



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 12, 2016

Paul R. Eckert, Esq.
WilmerHale
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Re: In the Matter of State Street Bank and Trust Company
State Street Corporation – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Mr. Eckert:

This is in response to your letter dated December 8, 2016, written on behalf of State Street Corporation (“Company”) and constituting an application for relief from the Company being considered an “ineligible issuer” under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 (“Securities Act”). The Company requests relief from being considered an “ineligible issuer” under Rule 405, due to the entry on December 12, 2016 of a Commission Order (“Order”) pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against State Street Bank and Trust Company (“SSBT”). The Order requires that, among other things, SSBT cease and desist from committing or causing any violations and any future violations of Sections 31(a) and 34(b) of the Investment Company Act and Rule 31a-1(b) thereunder.

Based on the facts and representations in your letter, and assuming SSBT complies with the Order, the Commission, pursuant to delegated authority, has determined that the Company has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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December 8, 2016

BY ELECTRONIC MAIL

Tim Henseler
Office Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: *In the Matter of State Street Bank and Trust Company*

Dear Mr. Henseler:

This letter is submitted on behalf of State Street Corporation (“State Street”), in connection with the forthcoming settlement of an administrative proceeding, to be filed by the Securities and Exchange Commission (the “Commission” or “SEC”), which is expected to resolve claims of the Commission against State Street Bank and Trust Company (“SSBT”) with respect to SSBT’s indirect foreign exchange business (“Indirect FX”). SSBT is a subsidiary of State Street. The settlement is expected to result in the entry of an administrative and cease-and-desist order against SSBT (the “Order”), which is described below.

Pursuant to Rule 405 promulgated under the Securities Act of 1933 (the “Securities Act”), State Street hereby requests that the Commission or the Division of Corporation Finance, pursuant to delegated authority, determine that for good cause shown it is not necessary under the circumstances that State Street be considered an “ineligible issuer” under Rule 405. State Street requests that this determination be effective upon the entry of the Order.

BACKGROUND

SSBT and the staff of the Commission’s Division of Enforcement (the “Enforcement staff”) have memorialized settlement terms in a proposed Offer of Settlement (“Offer”) to be made by SSBT to the Commission after a judgment of the United States District Court for the District of Massachusetts, reflecting the Court’s approval of a settlement resolving three class actions related to Indirect FX, becomes final. Based on discussions with the Enforcement staff, SSBT understands that the Commission has reviewed the proposed Offer, pursuant to a waiver by SSBT of Rule 240(c)(5) of certain of its rights under the Commission’s Rules of Practice (17 C.F.R. § 201.240(c)(5)), and that the Offer likely will be accepted. Accordingly, SSBT expects

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the Order to be entered shortly after the Court's judgment becomes final. The Court approved the class settlement on November 2, 2016, and, absent an appeal, the Court's judgment will become final on December 2, 2016. The Order will be issued on or very shortly after December 2, 2016.

If the Offer is accepted, SSBT expects that in the Order, the Commission will find that SSBT willfully violated Section 34(b) of the Investment Company Act of 1940 ("Investment Company Act") and caused violations of Investment Company Act Section 31(a) and Rule 31a-1(b) thereunder. SSBT will neither admit nor deny that finding, and will admit only those facts set forth in Appendix A to the Order.

DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.¹ As part of this offering reform, the Commission revised Securities Act Rule 405, creating a new category of issuer, the "well-known seasoned issuer" (or "WKSI"), and a new category of offering communication, the "free writing prospectus." A well-known seasoned issuer is eligible for important benefits under the Commission's rules that have changed the way corporate finance transactions for larger issuers are planned and structured, including the ability to "file-and-go" (i.e., eligibility for automatically effective shelf registration statements) and "pay-as-you-go" (i.e., the ability to pay filing fees as the issuer sells securities off the shelf). These rule changes have lessened the risk of regulatory delay in connection with capital formation without impacting the protection to investors. In addition, well-known seasoned issuers are provided with greater flexibility in terms of communications, including the ability to use free writing prospectuses in advance of filing a registration statement.

The Commission also created another category of issuer under Rule 405, the "ineligible issuer." An ineligible issuer is excluded from the category of "well-known seasoned issuer" and is ineligible to make communications by way of free writing prospectuses, except in limited circumstances.² As a result, an ineligible issuer that would otherwise be a well-known seasoned issuer does not have access to file-and-go or pay-as-you-go, and cannot use certain types of free writing prospectuses.

Securities Act Rule 405 authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible

¹ See Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

² See Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

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issuer.”³ The Commission has delegated the function of granting or denying such applications to the Director of the Division of Corporation Finance.⁴

State Street understands that the entry of the Order against SSBT, which is a subsidiary of State Street, would make State Street an ineligible issuer under Rule 405. As a result, State Street would not be able to qualify as a well-known seasoned issuer, and, therefore, would not have access to file-and-go and other reforms available to well-known seasoned issuers, and would not be able to be eligible to take advantage of all of the free writing prospectus reforms of Rules 164 and 433.

REASONS FOR GRANTING A WAIVER

Consistent with the framework outlined in the Division of Corporation Finance’s Revised Statement on Well-Known Seasoned Issuer Waivers issued on April 24, 2014, State Street respectfully requests that the Commission determine that it is not necessary for State Street to be considered an ineligible issuer as a result of the Order. Applying the ineligibility provisions to State Street would be disproportionately and unduly severe, for the reasons described below.

Nature of Conduct: Responsibility for and duration of the conduct

The Order finds that SSBT, until October 2009, provided certain of its custody clients with materially misleading statements describing its pricing for a method of foreign currency exchange it offered known as Indirect FX; and that these statements were made in responses to requests for proposals for custody services (issued or in effect during the relevant period) (“RFP responses”) and in other written and oral communications with clients. The Order also finds that, from at least January 2006 to October 2009, SSBT also provided its custody clients based in the United States and registered with the Commission under the Investment Company Act with records of Indirect FX trades (*i.e.*, daily and periodic transaction reports), that, in light of State Street’s misstatements about how it priced Indirect FX, were materially misleading because they omitted information that would have revealed that State Street had not executed the transactions in the manner described. These records routinely contained the dates of the Indirect FX transactions and the prices at which State Street executed the transactions. However, these records did not specify the time of day when the transactions were executed, or provided information about how the prices were determined. The Order includes no finding of scienter with respect to this conduct, which ended in 2009. Since 2009, State Street believes that any concerns regarding the disclosures in RFP responses have been cured and State Street has

³ Securities Act Rule 405, 17 C.F.R. § 230.405.

⁴ 17 C.F.R. § 200.30-1(a)(10).

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provided clients of its Indirect FX services with industry leading transparency on the pricing of such trades.

The violations addressed in the Order do not pertain to activities undertaken by State Street in connection with its role as an issuer of securities (or any disclosure related thereto). The conduct is unrelated to State Street's offerings of its own securities. No conduct by State Street or in respect of State Street's financial reporting or SEC filings is implicated in the Order. Rather, the conduct described in the Order occurred at SSBT (State Street's subsidiary), without involvement by State Street. No employees of State Street were named in the Order, and the Order does not include any findings that any of the directors or senior management of State Street engaged in any deliberate misconduct or were aware of violative conduct or ignored any warning signs or "red flags" regarding the conduct. Only SSBT was held responsible. Neither the conduct by SSBT nor the Order calls into question the reliability of State Street's financial reporting or SEC filings.

The SSBT employees involved in the conduct described in the Order did not, and will not, have any responsibility for preparing State Street's periodic or other disclosures as an issuer of securities. The conduct addressed in the Order does not call into question the reliability of State Street's current or future disclosure as an issuer of securities because none of the conduct is related in any way to any of State Street's current or future disclosures as an issuer of securities. State Street believes that its disclosure controls and procedures as an issuer and its filings with the Commission were not deficient with respect to its Indirect FX business, and the Commission staff has not made any allegation to the contrary.

Remedial Steps

In State Street's view, SSBT has taken appropriate steps to prevent the conduct described in the Order from recurring.

- In December 2009, SSBT voluntarily enhanced disclosure to custody clients and their investment managers regarding Indirect FX in a comprehensive update to SSBT's Investment Manager Guide. The updated Guide included complete, lengthy, and detailed disclosure regarding the pricing of Indirect FX trades, including the relationship between the rates at which the trades were executed and interbank market rates near in time to the execution of the trades. Specifically, the disclosure noted that Indirect FX rates would be less favorable to customers than indicative interbank market rates, and would differ from those indicative rates by no more than a specified number of basis points. In State Street's view, this voluntary disclosure was not required and goes beyond the disclosure provided by other banks in the same business.

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- In December 2009, SSBT voluntarily enhanced the online information available to clients and their investment managers regarding SSBT's Indirect FX trade rates. Specifically, SSBT began disclosing (and continues to disclose) on a next business day basis, for each currency pair traded: the source of indicative market rates used to set the price; the local time at which the relevant indicative market rates were obtained; the indicative spot bid and offer rates to which the markup or markdown were applied; the execution bid and offer rates; the markup or markdown applied to the indicative spot rate; and the daily high-low range of rates for that currency pair up to the time at which the trade was priced. In State Street's view, this affords complete transparency regarding the rates at which SSBT executes Indirect FX trades.
- The disclosures described above are intended to fully address the concerns of the Commission concerning SSBT's records of Indirect FX trades provided to its custody clients that are registered investment companies ("RICs"). Those records have always set forth accurately the amounts of currency being exchanged in particular Indirect FX trades, and the disclosures described above are intended to prevent any confusion by RIC custody clients reviewing the records about the manner in which their Indirect FX exchange rates were set and the relationship of those Indirect FX exchange rates to exchange rates for contemporaneous trades by others in the interbank market.
- SSBT has implemented enhanced controls that address the conduct described in the Order. Specifically, SSBT's policies and procedures for providing responses to RFPs and other disclosures to SSBT's custody clients and their investment managers regarding Indirect FX contain information similar to that contained (as described above) in the Investment Manager Guide. These controls are designed to prevent misleading statements regarding Indirect FX pricing and misleading records reflecting Indirect FX rates.
- Since 2009, SSBT has revised its procedure for responding to RFPs for custody services for clients in North America, with enhancements designed to improve, centralize and standardize the RFP response process. The RFP Library, which houses standard answers to be used by State Street's custody business in responding to RFPs, was reviewed in its entirety for accuracy by subject matter experts and legal personnel. Each standard answer was assigned a "content owner" responsible for the accuracy and completeness of the language. A protocol was implemented requiring approval by the content owner and by a subject matter expert for any substantive changes to approved standard answers in the RFP Library. RFP Library standard

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answers are reviewed periodically by subject matter experts and legal personnel and are updated as appropriate to reflect service offering and regulatory changes.

- In 2010, The State Street Global Markets (“SSGM”) division of SSBT, which conducts SSBT’s foreign exchange business, promptly rewrote descriptions of Indirect FX services to be used in RFP responses to confirm their accuracy and clarity. These descriptions are reviewed periodically, and legal personnel are involved in this review.

The Commission has previously granted State Street two waivers from being considered an ineligible issuer. *In the Matter of State Street Bank and Trust Company (B-2320) (Feb. 4, 2010)* related to conduct by SSBT in connection with disclosure of the extent of subprime mortgage-backed securities held in certain unregistered funds under its management. That matter found that SSBT violated Sections 17(a)(2) and (3) of the Securities Act. In addition, *In the Matter of State Street Bank and Trust Company, File No. 3-17055 (Jan. 14, 2016)* related to conduct of a former employee of SSBT who entered into an agreement with a former state official in Ohio to make illicit cash payments and political campaign contributions through two lobbyists in exchange for subcustodian contracts. That matter found that SSBT violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder.

Although the conduct that was the subject of these previous waivers was different from the conduct described in the Order, all three matters have in common that the conduct at issue does not relate to State Street’s conduct as an issuer of securities or State Street’s ability to make accurate disclosures in future offerings. None of these matters caused State Street’s disclosures in its periodic filings or offering materials to be false or misleading.

Taking into account the nature of the conduct described in the Order and the remediation steps which have been described above, State Street does not believe that the conduct described in the Order calls into question the reliability of State Street’s current and future financial reporting and SEC filings.

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Impact on Issuer

The Order directs SSBT to pay disgorgement and a substantial penalty and to cease and desist from violating certain provisions of the Investment Company Act. According to the Order, the conduct addressed by the Order ceased in 2009. The loss of State Street's status as an eligible issuer could, as described in more detail below, have an impact on State Street's ability to raise capital and conduct its operations. This would be an unduly severe consequence, particularly in light of the remedial actions taken to prevent the conduct described in the Order from recurring and the fact that the conduct at issue in the Order ended nearly seven years ago.

State Street is focused on helping clients manage and service their financial assets – facilitating liquidity and aiding clients in managing risk in financial transactions. In this capacity State Street provides critical infrastructure for the global capital markets, making possible a significant percentage of market transactions worldwide each day. State Street regularly relies on its eligible issuer status to offer securities under its automatic shelf registration statement. For State Street, the automatic shelf registration process provides a critical means of access to the United States capital markets, which provide essential funding for its operations and bank regulatory compliance. Losing its status as a well-known seasoned issuer would impose additional restrictions on State Street's use of shelf registration statements. Among other things, State Street would be required to pay all fees upfront at the time of registration and include additional information in its registration statements. Further, State Street's registration statements would be subject to a review period, limiting State Street's flexibility and ability to access the capital markets when market conditions are most advantageous. All of these consequences would impose additional administrative burdens and costs on State Street. In addition, if State Street is considered an ineligible issuer, its ability to communicate with investors using free-writing prospectuses ("FWPs") would be limited. FWPs convey targeted and relevant information to customers in a user-friendly format that is often easier to understand than the typically longer statutory prospectus. The SEC has recognized that investors and the securities markets benefit from the use of FWPs, which, among other things, facilitate greater transparency to investors.⁵ State Street used FWPs containing only a description of the terms of the securities in the offering or the offering itself ("term sheet FWPs") in connection with each of its issuances of debt securities in 2013, 2014, 2015, and to date in 2016. Since November 2013, State Street has once used a FWP that was not a term sheet FWP. Although State Street typically uses only term sheet FWPs, which will continue to be available even if WKSI status is lost, State Street would lose the flexibility to communicate in other ways with investors and the markets as needed in the future.

⁵ Securities Offering Reform, Securities Act Release No. 8501 (Nov. 3, 2004).

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State Street is a frequent issuer of registered securities, offering and selling debt securities, preferred stock, depositary shares, common stock, purchase contracts, units, warrants and capital securities (through trust affiliates). Using its automatic shelf registration statement, State Street issued approximately \$1.5 billion of senior notes and \$1.0 billion of senior subordinated notes in 2013, approximately \$1 billion of senior notes in 2014, approximately \$3 billion of senior notes in 2015, and approximately \$1.5 billion of senior notes to date in 2016. In 2014, 2015, and to date in 2016, State Street used its automatic shelf registration statements to issue approximately 60 million depositary shares (approximately \$1.5 billion), 750,000 depositary shares (approximately \$750 million), and 20 million depositary shares (approximately \$500 million), respectively, in each case representing ownership interests in series of preferred stock.

The automatic shelf registration process provides State Street a critical means of access to the capital markets in a timely and efficient manner including the ability to take advantage of changes in credit spreads or interest rates, which is essential for funding the company's business. State Street, like other similar institutions, faces regulatory and market conditions and uncertainties, including new and proposed rules relating to heightened capital, leverage and liquidity standards. For example, the Federal Reserve's proposed total loss-absorbing capacity and eligible long-term debt requirements may impose additional needs on State Street to access the capital markets in order to meet the required holding amounts, including through the use of securities with characteristics that are not yet known and therefore are difficult to anticipate in a shelf registration statement. As an ineligible issuer, State Street would lose the ability to register additional types of securities not already covered by its WKSI shelf by filing a new registration statement or post-effective amendment that becomes immediately effective. If State Street wished to make use of such additional types of securities, its registration statement would be subject to staff review and approval, and therefore by the time State Street would be able to launch an offering, the market may no longer be willing to purchase State Street's securities in the amount or at the price available upon commencement of the offering process, which could compromise the results of State Street's regulatory compliance efforts or negatively impact certain of its lines of business that rely on State Street funding.

All of State Street's issuances of securities (other than for employee benefit plan purposes) in the last two years have used its automatic shelf registration statements. The above figures and considerations demonstrate the importance of the WKSI shelf to State Street in meeting its regulatory, capital, funding, and business requirements.

In light of these considerations, subjecting State Street to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists to determine that State Street should not be considered an ineligible issuer under Rule 405 as a result of the Order. We respectfully request the Commission or the Division of Corporation Finance pursuant to delegated authority to make that determination.

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Please contact me at (202) 663-6537 if you have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Eckert", with a long horizontal stroke extending to the right.

Paul R. Eckert

cc: Jeffrey N. Carp, *State Street Corporation*
David C. Phelan, *State Street Corporation*
Jeremy Kream, *State Street Corporation*