

May 9, 2022

State Street Global Advisors
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Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

Submitted via email: pubcom@finra.org

Re: Regulatory Notice 22-08: Complex Products and Options

Dear Ms. Piorko Mitchell:

State Street Global Advisors, the investment management arm of State Street Corporation,¹ welcomes the opportunity to respond to the Financial Industry Regulatory Authority's ("FINRA") Regulatory Notice 22-08 ("Notice") which reminds members of their obligations in relation to complex products and options and solicits comments on effective practices and potential rule enhancements.² While we fully support efforts to improve investors' understanding of investment products and their potential underlying risks, we believe FINRA's approach may inappropriately limit investor access to certain well-established and widely-utilized investment products, most notably certain exchange-traded funds ("ETFs") and mutual funds.

With \$4.022 trillion in assets under management, State Street Global Advisors is the world's fourth-largest asset manager and the sponsor/marketer of the SPDRs family of ETFs, which includes 140 ETFs in the United States ("US") and more globally.³

As discussed in further detail below, we are concerned that imposing investment or access restrictions with respect to "complex products" – a category lacking a clear and standardized definition – has the potential to harm investors if such restrictions inappropriately limit investors' choices of certain investment products. State Street Global Advisors therefore: (i) urges further discussion on methods to enhance disclosure for investors rather than limiting their investment options; and (ii)

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 \$41.724 trillion in assets under custody and administration, and approximately \$4.022 trillion of assets under management, State Street operates in more than 100 geographic markets globally as of March 31, 2022. 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.finra.org/sites/default/files/2022-03/Regulatory-Notice-22-08.pdf>.

³ As of March 31, 2022. For more information, please visit SSGA's website at www.ssga.com.

supports greater clarity regarding the definition of the term “complex product” should regulatory measures be proposed with respect to this category.

PROMOTING CLARITY OVER RESTRICTING ACCESS

State Street Global Advisors wholly supports the Notice’s underlying goal – to ensure that investors understand the terms, features and risks of the financial products in which they invest. However, we believe this is best achieved through efforts to enhance the clarity of product disclosures rather than restricting investor access to investment products.

The Notice seeks comments on whether the current regulatory framework is appropriately tailored to address concerns raised by complex products, particularly those accessible to self-directed retail investors. Among FINRA’s questions are several asking whether additional requirements should apply with respect to retail investors investing in complex products. Such potential measures include: requiring enhanced account approval processes before an account may trade in complex products; imposing restrictions or limitations on retail investors’ access to complex products, such as limiting access to high-net worth or other categories of investors; requiring an account assessment as to whether retail investors may transact in an investment product that its brokerage firm has reasonably assessed as being complex; requiring knowledge assessments for such clients; and periodic reassessments of retail investors’ account profiles.

We believe that regulatory approaches that *inappropriately* limit or restrict access to investment products are harmful to investors. This can include limiting access to products that can be used to diversify portfolios and reduce risk in many cases; blocking investors’ ability to adjust portfolios quickly in response to market conditions; giving a false sense of security to retail investors that investment products that are not labelled “complex” are low risk; and dampening product innovation that could benefit investors. Rather than taking any such actions, we urge FINRA to take measures that would enhance investor understanding of investment products and their associated risks.

Enhancing clarity for ETF investors was a key motivation behind our involvement in a coalition of asset managers that asked the US exchanges to implement a classification system that categorizes different types of exchange-traded products (“ETPs”) in a way that reflects their inherent complexities, structural features, and risks.⁴ Whereas measures that restrict investor access would undermine the prevailing disclosure-based regulatory regime, measures to enhance clarity could strengthen the disclosure-based system, better support due diligence and help

⁴ In 2020, State Street Global Advisors along with BlackRock, Charles Schwab Investment Management, Fidelity Investments, Invesco, and Vanguard, recommended the exchanges implement an ETP classification system. See press release at <https://www.businesswire.com/news/home/20200513005792/en/Industry-Coalition-Champions-Clarity-Through-ETP-Classifications-%C2%A0>.

investors make better informed investment decisions. Moreover, measures focused on improving risk disclosures would retain investors' access and freedom to make investment decisions with respect to products that may otherwise be deemed "complex."

We recommend that FINRA continue to address concerns regarding retail investor access to specific products, including complex products, through its existing approach of: (i) providing investor-focused educational pieces on specific products; (ii) issuing regulatory notices reminding members of their sales practices and supervisory obligations with respect to complex products; and (iii) when necessary, exercising its enforcement authority.

LACK OF DEFINITIONAL CLARITY IS PROBLEMATIC

State Street Global Advisors believes that applying additional requirements to any product that FINRA deems "complex", without further clarifying what is meant by such a term is problematic. The Notice acknowledges that FINRA has intentionally not provided any standard definition of "complex product" so as to allow flexibility as product offerings and technology evolve. The Notice does not clearly define "complex product" but describes it as a product with features making it difficult for a retail investor to understand its essential characteristics and risks.

In our view, the lack of a formal and standardized definition of "complex product," will lead to overbroad interpretations of the term. Indeed, over time, a list of *potentially* complex products has developed, although the commonalities between these products are unclear. Historically, products that potentially could be deemed "complex products" have included multi-strategy funds, target-date funds, commodity ETFs and funds that use futures for hedging purposes. Should these types of products be deemed to be "complex products" for purposes of FINRA rules, it would mean that many publicly-offered funds, not ordinarily considered complex today, could be subject to further restrictions at the discretion of FINRA.

We believe that such an approach would be improper because imposing any requirements on these investment products, without further clarifying what is meant by the term complex products and exactly which products it encompasses will likely lead to confusion and to inconsistent and potentially discriminatory application across investment products. Ultimately this could limit investors' ability to fully access the public markets and have an unnecessary chilling effect on product innovation. Should FINRA propose any substantive measures with respect to complex products, we urge FINRA to provide notice and an opportunity to comment on a more precise definition of the term "complex product".

CONCLUSION

Thank you once again for the opportunity to offer our comments on the Notice. We appreciate FINRA's focus on investor protection. However, as opposed to introducing barriers that unnecessarily limit investor access and choice, we believe that any proposed changes with respect to complex products should strive to enhance clarity for investors. This includes a more clearly defined scope of application.

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

Sincerely,

A handwritten signature in cursive script that reads "Sean O'Malley".

Sean O'Malley
General Counsel & Chief Legal Officer
State Street Global Advisors