

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH  
SECURITIES DIVISION  
ONE ASHBURTON PLACE, ROOM 1701  
BOSTON, MASSACHUSETTS 02108**

SECRETARY OF  
THE COMMONWEALTH  
2016 APR 20 AM 9:10  
SECURITIES DIVISION

_____ )		
IN THE MATTER OF: )		
STATE STREET GLOBAL MARKETS, LLC )		
_____ )		
RESPONDENT )		Docket No.
		E-2016-0046

**ADMINISTRATIVE COMPLAINT**

**I. PRELIMINARY STATEMENT**

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (hereinafter the “Enforcement Section” and “Division,” respectively) files this Administrative Complaint in order to commence an Adjudicatory Proceeding against the above-named Respondent, State Street Global Markets, LLC (hereinafter “Respondent” and “SSGM”), for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (hereinafter the “Act”), and 950 MASS. CODE REGS. 10.00–14.413 (hereinafter the “Regulations”). The Administrative Complaint alleges that Respondent, a Massachusetts-registered broker-dealer, violated the Act and Regulations through the dishonest and unethical business practices of State Street Corporation (hereinafter “State Street”), its controlling owner. State Street overcharged clients by including concealed markups on certain custodial services billed as out-of-pocket expenses.

The Enforcement Section seeks an Order: (1) finding as fact the allegations set forth below; (2) imposing an administrative fine on Respondent in such amount and upon such

terms and conditions as the Director or Presiding Officer may determine; (3) censuring Respondent; and (4) taking any such further actions, including, but not limited to, ordering client reimbursement, which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

## II. SUMMARY

Over an 18-year period, State Street, through concealed markups on out-of-pocket expenses disguised as “pass through charges,” earned hundreds of millions of dollars in additional revenue at the expense of custodial clients and their investors. Although State Street has publically disclosed the existence of certain “incorrect invoicing,” State Street emails, along with information obtained by the Enforcement Section from State Street custodial clients, demonstrate a dishonest and pervasive culture of overbilling. In fact, contrary to State Street’s public disclosure, State Street’s course of conduct encompasses more than a mere billing oversight. Following State Street’s public disclosure, State Street cooperated with and voluntarily provided information and materials to the Division.

State Street commonly charged out-of-pocket expenses to custodial clients, including pension fund, mutual fund, hedge fund, and institutional investors. Out-of-pocket expenses included, but were not limited to, courier services, stamp duties, telex, expenses related to wires, and Society for Worldwide Interbank Financial Telecommunication (hereinafter “SWIFT”) messages (hereinafter “SWIFT Messages”). SWIFT Messages are secure electronic messages relating to payments, securities, treasury, and trade. While labeled as an out-of-pocket expense by State Street, SWIFT Messages contained concealed markups almost 20 times the actual cost.

State Street SWIFT Message expenses included two components: (1) unit charges and (2) State Street's SWIFT Message fee. The unit charge represented the expense charged by SWIFT to State Street. State Street's standard \$5.00 SWIFT Message fee purportedly represented State Street's overhead expense associated with sending SWIFT Messages. As State Street's overhead cost decreased over time, the standard SWIFT Message fee remained consistent at \$5.00, becoming an increasingly disproportionate and concealed markup. As early as 2004, one State Street employee indicated the overhead expense associated with sending SWIFT Messages was only \$2.00, and not the standard SWIFT Message fee of \$5.00. In 2009, State Street employee emails suggested the true cost to State Street as \$0.25, reflecting a drastic reduction in the overhead expense associated with sending SWIFT Messages. Despite internal knowledge concerning State Street's decreased overhead, State Street continued to bill custodial clients a \$5.00 State Street SWIFT Message fee conveyed as a "pass through charge."

Beginning in at least 2004 and continuing through 2015, State Street employees recognized that the SWIFT Message fee was not merely a "pass through charge." As one State Street employee commented in 2005, "[i]f it's costing us \$1 and we are charging \$5 my concern is that is no longer an out-of-pocket." Again, in 2009, a State Street employee commented, "[w]hy we are marking up SWIFT charges is beyond me. I understand OOP's [out-of-pockets] as pass through charges." Only hours later, that same State Street employee emailed, "I'm telling you. I learn something every day. Simply not amazed at anything that goes on here any more."

At least one State Street executive learned of State Street's mark-ups on out-of-pocket expenses as early as 2009. According to an internal document sent via email to the State Street executive, one State Street employee stated, "I would think that our clients would think that OOP expenses are pass thru's with maybe a bit of mark-up to cover our expenses. [...] We charge our clients \$5.00 per message - an exorbitant mark up that will certainly piss off clients when they figure this out." In an email response regarding the document, the same State Street executive instructed, "I would delete the section on OOP expenses. I would do more work on your own and maybe raise as a strategy question with a small group verbally only."

State Street employees also recognized the tremendous exposure created by State Street's concealed out-of-pocket expenses. One State Street employee noted in an email sent on October 24, 2006, "[t]his could be another 'repo' type issue where if the client ever asked for the detail of the charges we could have egg on our face." Clients with institutional knowledge of the true cost of SWIFT Messages were of particular concern to State Street. When discussing one large institutional client, a State Street employee stated, "[w]e can't be in a position [...] that they discover that we are taking them to the cleaners on SWIFT charges." In a later email, on July 15, 2010, a State Street employee summarized, "[REDACTED] does not want to pay the \$5 per message. He thinks that is a huge injustice because he knows how little the message costs."

One State Street custodial client, an international financial organization, sought additional information concerning out-of-pocket expenses after noticing a large increase in custodial bills. Specifically the international financial organization requested a breakdown of out-of-pocket expenses. While State Street provided broad figures, State

Street failed to give particulars as to why it was charging a \$5.00 fee for SWIFT Messages in addition to the unit charges per message. A senior investment officer at the international financial organization expected that out-of-pocket expenses represented actual overhead cost to State Street for sending SWIFT messages, without added profit included. Despite concerns from the international financial organization, in 2015, the international financial organization executed an amended agreement with State Street, memorializing State Street's SWIFT Message fee as a \$5.00 out-of-pocket expense.

Another State Street custodial client, a boutique investment manager, raised multiple concerns to State Street regarding out-of-pocket expenses and SWIFT Message charges, beginning in 2010. State Street's only response was that out-of-pocket expenses were "pass through charges." In 2014, the investment manager again raised concerns to State Street regarding high out-of-pocket expenses—noting an unexpected and substantial charge for SWIFT Messages. Finally, in 2015, while meeting with other custodial firms, the investment manager learned that at least one other custodial firm charged at most \$0.25 for SWIFT Messages. For at least some of the investment manager's funds, out-of-pocket expenses were borne by investors. State Street advised that it would look into the issue, and ultimately agreed to reimburse the investment manager for the overcharged SWIFT Message fees dating back to 2009.

### **III. JURISDICTION AND AUTHORITY**

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities.
2. The Enforcement Section brings this action pursuant to the enforcement authority conferred upon it by Sections 407A, 204, 414 of the Act and the Regulations wherein

the Division has the authority to commence an Adjudicatory Proceeding to enforce the provisions of the Act and the Regulations.

3. This proceeding is brought in accordance with Section 204 of the Act and the Regulations. Specifically, the acts and practices constituting violations occurred while Respondent was registered in Massachusetts as a broker-dealer.
4. The Enforcement Section specifically reserves the right to amend this Administrative Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

#### **IV. RELEVANT TIME PERIOD**

5. Except as otherwise expressly stated, the conduct described herein occurred between January 1, 1998 and the current date (the “Relevant Time Period”).

#### **V. RESPONDENT**

6. State Street Global Markets, LLC (hereinafter “SSGM”) is a limited liability company registered in Delaware. According to the Financial Industry Regulatory Authority’s (hereinafter “FINRA”) Central Registration Depository (hereinafter “CRD”), SSGM maintains a principal place of business located at State Street Financial Center, One Lincoln Street, Boston, Massachusetts 02111. SSGM has a CRD number of 30107. SSGM has been registered as a broker-dealer in Massachusetts since June 11, 1992.

#### **VI. OTHER INVOLVED AND RELATED PARTY**

7. State Street Corporation (hereinafter “State Street”) is a Massachusetts corporation with a principal place of business at One Lincoln Street, SFC/21, Boston, Massachusetts 02111. According to the CRD, State Street is the parent corporation of

SSGM and is a 75% or more direct owner of SSGM. State Street is a bank holding company that has subsidiaries including, but not limited to, State Street Bank and Trust Company.

## VII. STATEMENT OF FACT

### A. Introduction

#### **i. State Street publically disclosed client overcharging but failed to describe active and disproportionate markup practices over 18-year period.**

8. On December 17, 2015, State Street announced in a press release titled “State Street Notifies Asset Servicing Clients about Billing Review” (hereinafter “December 17<sup>th</sup> Press Release”), “that it [was] informing clients about a review that it initiated into the manner in which it invoiced certain expenses to asset servicing clients.”
9. The December 17<sup>th</sup> Press Release further stated, “[b]ased upon the Company’s preliminary assessment, over the 18-year period for which it has accessible records, approximately \$200 million or more of expenses may have been incorrectly invoiced.”
10. According to information provided to the Division by State Street, expenses related to SWIFT Messages represented about one-half, or \$200 million, of the total expenses under review by State Street.
11. According to State Street’s January 27, 2016 Fourth-Quarter 2015 and Full-Year 2015 Financial Highlights presentation, State Street identified approximately \$240 million as the “cumulative amount to be reimbursed over the review period.”
12. State Street cooperated and voluntarily provided materials and information to the Enforcement Section as part of its inquiry into this matter.

13. The Enforcement Section also communicated with two State Street custodial clients, who, prior to the December 17<sup>th</sup> Press Release, complained to State Street in connection with certain custodial services billed as out-of-pocket expenses.
14. Although State Street categorized “expenses” as incorrectly invoiced in the December 17<sup>th</sup> Press Release, over the past 18-years, State Street overcharged clients using concealed markups as high as 1,900% on certain out-of-pocket expenses.
  - ii. **State Street’s corporate structure and out-of-pocket expense practices.**
15. Throughout the Relevant Time Period, SSGM was registered as a broker-dealer in Massachusetts.
16. State Street is the parent corporation of SSGM.
17. State Street is a direct owner of SSGM, with an ownership interest of 75% or more.
18. State Street is also a control person of SSGM.
19. According to the State Street December 17<sup>th</sup> Press Release, “State Street Corporation [...] is one of the world's leading providers of financial services to institutional investors, including investment servicing, investment management and investment research and trading.”
20. Investment servicing includes transaction processing and settlement, and real time reporting on custody transactions, including trade status, asset positions, cash forecasting, intraday cash reporting, and daily and monthly priced holdings.
21. State Street provides custody and administrative services to pension plan, mutual fund, hedge fund, and other institutional investors, including clients located in Massachusetts.



22. Throughout the Relevant Time Period, eighty-one Massachusetts public pension funds contracted with State Street for custodial services.
23. Throughout the Relevant Time Period, State Street, per custodial contracts, typically charged custodial clients for out-of-pocket expenses.
24. Out-of-pocket expenses included, among other categories of expenses, 17f-5 review, audit-CCO attestations, audit-SAS 99, audit-SSAE 16/SOC 1, archives/storage, checks and stop payments, telephone, duplication and printing, courier/delivery, postage, Society for Worldwide Interbank Financial Telecommunication messages (hereinafter “SWIFT Messages”), wires, forms and supplies, pricing and verification, and support/micro equipment (hereinafter “Out-of-Pockets”).
25. At least two State Street custodial clients interpreted Out-of-Pockets to represent pass through charges—i.e. actual cost without an added profit markup.
26. According to the SWIFT website, accessible at [www.swift.com](http://www.swift.com) (hereinafter “SWIFT Website”), SWIFT is a global member-owned cooperative and the world’s leading provider of secure financial messaging services.
27. According to the SWIFT Website, SWIFT Messages are secure electronic messages relating to payments, securities, treasury, and trade.

**B. Prior Regulatory Scrutiny and Legal Actions Concerning Pervasive Pattern of Overcharging at State Street**

28. On October 20, 2009, the Attorney General of California announced charges against State Street concerning the cost of executing foreign currency trades for two of California's largest pension funds (hereinafter "California Overcharging Lawsuit").
29. Specifically, the Attorney General of California alleged that State Street "added a secret and substantial mark-up to the price of interbank foreign currency trades."
30. In addition to the California Overcharging Lawsuit, at least one other state pension fund, State Street shareholders, and State Street employees filed lawsuits relating to foreign currency overcharging.
31. On January 30, 2014, the Financial Conduct Authority of the United Kingdom settled with State Street UK, levying a fine of £22,885,000, for "develop[ing] and execut[ing] a deliberate and targeted strategy to charge substantial mark-ups on certain transitions [...] that were deliberately not agreed with clients or disclosed to them" (hereinafter "Final Notice").
32. The Final Notice also stated, "State Street UK failed to treat its customers fairly by allowing a culture to develop in the UK TM [transition management] business which prioritised revenue generation over the interests of customers."
33. In a related matter, on April 5, 2016, the United States Department of Justice indicted two employees of State Street with securities fraud and wire fraud, among other charges, for their roles in adding secret commissions to fixed income and equity trades performed within State Street's transition management business.

**C. State Street Included Significant Markups on Out-of-Pocket Expenses Despite Describing Out-of-Pocket Expenses as “Pass Through Costs”**

34. On July 29, 2002, a consulting firm presented findings to State Street including a report titled “Capturing Value From Billed-Versus-Contracted Discrepancies” (hereinafter “Fee Report”).

35. The Fee Report identified an opportunity for State Street to recover a total of \$9-13 million revenue related to Out-of-Pocket and fee-based expenses by “more aggressive data capture and billing practices.”

**i. Certain State Street out-of-pocket expenses billed to clients included a hidden markup as high as 1,900%.**

36. State Street SWIFT Message expenses included two components: (1) unit charges and (2) State Street’s SWIFT Message fee (hereinafter “SWIFT Message Fee”).

37. The unit charge represented the per SWIFT Message expense charged by SWIFT to State Street.

38. The standard SWIFT Message Fee of \$5.00 included State Street’s overhead expense associated with sending SWIFT Messages.

39. While the unit charge associated with SWIFT Messaging decreased over time, the standard SWIFT Message Fee remained \$5.00.

40. As early as November 1, 2004, State Street employees internally discussed the SWIFT Message Fee via email, with one State Street employee (hereinafter “State Street Employee One”) stating, “[f]or those clients that are billing back to their client, most clients are billing \$5 per message. **The true cost is about \$2 per message.**” (Emphasis added).

41. On December 12, 2005, in an email response with the subject line “[REDACTED] SWIFT Recovery” concerning a specific institutional client, a State Street employee (hereinafter “State Street Employee Two”) wrote:

Really I think the only true decision to be made is whether or not we are going to charge the **standard ("grossed up") charge or a modified one**. The client I had referenced in our phone conversation was actually [REDACTED] (I think I said [REDACTED]) and they were already at a non-standard charge of \$3.50 as opposed to the standard charge of \$5. There is some analysis currently going on around this and **I have been told unofficially that the true "cost" is around \$1**.

(Emphasis added).

42. In 2007, State Street Employee Two commented:

Sometime back at the beginning of time there was some form of analysis that arrived at the \$5 per message (my guess / understanding is that there was overhead included in this figure at the time that now should be spread over a much larger universe). Today **that figure is grossly inaccurate** in terms of actual cost **or even any legitimately defensible ‘fully loaded cost’**. **I would absolutely not charge this rate to any new clients**.

(Emphasis added).

43. While the true cost for SWIFT Messages decreased from 2005 to 2009, the standard SWIFT Message Fee passed through to State Street custodial clients remained consistent.

44. On April 1, 2009, when discussing the true cost of SWIFT Messaging assessed to State Street, State Street Employee One stated, “I think it is 25 cents to be honest with you.”

45. In November 2010, while a certain State Street employee (hereinafter “State Street Employee Three”) stated the \$5.00 SWIFT Message fee covered State Street’s overhead, one State Street employee (hereinafter “State Street Employee Four”), with

knowledge of the actual cost of a SWIFT Message, incredulously responded in an email, “\$4.96 to cover [overhead]? Is she serious??!!”

46. When asked via email for the actual costs associated with the \$5.00 overhead, State Street Employee Three responded, “There isn’t one.”

47. Despite custodial clients paying a markup as high as 1,900%, State Street internally paid actual cost associated with SWIFT Messages.

48. On April 1, 2009, State Street Employee Four, when discussing the waiver of the SWIFT Message Fee for a specific client, believed that only actual cost was passed on to State Street when billed internally:

Upon further research these charges are not being applied to the invoices. [REDACTED] told me to use the link to get what is being passed through but in the case of [REDACTED] the fee schedule waives SWIFT fees and they are charged against our cost center rather than billed to the client. **I can't find the cost on the P & L but the real cost must be passed along to us (not the mark up cost).**

(Emphasis added).

49. State Street also received rebates from SWIFT, which operated as a not-for-profit entity and rebated excess revenues to participating organizations, further offsetting State Street’s SWIFT Message overhead.

50. According to a 2012 email, State Street received a rebate of approximately \$1.5 million from SWIFT.

51. Furthermore, according to information contained on an internal excel spreadsheet distributed in 2014 by a State Street employee:

SWIFT as a non-profit organization caps the amount it bills State Street for use of the platform. A rebate is issued annually by SWIFT to State Street if this cap is exceeded; this is allocated by State Street as a contra expense to the P&L. In 2013, [State Street United States Investment

Services] Boston clients had accrued a Unit Cost of \$1,613,249 for SWIFT activity, but were rebated \$519,186.

**ii. State Street employees realized out-of-pocket expenses were not actually a “pass through cost.”**

52. As early as December 14, 2005, State Street employees questioned State Street’s SWIFT Message Fee as “out-of-pocket.”
53. On December 14, 2005, a State Street employee (hereinafter “State Street Employee Five”) questioned via email, “[h]ow do we get our arms around what is a realistic number. **If it's costing us \$1 and we are charging \$5 my concern is that is no longer an out-of-pocket.**” (Emphasis added).
54. In March 2009, State Street employees once again questioned the reasonableness of State Street’s SWIFT Message Fee via email, with State Street Employee Four stating, “[...] I believe we are charging some absurd fee per message (about \$5).”
55. State Street Employee Four reiterated this sentiment in another email two days later, stating, “The \$5 SWIFT message fee is billed as an out of pocket which by definition should be a pass through charge at cost.”
56. As State Street employees began to obtain more information in April 2009 regarding the true cost associated with SWIFT Messages, State Street Employee One stated in an email, “Why we are marking up SWIFT charges is beyond me. I understand OOP's [out-of-pockets] as pass through charges.”
57. Only hours later, State Street Employee One again emailed, stating, “I'm telling you. I learn something every day. Simply not amazed at anything that goes on here any more.”

58. On April 2, 2009, State Street Employee Four stated that the SWIFT Message Fee was a big problem. According to the email: "Out of pocket" with "mark up" = Big Problem."

59. The same State Street employee further emailed:

The fact [REDACTED] can't provide us what we pay SWIFT per message means **there is some serious monkey business going on here**. It will be interesting to see what he comes back with. I was told by [REDACTED] **what we bill = Per Message fee paid to SWIFT+ "overhead"+ programming fees. That is a bunch [of] crap.**

(Emphasis added).

60. On April 12, 2009, State Street Employee Five requested information regarding the SWIFT Message Fee, to present to a State Street executive (hereinafter "State Street Executive"), stating, "I want to lay this out to [State Street Executive], this is some big \$."

61. On April 13, 2009, State Street Employee Four responded, summarizing:

1. The fee we pay SWIFT is .12 per SMAC unit message and .05 per MCH unit message. There is an initiative underway to move these fees to .09 and .04 for SMAC and MCH respectively.
2. The \$5 fee represents coverage of the indirect charges for SWIFT messages. This includes the cost of SWIFT terminals, maintenance of files to SWIFT and all other overhead costs incurred in State Street to ensure proper transmission of the SWIFT messages. According to research undertaken by [REDACTED] over the past week he estimates the true cost of these indirect charges as about .25. A \$4.50 markup per message results.
3. [REDACTED] stated he knows exactly the revenue generated from these SWIFT message fees across [REDACTED]'s area. However, he would not disclose this figure to me other to say it is significant. He said that if you or [REDACTED] want this detail he would be willing to share. Just from what we have seen in our group the **annual revenue from this markup must be in the tens \$ of millions.**

(Emphasis added).

62. In an internal document regarding revenue, sent to State Street Executive on April 13, 2009, State Street Employee Five commented in part, “I would think that our clients would think that OOP expenses are pass thru's with maybe a bit of mark-up to cover our expenses. [...] We charge our clients \$5.00 per message - **an exorbitant mark up that will certainly piss off clients when they figure this out.**” (Emphasis added).

63. In an email response, concerning the internal document, State Street Executive stated, “I would delete the section on OOP expenses. I would do more work on your own and maybe raise as a strategy question with a small group verbally only.”

64. According to an email on July 20, 2010, State Street Employee Four acknowledged that the SWIFT Message Fee was not, “[...] a true OOP as we have portrayed [...]”

**iii. Dishonest and unethical business practices affecting State Street custodial clients.**

65. According to an email sent on October 24, 2006 by State Street Employee Five, “[...] [t]his could be another ‘repo’ type issue where **if the client ever asked for the detail of the charges we could have egg on our face.**” (Emphasis added).

66. A response from a State Street employee later on October 24, 2006, summarily stated, “[REDACTED] figured it out a few years ago ... it is an issue.”

67. Internal communications in 2007 reflected that State Street employees were aware of overcharging issues with SWIFT Messages, as State Street Employee Five emailed, “We can't be in a position on [REDACTED] that they discover that **we are taking them to the cleaners on SWIFT charges.**” (Emphasis added).



68. Later, in 2009, State Street Employee Five emailed, stating, “[t]his is getting messy.

We are charging the fund a huge mark-up to send SWIFT messages to a service provider who will know exactly what the messages cost.”

69. Also in 2009, when asked by a State Street employee what to tell a client regarding

SWIFT Messages, State Street Employee Four responded, “keep information sharing at a minimum on this.”

70. In a separate email exchange on April 6, 2009, other State Street employees also

questioned State Street’s SWIFT Message Fee.

71. When asked whether a senior State Street employee thought that State Street was

charging too much in relation to SWIFT Messages, the senior State Street employee responded:

No issues from me. As far as I am concerned it's been \$5.00 for many years on many clients and I have no intention to change it. I believe that Managers need an education on out of-pockets as many of them do not understand how the bank arrives at some of the numbers here. **They should be straight pass thru but as well all know this place does tack on additional expenses and marks them up to cover all internal costs.**

(Emphasis added).

72. Approximately one year later, in February 2010, when asked via email about seeking

the SWIFT Message Fees generated from the liquidation of a client fund, State Street Employee Four expressed concern, stating, “[t]here is a huge markup with SWIFT charges and **I don't want her asking for detail and then the secret will be out there.**” (Emphasis added).

73. Later in 2010, certain clients with more specialized knowledge of SWIFT Messages

began to balk at State Street’s SWIFT Message Fee.

74. According to one email, on July 15, 2010, a State Street employee summarized, “[REDACTED] does not want to pay the \$5 per message. He thinks that is a **huge injustice because he knows how little the message costs.**” (Emphasis added).

**a. Small custodial client questioned State Street regarding SWIFT Message Fee only to be told SWIFT Message Fee was a pass through charge billed at actual cost**

75. As part of the Enforcement Section Inquiry, Enforcement staff contacted an investment manager (hereinafter “Client One”) regarding State Street custodial services.

76. Client One’s Master Custodial Contract, executed on April 2, 2007, allowed State Street to charge for Out-of-Pocket expenses.

77. According to an email sent by Client One to State Street on December 3, 2010 (hereinafter “December 3<sup>rd</sup> Email”), following a presentation made earlier by State Street, Client One’s Chief Financial Officer questioned certain Out-of-Pocket expenses, including SWIFT Messages.

78. Upon information and belief, following the December 3<sup>rd</sup> Email, State Street told Client One that SWIFT Message costs were pass through charges.

79. Client One believed that pass through charges meant that State Street was charging the actual cost that State Street was incurring for SWIFT Messages.

80. After structural changes to certain Client One funds, which Client One believed would lower custodial costs, Client One again questioned Out-of-Pocket expenses on February 6, 2014.

81. Upon information and belief, following questions posed by Client One on February 6, 2014, State Street again told Client One the Out-of-Pocket expenses were pass through charges.
82. Certain Client One funds passed Out-of-Pocket expenses billed by State Street to retail investors.
83. Beginning in 2014, Client One commenced a Request for Proposal (hereinafter “2015 RFP”) for custodial firms to submit bids for custodial services.
84. Through the 2015 RFP process, Client One learned that at least one custodial agent charged only \$0.25 for SWIFT Messages and sometimes completely waived SWIFT Messaging charges.
85. State Street at one point offered Client One a reimbursement of “mere 15 months of overcharges.”
86. According to an email by Client One’s Chief Financial Officer sent on June 3, 2015, “I am sure you can understand our frustration, especially given that we have been inquiring about the accuracy of these charges since 2010 (5 ½ years), and our disappointment that we are now being offered a correction that covers a mere 15 months of overcharges.”
87. According to a letter of understanding, State Street eventually agreed to reimburse certain Out-of-Pocket fees and charges to Client One from January 2009 to May 2015.

**State Street led international financial institution to believe  
SWIFT Message Fee was an actual cost without any profit markup**

88. The Enforcement Section also contacted an international financial organization (hereinafter “Client Two”), which used State Street for certain custodial services.
89. According to Client Two, Client Two maintained multiple accounts with State Street, including one account focused on global equities and fixed income investments starting in 2014 (hereinafter the “Equities Fund”).
90. A Client Two employee (hereinafter “Client Two Employee”) observed an increase in out-of-pocket expenses concerning the Equities Fund.
91. Client Two Employee questioned State Street regarding out-of-pocket expenses.
92. Upon information and belief, State Street informed Client Two Employee that the charges represented out-of-pocket expenses.
93. Client Two Employee expected that out-of-pocket expenses were actual expenses incurred by State Street, with no profit included.
94. Client Two Employee requested a breakdown of out-of-pocket expenses and learned that out-of-pocket expenses included a SWIFT Message Fee of \$5.00.
95. According to Client Two Employee, State Street never provided a “breakdown” of State Street’s Swift Message Fee.
96. According to Client Two Employee, in the third quarter of 2015, Client Two and State Street amended their fee agreement to memorialize State Street’s \$5.00 Swift Message Fee.
97. At the time of the amended fee agreement, Client Two Employee believed that the SWIFT Message Fee represented State Street’s actual cost for SWIFT Messages.

## VIII. VIOLATIONS OF LAW

### COUNT I – Violations of MASS. GEN. LAWS. ch. 110A, § 204

98. Section 204 of the Act provides in pertinent part:

**(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:-**

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G). (Emphasis added).

99. The Enforcement Section herein re-alleges and restates the allegations of fact set forth in paragraphs 1 through 97 above.

100. The conduct of State Street, the person directly or indirectly controlling Respondent, as described above, constitutes violations of MASS. GEN. LAWS. ch. 110A, § 204(a)(2)(G).

## IX. STATUTORY BASIS FOR RELIEF

101. Section 407A of the Act, entitled “Violations; Cease and Desist Orders; Costs,” provides in pertinent part:

(a) If the secretary determines, after notice and opportunity for a hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take affirmative action, including the imposition of an administrative fine, the issuance of an order for accounting, disgorgement or rescission or any other relief as in his judgment may be necessary to carry out the purposes of [the Act]. . . .

102. The Enforcement Section re-alleges and restates the allegations of fact set forth in paragraphs 1 through 97 above.

103. State Street, the person directly or indirectly controlling Respondent, directly and indirectly, engaged in the acts, practices, and courses of business set forth in the Administrative Complaint above, and it is the Enforcement Section's belief that Respondent will continue to engage in acts and practices similar in subject and purpose, which constitute violations, if not ordered to cease and desist.

#### **X. PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such "action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A]."

#### **XI. RELIEF REQUESTED**

Wherefore, the Enforcement Section of the Division requests that the Director or Presiding Officer take the following actions:

- A. Find as fact the allegations set forth in paragraphs 1 through 97, inclusive of the Administrative Complaint;
- B. Impose an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine;
- C. Censure Respondent; and

D. Take any such further actions, including, but not limited to, ordering client reimbursement, which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION  
ENFORCEMENT SECTION**

By and through its attorneys,



Anthony R. Leone, Third Assistant Director for Enforcement



William J. Neelon, Enforcement Attorney

Massachusetts Securities Division  
One Ashburton Place, Room 1701  
Boston, Massachusetts 02108  
(617) 727-3548 Telephone  
(617) 248-0177 Facsimile

Dated: April 20, 2016