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

Submitted via email: rule-comments@sec.gov

Re: Good Faith Determinations of Fair Value [Release No. IC-33845; File No. S7-07-20]

Dear Ms. Countryman:

State Street Global Advisors, the investment management arm of State Street Corporation¹, welcomes the opportunity to comment on the United States Securities and Exchange Commission's (the "Commission") proposed new Rule 2a-5 Good Faith Determinations of Fair Value (the "Proposed Fund Valuation Rule").² Specifically, the Commission is seeking comments on fund valuation practices, including the assessment and management of material risks associated with fair value determinations; fair value methodologies; oversight of pricing services; and the role of the board of directors with respect to the fair value of the investments of a registered investment company or business development company.

With \$3.054 trillion in assets under management,³ State Street Global Advisors is the world's third-largest asset manager and the issuer of the SPDR family of exchange-traded funds. State Street Global Advisors appreciates the Commission's initiative to modernize the regulatory approach related to fund valuation. The investment management industry has changed considerably since the fund valuation rule was last revised, and we believe a fresh look is appropriate and timely.

We support the Commission's proposed overall approach to fund valuation; the flexibility it would provide funds in assigning valuation responsibilities, in particular its recognition of a board's oversight role while the investment adviser performs daily activities; and we commend its initiative to update and formalize fair valuation guidance. However, we believe the Proposed Fund Valuation Rule requires some

¹ Headquartered in Boston, Massachusetts, State Street Corporation is a global custodian bank which specializes in the provision of financial services to institutional investor clients. This includes the provision of investment servicing, investment management, data and analytics, and investment research and trading. With \$33.515 trillion in assets under custody and administration and \$3.054 trillion of assets under management, State Street operates in more than 100 geographic markets globally as of June 30, 2020. State Street is organized as a United States bank holding company, with operations conducted through several entities, primarily its wholly-owned state-chartered insured depository institution, State Street Bank and Trust Company.

² Available at <https://www.govinfo.gov/content/pkg/FR-2020-05-13/pdf/2020-08854.pdf>.

³ As of June 30, 2020.

revision prior to adoption, specifically around three matters. First, we suggest modifying the prompt board reporting requirement and allowing flexibility in performing and demonstrating adequate board oversight. Second, we ask the Commission to reconsider its approach to determining the fair value of fund investments and related recordkeeping requirements. Third, we request eliminating the pre-established criteria funds must consider during the price challenge process.

Modification of the Frequency and Timing of Board Reporting Requirements

The Proposed Fund Valuation Rule provides several requirements around board reporting including periodic reporting, of no less than quarterly, on material valuation risks, material changes to methodologies, testing results, resources and the oversight of pricing services. It also requires investment advisers to promptly report, within three business days, to the board (“prompt reporting requirement”) on “matters that materially affect, or could have materially affected, the fair valuation of the assigned portfolio of investments, including a significant deficiency or material weakness in the design or implementation of the adviser’s fair value determination process or material changes in the fund’s valuation risks.”⁴

State Street Global Advisors fully supports the reporting of material matters to the board, however, we have concerns with the proposed prompt reporting requirement. There are many situations in which meeting the prompt reporting requirement is likely to be difficult. For example, the root cause and potential magnitude of a systematic pricing issue may take an extended period of time to identify, evaluate and analyze across a large population of funds and subsequently provide adequate details to the board. Specifically, we believe the scope of the requirement to report on issues that “could have materially affected, the fair value of the assigned portfolio assignments”⁵ is overly broad and, given the phrasing, highly speculative. Therefore, we do not believe three business days would provide sufficient time to fully investigate and confirm whether an issue rises to the level of warranting a written report to the board and then prepare such report. We recommend extending the prompt reporting requirement beyond three business days to the next regularly scheduled quarterly board meeting.

Additionally, with regard to the proposed quarterly board reporting of non-material matters, we believe deference should be given to the board and investment adviser to determine the manner in which they perform adequate oversight of the valuation process. We believe it unnecessary to enumerate specific criteria for consideration,⁶

⁴ Available at <https://www.govinfo.gov/content/pkg/FR-2020-05-13/pdf/2020-08854.pdf> (p. 49).

⁵ Available at <https://www.govinfo.gov/content/pkg/FR-2020-05-13/pdf/2020-08854.pdf> (p. 50).

⁶ The periodic board reporting would require quarterly assessments of the adequacy and effectiveness of the investment adviser’s fair value process, including a summary or description of: (1) assessment and management of material valuation risk; (2) any material changes to, or material deviations from, established fair value methodologies; (3) testing results; (4) adequacy of resources allocated to the fair value process, including any material changes to the roles or functions of the responsible persons; (5) any material changes to the investment

and recommend that instead the final rule should not be so specific as to require reporting on items that may not change quarterly or are immaterial. Moreover, we believe providing boards and investment advisers flexibility to determine what constitutes adequate oversight of the valuation process better aligns with the existing compliance and liquidity rules. State Street Global Advisors recommends requiring: (a) annual reporting of non-material matters to the board; and (b) quarterly reporting to the board of any material changes to valuation risks and fair value methodologies, and the identification of significant deficiencies or material weaknesses in the design or implementation of the fair valuation determination process.

Support a 3-Tier Approach to Fund Valuation Determinations

When determining the fair value of a portfolio holding, boards rely on whether or not quotations are “readily available.” The Proposed Fund Valuation Rule defines a situation where determinations fall into one of two categories, “readily available” or not readily available.

Rather than the proposed two category approach, we believe that a 3-tier approach, similar to current generally accepted accounting principles (“GAAP”), is more appropriate. GAAP categorizes securities as Level 1, Level 2 or Level 3 when conducting fund valuations.⁷ Similarly, we recommend the Commission adopt a 3-tier approach, which we believe is less binary and better accounts for differences in risks and challenges across different asset types within a fund’s portfolio of investments.

Moreover, we believe the requirement that funds maintain documentation to support fair value determinations, including specific applied methodologies, assumptions and inputs considered so as to enable a third party to verify the fair value determination, may be overly burdensome. In many cases, an investment adviser receives thousands of daily prices from a pricing vendor on Level 2 securities, but it is common practice only to document prices that are actually utilized by the investment adviser. Given the volume of data and limited value of maintaining such information, we recommend that such detailed recordkeeping requirements only be required for investments where a fund has established its own fair value methodologies.

adviser’s process for selecting and overseeing pricing services, as well as material events related to this oversight (such as changes in service providers or price overrides); and (6) any other materials requested by the board.

⁷ Level 1 securities are categorized as quoted prices that are unadjusted in active markets for identical financial instruments that the fund can access at the measurement date. Level 2 securities are financial assets and liabilities whose fair value can be determined by data values and market prices based on market data obtained from sources independent of the reporting entity. Level 3 securities have inputs that are unobservable to market participants and are developed using the best available information under the circumstances.

Amend Criteria Related to Price Challenges

As the Commission recognizes, funds may utilize pricing services for the determination of securities' fair values. The Proposed Fund Valuation Rule requires oversight and evaluation of such pricing services by assigning a fund's board or its investment adviser the responsibility of establishing a process for monitoring, evaluating and approving the pricing service providers and establishing the criteria for initiating price challenges, such as establishing objective thresholds.

While we are supportive of price challenges, to the extent that they provide quality oversight of vendors pricing services, we believe it to be counterproductive to have pre-established criteria for such price challenges. The required use of pre-established criteria would be substantially limiting to investment advisers, who need the flexibility and discretion to adapt their evaluation of prices to the then-current market environment, in particular during times of market volatility. As such, we believe pre-established criteria should not be defined under the Proposed Fund Valuation Rule. Investment advisers should have the ability to rely on pricing service providers' methodologies and their related application, while also permitting applications of investment advisers' own methodologies for specified investments.

Conclusion

State Street Global Advisors would once again like to thank the Commission for the opportunity to provide comments on the Proposed Fund Valuation Rule.

Please feel free to contact me at Katherine_McKinley@ssga.com should you wish to discuss our submission in further detail.

Sincerely,



Katherine S. McKinley
Senior Vice President and General Counsel
State Street Global Advisors