



State Street Corporation

Stefan M. Gavell  
Executive Vice President and Head of  
Regulatory, Industry and Government Affairs

State Street Financial Center  
One Lincoln Street  
Boston, MA 02111-2900

Telephone: 617.664.8673  
Facsimile: 617.664.9339  
smgavell@statestreet.com  
[www.statestreet.com](http://www.statestreet.com)

April 14, 2016

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: Transfer Agent Regulations (File Number S7-27-15)**

Dear Mr. Fields:

State Street Corporation<sup>1</sup> appreciates the opportunity to comment on the United States (“US”) Securities and Exchange Commission’s (“Commission”) release related to transfer agent regulations.<sup>2</sup> State Street Bank and Trust Company (“State Street”), the operating subsidiary of State Street Corporation, is a state-chartered bank that is a member of the Federal Reserve System that is registered as a transfer agent pursuant to Section 17A(c) of the Securities Exchange Act of 1934 (“Exchange Act”). State Street provides transfer agency services - spanning both statutory transfer agency functions<sup>3</sup> and ancillary<sup>4</sup> services and functions - to a wide variety of client types including registered funds<sup>5</sup> and unregistered investment vehicles.<sup>6</sup>

---

<sup>1</sup> Headquartered in Boston, Massachusetts, State Street Corporation specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With \$27.5 trillion in assets under custody and administration and \$2.24 trillion in assets under management as of December 31, 2015, State Street Corporation operates in more than 100 geographic markets worldwide. State Street Corporation is organized as a US bank holding company, with operations conducted through several entities, including State Street Bank and Trust Company, custodian and transfer agent, and State Street Global Advisers (“SSgA”), its asset management division.

<sup>2</sup> Securities and Exchange Commission (“SEC”) Release No. 34-76743; File No. S7-27-15 (December 22, 2015) (“Release”). The Release includes both an Advance Notice of Proposed Rulemaking (“ANPR”) and a Concept Release.

<sup>3</sup> Statutory transfer agency functions are defined by Section 3(a)(25) of the Exchange Act as “...engage[ing] on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates...”

<sup>4</sup> Ancillary services and functions include: serving as a paying agent to pay out interest, dividends, or other distributions to stock; and acting as proxy agents, exchange agents, tender agents, and mailing agents.

<sup>5</sup> Open-end funds (i.e., mutual funds), closed-end funds, exchange-traded funds and business development companies are collectively referred to as “registered funds.”

<sup>6</sup> Collective investment trusts, corporations, partnerships, limited liability entities, collateralized bond, debt and loan obligations and offshore funds are collectively referred to as “unregistered investment vehicles.”

We support the Commission's efforts in modernizing its transfer agent regulations but have concerns with some questions that were raised. Our comments focus primarily on the Concept Release and Additional Request for Comment.<sup>7</sup> The Concept Release discusses issues beyond the advance notice of proposed rulemaking ("ANPR") and specifically seeks comments on whether additional regulations and policies are necessary to address those issues. Our comments are focused primarily on several aspects of the Concept Release and some sections of the ANPR including: the processing of book-entry securities; bank and broker-dealer recordkeeping for beneficial owners; transfer agents to mutual funds; outsourcing activities and non-qualifying securities serviced by a registered transfer agent; and restricted securities and compliance with federal securities law.

## I. Processing of Book-Entry Securities

As noted in the Concept Release<sup>8</sup>, when the transfer agent rules were originally written most securities were issued in certificated form. Today, most municipal and corporate bonds, US government and mortgage-backed securities, commercial paper, and mutual fund securities, are offered almost exclusively in book-entry form and although equities have made progress towards full dematerialization, they still lag behind this trend.

Several questions in the Concept Release request comments on whether certain changes to the transfer agent rules would modernize the rules for processing book-entry securities. In relation to the processing of book-entry securities, State Street recommends that the Commission:

- Maintain the distinction between routine and non-routine processing;
- Maintain the currently permitted timeframes for posting debits and credits;
- Make no changes to "good order" timeframes; and
- Not require account statements from transfer agents when there is no direct relationship.

### a. Routine Versus Non-Routine

State Street recommends that the Commission maintain the distinction between routine and non-routine processing as this is still a critical distinction in the current transfer agent operating model. In the Concept Release, several questions relate to routine versus non-routine distinctions in Exchange Act Rule 17Ad-1. This distinction matters in regards to processing obligations (question 88), the potential for backlogs (question 89), and the distinction between items received before noon and items received after noon (question 90). First, although mutual fund transactions may be routine, there are a variety of other circumstances that are non-routine and require flexibility for the collection and review of additional documentation, such as death certificates, corporate resolutions, powers of attorney, etc. Additionally, restricted securities, such as collateralized loan obligations ("CLOs"), require the submission of supplemental paper documentation, such as transferor/transferee forms necessitated by the deal indenture. These supplemental documents must be matched to the deal indenture and to the transfer information submitted to ensure completeness and accuracy. These non-routine items require additional review and processing when they arrive at the transfer agent.

Second, current trading volumes in particular types of assets do not see a backlog. Exchange Act Rule 17 Ad-2 requires routine items in good order to be processed within three business days while non-routine items must receive diligent and continuous attention with the view that they are turned around as soon as possible. However, we believe there would be potential for backlogs if the distinction between routine and non-routine is removed. The documents referenced above cannot always be inspected and determined to be in good order within three business days for non-routine processing as there could be hold-ups from a third-party

---

<sup>7</sup> Release at 81988-82004.

<sup>8</sup> Release at 81988-81989.

administrator, an unresponsive party, and other circumstances that are out of the transfer agent's control. State Street believes the current standard in Exchange Rule 17 Ad-2 permitting non-routine items to receive diligent and continuous attention and to be turned around as soon as possible, combined with the consequences of a failure to meet current performance standards, need not change.

Third, the distinction between items received before noon and items received after noon is still very relevant in transfer agent operations. Although the Commission states that a vast majority of requests are received and responded to electronically, there still exists a physical world which requires manual processes. For example, restricted products, such as CLOs, still require physical notes to evidence ownership. Since these products are still commonly certificated and sponsors show no interest in dematerialization, the distinction between items received before noon and items received after noon is still necessary for transfer agent processing.

Finally, the Commission asks if in conjunction with eliminating the distinction between routine and non-routine, whether the rules should be amended to apply to the entire range of instructions a transfer agent may receive including those related to uncertificated securities, such as purchase and sales orders, balance certificates, establishment and movement of book-entry positions, corporate actions, and updates of security holder book-entry account information (question 88). State Street requests that the Commission provide further clarification with respect to this question as some of the transactions cited are already governed by existing regulations. Thus, further regulation would be redundant and potentially conflict with an already established rule.

## **b. Timing of Processing**

State Street recommends that the Commission maintain the current permitted timeframes for posting credits and debits. As an overall matter, different instruments require different processes. Although the industry aims to process transactions as soon as reasonably possible and generally processes transactions within a few days, there is still a need for the latitude of the current permitted timeframes for posting credits and debits to the master securityholder file (question 91). Some securities, like registered funds of hedge funds, price on a lag and transactions cannot be posted to the master securityholder file until the price is received and processed by the transfer agent. Transfer agents rely on prospectuses, offering documents or other fund literature to determine that the posting of credits and debits is processed in line with fund requirements. As such, State Street believes that the current Exchange Act Rule 17Ad-10 permitted timeframes for posting credits and debits should not be shortened.

## **c. "Good Order"**

The Commission questions whether the transfer agent rules should be amended to define what information or documentation is required and from whom it must be received to constitute good order and whether transfer agents should be required to buy-in securities (or take other corrective action) to satisfy transfer instructions that were received in good order but not completed after a specific period of time (question 94). State Street recommends that the Commission continue to permit a fund's prospectus, other offering documents, or the transfer agent's own standard to define what information or documentation is required and from whom it must be received to constitute good order. State Street believes this flexibility in the definition of "good order" is necessary to allow for unforeseen circumstances.

Additionally, State Street believes that requiring transfer agents to buy-in securities is not always appropriate. Specifically, we recommend that the Commission consider eliminating the concept of buy-ins for mutual funds and permitting a fact and circumstances approach to determining corrective actions for other entity types.

## **d. Transfer Agent Account Statements**

The Commission questions whether transfer agents should be required to provide securityholders with an account statement with specific details for each transaction occurred with respect to each securityholder's account (question 96). State Street does not believe that transfer agents should be required to provide securityholders with an account statement unless there is a direct relationship between the transfer agent and the securityholder. We believe that an account statement from a transfer agent will not only cause securityholder confusion (unless they have a direct relationship with the transfer agent), but will ultimately increase costs for the underlying investor. For example, most investors already receive a statement from their broker or investment advisor. If they were to receive another statement for the same holding from a transfer agent, the investor may be under the wrong impression that these are separate transactions. Additionally, transfer agents would likely push down the added costs of providing such a statement to their fund clients, thus increasing costs to investors without much additional benefit.

## **II. Bank and Broker-Dealer Recordkeeping for Beneficial Owners**

State Street strongly opposes the Commission's proposal to require entities that are regulated by the Commission, including brokers, banks, or others to "pass through" securityholder information to transfer agents (question 99). Recordkeeping for beneficial owners is structured so that the records of clients of brokers, bankers, and others are maintained by the financial intermediary. Transfer agents do not receive this information as they do not have a direct relationship with the underlying securityholder. If this information were required to be passed through, there would be privacy and anti-money laundering implications for both the financial intermediary and the transfer agent. Additionally, if the transfer agents were required to accept and protect private information of non-customers, not only would they be increasing their risk profile, but the collection of this information would likely complicate a transfer agent's responsibilities under the Bank Secrecy Act and USA PATRIOT Act regarding screening against government lists by causing the financial intermediaries' clients to become clients of the bank. We believe potential increases in costs in the form of additional compliance and risk procedures, recordkeeping and technology requirements for the transfer agent would be significant and would be passed back to the financial intermediaries.

## **III. Transfer Agents to Mutual Funds**

The Concept Release also discusses the growth of the mutual fund industry and the related transfer agent services provided to mutual funds and other registered investment companies.<sup>9</sup> The Commission seeks comment on the regulation of transfer agents to registered investment companies based on the unique trading, market, asset class, and other relevant characteristics of the registered investment companies they service. In relation to the Concept Release's questions on transfer agents to mutual funds, State Street:

- Supports a separate regulatory regime for mutual fund transfer agents;
- Articulates the differences between transfer agents and the services they provide to equity, debt, and registered investment company securities;
- Supports an equal playing field for recordkeeping and disaster recovery requirements;
- Opposes more detailed information in Form TA-2 without an understanding of its benefit;
- Believes there is no conflict of interest when a mutual fund transfer agent serves as a fund administrator for the same mutual fund;
- Does not believe "as of" transactions (i.e., those processed by recordkeepers or distributors pursuant to written agreements with the fund) require heightened attention; and

---

<sup>9</sup> Release at 81990-81992. "[M]utual funds and other registered investment companies" includes open-end funds, closed-end funds, unit investment trusts and exchange traded funds.

- Supports the continuing use of omnibus accounts.

## **a. Separate Regulatory Regime for Mutual Fund Transfer Agents**

State Street believes that mutual fund transfer agents should be regulated differently than transfer agents to operating companies. As noted by the Commission, several trillion in assets are managed by US registered investment companies. This figure is primarily comprised of mutual funds, closed-end management investment companies, unit investment trusts, and exchange-traded funds (ETFs). Additionally, although many core services provided by mutual fund transfer agents are similar to the core services by operating company transfer agents, there still exist differences, including: the fact that mutual fund transfer agents process dematerialized securities in much larger numbers than operating company transfer agents; the manner in which they are organized; and the manner in which they are compensated.<sup>10</sup>

As such, State Street strongly supports a separate regulatory regime for mutual fund transfer agents. A separate regulatory regime is ideal not because of so-called complexities, but because: mutual fund transfer agents provide exclusive services; there is already a different regulatory regime that is applicable to mutual fund transfer agents and not applicable to operating company transfer agents; and mutual fund transfer agents provide a variety of services that are not provided by operating company transfer agents.

## **b. Transfer Agents that Service Equity Securities, Debt Securities, and Registered Investment Company Securities**

The Commission asks for an explanation of the differences among transfer agents that service equity securities, debt securities, and registered investment company securities (question 101). The most significant difference among transfer agents that service equity securities, debt securities, and registered investment company securities is the manner in which they are traded. Open-end registered investment companies are offered continuously and directly from the fund and are purchased at the net asset value close. Equity securities are only offered during initial public offerings, in conjunction with dividend reinvestment (“DRIP”) plans and other corporate actions. Otherwise, they are traded on the secondary market, outside the transfer agent’s scope and at market price.

## **c. Support an Equal Playing Field**

Neither the ANPR nor the Concept Release explains why the Commission believes that business continuity requirements should be imposed on transfer agents. However, the Commission questions whether it should impose additional recordkeeping and disaster recovery requirements for mutual fund transfer agents (question 104). If the Commission determines it is in the public interest to have such requirements, State Street supports an equal playing field for recordkeeping and disaster recovery requirements. As may be true for other transfer agents, State Street is a subsidiary of a public company and is already subject to business continuity and disaster recovery regulatory requirements.

## **d. Form TA-2**

The Commission questions whether transfer agents should be required to provide more detailed information on Form TA-2 about the types of issuers they are servicing and the types of work they are performing for those issuers (question 105). State Street would like to better understand the value of this information to the Commission. For example, Exchange Act Rule 17 Ad-16 requires reporting of transfer agent clients (i.e., issuers) to the Depository Trust & Clearing Corporation (“DTCC”). Could the request for issuer information be accomplished by leveraging this information versus a new reporting requirement? In addition, State Street

---

<sup>10</sup> Release at 81990-81992.

requests that the Commission clarify how sub-contracting should be reflected on Form TA-2 in order to avoid confusion and duplicative reporting.

## **e. Exchange-Traded Funds**

The Commission questions whether it should amend current transfer agent rules to explicitly address transfer agents for ETFs and whether there are particular issues unique to transfer agent service of ETFs that would raise risks not present with respect to other types of investment companies (question 110). State Street recommends against ETF specific amendments to the transfer agent rules, because there are no particular issues unique to transfer agent servicing of ETFs versus other types of investment companies.

## **f. Mutual Fund Transfer Agent as Fund Administrator**

The Commission asks how often mutual fund transfer agents serve as fund administrators for the same mutual fund and whether this dual role creates conflicts of interest or other concerns (question 114). The ANPR asks similar questions regarding transfer agent affiliations with issuers and broker/dealers (question 9) and custodians (question 24). State Street believes such affiliations and relationships are very common in the industry. Internal transfer agents for mutual funds are typically affiliated with a mutual fund's administrator and distributor. External transfer agents may be affiliated with, or be part of, the legal entity that provides fund administration, custody, fund accounting or is a broker. State Street believes the possibility of conflicts of interest is generally mitigated by distinct contracts for each service between the service provider and the issuer and separate pricing. Additionally, there exists a body of controls and procedure to achieve a segregation of duties between business units further mitigating any conflicts of interest concerns.

## **g. "As of" Transactions**

"As of" transactions are those which correct errors in the purchase or sale of mutual fund shares. Our comments reflect "as of" transactions which are processed by recordkeepers or distributors contracted with the fund to perform services that require additional processing time and/or fund approved error correction. As explained in more detail below, State Street believes these transactions occur in the normal course of business and do not require heightened attention. The Commission asks whether these "as of" transactions should be addressed in the transfer agent rules (question 116); whether the number of "as of" transaction should be reported by mutual fund transfer agents on Form TA-2 (question 118); whether a greater number of "as of" transactions are indicative of potential processing problems, such as turnaround backlog or problems with accuracy (question 118); or whether greater numbers of "as of" transactions indicate potentially risky mutual fund trading practices that may dilute the interests of long-term investors in the mutual fund (question 118).

As stated above, "as of" transactions result from the correction of errors in the purchase or sale of mutual fund shares. In the normal course of business, errors will occur, however, transfer agents have in place procedures to quickly address such errors and we do not believe that "as of" transactions are indicative of widespread issues. The Commission should note that most transfer agents cannot accept trades after the fund cutoff time unless they are from a client-authorized third party administrator who requires an overnight cycle to process their trades prior to submission to the transfer agent. Any deviations from this protocol would normally be escalated to the client by the transfer agent.

Additionally, State Street does not believe that "as of" transactions are an adequate reflection of a mutual fund transfer agent's compliance with turnaround rules. Many "as of" transactions relate to retirement plans and variable annuity products which are through the DTCC's Defined Contribution Clearing and Settlement file in accordance with written agreements between a mutual fund and its third party administrator or other intermediary (where the cutoff time is generally defined as receipt by the intermediary on trade date no later than 4PM eastern standard time and posting occurs on T+1 as of the prior day). This results in these transactions

being considered “as of” even though they are processed in a timely manner by the transfer agent. The capturing of these transactions would provide an inaccurate reflection of compliance with turnaround rules. If the Commission wishes to capture this information, we recommend that the Commission either redefine in the instructions to Form TA-2 what constitutes an “as of” transaction or use another measure of overall compliance such as the percentage of transactions processed by the transfer agent on the day of receipt.

## **h. Omnibus Accounts**

As noted in the Concept Release, the mutual fund industry has been moving towards omnibus sub-accounting arrangements over the years, which has created a fundamental shift in the roles and responsibilities of traditional shareholder servicing and recordkeeping.<sup>11</sup> The Commission seeks comments as to whether these arrangements introduce new or additional risks (question 119); whether rules governing oversight of sub-transfer agents to mutual funds are necessary (questions 120 and 121); and whether there are concerns over the transfer agent’s lack of visibility into the identity of beneficial owners and products serviced by intermediaries acting as sub-transfer agents (question 122).

### **1. Risks to the Prompt and Accurate Settlement of Securities Transactions**

The Commission asks whether a mutual fund’s use of intermediaries who act as sub-accounting or sub-transfer agents introduce new or additional risks to the prompt and accurate settlement of securities transactions (question 119). State Street believes that such risk is minimal as this process has been successfully in place for several years between issuers, intermediaries, and mutual fund transfer agents. When the industry initially transitioned to omnibus accounting, there may have been some challenges. However, over the years, the industry has successfully adapted and integrated these accounts into their processes and systems. Additionally, transitioning away from omnibus arrangements so there is no “lack of visibility” would lead back to the duplication of processes that existed in the past, thereby complicating and delaying the settlement process of securities transactions.

### **2. Oversight of Sub-Transfer Agents to Mutual Funds**

The Commission requests comment as to whether there should be rules governing how mutual fund transfer agents oversee sub-accounting or sub-transfer agents to mutual funds (question 120) and what oversight functions are typically performed for intermediaries performing sub-transfer agent or sub-accounting services to beneficial owners of mutual fund shares (question 121). State Street strongly believes that the oversight function is the responsibility of the party who hires or contracts with the sub-transfer agent or sub-accounting agent. During the hiring or contracting process, the parties perform the required due diligence for onboarding such sub-agents. It is not the responsibility of a transfer agent to oversee parties that it has no contractual privity with and had no role in hiring. The mutual fund (or its manager or compliance officer), not the mutual fund transfer agent, is responsible for overseeing a fund’s relationships with its agents and intermediaries. As such, transfer agents should not be required to provide oversight functions for sub-transfer agents with whom it has no direct relationship.

### **3. Lack of Visibility into Beneficial Owners Identity and Products Serviced by Intermediaries Acting as Sub-Transfer Agents**

The Commission asks whether any problems are created by transfer agents’ lack of visibility into the identity of beneficial owners and products serviced by intermediaries acting as sub-transfer agents (question 122). State Street does not believe that the “lack of visibility” is an issue, as this is a widely accepted feature of omnibus accounts. Mutual fund shareholder recordkeeping shifted towards omnibus sub-accounting arrangements in

---

<sup>11</sup> Release at 81911.

order to facilitate a more efficient transaction process. If the Commission requires that transfer agents know the identities of beneficial owners, there will not only be significant costs associated with this, but also anti-money laundering and privacy concerns as described previously in Section II. Additionally, requiring visibility would cause the industry to have duplicative processing and recordkeeping on the associated records.

#### **IV. Outsourcing Activities and Non-Qualifying Securities Serviced by a Registered Transfer Agent**

As noted by the Commission, consistent application of transfer agent rules to all activities of registered transfer agents is critical to protect investors and promote the safe and efficient functioning of the National Clearing and Settlement System.<sup>12</sup> The Commission asks whether it should codify existing staff interpretations stating that registered transfer agents that service at least one Qualifying Security must apply all of the transfer agent rules to all securities serviced by that transfer agent, including non-Qualifying Securities or alternatively, should the Commission provide exemptions regarding non-Qualifying Securities from one or more or from all of the Commission's transfer agent rules (question 144).

State Street does not believe the Commission should codify these staff interpretations, at least with respect to banks. The Exchange Act has provisions that treat a "separately identifiable department or division" within a bank ("SID") as distinct from other operations within the bank for regulatory purposes. For example, Section 3(a)(4) of the Exchange Act excludes banks from the definition of a "broker" if: brokerage services are offered in a portion of the bank that is clearly marked out and distinct from deposit-taking activity<sup>13</sup> or transactions in securities are affected in a bank's "trust department or other department regularly examined by bank examiners".<sup>14</sup> Therefore, State Street requests clarification that a single legal entity registered as a transfer agent may operate separate departments or divisions to perform statutory transfer agent functions for Qualifying Securities (i.e., mutual fund transfer agent) and, outside the transfer agent regime of such mutual fund transfer agent, perform transfer agent functions for non-Qualifying Securities. State Street also requests clarification that a single legal entity that is registered as a transfer agent may operate separate departments or divisions to provide ancillary services and functions (i.e., functions not included in Section 3(a)(25) of the Exchange Act such as serving as a paying agent to pay out interest, dividends, or other distributions to stock issuers; and acting as proxy agents, exchange agents, tender agents, and mailing agents) to either Qualifying Securities or non-Qualifying Securities without having to register as a transfer agent.

Additionally, the Commission asks whether there are technological, legal, policy, or other reasons why a registered transfer agent would not be able to apply the transfer agent rules to all securities serviced by the transfer agent (question 145). State Street believes that if the Commission were to issue separate rules for mutual funds and operating companies, a gap still exists for transfer agents of non-Qualifying Securities. The Commission should clarify what is specifically covered by the transfer agent regulatory regime to avoid ambiguity and inconsistent application.

#### **V. Restricted Securities and Compliance with Federal Securities Law**

As a final note, although we have focused primarily on the Concept Release in this comment letter, we would like to address restricted securities and compliance with federal securities laws which is included in the ANPR. As noted by the Commission, currently, there are no specific rules regarding the placement or removal of restrictive legends by transfer agents. The Commission asks whether there is a need for rules governing the role of transfer agents in placing or removing restrictive legends (question 32) and whether specific guidelines and requirements for registered transfer agents in connection with removing a restrictive legend and in connection

---

<sup>12</sup> Release at 82002-82003.

<sup>13</sup> Section 3(a)(4)(B)(i).

<sup>14</sup> Section 3(a)(4)(B)(ii)

## STATE STREET

with issuing any security without a restrictive legend should be provided (question 33). The proposed documents include: (1) an opinion letter; (2) approval of the issuer; (3) evidence of a registration statement or exemption; and/or (4) conducting due diligence on the issuer, shareholder and attorney providing the opinion. State Street believes that the Commission should apply any specific rules it adopts to the products that currently reflect its greatest area of concern, versus across a general spectrum of products. Such a broad approach is unnecessary because, for example, collateralized products' indentures set out clear instructions on the forms that require completion by the transferor and transferee in every transaction.

Thank you for the opportunity to comment on the important matters raised primarily within the Concept Release. As noted above, State Street supports the Commission's efforts to create a regulatory regime for transfer agents. However, we have concerns with some of the questions raised in the Concept Release and ANPR as noted in this comment letter. Please feel free to contact Dolie Chacko Sarbanis at [REDACTED] should you wish to discuss State Street's submission in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stefan M. Gavell', written in a cursive style.

Stefan M. Gavell