UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 32390 / December 12, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17720

In the Matter of

STATE STREET BANK AND TRUST COMPANY,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 (the "Investment Company Act"), against State Street Bank and Trust Company ("State Street" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it, the subject matter of these proceedings, and the facts set forth in Annex A attached hereto, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

Until October 2009, State Street provided certain of its custody clients with materially misleading statements describing its pricing for a method of foreign currency exchange ("FX") it offered known as Indirect FX. From at least January 2006 to October 2009 (the "relevant period"), State Street also provided its custody clients based in the United States ("U.S.") and registered with the Commission under the Investment Company Act with records of Indirect FX trades that, in light of these statements, both omitted material information and were misleading in light of the circumstances in which they were made.

State Street's custody clients used Indirect FX to buy and sell foreign currencies as needed to settle transactions involving foreign securities.

On various occasions, State Street represented to certain custody clients: that it provided "best execution" on FX transactions; that its priority was to obtain the best possible prices on FX transactions; that it guaranteed the most competitive rates available on FX transactions; that it priced FX transactions at prevailing interbank or market rates; and that its Indirect FX rates were based on the size of the trade, State Street's inventory of the currency, prevailing market conditions, market rates, and/or State Street's risk management assessment. These representations did not accurately describe State Street's Indirect FX.

State Street priced most Indirect FX transactions executed in the U.S. near the end of each trading day, regardless of when trade orders were received. State Street applied a predetermined, uniform markup to current interbank market rates to price Indirect FX transactions, limited only by the high/low interbank rates of the day. As a result it often executed Indirect FX trades with custody clients at or near the highest and lowest rates in the interbank market between the time the market opened in the morning in the U.S. and the time that State Street priced the transactions (hereinafter the "U.S. trading day"). State Street realized substantial revenues from Indirect FX.

Accordingly, State Street: did not provide "best execution" on Indirect FX transactions; did not undertake to obtain the best possible prices for custody clients using Indirect FX; did not guarantee the most competitive rates available; did not price Indirect FX transactions at prevailing interbank or market rates; and did not base its Indirect FX rates on the size of the trade, its currency inventory, prevailing market conditions, market rates and/or risk management assessment.

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

State Street provided its registered investment company ("RIC") custody clients with, among other things, detailed and itemized daily records of all transactions, including detailed and itemized records of receipts and disbursements of cash and other debits and credits in RIC accounts. State Street also provided its RIC custody clients with periodic transaction reports. Generally, State Street's contracts with RICs provided that these and other books and records required to be kept by the RICs under the Investment Company Act that were in the possession of State Street were the property of the RICs and would be prepared and maintained as required by the Investment Company Act and the rules thereunder. 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 provide information about how the prices were determined. In light of State Street's misstatements about how it priced Indirect FX, the records were materially misleading because they omitted information that would have revealed that State Street had not executed the transactions in the manner described.

Respondent

State Street, which is a subsidiary of publicly-traded State Street Corporation, is a Massachusetts trust company and a bank that is a member of the Federal Reserve System. Its headquarters is in Boston, Massachusetts.

Among other lines of business, State Street acts as a custody bank for a wide range of clients, including mutual funds, closed-end funds and unit investment trusts that are registered with the Commission as investment companies under the Investment Company Act (collectively, these registered investment companies are referred to as "RICs"). As a custody bank, State Street undertakes to hold and safeguard its custody clients' financial assets, including stocks, bonds and currencies. State Street offers a variety of services to its custody clients, including custody, clearing, payment, and settlement functions, as well as record-keeping functions that include providing clients detailed and itemized records of receipts and disbursements of cash and other debits and credits. For RIC clients, State Street generally agreed to prepare and maintain such records, which were the property of the RICs, as required by the Investment Company Act and rules thereunder. With approximately $28.5 trillion in assets under custody and administration, State Street is one of the largest custody banks in the world.

Facts

A. State Street's Foreign Exchange Practices

1. Many of State Street's U.S.-based custody clients, including a large number of RICs, invest in foreign securities, which must be purchased and sold in the currencies of the countries in which the securities are traded. To settle these transactions, State Street's U.S.-based custody clients regularly purchase and sell foreign currencies. In addition, dividends earned on foreign securities are commonly paid in foreign currencies. State Street's U.S.-based custody clients sell foreign currencies, as needed, to repatriate such dividends to U.S. dollars.

2. There is no central exchange for the interbank foreign currency market. The interbank market is comprised principally of a group of large banks acting as market makers that buy from and sell to one another large, round lots of foreign currency. Consequently, State Street's custody clients generally must conduct FX attendant to their foreign securities transactions outside the interbank market, with State Street or another bank.

3. During the relevant period, State Street made available to its custody clients two primary methods of buying and selling foreign currencies, generally referred to as Direct FX and Indirect FX. In both cases, State Street bought and sold the currencies with its custody clients as principal. Custody clients and their investment managers selected which method of execution to use.

4. Using Direct FX, custody and other clients could negotiate the terms of FX transactions on a trade-by-trade basis with sales traders on State Street's FX trading desk.

5. Using Indirect FX, custody clients submitted instructions to State Street to execute the client's FX trades automatically through State Street's Global Markets division. When clients used Indirect FX, State Street processed and executed the clients' purchases and sales of foreign currencies without direct involvement from the clients, and did not negotiate prices on a trade-by-trade basis. For Indirect FX trades, State Street unilaterally determined the prices for clients' currency purchases or sales. State Street's spreads on Indirect FX transactions were generally substantially higher than on negotiated Direct FX transactions.

B. State Street's Indirect FX Pricing

6. During the relevant period, State Street followed a multi-step process to price Indirect FX trades executed in the U.S. for the settlement of foreign securities transactions. During the course of each business day, custody clients, usually acting through their investment managers, submitted notices of their foreign securities trades to State Street, containing instructions to execute Indirect FX transactions. State Street typically priced Indirect FX transactions together, near the end of the trading day, according to a fixed routine that involved the following:

- State Street employees observed indicative interbank bid/offer rates (current rates at which large banks were buying and selling currencies in the interbank market) reported by an outside service.

- State Street employees applied a predetermined, uniform markup (if the custody client was purchasing the currency) or markdown (if the client was selling the currency) to all indicative interbank bid/offer rates that they observed. During the relevant period, these markups ranged from at least 12 to 22 basis points.

- After applying the markup/markdown, State Street employees compared the resulting prices to the highest/lowest indicative interbank rates for each currency during the U.S. trading day. If the resulting prices fell at or within the highest and lowest indicative rates for the U.S. trading day, State Street's employees executed the Indirect FX trades at those prices. If the resulting prices fell outside the highest or lowest indicative interbank rates for the U.S. trading day, State Street's employees executed the Indirect FX trades at prices adjusted to fall at the day's highest or lowest indicative interbank rates.

- When pricing Indirect FX orders submitted by investment managers in the U.S., State Street determined whether the custody clients for each investment manager that had placed Indirect FX orders were net buyers or net sellers of each currency that the investment manager's clients traded that day. If the clients of an investment manager were net buyers of a currency, State Street assigned its "sell" price for the currency to all Indirect FX transactions conducted by the investment manager's clients that day. State Street assigned its "buy" price to clients of any investment manager whose clients were net sellers for the day. State Street thus charged a markup or markdown on the net amount of currency ordered by each investment manager.

7. When pricing foreign currency transactions involving the repatriation of dividends and other income earned on foreign securities, State Street followed a similar process of applying predetermined, uniform markups/markdowns to indicative interbank bid/offer rates. However, State Street did not limit its prices on these transactions by the highest or lowest indicative interbank rates, and the prices on these transactions at times exceeded the day's highest or lowest indicative interbank rates. For repatriation transactions, State Street applied a predetermined markup that ranged from 50 to 150 basis points.

8. State Street applied its predetermined, uniform markups/markdowns to all Indirect FX transactions regardless of the size of the transactions, regardless of its inventories, and regardless of market conditions or risk management considerations at the times it executed the transactions. The markups/markdowns commonly remained unchanged for months. As a result of this practice, State Street's Indirect FX prices were often at or near the highest and lowest interbank market rates for the U.S. trading day. State Street derived substantial revenue from such markups and markdowns.

C. State Street's Misleading Representations Concerning Indirect FX Prices

9. While State Street priced Indirect FX trades in the manner described above, it provided certain of its custody clients, including RICs, with misleading statements indicating that its FX execution provided more favorable exchange rates than its Indirect FX service actually did. State Street made these representations about its FX execution in responses to requests for proposals for custody services (issued or in effect during the relevant period) and in other written and oral communications with clients, which did not delineate the differences between Direct and Indirect FX execution. These misleading communications included responses to questions raised directly with State Street by custody clients and investment managers about Indirect FX pricing.

10. State Street's materially misleading statements included:

    (a) that it priced FX transactions at prevailing interbank or market rates for the currencies traded;

    (b) that it provided "best execution" on FX trades;

    (c) that its trading desk personnel, "whose priority [was] obtaining the best possible prices on FX trades, offer[ed] insight into relatively short-term currency movements and market events;"

    (d) that it guaranteed "the most competitive rates available" for FX trades "as all trades are priced based on the prevailing Interbank rates at the time the trade is executed;" and

    (e) that the rates it charged for FX trades were based on the size of the trade, State Street's inventory of the currency, prevailing market conditions, market rates, and/or State Street's risk management assessment.

11. In fact, none of these representations about State Street's FX execution applied to Indirect FX. With respect to Indirect FX:

    (a) State Street did not price Indirect FX transactions at prevailing interbank or market rates;

    (b) State Street did not provide "best execution" on Indirect FX trades. Instead it sold currencies as a principal, at rates set by undisclosed internal markup/markdown formulas;

    (c) the personnel on State Street's trading desk did not have as a priority obtaining the best possible prices for clients on Indirect FX trades;

    (d) State Street did not guarantee Indirect FX customers the most competitive rates available; and

    (e) State Street's rates for Indirect FX trades were not based on the size of the trade, State Street's inventory of the currency, prevailing market conditions, market rates, and/or State Street's risk management assessment. Instead, State Street applied predetermined, uniform markups/markdowns to indicative interbank rates limited in non-repatriation trades only by the high/low interbank rates of the day.

D. State Street Provided Materially Misleading Transaction Records to Its Registered Investment Company Custody Clients

12. State Street provided RIC custody clients with, among other things, detailed and itemized daily records of all transactions, including detailed and itemized records of receipts and disbursements of cash and other debits and credits in RIC accounts. These reports were books and records that the RICs were required to keep under the Investment Company Act. Generally, State Street's contracts with RICs provided that these and other books and records in the possession of State Street were the property of the RICs and that State Street would prepare and maintain them for the RICs as required by the Investment Company Act and the rules thereunder.

13. From at least January 2006 to October 2009, the daily and periodic transaction reports that State Street provided to its RIC custody clients included the date of each Indirect FX transaction and the execution price. The reports did not specify the time of day when the transactions were executed, or provide any information about how the Indirect FX prices were determined. In light of State Street's misstatements about how it priced Indirect FX, the reports were materially misleading because they concealed from RIC custody clients that State Street had not executed their Indirect FX trades in the manner represented to them.[2]

E. Respondent's Gains Due to Its Wrongful Conduct

14. During the relevant period, State Street obtained at least $75,000,000 in profits attributable to its conduct described above relating to Indirect FX.

Violations

As a result of the conduct described above, State Street willfully violated Section 34(b) of the Investment Company Act which prohibits any person from making any untrue statement of material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act or the keeping of which is required pursuant to Section 31(a) of the Investment Company Act and provides that it shall be unlawful for any person so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to make the statements therein, in light of the circumstances under which they were made, from being materially misleading. State Street also caused violations of Section 31(a) of the Investment Company Act and Rule 31a-1(b) thereunder, which require RICs to maintain records containing certain information about their transactions.

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[2] State Street began widely disseminating information about how it priced Indirect FX in October 2009 after a lawsuit was filed against it alleging it was applying undisclosed markups/markdowns to such trades. In December 2009, State Street began providing detailed descriptions of the manner in which Indirect FX prices were set, which were included in transaction reports available daily to those executing Indirect FX transactions and their investment managers.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent State Street's Offer.

Accordingly, pursuant to Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent State Street cease and desist from committing or causing any violations and any future violations of Sections 31(a) and 34(b) of the Act and Rule 31a-1(b) thereunder.

B. Respondent shall, within one year of the date of this Order, pay disgorgement of $75,000,000 plus prejudgment interest of $17,369,416.51 to the Securities and Exchange Commission.

Any payment made by State Street within one year of the date of this Order to a RIC custody client from which State Street obtained revenue as a result of the conduct described in this Order (refunding any of such revenue) shall satisfy State Street's obligation to pay an equivalent sum to the Commission for purposes of disgorgement and prejudgment interest owed pursuant to the Order, including payments that may be made to RIC custody clients in the consolidated class actions Arkansas Teacher Retirement System, on behalf of itself and all others similarly situated v. State Street Bank & Trust Co., Case No. 1:11-cv-10230-MLW (D. Mass., filed Feb. 10. 2011); Henriquez and those similarly situated v. State Street Bank & Trust Co., et al., Case No. 1:11-cv-12049-MLW (D. Mass., filed Oct. 12, 2011); and Andover Trust Companies Employee Savings and Profit Sharing Plan, et al. v. State Street Bank & Trust Co., No. 1: 12-cv-11698-MLW (D. Mass., filed Sept. 12, 2012).

Not later than thirty (30) days after the one year anniversary of the date of this Order, State Street shall provide the Commission staff with an accounting of all amounts it has paid to RIC custody clients that should be deemed payment to the Commission for purposes of satisfying the disgorgement and prejudgment interest ordered. The accounting shall specify with respect to each RIC custody client that received monies: (1) name and address; (2) date of payment; and (3) amount received. State Street shall also provide the staff with copies of cancelled checks or other documentation acceptable to the staff evidencing such payments.

Upon good cause shown, the Commission staff may, in its discretion, extend by up to six months the one-year period within which State Street must make payments to RIC clients in order to satisfy its disgorgement obligation pursuant to this Order.

Not later than thirty (30) days after the expiration of any further extended time period approved by the staff in its discretion upon good cause shown, which shall not exceed six months (the Required Payment Period), State Street shall provide the Commission staff with an accounting of all amounts it has paid to RIC custody clients that should be deemed payment to the

Commission for purposes of satisfying the disgorgement and prejudgment interest ordered. The accounting shall specify with respect to each RIC custody client that received monies: (1) name and address; (2) date of payment; and (3) amount received. State Street shall also provide the staff with copies of cancelled checks or other documentation acceptable to the staff evidencing such payments.

State Street shall provide the accounting(s) and supporting documents required by this Order to the Commission staff under cover letter that identifies State Street as Respondent in these proceedings and the file number of these proceedings to Celia Moore, Assistant Regional Director, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110. State Street shall provide any and all supporting documentation for the accounting to Commission staff upon request and cooperate with any additional requests by the Commission staff.

If within the Required Payment Period the payments made by State Street to RIC custody clients are less than $92,369,416.51, State Street shall, within sixty (60) days of the expiration of the Required Payment Period, pay to the Commission the outstanding disgorgement and prejudgment amounts ordered. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds, or transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

C. Respondent shall, within seven (7) days of the entry of this Order, pay a civil money penalty in the amount of $75,000,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying State Street as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Celia D. Moore, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110.

By the Commission.

Brent J. Fields
Secretary

Annex A

Respondent admits the facts set forth below:

Foreign Exchange Practices at State Street

1. During the relevant period, State Street offered two primary foreign exchange services to its custody clients: Direct FX and Indirect FX. Custody clients, or their investment managers, selected the method of execution to use for their FX transactions. When using Direct FX, custody clients negotiated the terms of each FX transaction on a trade-by-trade basis with sales traders on State Street's FX trading desk. When using Indirect FX, custody clients executed FX trades with the State Street Global Markets division of State Street ("SSGM"), which determined trade prices without consulting the custody clients.

2. During the relevant period, when custody clients or their investment managers submitted instructions to execute the clients' FX trades using Indirect FX, State Street processed and executed purchases and sales of foreign currencies without involvement from the clients. For example, custody clients that utilized Indirect FX did not negotiate prices on a trade-by-trade basis. Rather, SSGM unilaterally determined the prices for Indirect FX purchases or sales. In practice, SSGM's spreads on Indirect FX transactions were generally substantially higher than on negotiated Direct FX transactions.

Indirect FX Pricing at State Street

3. During the relevant period, State Street executed Indirect FX trades following a multi-step process described below. Each business day, custody clients (or their investment managers) who chose to submit Indirect FX trades for execution in the United States electronically submitted notices of their foreign securities trades to State Street that contained instructions to execute Indirect FX transactions. SSGM typically priced Indirect FX transactions in the United States together at the end of the trading day, according to the following routine for each currency traded:

> a) SSGM first observed the indicative interbank bid/offer rate (i.e., current rate at which large banks were buying and selling the currency in the interbank market) reported by an outside service (the "Interbank Rate").
>
> b) Next, SSGM applied a predetermined, uniform mark-up (if the custody client purchased the currency) or mark-down (if the client sold the currency) to the Interbank Rate (collectively, the "Mark-Up"). During the relevant period, the Mark-Up ranged from at least 12 to 22 basis points (i.e., 0.12% to 0.22%).
>
> c) After applying the Mark-Up, SSGM compared the resulting prices to the highest or lowest indicative Interbank Rate for the currency during the U.S. trading day. To the extent the price fell outside of the daily range of Interbank Rates during the U.S. trading day for that currency, SSGM capped the price to fall at either the day's high or low Interbank Rate.

d) If an investment manager submitted multiple orders for a currency (for one or more custody clients), SSGM determined whether the trades considered together made the investment manager's clients, in the aggregate, net buyers or sellers of the currency for that trading day. If the investment manager's clients were, in the aggregate, net buyers of a currency, SSGM assigned its "sell" price to all Indirect FX trades executed by the investment manager. If the investment manager's clients were, in the aggregate, net sellers of a currency, SSGM assigned its "buy" price. Accordingly, SSGM applied the Mark-Up to the net amount of currency ordered by each investment manager.

4. When pricing FX transactions involving the repatriation of dividends or other income earned from foreign securities ("Repatriation Trades"), during the Relevant Period, SSGM followed a similar process of applying a predetermined, uniform Mark-Up to an Interbank Rate. SSGM set one rate for each currency and applied it to all repatriation transactions in that currency worldwide that it executed in the twenty-four (24) hour period after it set the rate. Accordingly, SSGM did not limit its Mark-Up on Repatriation Trades to the daily range of Interbank Rates, and SSGM's prices on these Repatriation Trades often exceeded the day's high or low Interbank Rates. For these Repatriation Trades, SSGM's Mark-Up ranged from 50 to 150 basis points (i.e., 0.50% to 1.50%).

5. State Street made representations to certain existing and potential clients concerning FX execution, including:

a) SSGM priced FX transactions at prevailing interbank market rates.

b) State Street provided "best execution" on FX trades.

6. Contrary to the representations in paragraph 5 above:

a) SSGM generally did not price Indirect FX transactions at prevailing interbank market rates.

b) SSGM was aware that it executed Indirect FX transactions, at rates established consistent with paragraphs 3 and 4 above, and generally did not disclose this process to clients.