UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
TRADING AND MARKETS

January 9, 2015

Mr. Ira D. Hammerman
Executive Vice President and General Counsel
Securities Industry and Financial Markets Association
1101 New York Avenue, NW, 8th Floor
Washington, DC 20005

Re: **Request for No-Action Relief Under Broker-Dealer Customer Identification Program Rule (31 C.F.R. § 1023.220)**

Dear Mr. Hammerman:

In your letter dated January 5, 2015, you request assurances that the staff of the Division of Trading and Markets will not recommend enforcement action to the Securities and Exchange Commission under Rule 17a-8 under the Securities Exchange Act of 1934 ("Exchange Act") if a broker-dealer relies on a registered investment adviser to perform some or all of its customer identification program ("CIP") obligations, subject to certain enumerated conditions set forth in your incoming letter. Specifically, you request that the Division extend a no-action position that it took in 2013, which is substantially similar to previous no-action positions first taken by the Division in 2004.[1]

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[1] See Letter from Annette L. Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission, to Alan Sorcher, Securities Industry Association, dated February 12, 2004 (the "2004 Letter"); Letter from Annette L. Nazareth, Director, Division of Market Regulation, Securities and Exchange Commission, to Alan Sorcher, Securities Industry Association, dated February 10, 2005; Letter from Robert L.D. Colby, Acting Director, Division of Market Regulation, Securities and Exchange Commission, to Alan Sorcher, Securities Industry Association, dated July 11, 2006; Letter from Erik Sirri, Director, Division of Trading and Markets, Securities and Exchange Commission, to Alan Sorcher, Securities Industry and Financial Markets Association, dated January 12, 2008; Letter from Daniel M. Gallagher, Jr., Deputy Director, Division of Trading and Markets, Securities and Exchange Commission, to Ryan Foster, Securities Industry and Financial Markets Association, dated January 11, 2010; Letter from Lourdes Gonzalez, Acting Co-Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, to Ryan Foster, Securities Industry and Financial Markets Association, dated January 11, 2011; Letter from Emily Westerberg Russell, Senior Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, to Ira Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, dated January 11, 2013 (the "2013 Letter").

On February 12, 2004, the Division, in consultation with the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"), issued a letter stating that it would not recommend enforcement action to the Commission if a broker-dealer treated a registered investment adviser as if it were subject to an anti-money laundering program rule under 31 U.S.C. § 5318(h) ("AML Program Rule") for the purposes of paragraph (b)(6) (now (a)(6)) of the CIP rule applicable to broker-dealers, 31 C.F.R. § 103.122 (now 31 C.F.R. § 1023.220) ("CIP Rule"). By its terms, the 2004 Letter was to be withdrawn without further notice on the earlier of: (1) the date upon which an AML Program Rule for investment advisers becomes effective, or (2) February 12, 2005. Because an AML Program Rule for investment advisers did not become effective, and in response to your subsequent requests for no-action relief, the no-action position in the 2004 Letter was extended for an additional 18 months on February 10, 2005, for an additional 18 months on July 11, 2006, for an additional two years on January 10, 2008, for an additional 12 months on January 11, 2010, for an additional two years – subject to certain additional conditions – on January 11, 2011, and for an additional two years on January 11, 2013.

In your letter, you indicate that broker-dealers have come to rely on the no-action position that was taken in the Division's previous letters, and ask that the Division extend the position taken in the 2013 Letter.

Response

Without necessarily agreeing with your assertions, the Division, following further consultation with FinCEN staff, extends the no-action position in the 2013 Letter until the earlier of: (1) the date upon which an AML Program Rule for investment advisers becomes effective,[2] or (2) two years from the date of this letter.

Accordingly, the Division will not recommend enforcement action to the Commission under Exchange Act Rule 17a-8 if a broker-dealer treats an investment adviser as if it were subject to an AML Program Rule for the purposes of paragraph (a)(6) of the CIP Rule provided that the other provisions of the CIP Rule are met, and: (1) the broker-dealer's reliance on the investment adviser is reasonable under the circumstances, as discussed in more detail below; (2) the investment adviser is a U.S. investment adviser registered with the Commission under the Investment Advisers Act of 1940; and (3) the investment adviser enters into a contract with the broker-dealer in which the investment adviser agrees that: (a) it has implemented its own anti-money laundering program consistent with the requirements of 31 U.S.C. 5318(h) and will update such anti-money

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[2] See Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions, 79 FR 76455, 76609 (Dec. 22, 2014).

laundering program as necessary to implement changes in applicable laws and guidance, (b) it (or its agent) will perform the specified requirements of the broker-dealer's CIP in a manner consistent with Section 326 of the PATRIOT Act, (c) it will promptly disclose to the broker-dealer potentially suspicious or unusual activity detected as part of the CIP being performed on the broker-dealer's behalf in order to enable the broker-dealer to file a Suspicious Activity Report, as appropriate based on the broker-dealer's judgment,[3] (d) it will certify annually to the broker-dealer that the representations in the reliance agreement remain accurate and that it is in compliance with such representations, and (e) it will promptly provide its books and records relating to its performance of the CIP to the Commission, to a self-regulatory organization that has jurisdiction over the broker-dealer, or to authorized law enforcement agencies, either directly or through the broker-dealer, at the request of (i) the broker-dealer, (ii) the Commission, (iii) a self-regulatory organization that has jurisdiction over the broker-dealer, or (iv) an authorized law enforcement agency.[4]

As to the reasonableness of a broker-dealer's reliance on an investment adviser, we understand that broker-dealers seeking to rely on the no-action position taken in this letter will undertake appropriate due diligence on the investment adviser that is commensurate with the broker-dealer's assessment of the money laundering risk presented by the investment adviser and the investment adviser's customer base. Such due diligence would be undertaken at the outset of the broker-dealer's relationship with the investment adviser, and updated during the course of the relationship, as appropriate.

Further, we expect that a broker-dealer's assessment of the money laundering risk presented by an investment adviser and the investment adviser's customer base would depend on the particular facts and circumstances. For example, in some instances, a broker-dealer may consider an affiliated investment adviser to present a lower money laundering risk than an unaffiliated investment adviser. The investment adviser's status as an affiliate, however, is one of many factors that may be relevant to such a risk

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[3] Firms are reminded that nothing in this no-action letter relieves a broker-dealer of its obligation to establish policies, procedures, and controls that are reasonably designed to detect and report suspicious activity that is attempted or conducted by, at, or through the broker-dealer. See 31 C.F.R. § 1023.320(a)(2).

[4] A broker-dealer that chooses not to avail itself of the relief being granted pursuant to this letter may still contractually delegate the implementation and operation of its CIP to an investment adviser; however, the broker-dealer will remain solely responsible for assuring compliance with the CIP Rule and therefore, must actively monitor the operation of its CIP and assess its effectiveness. See "Customer Identification Programs for Broker-Dealers," Exchange Act Release No. 47752 (Apr. 29, 2003), 68 FR 25113, 25123 n. 132 (May 9, 2003).

assessment, and an affiliated investment adviser may or may not present a lower money laundering risk, depending on the facts and circumstances.[5]

This is a staff position with respect to enforcement action only and does not purport to express any legal conclusions. It may be withdrawn or modified if the staff determines that such action is necessary to be consistent with the Bank Secrecy Act and in the public interest.

Sincerely,

Lourdes Gonzalez
Assistant Chief Counsel
Division of Trading and Markets

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[5] See, e.g., United States Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History" (July 17, 2012), available at: http://www.hsgac.senate.gov/subcommittees/investigations/reports.

sifma
Invested in America

January 5, 2015

Via Electronic Mail

Lourdes Gonzalez
Assistant Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request for No-Action Relief under Broker-Dealer Customer Identification Rule (31 C.F.R. § 1023.220)

Dear Ms. Gonzalez:

On behalf of its member broker-dealers, the Securities Industry and Financial Markets Association ("SIFMA")[1] hereby requests that the staff of the Division of Trading and Markets (the "Division") of the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") extend the no-action relief currently in effect with respect to the reliance provisions of the customer identification rule applicable to broker-dealers (31 C.F.R. § 1023.220) (the "CIP Rule").[2] Under a letter dated January 11, 2013 (the "2013 No-Action Letter"), the current relief expires January 11, 2015.[3]

As you know, the CIP Rule, which was adopted pursuant to Section 326 of the USA PATRIOT Act,[4] requires each broker-dealer to adopt a written customer identification program ("CIP") that includes risk-based procedures for verifying the identity of each customer. The CIP Rule permits broker-dealers to rely on certain financial institutions to perform CIP procedures with respect to shared customers. Such reliance is permissible under the CIP regulations where: (1) it is reasonable under the circumstances; (2) the relied-on financial institution is subject to an anti-money laundering program rule ("AMLP Rule") under 31 U.S.C. § 5318(h) of the Bank Secrecy Act ("BSA")[5] and is regulated by

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[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

[2] *See* Letter from Emily Westerberg Russell, Senior Special Counsel, Division of Trading and Markets, SEC, to Ira Hammerman, Senior Managing Director and General Counsel, SIFMA, dated January 11, 2013, *available at* http://www.sec.gov/divisions/marketreg/mr-noaction/2013/sifma011113-17a-8.pdf.

[3] *See id*.

[4] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Pub. L. No. 107-56 (2001).

[5] 31 U.S.C. § 5311 *et seq*.

a federal functional regulator; and (3) the relied-on financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its anti-money laundering ("AML") program and that it (or its agent) will perform specified requirements of the broker-dealer's CIP.[6] The reliance provision is designed to permit financial institutions with shared customers to agree as to how they will allocate performance of the CIP requirements and, thereby, rely on one another to avoid unnecessary duplication of efforts with respect to a given customer.

At the time that the CIP Rule became effective, SEC-registered investment advisers ("RIAs") were the subject of a proposed AMLP Rule that had not been finalized.[7] As a result, broker-dealers were not permitted under the CIP Rule to rely on RIAs to perform any part of their CIP requirements. For that reason, SIFMA specifically sought no-action relief addressing a broker-dealer's reliance on an RIA under 31 C.F.R. § 1023.220(a)(6) (then 31 C.F.R. § 103.122(b)(6)) to perform some or all of the broker-dealer's CIP obligations with respect to shared customers. As discussed below, that relief was granted and has since been extended a number of times, and SIFMA now seeks a further extension of the Division staff's no-action position.

No-Action Relief to Date

The requested relief was first issued by the staff of the Division (then known as the Division of Market Regulation), in consultation with the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"), in 2004.[8] Since that time, the no-action relief has been extended a number of times,[9] including three extensions granted after the withdrawal of FinCEN's proposal to subject certain investment advisers to an AMLP Rule.[10]

In each of the no-action letters since 2004, Division staff has stated that it will not recommend to the Commission that enforcement action be taken under Rule 17a-8 under the Securities Exchange Act of 1934, as amended,[11] based on a broker-dealer's reliance on an RIA to perform certain CIP obligations, subject to certain conditions. Most recently, under the 2013 No-Action Letter, Division staff stated that it would not recommend enforcement action if a broker-dealer treats an investment adviser as if it were subject to an AMLP Rule for the purposes of paragraph (a)(6) of the CIP Rule, provided that the

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[6] 31 C.F.R. § 1023.220(a)(6).

[7] *See* Anti-Money Laundering Programs for Investment Advisers, 68 Fed. Reg. 23646 (May 5, 2003).

[8] *See* Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Alan Sorcher, Vice President and Associate General Counsel, Securities Industry Association ("SIA"), dated February 12, 2004.

[9] *See* Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Alan Sorcher, Vice President and Associate General Counsel, SIA, dated February 10, 2005; Letter from Robert L.D. Colby, Acting Director, Division of Market Regulation, SEC, to Alan Sorcher, Vice President and Associate General Counsel, SIA, dated July 11, 2006; Letter from Erik Sirri, Director, Division of Trading and Markets, SEC, to Alan Sorcher, Vice President and Associate General Counsel, SIFMA, dated January 10, 2008; Letter from Daniel M. Gallagher, Jr., Deputy Director, Division of Trading and Markets, SEC, to Ryan Foster, Manager, SIFMA, dated January 11, 2010 (the "2010 No-Action Letter"); Letter from Lourdes Gonzalez, Acting Co-Chief Counsel, Division of Trading and Markets, SEC, to Ryan D. Foster, Manager, SIFMA, dated January 11, 2011 (the "2011 No-Action Letter"); and the 2013 No-Action Letter.

[10] *See* Withdrawal of the Notice of Proposed Rulemaking; Anti-Money Laundering Programs for Investment Advisers, 73 Fed. Reg. 65568 (November 4, 2008), and the 2010 No-Action Letter, the 2011 No-Action Letter and the 2013 No-Action Letter, *supra*.

[11] 17 C.F.R. § 240.17a-8.

other provisions of the CIP Rule are met, and: (1) the broker-dealer's reliance on the investment adviser is reasonable under the circumstances;[12] (2) the investment adviser is a U.S. investment adviser registered with the Commission under the Investment Advisers Act of 1940, as amended; and (3) the investment adviser enters into a contract with the broker-dealer in which the investment adviser agrees that (a) it has implemented its own AML program consistent with the requirements of 31 U.S.C. 5318(h) and will update such AML program as necessary to implement changes in applicable laws and guidance, (b) it (or its agent) will perform the specified requirements of the broker-dealer's CIP in a manner consistent with Section 326 of the PATRIOT Act, (c) it will promptly disclose to the broker-dealer potentially suspicious or unusual activity detected as part of the CIP being performed on the broker-dealer's behalf in order to enable the broker-dealer to file a Suspicious Activity Report, as appropriate based on the broker-dealer's judgment, (d) it will certify annually to the broker-dealer that the representations in the reliance agreement remain accurate and that it is in compliance with such representations, and (e) it will promptly provide its books and records relating to its performance of CIP to the Commission, to a self-regulatory organization that has jurisdiction over the broker-dealer, or to authorized law enforcement agencies, either directly or through the broker-dealer, at the request of (i) the broker-dealer, (ii) the Commission, (iii) a self-regulatory organization that has jurisdiction over the broker-dealer, or (iv) an authorized law enforcement agency. As indicated above, this no-action position is in effect until January 11, 2015.

Reliance on Registered Investment Advisers

As indicated in our prior requests for no-action relief, some of SIFMA's broker-dealer members have come to rely on RIAs under the CIP Rule and the staff's no-action relief to perform some or all of the CIP obligations related to customers with which both have a customer relationship. SIFMA believes strongly that the reliance provisions of the CIP Rule play an important and necessary role in effective anti-money laundering compliance because intermediary and shared business relationships are a common and legitimate part of the securities industry and U.S. capital markets. RIAs are regulated by a federal functional regulator, and many have established AML programs consistent with 31 U.S.C. 5318(h). Permitting two regulated financial institutions with a common customer to rely on one another to perform some or all of the CIP requirements under the CIP Rule avoids duplication of efforts and inefficient allocation of significant and costly resources.

SIFMA also believes that the interaction between broker-dealers and RIAs is precisely the type of relationship intended to be covered by the reliance provisions, and that the staff's no-action relief should continue to be available to firms in a position to implement such reliance. RIAs often have the most direct relationship with the customers they introduce to broker-dealers, are best able to obtain the necessary documentation and information from and about the customers, and therefore are in the best position to perform some or all of the requirements of the CIP Rule. Moreover, RIAs are often

[12] As to the reasonableness of a broker-dealer's reliance on an investment adviser, Division staff stated in the 2013 No-Action Letter its understanding that broker-dealers seeking to rely on the no-action position in the letter "will undertake appropriate due diligence on the investment adviser that is commensurate with the broker-dealer's assessment of the money laundering risk presented by the investment adviser and the investment adviser's customer base. Such due diligence would be undertaken at the outset of the broker-dealer's relationship with the investment adviser, and updated during the course of the relationship, as appropriate." The staff stated further that a broker-dealer's assessment of the money laundering risk presented by an investment adviser and the investment adviser's customer base would depend on the particular facts and circumstances, and that an investment adviser's status as an affiliate is one of many factors that may be relevant to such a risk assessment. *See* 2013 No-Action Letter, at p. 3.

reluctant to have the broker-dealer contact the customer because they view the broker-dealer as their competitor. Accordingly, SIFMA's broker-dealer members would like to continue to have the staff's no-action position available for reliance on RIAs under the CIP Rule to perform some or all of broker-dealers' CIP obligations with respect to shared customers.

Request for No-Action Relief

For the foregoing reasons, SIFMA respectfully requests that the Division staff extend the no-action position stated in the 2013 No-Action Letter, subject to the conditions stated in that letter. We note that FinCEN has publicly stated that it has drafted a notice of proposed rulemaking that would prescribe minimum standards for AML programs to be established by certain investment advisers and would require such investment advisers to report suspicious activity to FinCEN.[13]

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We thank you for the opportunity to submit this no-action request and would be happy to discuss our request. Please do not hesitate to contact me if you would like to discuss these matters further.

Respectfully submitted,

Ira D. Hammerman
Executive Vice President and General Counsel

cc: Jennifer Shasky Calvery, Director, FinCEN
Jamal El-Hindi, Associate Director, FinCEN
John Fahey, Branch Chief, SEC
Emily Westerberg Russell, Senior Special Counsel, SEC
Lindsay Kidwell, Special Counsel, SEC

[13] *See* Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions, 79 Fed. Reg. 76455, 76609 (December 22, 2014). FinCEN has stated further that it has been working closely with the Commission on issues related to the draft proposal. *See id.*