

November 9, 2012

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Mr. John G. Walsh
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Prohibitions and Restrictions on Proprietary Trading and Treatment of Separately
Managed Accounts in Bona Fide Seeding Programs of Bank Owned Asset Managers

Dear Sirs and Madams,

State Street Global Advisors, the investment advisory arm of State Street Corporation (“SSgA”),¹ appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System (“**Board**”), the Office of the Comptroller of the Currency (“**OCC**”), the Federal Deposit Insurance Corporation (“**FDIC**”), the Commodity Futures Trading Commission (“**CFTC**”), and the Securities and Exchange Commission (“**SEC**”) (together the “**Agencies**”) proposed rule titled, “Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds” (the “**Proposed Rule**”).² SSgA is a global leader in asset management, entrusted

¹ In the United States, SSgA operates as a division of State Street Bank and Trust Company, and through its U.S. registered investment advisor, SSgA Funds Management, Inc. Outside of the U.S., SSgA provides investment advisory and fund management through various subsidiaries regulated in the jurisdictions in which they operate.

² Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds, 76 Fed. Reg. 68846 (Nov. 7, 2011).

with \$2.06 trillion in assets as of September 30, 2012, from public and private retirement plans, large corporations, non-profit organizations, endowments and foundations, sovereign wealth funds, insurance companies, banks, central banks, and registered investment companies.

SSgA is submitting this letter in order to express our views about the proprietary trading restrictions under the Proposed Rule and the treatment of banking entities that invest in separately managed accounts for the purpose of conducting bona fide fiduciary strategy seeding programs (“bona fide seed accounts”). To that end, SSgA is seeking clarification from the Agencies that seeding and managing investment strategies in bona fide seed accounts does not constitute proprietary trading under the Proposed Rule’s proprietary trading restrictions.

I. Seeding Activity is Distinguishable from Proprietary Trading

A. Purpose of Seeding Programs.

Consistent with industry market practice, as an investment adviser and fiduciary, SSgA will from time to time establish bona fide seed accounts to test new investment strategies or theses. Like other asset managers focused primarily on the institutional client segment, SSgA’s bona fide seed accounts will typically be in the form of a separate account with a small amount of allocated capital.

The principle purpose of the bona fide seed account is to establish a performance track record that can be shared with existing and prospective institutional clients to demonstrate the viability of an investment thesis underlying a particular investment strategy. An essential element of the due diligence process for institutional clients seeking new investment management services is the ability to review substantive evidence of proven investment performance, execution, risk management and liquidity over a sufficient period of time, often as much as three years or longer. Bona fide seed accounts are often the only practical mechanism to accurately establish a performance record. These track records are a critical aid to investors in gaining a better understanding of the risks, trading approach, and other portfolio characteristics over time. From a safety and soundness perspective, the potential inability to employ these seed track records could expose institutional investors to increased risk and put bank-owned asset managers at a competitive disadvantage to non-bank affiliated investment managers.

SSgA’s ability to maintain a robust seeding program and consequently a diversified product suite is essential to our fiduciary clients in their efforts to construct an appropriate, sound and diversified investment program. Ultimately, our clients are better served when in receipt of all the facts pertinent to an investment strategy, including actual investment performance that has been tested over time. “Paper portfolios,” which provide *simulated* performance, risk management, liquidity, etc., are often not a practical substitute and are generally not acceptable to our clients.

B. Seeding Program: Process and Governance.

Bona fide seed accounts managed by asset management firms are readily distinguishable from the proprietary trading accounts of banking entities that the Proposed Rules are intended to limit. This is particularly true of SSgA’s seed account program which is tightly governed and limited in terms of capital allocation. At SSgA, the seeding process itself is initiated through a formal governance process that oversees both the approval of the investment thesis and the allocation of SSgA’s limited seed account

capital. Initially, SSgA's Investment Committee deliberates the merits of the strategy proposal and renders a vote on whether or not to proceed to the seeding stage. Assuming passage, the investment strategy is then considered for approval by SSgA's Product Committee. Both committees consist of senior management personnel representing portfolio management, product development, relationship management, legal, risk, operations, finance and compliance and are integrated into SSgA's larger governance structure. The Product Committee is responsible for allocating a portion of the overall seed pool to the investment strategy, to be managed in accordance with the investment objective and guidelines of the strategy. The Product Committee limits the total seed allocation to an amount that is no greater than what is reasonably required to implement the seed strategy and the Product Committee and Investment Committee monitor the strategy's performance, investment risks and the ongoing viability of the seed strategy throughout the seeding period. If the seed strategy proves successful and able to be extended to the market place for third-party investment, the initial seed investment is recalled to SSgA's larger seed pool to be reinvested in other investment strategies at a later date. If the seed portfolio fails (e.g., the track record shows consistent negative performance or other factors exist such as adverse market conditions, liquidity issues, failed investment thesis or little third-party client interest), it will ultimately be closed, and, as noted above, immediately recalled to SSgA's larger seed pool.

As noted above, SSgA's seeding activity is subject to rigorous governance and oversight, entailing regular monitoring by investment and risk functions within the banking entity throughout the seeding period. Further, SSgA's seeding activity is conducted within the fiduciary asset management arm of State Street Bank and Trust Company, the activities of which are generally governed by the fiduciary and prudential standards detailed by various regulations such as the Investment Advisers Act of 1940, the Employee Retirement Income Security Act of 1974 (ERISA), or common law. With respect to portfolio management controls, SSgA's portfolio managers are not incentivized by means of increased compensation relative to investment performance during the seeding period and must regularly provide reporting up to the appropriate governance committees as described above.

C. Treatment of Bona Fide Seed Accounts under the Proposed Rules.

For an activity to be considered "proprietary trading" under the Proposed Rule, banking entities must take covered financial positions in "trading accounts." The definitional construct of "trading account" under the Proposed Rule provides for a three part functional test. While we believe that the conditions under Subpart B, Section __.3(b)(2)(i)(B) and (C) respectively regarding the market risk capital rule and registered entities are clear, we are seeking confirmation that under Subpart B, Section __.3(b)(2)(i)(A) seeding and managing investment strategies in a bona fide seed account does not constitute proprietary trading under the Proposed Rule because the account is not used to take one or more covered financial positions "principally for the purpose of" (i) short term resale, (ii) benefiting from actual or expected short-term price movements, (iii) realizing short-term arbitrage profits, or (iv) hedging one or more such positions. Rather, as we have emphasized throughout this letter, bona fide seeding accounts are utilized principally for the purpose of conducting bona fide seeding programs to establish track records for products to be offered to our fiduciary clients. Bona fide seeding accounts are limited with respect to capital allocation and subject to review within SSgA's governance structure, namely the Investment Committee and Product Committee. The seed strategies themselves are managed in accordance with a specific investment objective and guidelines and the relevant portfolio managers are not compensated or incentivized relative to investment performance. Finally, assuming the strategy is successful and a third

party client seeks to invest in the strategy, the seed account is closed immediately and the capital is recalled to SSgA's larger seed pool to be reinvested in other investment strategy theses at a later date.

II. Suggested Conditions of Seeding Activity so as Not to Constitute Proprietary Trading

SSgA is proposing that the Agencies expressly clarify that seeding and managing investment strategies in bona fide seed accounts do not constitute proprietary trading under the Proposed Rule's proprietary trading restrictions. SSgA believes it would be appropriate for the Agencies to set forth certain non-exclusive factors that a banking entity could rely upon to determine that a bona fide seed account should be excluded under the Proposed Rule. These facts would include the following:

- The seeding activity is undertaken by the fiduciary arm of the banking entity
- The seeding activity is undertaken solely in connection with bona fide product development, the purpose of which is to test proposed or existing investment strategies for potential investment by third party investors
- The seeding activity, including allocation of seed capital, is subject to firm governance and/or formal committee oversight
- The seed allocation is limited to an amount that is no greater than what is reasonably required to implement the particular seed strategy and affirmed by the relevant governance oversight committee
- During the seeding period, portfolio managers are not compensated or incentivized relative to investment performance and are required to manage seed capital in accordance with a written investment objective and guidelines
- Upon establishment of a track record, generally within three years, and the receipt of third-party client money, seed accounts are closed and the initial investment is recalled to the seed pool

III. Conclusion

SSgA recognizes the challenges the Agencies have in attempting to draft regulations to limit potentially risky banking activities while permitting banks and specifically bank-owned asset managers like SSgA the ability to continue to bring to market innovative and diversified investment products for their fiduciary clients through the operation of bona fide seeding programs. SSgA thanks the Agencies for the opportunity to provide our suggestions regarding how the Proposed Rule could be clarified so that the proprietary trading restrictions thereunder do not prohibit banking entities like SSgA from carrying out bona fide seeding programs that ultimately serve to benefit our fiduciary clients. We believe that the seeding activity contemplated by this letter is one that allows bank-owned asset managers to remain competitive in the market place and is the type of fiduciary advisory activity that Congress did not intend to prohibit. We would be happy to discuss this letter at your convenience.

Respectfully submitted,



Phillip S. Gillespie
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