets to fund acquisitions - is focused on one of two things: One is buying more platforms, consumer and commercial origination platforms which create product which can then be used to be put in senior form back on Athene's balance sheet or allocated to third party accounts or syndicated to the market. So it's a management fee or transaction fee or both business."[29]

In this set of quotes, Apollo describes multiple interests in originating private credit investments: transaction fees, management fees, selling investments to Athene as invested assets, selling investments to third parties (such as the ETF), creating "attractive spreads of approximately 230 basis points above comparably rated public corporate benchmarks" by originating private credit within its own company.

Which financial stream is more important to Apollo in normal markets, fees or higher investment returns? Does that change in times of market stress? If Athene's insurance regulators downgrade Athene's Apollo-originated investments during market stress, will Apollo decide it is more important to its business to repurchase Athene's private credit investments over the ETF's? Could Apollo value the same private credit investments differently at different times on Athene's books and the ETF's? Could a liquidity crisis at the ETF provide Apollo an opportunity to buy back its assets at a discount and resell them to the ETF once the liquidity crisis is over?

Add to these competing interests the requirement to buy back its originated investments from the ETF at a firm bid price that Apollo sets without independent oversight and with no fiduciary or advisory duty to the ETF,

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[26] Athene Fixed Income Presentation, November 2024, p. 24, https://d1io3yog0oux5.cloudfront.net/_5fec93ac9abe930a41358e5516b24982/athene/db/2294/22459/presentation/Q3+2024+Fixed+Income+Investor+Presentation+Final.pdf

[27] Barclays 2022 Financials Conference, 9/13/2022, webcast on Apollo Global Management's website, minute 23:35 https://event.webcasts.com/starthere.jsp?ei=1569268&tp_key=f2e67bcda6&language=en-us

[28] Barclays 2022 Financials Conference, 9/13/2022, webcast on Apollo Global Management's website, minute 17:45 https://event.webcasts.com/starthere.jsp?ei=1569268&tp_key=f2e67bcda6&language=en-us

[29] Barclays 2022 Financials Conference, 9/13/2022, webcast on Apollo Global Management's website, minute 15:00 https://event.webcasts.com/starthere.jsp?ei=1569268&tp_key=f2e67bcda6&language=en-us

and we suggest the ETF cannot meet the Investment Company Act requirements of fair valuation for the Apollo-originated investments.

4. Rating agencies have raised concerns about the scale and health of the "private credit" market which could pose risks to investors in a liquid ETF backed by illiquid assets.

The private credit market has grown to roughly $2 trillion,[30] through which non-bank institutions like Apollo issue loans to companies directly. However, observers like the International Monetary Fund (IMF) have raised concerns that the private credit market has not been tested. In the most recent Global Financial Stability Report, the IMF raises concerns about the private credit market. While they acknowledge there has not been a downturn yet, they say "signs are mounting that high interest rates are pressing private credit borrowers, and a severe downturn has not yet tested the many features designed to mitigate credit risks at the private credit industry's current size and scope."[31] The report then describes how the risk could play out. The authors say that the opaqueness of private credit makes "the private credit industry vulnerable to episodes of crisis of confidence" that could create "an adverse feedback loop" freezing fundraising for private credit and leading to a reduction of exposure to private credit. Eventually that could spillover to other markets and the broader economy.

The 2008 credit crisis devolved around a similar dynamic set off by publicly securitized residential mortgage loans, which became illiquid when defaults spiked and quality of underlying loans could not be trusted. Stronger bank regulation on loan quality and capital reserves which followed the 2008 financial collapse has in turn driven the expansion of the private credit market. One key dynamic of private credit market is that originators like Apollo are outside the regulated banking system.

As reported in Bloomberg on February 21, 2024, "Michael Hsu, the acting comptroller of the currency, said on Wednesday that officials need to keep tabs on risks from PE firms originating more loans and ramping up other activities typically done by banks. He also raised concerns about buyout firms' increased activity in insurance and creative funding structures. 'Since PE firms are not subject to consolidated supervision, it is not possible for regulators and other outsiders to assess how risky and interdependent these activities are,' Hsu said…"[32]

Bloomberg also reported on May 29, 2024 that JP Morgan Chase CEO "Jamie Dimon said he expects problems to emerge in private credit and warned that 'there could be hell to pay,' particularly as retail clients gain access to the booming asset class…. 'It reminds me a little bit of mortgages.'"[33]

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[30] Caleb Mutua and Ellen Schneider. "Private Lenders Raise Most High-Grade Debt Ever as Risks Rise" Bloomberg. September 30, 2024. https://www.bloomberg.com/news/articles/2024-09-30/private-lenders-raise-most-high-grade-debt-ever-as-risks-rise?srnd=homepage-americas

[31] International Monetary Fund, Global Financial Stability Report: Steadying the Course: Uncertainty, Artificial Intelligence, and Financial Stability. Oct 2024. https://www.imf.org/en/Publications/GFSR/Issues/2024/10/22/global-financial-stability-report-october-2024 p.30

[32] Kantanga Johnson. "PE's Private Credit Push Can Pose Stability Risk, Bank Regulator Says" Bloomberg. February 21, 2024. https://www.bloomberg.com/news/articles/2024-02-21/pe-s-private-credit-push-can-pose-stability-risk-occ-s-hsu-says

[33] Hannah Levitt. "Dimon Says 'Could Be Hell to Pay' If Private Credit Sours" Bloomberg, May 29, 2024. https://www.bloomberg.com/news/articles/2024-05-29/dimon-says-there-could-be-hell-to-pay-if-private-credit-sours?srnd=homepage-americas

Credit rating agency Moody's noted in April 2023, that "The greatest challenge in understanding dynamics within P[rivate] C[redit] markets and between them and other credit markets lies in the paucity of data on the growth and composition of P[rivate] C[redit] markets."[34]

For these reasons, we urge the SEC to reject the registration application for SPDR SSGA Apollo IG Public & Private Credit ETF.

Sincerely,

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[34] Moody's, April 2023, "How risks in private credit could evolve as financial conditions tighten" p. 1.