

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into between the United States of America, acting through the United States Department of Justice (the “United States”) and State Street Bank and Trust Company (“State Street,” and, together with the United States, “the Parties”) through their authorized representatives.

RECITALS

A. State Street is a Massachusetts state chartered bank, a member of the Federal Reserve System with certain deposits insured by the Federal Deposit Insurance Corporation, with its headquarters at State Street Financial Center, One Lincoln Street, Boston, Massachusetts 02111.

B. State Street acts as a custody bank holding assets for a wide range of clients, including pension funds for states, cities, colleges, universities, foundations, non-profit organizations, and financial institutions, including federally insured financial institutions (and/or subsidiaries or affiliates of these institutions) within the meaning of 18 U.S.C. § 20. As a custody bank, State Street undertakes to hold and safeguard its custody clients’ financial assets, including stocks, bonds, and currencies. In this capacity, State Street provides a variety of administrative services to those clients, including purchasing and selling foreign currencies and repatriating dividends and other income paid in foreign currencies (“foreign exchange” or “FX”).

C. The United States contends that, from January 2003 through October 2009 (the “Relevant Period”), State Street violated the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”), 12 U.S.C. § 1833a, by engaging in a scheme or artifice to defraud certain custody clients by making or causing to be made false and misleading representations and/or material omissions when pricing FX transactions. The conduct alleged

below in paragraphs C.5 through C.9, including all subparagraphs therein, forms the basis of these claims and will be referred to herein as the “Covered Conduct.”

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%).

State Street’s Misleading Representations Concerning FX Prices

5. Despite pricing Indirect FX as described above, State Street, by way of interstate and foreign wires and mails, knowingly made misrepresentations and omitted material facts in communications with clients, including financial institutions, indicating that its Indirect FX service provided more favorable execution than it actually did.

6. SSGM applied its predetermined, uniform Mark-Up 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 Mark-Up often remained unchanged for months. As a result of this practice, State Street derived substantial revenue while it offered Indirect FX clients prices that were often at or near the highest and lowest Interbank Rates for the U.S. trading day.

7. State Street’s materially misleading statements included that:

a) SSGM priced FX transactions at prevailing Interbank or market rates;

b) State Street provided “best execution” on FX;

c) State Street trading desk personnel, “whose priority [was]

obtaining the best possible price on FX trades, offer[ed] insight into relatively short-term currency movement and market events;”

d) State Street 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) The rates State Street 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.

8. None of these representations, in fact, applied to State Street’s Indirect FX practices. In fact, with respect to Indirect FX:

a) SSGM did not price Indirect FX transactions at prevailing

Interbank or market Rates;

b) State Street did not provide “best execution” on Indirect FX trades

and instead executed Indirect FX trades at rates set by a predetermined, undisclosed Mark-Up;

c) State Street trading personnel did not have obtaining the best

possible prices for clients as a priority 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, SSGM applied a

predetermined uniform Mark-Up to indicative Interbank Rates limited, in non-Repatriation Trades, to the high or low Interbank Rate of the day.

9. During the Relevant Period, State Street collected hundreds of millions of dollars from its Indirect FX clients, including from federally insured financial institutions, by way of the undisclosed Mark-Ups described in paragraphs C3-C4 above. State Street engaged in this scheme willfully, knowingly, and/or with deliberate ignorance of the truth.

D. The following class actions were filed by customers of State Street concerning the pricing of foreign currency transactions: (i) *The Andover Companies Employee Savings and Profit Sharing Plan, et al. v. State Street Bank and Trust Co., et al.* (Case No. 12-cv-11698-MLW); (ii) *Henriquez, et al. v. State Street Bank and Trust Co., et al.* (Case No. 11-cv-12049-MLW); and (iii) *Arkansas Teacher Retirement System v. State Street Bank and Trust Company, et al.* (Case No. 1:11-cv-10230-MLW) (collectively, the “Class Actions”). On or about July 26, 2016, State Street entered into a stipulation of settlement with the plaintiffs in the Class Actions pursuant to which State Street agreed to settle the claims asserted in those actions (the “Proposed Customer Class Action Settlement”).

E. On or about May 19, 2016, State Street entered into a settlement-in-principle with the Division of Enforcement of the United States Securities and Exchange Commission (“SEC”), pursuant to which State Street agreed to pay a civil penalty to the SEC in addition to amounts to be paid in restitution pursuant to the Proposed Customer Class Settlement in order to settle claims of the SEC concerning State Street’s conduct in pricing foreign currency transactions.

F. On or about July 26, 2016, State Street entered into a settlement-in-principle with the United States Department of Labor (“DOL”), pursuant to which State Street agreed to settle

claims arising under the Employee Retirement Income Security Act (“ERISA”) concerning State Street’s conduct in pricing foreign currency transactions.

G. In consideration of the mutual promises and obligation of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. State Street admits, acknowledges, and accepts responsibility for the following conduct:

a. The allegations outlined in Paragraphs C.1 through C.4, including all subparagraphs contained therein, above.

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

- i. SSGM priced FX transactions at prevailing interbank market rates;
and
- ii. State Street provided “best execution” on FX trades.

c. Contrary to the representations in paragraph 1.b:

- i. SSGM generally did not price Indirect FX transactions at prevailing interbank market rates.
- ii. SSGM was aware that it executed Indirect FX transactions, at rates established consistent with paragraph C.3 and C.4 above, and generally did not disclose this process to clients.

2. In settlement of the United States’ claims against State Street, State Street shall pay the United States \$155,000,000.00, as a civil penalty pursuant to FIRREA (the “Settlement Amount”). No later than thirty (30) business days after the Effective Date, State Street shall

deposit the Settlement Amount in an account of a third party escrow agent (the “Escrow Agent”) for the sole benefit and ultimate disbursement to the United States (the “Escrow Account”). The United States and State Street shall negotiate in good faith the terms of an escrow agreement that will establish the Escrow Account (the “Escrow Agreement”) no later than twenty (20) business days after the Effective Date. Upon the expiration of any time for appeal of the order and final judgment entered by the United States District Court for the District of Massachusetts (“Court”) to approve the Proposed Customer Class Action Settlement, or, if any appeal that could materially impact the disbursement of funds pursuant to the terms of the Proposed Customer Class Action Settlement is filed and not dismissed, after the order of the Court is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by certiorari or otherwise, and after the time for any petition for reargument, appeal or review, by certiorari or otherwise, has expired, the United States and State Street shall direct the Escrow Agent to disburse to the United States all funds maintained in the Escrow Account, including the Settlement Amount (collectively, the “Escrow Funds”). State Street shall pay any and all of the Escrow Agent fees or other costs associated with the Escrow Account, which fees or other costs shall not be deducted from the Escrow Funds, if such fees or other costs are not waived by the Escrow Agent.

3. Subject to the exceptions in Paragraph 4 below (concerning excluded claims), and conditioned upon State Street’s full payment of the Settlement Amount and disbursement of all Escrow Funds to the United States pursuant to paragraph 2 and full performance of the other terms set forth herein, the United States releases State Street together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations (including State Street Global Markets, LLC), divisions, current or former corporate owners, and the

corporate successors or assigns of any of them, from any civil or administrative monetary claim the United States has under FIRREA, 12 U.S.C. § 1833a, the False Claims Act, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308, or the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct (the “Released Claims”).

4. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released by this Agreement, and are not Released Claims:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as expressly stated in the Agreement, any administrative liability;
- d. Any liability arising from FX transactions involving State Street’s custody clients who were located outside the United States and whose FX transactions were processed and/or executed by State Street outside the United States;
- e. Any liability to the United States or its agencies (including but not limited to the SEC and the DOL) for any conduct other than that covered by the Released Claims;
- f. Any liability based on obligations created by this Agreement; and
- g. Any civil liability of individuals whether under FIRREA or otherwise.

5. State Street shall be in default of this Agreement if it fails to pay the Settlement Amount as set forth in Paragraph 2 above or to comply materially with any other obligations under this Agreement (“Default”). The United States shall provide written notice to State Street

of any Default, to be sent in the manner set forth in Paragraph 14 below. State Street shall then have an opportunity to cure the Default within seven business days from the date of receipt of the notice of Default. In the event that a Default involving failure to pay the Settlement Amount is not fully cured within seven business days of the receipt of the notice of Default (“Uncured Default”), the full Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of nine percent per annum compounded annually on the remaining unpaid principal balance, beginning seven business days after mailing the notice of Default. In the event of an Uncured Default, State Street further agrees that the United States, at its option, may (a) rescind this Agreement and file a complaint against State Street concerning the Covered Conduct; (b) seek specific performance of this Agreement; (c) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing State Street by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. State Street shall not contest any offset or any collection undertaken by the United States pursuant to this Paragraph, either administratively or in any court. In addition, State Street shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorneys’ fees and expenses. In the event that this Agreement is rescinded pursuant to this Paragraph or Paragraph 6, State Street shall not plead, argue, or otherwise raise any defenses based upon the passage of time – including any such defense based upon a statute of limitations, laches, estoppel, delay or similar time-based limitations (whether statutory, contractual, or otherwise) – to any civil or administrative claims that related to the Covered Conduct, except to the extent such defenses were available on July 31, 2013.

6. Notwithstanding any provision herein, if the United States District Court for the District of Massachusetts (“Court”) issues an order denying preliminary or final approval of the Proposed Customer Class Action Settlement, or any appellate court (including the Supreme Court) overturns in any material respect the order and final judgment(s) entered by the Court approving the Proposed Customer Class Action Settlement, this Agreement shall be deemed rescinded and vacated, and: (i) the statute of limitations on any Released Claims of the United States shall be deemed tolled from the Effective Date until the date that the Agreement is deemed rescinded and vacated; (ii) the Escrow Funds shall be returned to State Street; and (iii) neither this Agreement nor any action taken pursuant to it shall be admissible or otherwise used in connection with any Released Claims that may be asserted, without the consent of the Parties.

7. State Street waives and shall not assert any defense it may have to any criminal prosecution relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or under the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. State Street fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys’ fees, costs, and expenses of every kind and however denominated) that State Street has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, or

servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. State Street agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of State Street, and its present or former officers, directors, employees, shareholders, and agents, in connection with:

i. the matters covered by this Settlement Agreement;

ii. the United States' civil investigation of the Covered Conduct;

iii. State Street's investigation, defense, and corrective actions undertaken in response to the United States' civil investigation of the Covered Conduct (including attorney's fees);

iv. the negotiation and performance of this Agreement; and

v. the payment State Street makes to the United States pursuant to this Agreement, including costs and attorney's fees

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by State Street, and State Street shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: State Street further agrees that, within ninety (90) days of the Effective Date of this Agreement, it shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by State Street from the United States. State Street agrees that the United States, at a minimum, shall be entitled to recoup from State Street any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted cost reports, information reports, cost statements, or requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine State Street's books and records and to disagree with any calculations submitted by State Street or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by State Street, or the effect of any such Unallowable Costs on the amount of such payments. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by State Street or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on State Street or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

10. State Street agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement with respect to the Covered Conduct. Upon reasonable notice, State Street shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony with respect to the Covered Conduct, consistent with the rights and privileges of such individuals. State Street further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents (including reports, memoranda of interviews, and records) in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

11. Except as expressly provided in this Agreement, this Agreement is intended to be for the benefit of the Parties only. The Parties are not releasing any claims against any other person or entity except as expressly provided in this Agreement.

12. Any notice pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be delivered by express courier and by e-mail transmission, followed by postage-prepaid mail, to the following representatives:

To the United States:

Justin O'Connell
Abraham George
Assistant United States Attorneys
John Joseph Moakley
United States Federal Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
Tel: (617) 748-3100
Fax: (617) 748-3974
Email: Justin.O'Connell@usdoj.gov;

Abraham.George@usdoj.gov

To State Street:

William H. Paine
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02019
Tel: (617) 526-6000
Fax: (617) 526-5000
Email: william.paine@wilmerhale.com

-and-

David C. Phelan
Executive Vice President and General Counsel
State Street Bank and Trust Company
One Lincoln Street
Boston, MA 02111
Tel: (617) 664-1738
Fax: (617) 664-4310
Email: dcphelelan@statestreet.com

13. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Massachusetts. For purposes of construing this Agreement, it shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

16. Any failure by the United States to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and

the United States, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

17. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

18. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

20. This Agreement is binding on State Street's successors, transferees, heirs, and assigns.

21. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 07.26.16

BY: 

Justin O'Connell
Abraham R. George
Assistant United States Attorneys
United States Attorney's Office
District of Massachusetts

STATE STREET BANK AND TRUST COMPANY

DATED: 7/26/16

BY: David Phelan

David C. Phelan
Executive Vice President and General Counsel
State Street Bank and Trust Company