

SEC Ends Moratorium on Active ETFs' Use of Derivatives

At a speech given at the ALI CLE 2012 Conference on Investment Adviser Regulation held on December 6th, SEC Division of Investment Management Director Norm Champ announced that the SEC staff will no longer defer consideration of exemptive requests under the Investment Company Act relating to actively-managed ETFs that make use of derivatives (“Derivatives ETFs”). The SEC is ending its moratorium on new exemptive orders for Derivatives ETFs that was imposed on March 25, 2010, in connection with its review of the use of derivatives by investment companies.

As a condition to processing exemptive applications by Derivative ETFs, the SEC is requiring that two specific representations be included in the application: “(i) that the ETF’s board periodically will review and approve the ETF’s use of derivatives and how the ETF’s investment adviser assesses and manages risk with respect to the ETF’s use of derivatives; and (ii) that the ETF’s disclosure of its use of derivatives in its offering documents and periodic reports is consistent with relevant Commission and staff guidance.”

The SEC’s moratorium will continue to apply to leveraged ETFs.

Mr. Champ’s speech may be found by [clicking here](#).

If you would like to learn more about the developments discussed in this Alert, please contact the Ropes & Gray attorney with whom you regularly work or any member of the Ropes & Gray Investment Management group listed below.

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