

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24403; 812-11440]

SSgA Funds and State Street Bank and Trust Company; Notice of Application

April 25, 2000.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds and/or short-term bond funds.

Applicants: SSgA Funds, on behalf of its series SSgA Money Market Fund, SSgA U.S. Government Money Market Fund, SSgA S&P 500 Index Fund, SSgA Small Cap Fund, SSgA Matrix Equity Fund, SSgA Active International Fund, SSgA International Pacific Index Fund, SSgA Bond Market Fund, SSgA Yield Plus Fund, SSgA U.S. Treasury Money Market Fund, SSgA U.S. Treasury Obligations Fund, SSgA Growth and Income Fund, SSgA Intermediate Fund, SSgA Emerging Markets Fund, SSgA Prime Money Market Fund, SSgA Tax Free Money Market Fund, SSgA Tuckman Active REIT Fund, SSgA Life Solutions Income and Growth Fund, SSgA Life Solutions Balanced Fund, SSgA Life Solutions Growth Fund, SSgA Special Equity Fund, SSgA High Yield Bond Fund, SSgA International Growth Opportunities Fund, SSgA Aggressive Equity Fund, and SSgA IAM SHARES Fund (each a "Fund" and collectively, the "Funds"), and State Street Bank and Trust Company ("State Street").

Filing Dates: The application was filed December 23, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing Nor Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests

should be received by the Commission by 5:30 p.m. on May 22, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609; Applicants, SSgA, Two International Place, 35th Floor, Boston MA 02110, State Street, 225 Franklin Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT:

Deepak T. Pai, Senior Counsel, at (202) 942-0574 or George J. Zornada, Branch Chief, at (202) 942-0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. SSgA Funds, organized as a Massachusetts business trust, is registered under the Act as an open-end management investment company. Each Fund is a series of SSgA Funds and has a separate investment objective and policies. State Street serves as the investment adviser for each of the Funds. State Street is a bank and is not required to register as an investment adviser under the Investment Advisers Act of 1940. Applicants also request relief for all other registered management investment companies and series thereof now or hereafter existing for which State Street, or a person controlling, controlled by, or under common control with State Street (collectively, "State Street"), acts as investment adviser (together with the Funds, the "Funds").¹

2. Each Fund ("Participating Fund") has, or may be expected to have, cash that has not been invested in portfolio securities ("Uninvested Cash") held by its custodian bank. Such Uninvested Cash may result from a variety of

sources, including dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors. Certain of the Participating Funds also may participate in a securities lending program under which a Participating Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash ("Cash Collateral," and together with Uninvested Cash, "Cash Balances").

3. Applicants request relief to permit Participating Funds to use Cash Balances to purchase shares of one or more of the funds that are money market funds or short-term bond funds (the "Central Funds"), and the Central Funds to sell shares to and purchase shares from the Participating Funds (the "Proposed Transactions"). Certain of the Central Funds are money market funds operating pursuant to rule 2a-7 under the Act. The other Central Funds are or will be short-term bond funds that seek high current income consistent with the preservation of capital by investing in fixed-income securities and maintaining a dollar-weighted average maturity of three years or less (the "Short-Term Bond Funds.") Applicants believe that the Participating Funds' investment in the Central Funds may reduce the risk of counterparty default on repurchase agreements and the market risk associated with direct purchases of short-term obligations, while providing high current money market rates of return, ready liquidity, and increased diversity of holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represented more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company sell its securities to another investment company if the sale will cause the acquiring company to own

¹ All investment companies that currently intend to rely on the requested relief have been named as applicants, and any existing or future registered management investment company or series thereof that relies on the requested relief in the future will do so only in accordance with the terms and conditions of the application.

more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption from the provisions of sections 12(d)(1)(A) and (B) to the extent necessary to permit each Participating Fund to invest Cash Balances in the Central Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Central Fund will maintain a highly liquid portfolio, a Participating Fund will not be in a position to gain undue influence over a Central Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Central Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' ("NASD") Conduct Rules) or, if such shares are subject to any such distribution fee or service fee, State Street will waive its advisory fee for each Participating Fund in an amount that offsets the amount of such distribution and/or service fees incurred by the Participating Fund. In connection with approving any advisory contract for a Participating Fund, the Participating Fund's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Trustees") will consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Participating Fund by the Adviser as a result of the investment of Uninvested Cash in the Central Funds. Applicants represent that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an

"affiliated person" of an investment company to include the investment adviser, any person that owns 5% or more of the outstanding voting securities of that company, and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that the Participating Funds and Central Funds may share a common investment adviser and a common Board. Therefore, each Participating Fund and each Central Fund may be an affiliated person of every other Fund. In addition, applicants state that a Participating Fund may become an affiliated person of a Central Fund by owning more than 5% of the outstanding voting securities of a Central Fund. Accordingly, applicants seek an exemption from the provisions of section 17(a) to permit the sale of shares of the Central Funds to the Participating Funds and the redemption of such shares by the Central Funds.

5. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policies of each registered investment company involved, and with the general purposes of the Act. Section 6(c) of the Act provides, in part, that the Commission may exempt any person, security or transaction, or any class or classes of person, securities or transactions, from any provision of the Act if, and to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c) of the Act. Applicants state that the terms of the Proposed Transactions are fair and reasonable, and do not involve overreaching because the consideration paid and received on the sale and redemption of shares of a Central Fund will be based on the Central Fund's net asset value per share. In addition, under the Proposed Transactions, the Participating Funds will retain their ability to invest their Cash Balances directly in money market instruments and other short-term obligations, as permitted by each Participating Fund's investment objectives and policies. Applicants state that each of the Central Funds reserves the right to discontinue selling shares to any of the Participating

Funds if its Board determines that such sales would adversely affect its portfolio management and operations. Applicants note that the investment of assets of the Participating Funds in shares of the Central Funds will be affected in accordance with each Participating Fund's investment restrictions and will be consistent with each Participating Fund's policies as set forth in its registration statement.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibits an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Participating Funds and the Central Funds, by participating in the Proposed Transactions, and State Street, by managing the Proposed Transactions, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d-1 under the Act.

8. Rule 17d-1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transactions, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Participating Funds in shares of the Central Funds would be indistinguishable from any other shareholder account maintained by the Central Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a 12b-1 plan, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the NASD), or if such shares are subject to any such distribution fee or service fee, State Street will waive its advisory fee for each Participating Fund in an amount that offsets the amount of such distribution and/or service fees incurred by the Participating Fund.

2. If State Street collects a fee from any Central Fund for acting as its investment adviser with respect to

assets invested by a Participating Fund, before the next meeting of the Board of that Participating Fund is held for the purpose of voting on the Participating Fund's advisory contract pursuant to section 15 of the Act, State Street will provide the Board with specific information regarding the approximate cost to State Street for, or portion of the advisory fee under the existing advisory contract attributable to, managing the assets of the Participating Fund that can be expected to be invested in such Central Funds. Before approving the Participating Fund's advisory contract pursuant to section 15, the Board, including a majority of the Disinterested Trustees shall consider to what extent, if any, the advisory fees charged to the Participating Fund by State Street should be reduced to account for reduced services provided to the Participating Fund by State Street as a result of Uninvested Cash being invested in the Central Funds. The minute books of the Participating Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment in the Central Funds does not exceed 25% of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions, if any, and will be consistent with each Participating Fund's policies as set forth in its prospectus(es) and statement(s) of additional information. Participating Funds that are money market funds will not acquire shares of any Central Fund that does not comply with the requirements of rule 2a-7 under the Act.

5. Each Participating Fund, each Central Fund, and any future Fund that may rely on the order shall be advised by State Street.

6. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42723; File No. SR-NYSE-99-48]

Notice of Extension of Comment Period for Issues Relating to Market Fragmentation

April 26, 2000.

On December 10, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to rescind Exchange Rule 390. The proposed rule change was published for comment in the **Federal Register** on February 28, 2000.³ The release publishing notice of the proposed rule change also included a Commission request for public comment on issues relating to market fragmentation ("Concept Release"). The comment period relating to the rescission of Exchange Rule 390 expired on March 20, 2000; the comment period for issues related to market fragmentation is scheduled to expire on April 28, 2000.

The Commission has decided to extend for two weeks until May 12, 2000, the comment period for issues related to market fragmentation. The Concept Release requested comment on a wide range of issues, including whether fragmentation is now, or may become in the future, a problem that significantly detracts from the fairness and efficiency of the U.S. markets. In addition, the Concept Release requested comment on six potential options for addressing fragmentation. These issues are very complex, and the Commission believes that it will be helpful for commenters to have two extra weeks in which to prepare and submit their views.

In this regard, the Commission urges commenters not to limit their attention to a single option raised in the Concept

Release, particularly the option of establishing comprehensive price/time priority for all displayed trading interest. This option has been widely referred to in the press as a "CLOB"—a central limit order book. The other five options were included in the Concept Release specifically to afford commenters an opportunity to submit their views on alternatives to a CLOB that would be more focused on specific practices or problems that may isolate investor orders, discourage quote competition, or impair public price discovery. The Commission hopes to receive the benefit of commenters' views on these other options as well.

Interested persons are invited to submit written data, views, and arguments concerning issues relating to market fragmentation discussed in the Concept Release. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NYSE-99-48. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

It is therefore ordered that the period for public comment on issues relating to market fragmentation is extended until May 12, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-10893 Filed 5-1-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Environmental Assessment for the Proposed Actions Relating to the Change in Departure Procedure at Sarasota Manatee International Airport and Public Comment

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of availability and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 ("Concept Release").