STATE STREET GLOBAL ADVISORS

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

Submitted via email to: rule-comments@sec.gov

Re: Investment Company Names (File Number S7-16-22)

Dear Ms. Countryman:

State Street Global Advisors, the investment management arm of State Street Corporation, welcomes the opportunity to respond to the Securities and Exchange Commission's (the "Commission") proposal to amend Rule 35d-1 (the "Names Rule") under the Investment Company Act of 1940 (the "1940 Act") (the "Proposal").[1]

With $3.475 trillion in assets under management, State Street Global Advisors is the world's fourth-largest asset manager and sponsors the SPDR® family of exchange traded funds ("ETFs").[2] State Street Global Advisors manages more than 130 U.S. ETFs and mutual funds that seek to track the performance of an index and include some portion of the index's name in the fund's name ("index funds").[3] While we appreciate the Commission's efforts to modernize and clarify the Names Rule, as a leading manager of U.S. index ETFs and mutual funds, we are particularly concerned that the Proposal and guidance in the Release creates new interpretive issues that have the potential to undermine the objective and value proposition of index funds to the detriment of index fund investors.

EFFECT OF COMPLIANCE WITH 80% INVESTMENT POLICY – INDEX FUND GUIDANCE

The Proposal adds a new provision to the Names Rule providing that a fund's name may be materially deceptive or misleading under Section 35(d) of the 1940 Act even if the fund adopts an 80% investment policy pursuant to the Names Rule and otherwise complies with the Names Rule's requirement to adopt and implement the policy. While we do not object to this new provision, which would codify Commission guidance that the Names Rule's 80% investment policy requirement is not intended to create a safe harbor for fund names, we have significant concerns that the Commission's guidance in the Release regarding the application of this provision to

[1] See Investment Company Names, SEC Release No. IC-34593 (May 25, 2022), available at https://www.sec.gov/rules/proposed/2022/ic-34593.pdf (the "Release").
[2] As of June 30, 2022.
[3] As of June 30, 2022.

index funds would establish an uncertain standard with respect to how an index fund and its investment adviser should be expected to oversee an index provider's composition of the index the fund seeks to track.[4] Specifically, the Commission's guidance sets forth that even where an index fund has invested more than 80% of the value of its assets in an index included in the fund's name, the underlying index may have components that are contradictory to the index's name, and in such circumstances, the fund's name could still be materially deceptive or misleading.[5]

The objective of an index fund is to track the performance of its underlying index. By investing in an index fund, an investor should expect that the fund will seek to approximate the returns of the fund's underlying index as constituted by the index provider. The use of an index's name in a fund's name and an index fund's investment policy to invest at least 80% of its assets in the underlying index serves to reinforce this fundamental expectation. The application of this straightforward and transparent investing premise has allowed millions of investors the opportunity to benefit from the wide range of cost-effective index mutual funds and ETFs in the marketplace.

To the extent the Release's guidance could be interpreted to mean an index fund's investment adviser would be required to scrutinize the inclusion of each constituent in an index on a daily basis and, accordingly, make decisions on whether or not an index constituent merits investment by the fund, we believe this would be counterintuitive to the expectations of investors and has the potential to erode the benefits of index fund investing. This could further alter the character of index fund management into a form of active management, and put investment managers in an unnatural position of acting as an enforcement mechanism upon index providers. This is above and beyond the type of oversight and due diligence that an asset manager should exert over index providers. Although we agree that appropriate due diligence should be conducted on the index provider, investment advisers should not be in the position of second guessing index providers, or be held accountable for the qualification of the index on a daily basis.

The costs and complexity associated with developing testing to comply with such a standard, particularly with respect to indices utilizing proprietary classifications, scoring or data that is unavailable to the fund's investment adviser, will increase the costs of index fund investing, will be operationally challenging and may render certain indices unworkable as underlying indices for index funds, thereby limiting investor choice and innovation in the marketplace. Were a fund's investment adviser to disagree with the index's inclusion of certain constituents, this could result in increased tracking error and/or transaction costs to the extent a fund would need to modify its investments, each to the detriment and potential confusion of index fund investors. The potential for increased tracking error and transaction costs under a daily compliance testing standard is particularly concerning given that indexes are

[4] Release at 70.
[5] Release at 70.

generally designed to rebalance periodically rather than daily, such that characteristics of index constitutents can change during rebalances (e.g., constituents in a small-cap index that rebalances annually could become mid-capitalization companies between index rebalances).

We strongly urge the Commission not to adopt the guidance regarding index funds included in the Release as discussed above, which we believe could be interpreted to require index fund managers to continuously monitor index construction and output and require index fund managers, in an effort to comply with the revised Names Rule, to adjust the portfolios of the index funds they manage such that the funds' portfolios deviate from the indexes that they are designed to track. Furthermore, we are concerned that if the Names Rule is revised as proposed and the guidance regarding index funds is adopted, this could result in many index funds removing the name of the index from the fund name, which we believe is ultimately not helpful to fund investors in selecting the most suitable fund for their needs.

Instead, we would support the Commission adopting guidance providing that a fund satisfies the Names Rule with respect to any portion of the fund's name that includes an index's name if the index has a methodology reasonably designed to result in constituents suggested by the index's name at the index's rebalance and the fund complies with its 80% test to invest in such an index. We believe that the application of such a standard will provide an appropriate level of oversight while also maintaining important distinctions between index fund and active fund management, preserving the benefits of index fund investing for investors, and fostering investor choice and innovation.

CONCLUSION

Thank you once again for the opportunity to offer our comments on the Proposal. Please feel free to contact me at [redacted] should you wish to discuss State Street Global Advisors' submission in further detail.

Sincerely,

Sean O'Malley

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State Street Global Advisors