



State Street Corporation

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April 11, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Via email: rule-comments@sec.gov

Re: Proposed Rule - Modernization of Beneficial Ownership Reporting (File Number: S7-06-22)

Dear Ms. Countryman:

State Street Corporation (“State Street”) appreciates the opportunity to respond to the Securities and Exchange Commission’s (“Commission”) proposed rule related to the reporting of information on beneficial ownership (“Proposal”), which would, among other changes, accelerate filing deadlines for Schedules 13D and 13G and make changes to the definition of a “group” for beneficial ownership purposes.¹ While we recognize the value of transparency in relation to beneficial ownership, we have several concerns with the Proposal. First, we are concerned that the accelerated filing deadlines may be operationally challenging, and we suggest alternative filing schedules. Second, we are concerned that the proposed change in the definition of “group” may inadvertently chill important asset stewardship activities by asset managers, and we recommend that the SEC provide greater clarity that such activities are permitted.

Headquartered in Boston, Massachusetts, State Street is a global custody bank which specializes in the provision of financial services to institutional investor clients, such as pension plans, mutual funds,

¹ Available at <https://www.govinfo.gov/content/pkg/FR-2022-03-10/pdf/2022-03222.pdf>.

alternative investment funds, central banks, charitable foundations and endowments. This includes the provision of investment servicing, investment management, data and analytics, and investment research and trading. With \$43.7 trillion in assets under custody and administration, State Street operates in more than 100 geographic markets globally.² State Street is organized as a United States bank holding company, with operations conducted through several entities, primarily its wholly-insured depository institution subsidiary, State Street Bank and Trust Company. Among other entities, State Street includes State Street Global Advisors, which is the world's fourth largest asset manager and the issuer of the SPDR family of exchange traded funds, with \$4.1 trillion in total assets under management.³

FILING DEADLINE FOR INITIAL SCHEDULE 13G FILINGS FOR QUALIFIED INSTITUTIONAL INVESTORS ("QII")

The Commission is proposing to shorten the initial filing deadline for Schedule 13G filers from 45 calendar days after year-end in which the filer's beneficial ownership exceeds 5% of a covered class of equity securities, to 5 business days.

While we acknowledge the Commission's desire to increase the frequency of 13G filings, we believe the proposed acceleration of the filing deadline poses several practical concerns. Currently, State Street files as a QII at the consolidated level and therefore aggregates data from across the firm and submits Schedule 13G annually within 45 calendar days of year-end when our beneficial ownership exceeds 5%. The proposed acceleration poses significant operational concerns, including the lack of sufficient time to validate the data to be included in the consolidated filing. Five business days is especially difficult to review and verify the accuracy of data received from multiple entities. Moreover, we are concerned that monthly reporting for Schedule 13G filers may provide insight into trading patterns, while imposing significant additional costs which the Commission has not adequately justified.

As such, State Street recommends that the deadline for the initial filing for 13G filers be 15 business days after quarter-end in which the beneficial ownership exceeds 5% of a covered class of securities. This balances the need for increased transparency with operational and cost considerations. Moreover, it provides sufficient time for QIIs to validate and aggregate data across multiple entities.

FILING DEADLINE FOR AMENDMENTS TO SCHEDULE 13G FILINGS FOR QIIs

The Commission is also proposing to modify the filing deadline for amendments to Schedule 13G. Specifically, the Proposal would replace the existing 45 calendar days after the end of the year standard in which any change occurred to 5 business days after the end of the month in which a material change occurred.

Similar to the initial 13G filings, we believe the accelerated deadline foreseen by the Commission creates operational challenges, including insufficient time to validate the accuracy of data for a consolidated filing. Moreover, while we support the addition of the reference to "material" changes for amendments to

² As of December 31, 2021.

³ As of December 31, 2021.

Schedule 13G, we believe materiality should be more clearly defined by the Commission. Specifically, we believe a material change should only be triggered when the change in beneficial ownership exceeds 5%. Moreover, we suggest an additional 5 business days compared to our recommendation for initial 13G filings, as the Commission has already received the initial 13G filing which informs it and the issuer company that we are a substantial shareholder. The filing of the amendment only provides the additional context of either a change in the holdings percentage or that we are no longer a substantial shareholder.

As such, we recommend that amendments to 13G filings be required within 20 business days after quarter-end in which a material change has occurred and materiality be defined as more than a 5% change in beneficial ownership.

MODIFICATION TO EXEMPTIONS FROM THE TREATMENT OF “GROUP”

State Street is concerned with the Commission’s proposed approach to the definition of “group” for purposes of beneficial ownership reporting, due to the potential negative impact (perhaps unintended) of the proposed change on the ability of our asset manager, State Street Global Advisors, to effectively engage in stewardship activities for companies held in our clients’ investment portfolios.

State Street Global Advisors, like other asset managers, actively engages in stewardship activities with portfolio companies across a variety of topics focused on driving long-term value for investors. While such activities typically result in direct, one-to-one engagement with companies, they are very often informed by discussion with a wide variety of stakeholders, including other shareholders. Such discussions are never with the intent to influence control or align perspectives and these activities in no way suggest the formation of a “group” for beneficial owning purposes, but could be captured by the Commission’s proposed revised definition.

While the Commission does helpfully propose a new exemption for engagement activities under proposed Rule 13d-6(c), we are concerned that the exemption is insufficient to protect the ability of asset managers seeking to fulfil their fiduciary duty to engage in stewardship activities with portfolio companies. Specifically, we are concerned that the proposed exemption’s condition that communications cannot be undertaken with the purpose or effect of changing or influencing the control of the issuer is unduly narrow. Proxy votes related to control of an issuer are important for investors, and asset managers should make informed votes on such matters, which requires interactions with other parties, including other investors. However, the intent of the other parties that asset managers may engage with in these communications, including other investors, should not be attributed to the asset manager. Under the Commission’s Proposal, such communications may trigger consolidation into a “group” for beneficial reporting purposes, an outcome that neither reflects the actual circumstances of the communications, or, we believe, the intent of the Commission.

We therefore urge the Commission to reconsider its revised definition of “group,” and revert to the current standard requiring “agreement” between the parties. Should the Commission decide to adopt its proposed “group” definition in its final rule, we urge the Commission to adopt an exemption for engagement activities that clearly allows asset managers to exercise their fiduciary duty, and conduct informed stewardship activities, including communications with other stakeholders, including other investors.

CONCLUSION

Thank you once again for the opportunity to offer our comments on the proposed changes to beneficial ownership reporting requirements. While we appreciate the Commission's focus on enhancing transparency, we recommend that the Commission adjust the proposed filing deadlines for initial and amended 13G filings, taking into consideration the operational and other practical challenges posed by a significantly accelerated timeline. Furthermore, we recommend that it reconsider its proposed amendments to the definition of "group" by retaining the "agree to" language in the current rule, or by adopting an exemption for engagement activities that clearly allows asset managers to conduct informed stewardship activities.

Please feel free to contact me at jibarry@StateStreet.com should you wish to discuss State Street's submission in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read "JJ Barry", with a stylized flourish at the end.

Joseph J. Barry