

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of

State Street Global Advisors Funds
Distributors, LLC (BD #30107)

and

State Street Global Markets, LLC (BD
#285852)

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-2179
SD-2180

Date: August 1, 2018

I. Introduction

On October 23, 2017 and October 24, 2017, respectively, State Street Global Advisors Funds Distributors, LLC (“SSGAFD”) and State Street Global Markets, LLC (“SSGM”) (collectively, the “Firms” or the “Applicants”) submitted Membership Continuance Applications (“MC-400As” or the “Applications”) to FINRA’s Department of Registration and Disclosure (“RAD”). The Applications seek to permit the Firms, which are FINRA members subject to a statutory disqualification, to each continue their memberships with FINRA. A hearing was not held in these matters; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Regulation (“Member Regulation” or the “Department”) recommends approval of the Firms’ Applications to continue their memberships with FINRA and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act”).¹

II. The Statutorily Disqualifying Event

SSGAFD and SSGM are subject to statutory disqualification, as defined in Exchange Act

¹ On January 3, 2018, the Securities and Exchange Commission (the “Commission” or the “SEC”) verbally consented to the Department filing a combined Rule 19h-1 Notice on behalf of SSGAFD and SSGM on the grounds that the Firms are affiliates and are both subject to a statutory disqualification as a result of the same SEC order which identifies the Firms collectively, makes the same findings against each of the Firms and imposed the same sanctions against the Firms.

Section 15(b)(4)(D), incorporated by reference in Exchange Act Section 3(a)(39)(F), as a result of a September 7, 2017 SEC Order finding that they willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”); Section 10(b) of the Exchange Act, and Rules 10b-5(a) and (c) thereunder; and Section 15(c)(1) of the Exchange Act (the “Order”).²

According to the Order, between February 2010 and September 2011, the Firms charged six of their customers who were changing fund managers and/or investment strategies and who faced large and complex changes to their portfolio of assets (hereinafter “transition management customers”) hidden and unauthorized mark-ups and commissions beyond the fees, mark-ups, or commissions that the customers agreed to pay on U.S. and European securities.³ In addition, through the actions of former employees, the Firms instructed their traders to levy mark-ups and commissions in certain transactions despite contractual terms to the contrary. The Firms also generated fraudulent reports that hid the mark-ups and commissions, and after one of the customers confronted the Firms about some of the hidden mark-ups, the Firms made materially false and misleading statements to the customer to conceal their conduct.⁴ The Firms collectively overcharged these six customers approximately \$20 million.⁵

In anticipation of the institution of an administrative proceeding, the Firms submitted, and the Commission accepted, Offers of Settlement in which the Firms consented to the findings contained in the Order and collectively were censured, ordered to cease and

² See Order in *In the Matter of State Street Global Markets, LLC, State Street Global Advisors Funds Distributors, LLC and State Street Bank and Trust Company*, Admin. Proc. File No. 3-18159, Exchange Act Release No. 81543 (September 7, 2017) (attached as Exhibit 1). SSGAFD, formerly known as State Street Global Markets, LLC, is a subsidiary of State Street Corporation (“State Street”) and was given its current name in 2017 as part of a reorganization of State Street’s broker-dealer business. During the time of the events in the Order, the transition management services at issue were provided by SSGAFD. SSGM is a newly-formed broker-dealer, created during the course of the same State Street reorganization. State Street transferred the name “State Street Global Markets, LLC” to the newly-created entity in 2017, which now conducts the transition management services business previously operated by SSGAFD. SSGAFD no longer conducts a transition management services business.

³ *Id.* at 2. “Transition management is a service provided by some financial institutions to institutional customers that are changing fund managers or investment strategies and face large and complex changes to their portfolios of assets. Transition management services are marketed as a means to help reduce the cost of such ‘transitions,’ which often require the execution of a large quantity of orders to buy and sell stocks (thus generating significant expenses for the customer).” *Id.* at 4.

⁴ *Id.*

⁵ *Id.*

desist from committing or causing any violations, including any future violations, of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Exchange Act Section 15(c)(1), and ordered to pay a \$32.3 million civil penalty.⁶

In addition, the Firms agreed to a number of undertakings related to their internal controls concerning, among other things, undisclosed and unauthorized compensation, fees, expenses, and/or other costs charged by Respondents in their transition management, foreign-exchange, and custody bank business lines.⁷ Specifically, the Firms agreed, among other things, to retain a qualified independent ethics and compliance consultant to review and evaluate the Firms' procedures and controls concerning disclosure of compensation, fees, expenses, and/or other costs charged by the Firms related to securities transactions, the custody of securities or related services, including but not limited to written disclosures, advertising materials and other forms of communication with clients or customers and prospective clients or customers. The consultant is also to review and evaluate whether Firms have procedures and controls that are reasonably designed to provide accurate statements, invoices, and other information to their clients and customers as well as to maintain accurate books, records and accounts. A number of these undertakings will continue for two years from the date of the Order.

III. Background Information of the Firms

A. SSGAFD

SSGAFD has been a member of FINRA since 1992.⁸ SSGAFD, which is owned by State Street Global Advisors, Inc., is based in Boston, Massachusetts and is a mutual fund underwriter or sponsor and also engaged in the private placements of securities.⁹

⁶ *Id.* at 18. The Firms paid the penalty on September 14, 2017. *See* MC-400A Application of SSGAFD at FINRA00197 (attached as Exhibit 2); MC-400A Application of SSGM at FINRA00182 (attached as Exhibit 3). In addition to the Commission's sanctions, the Firms entered into a Deferred Prosecution Agreement (the "DPA") with the U.S. Department of Justice on January 18, 2017 pursuant to which the Firms were charged with conspiracy to commit wire fraud and securities fraud, in violation of 18 U.S.C. Section 371, agreed to pay a monetary penalty of \$32.3 million and to take various remedial actions. *See* Deferred Prosecution Agreement between the United States Department of Justice, Criminal Division, Fraud Section and State Street Corporation (Jan. 18, 2017) (attached as Exhibit 4).

⁷ *See* Exhibit 1 at 14 – 18. For the purposes of the Undertakings, the Firms are referred to as the "Respondents."

⁸ *See* Exhibit 2 at FINRA00198.

⁹ *Id.* at FINRA00229 – FINRA00230 and FINRA00235 – FINRA00237; *See also* Exhibit 1 at 2 – 3.

SSGAFD represents that it employs 268 registered representatives, 17 of whom are also registered principals.¹⁰ It has 6 branch offices, 3 of which are Offices of Supervisory Jurisdiction (“OSJs”).¹¹

B. SSGM

SSGM, a wholly-owned subsidiary of State Street Corporation, has been a member of FINRA since 2017.¹² SSGM is based in Boston, Massachusetts and engages in the following businesses: broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; mutual fund retailer; U.S. government securities dealer; U.S. government securities broker; municipal securities dealer; municipal securities broker; solicitor of time deposits in a financial institution; put and call broker or dealer or option writer; broker or dealer selling securities of non-profit organizations (e.g. churches, hospitals); non-exchange member arranging for transactions in listed securities by exchange member; trading securities for own account; private placement of securities; broker or dealer selling interests in mortgages or other receivables; and soft dollar, commission recapture and directed brokerage arrangements.¹³ SSGM represents that it employs 109 registered representatives, 12 of whom are also registered principals.¹⁴ It has 3 branch offices, all of which are OSJs.¹⁵

C. Routine Examinations of SSGAFD and SSGM

Routine Examinations of SSGAFD

FINRA’s most recent examination of SSGAFD, a FINOP examination, began in July 2017 and concluded in January 2018. FINRA issued a Cautionary Action for an exception relating to SSGAFD’s processes and supervisory controls pertaining to wire disbursement activity and journal entries.¹⁶

¹⁰ *Id.* at FINRA00198.

¹¹ *Id.*

¹² *See* Exhibit 1 at 2; *See also* Exhibit 3 at FINRA00183.

¹³ *Id.* at FINRA00215, FINRA00221 – FINRA00222, and FINRA00224.

¹⁴ *Id.* at FINRA00183.

¹⁵ *Id.*

¹⁶ Examination Disposition Letter, Examination Report, and SSGAFD’s Response, 2017 Cycle

FINRA conducted its prior examination of SSGAFD, a FINOP and sales practice examination, in 2016. FINRA referred an exception relating to SSGAFD's compliance with the Exchange Act Rule 17a-4 to its Department of Enforcement. This referral resulted in a letter of Acceptance, Waiver and Consent ("AWC") which FINRA accepted from SSGM in July 2017.¹⁷ It also issued a Cautionary Action for exceptions relating to communication review and advertising filing requirements, supervisory standards, as well as Exchange Act net capital and FINRA books and records requirements.¹⁸

Routine Examination of SSGM

FINRA conducted its first, and only, cycle examination of SSGM in 2017 and did not identify any exceptions.¹⁹

D. Regulatory Actions against SSGAFD and SSGM

In the past two years, SSGAFD and SSGM have been subject to regulatory actions by FINRA and the Massachusetts Securities Division.

In December 2016, SSGAFD entered into an Agreement and Acknowledgment of Undertakings (an "MOU") with the Massachusetts Securities Division to settle allegations that it concealed markups on out-of-pocket expenses disguised as "pass through charges" to custodial clients, including pension funds, mutual funds, hedge funds, and institutional investors, over an 18-year period.²⁰ In connection with the MOU,

Examination of State Street Global Advisors Funds Distributors, LLC, Examination No. 20170523018 (January 11, 2018) (attached as Exhibit 5).

¹⁷ *Infra* at Note 23.

¹⁸ Examination Disposition Letter, Examination Report, and SSGAFD's Response, 2016 Cycle Examination of State Street Global Markets, LLC, Examination No. 20160476669 (August 19, 2016) (attached as Exhibit 6). As discussed *supra* at Notes 2 and 8, during the time of its 2016 Cycle Examination, SSGAFD was known as State Street Global Markets, LLC, whose name was transferred to a newly-formed broker-dealer, SSGM, in 2017.

¹⁹ Examination Report, 2017 Cycle Examination of State Street Global Markets, LLC, Examination No. 20170537041 (November 3, 2017) (attached as Exhibit 7).

²⁰ Agreement and Acknowledgment of Undertakings Between the Massachusetts Securities Division and State Street Global Markets, LLC (Dec. 12, 2016) (attached as Exhibit 8). The MOU does not subject SSGAFD to a statutory disqualification because there were no findings of violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct, nor did the sanctions involve licensing or registration revocation or suspension.

SSGAFD paid the Massachusetts Securities Division a \$2.5 million administrative payment and represented that it will reimburse the present and former Massachusetts clients identified in the MOU.²¹

In July 2017, FINRA accepted an AWC from SSGM for failing to maintain electronic brokerage records in a non-erasable and non-rewritable format, failing to store separately from the original a duplicate copy of electronic records, and for failing to have adequate supervisory processes relating to its compliance with record retention requirements.²² FINRA censured SSGM and fined it \$1.5 million. SSGM also consented to undertakings relating to the adequacy of its relevant policies and procedures to ensure compliance with the federal securities laws and FINRA rules addressed in the AWC.²³ The firm paid the fine in full and is currently in compliance with the relevant undertakings.

E. Prior Rule 19h-1 Notices

No prior 19h-1 notices have been filed on behalf of SSGAFD or SSGM.

IV. The Firms' Proposed Continued Memberships with FINRA and Proposed Supervisory Plan

The Firms seek to continue their memberships in FINRA notwithstanding the Order that triggered their statutory disqualification. As noted above, the SEC required the Firms to comply with numerous undertakings that relate to, among other items, the Firms' controls over undisclosed and unauthorized compensation, fees, expenses, and/or other costs charged by the Firms in their transition management, foreign-exchange, and custody bank businesses. The Firms have retained the same consultant in connection with the undertakings imposed pursuant to the Order as they did with those imposed pursuant to the DPA. Also, the Firms represented that they have thus far complied with the terms of the undertakings and that the consultant's recommendations for improving the Firms'

²¹ *Id.* SSGAFD submitted the entire payment to the Massachusetts Securities Division on December 15, 2016. Further, SSGAFD discontinued this billing practice and reimbursed its present and former Massachusetts clients who were improperly charged markups on out-of-pocket expenses disguised as "pass through charges." A review of the Firms' regulatory histories reflects that this is the only other matter involving the Firms that concerns similar misconduct addressed in the Order.

²² AWC No. 2016051821601 (July 11, 2017) (attached as Exhibit 9).

²³ *Id.*

compliance and ethics programs are due in mid-June.²⁴

To supplement these actions already taken, the Firms have agreed to the following plan of supervision (the “Supervisory Plan” or the “Plan”):²⁵

1. Comply with the undertakings specified in the Order;
2. Establish protocols to ensure that the undertakings outlined in the Order are completed in the time period established in the Order or by the time period granted by Commission staff in any extension;
3. Provide FINRA with copies of correspondence between the Firms and Commission staff regarding requests to extend the procedural dates relating to the undertakings; and
4. Provide FINRA with a copy of the certification and all supporting documentation that will be provided to the Commission upon completion of the undertakings as specified in the Order. These documents may be sent directly to:

Lorraine Lee-Stepney
Manager, Statutory Disqualification Program
FINRA
1735 K Street NW
Washington, DC 20006
Lorraine.Lee@finra.org

5. SSGAFD is no longer engaged in the transition management services business. Should SSGAFD seek to reengage a business in transition management services, it will file an application under NASD Rule 1017 and obtain FINRA’s approval to do so.

²⁴ See Letter from John M. Faust of Wilmer Cutler Pickering Hale and Door LLP (counsel for the Firms), to Nicholas Vitalo, of FINRA, dated February 23, 2018, wherein an update is provided on the progress the Firms have made on the undertakings (attached as Exhibit 10). FINRA has separately spoken with SEC staff and have confirmed the information contained in Exhibit 10.

²⁵ See Letter dated June 21, 2018 from Nicholas Vitalo of FINRA to John M. Faust, Esq. (“Faust”), Counsel for the Applicants, seeking the Firms’ written consent to the Supervisory Plan (attached as Exhibit 11).

6. Should SSGAFD seek to resume a business in transition management services, it will submit for FINRA approval, as part of its application under NASD Rule 1017, amended policies and procedures: (i) relating to disclosure of compensation, fees, expenses, and/or other costs charged by SSGAFD related to securities transactions or the custody of securities or related to services provided to clients or customers concerning securities transactions, (ii) reasonably designed to provide accurate statements, invoices, and other information to its clients and customers, and (iii) sufficient to provide reasonable assurances that SSGAFD is maintaining fair and accurate books, records and accounts, with particular emphasis on whether such controls are reasonably designed to address the integrity of SSGAFD's books and records given the global nature of the transition management services business.

7. Seek written approval from Member Regulation prior to changing any provision of the Plan.

Subsequent to an approval of the Firms' continued memberships in FINRA notwithstanding their statutory disqualification, FINRA will utilize its examination and surveillance processes to monitor the Firms' compliance with the standards prescribed by FINRA Rule 9523. Specifically, FINRA will examine the Firms to review their implementation of the agreed upon Supervisory Plan.

V. Discussion

After carefully reviewing the record in this matter, Member Regulation approves the Firms' requests to continue their memberships in FINRA, subject to the terms and conditions set forth herein.

In evaluating the Applications, Member Regulation assessed whether the Firms have demonstrated that their continued memberships are consistent with the public interest and do not create an unreasonable risk of harm to investors or the market.²⁶ Typically, factors that bear on Member Regulation's assessment include, among other things, the nature and gravity of the statutorily-disqualifying misconduct, the time elapsed since its occurrence,

²⁶ See FINRA By-Laws, Art. III, Sec. (3)(d); *In the Matter of the Continued Membership of J.P. Morgan Securities, Inc.*, SD-1904, SD-1905, and SD-1984 (FINRA NAC 2014), quoting *Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Available at: http://www.finra.org/sites/default/files/NAC%20Statutory%20Disqualification%20Decision%20SD1904_0_0_0_0_0.pdf. (last visited June 7, 2018).

the restrictions imposed, the Firms' regulatory histories and whether there has been any intervening misconduct.

While the Order described serious violations of the federal securities laws, Member Regulation notes that the Firms represent that they have taken steps to address the conduct that led to the Commission entering the Order.²⁷ SSGAFD no longer provides transition management services and cannot reengage in that business unless and until FINRA approves its request under NASD Rule 1017.²⁸ SSGM, which still conducts a transition management services business, represents that it has undertaken numerous remedial measures and enhancements prior to, and independent of, those contained in the Order, including deploying enhanced procedures that require, among other things, additional pre- and post-trade review of transactions for transition management customers.²⁹ Member Regulation also notes that SSGM represented that it continues to work with its consultant to further refine its policies and procedures addressing its billing practices in connection with its transition management business.

In addition, Member Regulation notes that the underlying misconduct occurred between February 2010 and September 2011 and, other than MOU discussed above, the Firms have not been found to engage in similar misconduct since. Additionally, the Firms fully repaid the victims of their misconduct in both the present matter and in connection with the MOU and no longer employ the individuals identified in the Order.³⁰ The Firms also represent that they are in compliance with the terms of the DPA which was entered into with the U.S. Department of Justice, and continue to cooperate with the independent compliance monitor.³¹

Finally, Member Regulation recognizes that, beyond ordering the undertakings described above and imposing a fine, the Commission did not expel, suspend, or otherwise limit the Firms' securities activities. As of the date of this Notice, the Firms represent that they continue to comply with the terms of the Order.³² When combined with the proposed

²⁷ See Exhibit 1 at 4, 6.

²⁸ See Exhibit 2 at FINRA00199.

²⁹ See SSGM Transition Management Desk Procedures (Dec. 8, 2017) (attached as Exhibit 12).

³⁰ See Exhibit 3 at FINRA00210 – FINRA00212; See also Exhibit 4 at pp. 3 – 4.

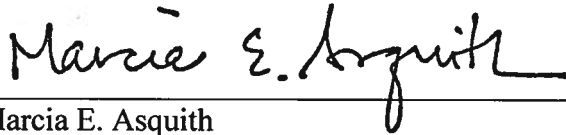
³¹ *Supra* at Note 6; See also Exhibit 12.

³² *Supra* at Note 24.

Supervisory Plan, it appears as though the Firms' continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets.

Member Regulation is satisfied based on the foregoing and on the Firms' representations made pursuant to the Supervisory Plan that the Firms should be permitted to continue their memberships in FINRA. Accordingly, Member Regulation recommends approval of the Firms' Applications to continue their memberships with FINRA as set forth herein. The Firms are also members of various SROs and, where appropriate, those SROs have indicated that they concur with the Department's determination to approve the Firms' continued memberships.³³ In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued memberships of the Firms will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of FINRA,



Marcia E. Asquith

Executive Vice President, Board & External Relations

³³ The following SROs concur with the Firms' continued membership: DTCC, NASDAQ OMX BX, NQX, NYSE American and NYSE.

Exhibits

1. Order *In the Matter of State Street Global Markets, LLC, et al.*, Admin. Proc. File No. 3-18159 (September 7, 2017).
2. MC-400A Application of SSGAFD.
3. MC-400A Application of SSGM.
4. Deferred Prosecution Agreement between the United States Department of Justice, Criminal Division, Fraud Section, and State Street Corporation (January 18, 2017).
5. 2017 SSGAFD Cycle Examination (No. 20170523018) documents.
6. 2016 SSGAFD Cycle Examination (No. 20160476669) documents.
7. 2017 SSGM Cycle Examination (No. 20170537041) documents.
8. Agreement and Acknowledgment of Undertakings Between the Massachusetts Securities Division and State Street Global Markets, LLC, dated December 12, 2016.
9. AWC No. 2016051821601 (July 11, 2017).
10. Letter from John M. Faust of Wilmer Cutler Pickering Hale and Door LLP (counsel for the Firms), to Nicholas Vitalo, of FINRA, dated February 23, 2018.
11. SSGM and SSGAFD Consents to Supervisory Plan dated June 29, 2018 and July 9, 2018, respectively.
12. SSGM Transition Management Desk Procedures (December 8, 2017).