



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

December 12, 2018

Ms. Aseel M. Rabie
Managing Director and Associate 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) and Beneficial
Ownership Requirements for Legal Entity Customers (31 C.F.R. §
1010.230)**

Dear Ms. Rabie:

In your letter dated December 7, 2018 you request assurances that the staff of the Division of Trading and Markets (the "Division") will not recommend enforcement action to the Securities and Exchange Commission (the "SEC" or the "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 obligations under the customer identification program ("CIP") rule, 31 C.F.R. § 1023.220 ("CIP Rule"), and/or the portion of the customer due diligence rule regarding beneficial ownership requirements for legal entity customers, 31 C.F.R. § 1010.230 ("Beneficial Ownership Requirements"), subject to certain enumerated conditions set forth in your incoming letter. Specifically, you request that the Division extend the effectiveness of a no-action position that it took in 2016, which is substantially similar to previous no-action positions first taken by the Division in 2004, and also applied the principles underlying that position to the Beneficial Ownership Requirements.¹

¹ See Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Alan Sorcher, Securities Industry Association, dated Feb. 12, 2004 (the "2004 Letter"); Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Alan Sorcher, Securities Industry Association, dated Feb. 10, 2005; Letter from Robert L.D. Colby, Acting Director, Division of Market Regulation, SEC, to Alan Sorcher, Securities Industry Association, dated Jul. 11, 2006; Letter from Erik Sirri, Director, Division of Trading and Markets, SEC, to Alan Sorcher, Securities Industry and Financial Markets Association ("SIFMA"), dated Jan. 12, 2008; Letter from Daniel M. Gallagher, Jr., Deputy Director,

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. 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 effectiveness of the no-action position in the 2004 Letter has been extended a number of times in substantially the same form since 2004, most recently for an additional two years – subject to certain additional conditions – on December 12, 2016.²

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 with respect to the CIP Rule, and most recently with the granting of no-action relief with respect to the Beneficial Ownership Requirements. You ask that the Division extend the effectiveness of the no-action position taken in the 2016 Letter with respect to the CIP Rule and Beneficial Ownership Requirements.

Division of Trading and Markets, SEC, to Ryan Foster, SIFMA, dated Jan. 11, 2010; Letter from Lourdes Gonzalez, Acting Co-Chief Counsel, Division of Trading and Markets, SEC, to Ryan Foster, SIFMA, dated Jan. 11, 2011; 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 Jan. 11, 2013; Letter from Lourdes Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, SEC, to Ira Hammerman, Executive Vice President and General Counsel, SIFMA, dated Jan. 9, 2015 (the "2015 Letter"); Letter from Emily Westerberg Russell, Senior Special Counsel, Division of Trading and Markets, SEC, to Aseel Rabie, Managing Director and Associate General Counsel, SIFMA, dated Dec. 12, 2016 (the "2016 Letter").

² See *id.* In May 2016, FinCEN issued new rules to clarify and strengthen customer due diligence requirements for covered financial institutions, including broker-dealers. See Customer Due Diligence Requirements for Financial Institutions, 81 FR 29398 (May 11, 2016). These rules include Beneficial Ownership Requirements, which contain a reliance provision in paragraph (j) that is similar to the one contained in paragraph (a)(6) of the CIP Rule. Specifically, under paragraph (j) of the Beneficial Ownership Requirements, a covered financial institution may rely on the performance by another financial institution of the requirements of the rule, subject to certain conditions, including that the other financial institution is subject to an AML Program Rule. See 31 C.F.R. § 1010.230(j). Covered financial institutions had to comply with these rules by May 11, 2018. See Customer Due Diligence Requirements for Financial Institutions, 81 FR 29398 (May 11, 2016).

Response

Without necessarily agreeing with your assertions, the Division, following further consultation with FinCEN staff, extends the effectiveness of the no-action position in the 2016 Letter until the earlier of: (1) the date upon which an AML Program Rule for investment advisers becomes effective,³ 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 and/or paragraph (j) of the Beneficial Ownership Requirements, provided that the other provisions of the CIP Rule and the Beneficial Ownership Requirements, respectively, 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 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 and/or the broker-dealer's beneficial ownership procedures in a manner consistent with Section 326 of the USA PATRIOT Act⁴ and the Beneficial Ownership Requirements, respectively, (c) it will promptly disclose to the broker-dealer potentially suspicious or unusual activity detected as part of the CIP and/or beneficial ownership procedures 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,⁵ (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 and/or beneficial ownership procedures to the Commission,

³ See Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 FR 52680 (Sept. 1, 2015).

⁴ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act"), Pub. L. No. 107-56, 115 Stat. 296 (2001).

⁵ 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).

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.⁶

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 assessment, and an affiliated investment adviser may or may not present a lower money laundering risk, depending on the facts and circumstances.⁷

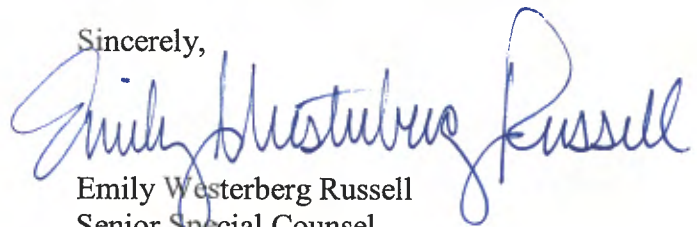
⁶ A broker-dealer that chooses not to avail itself of the relief being granted pursuant to this letter may still contractually delegate the implementation and operation of its CIP and beneficial ownership procedures to an investment adviser; however, the broker-dealer will remain solely responsible for assuring compliance with the CIP Rule and the Beneficial Ownership Requirements and therefore, must actively monitor the operation of its CIP and beneficial ownership procedures and assess their 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).

⁷ 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>.

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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, or if the staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, this position is based solely upon the representations you have made and is limited strictly to the facts and conditions described in your letter. Any different facts or circumstances may require a different response.

Sincerely,



Emily Westerberg Russell
Senior Special Counsel
Division of Trading and Markets



Invested in America

December 7, 2018

Via Electronic Mail

Ms. Emily Westerberg Russell
Senior Special 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 Program Rule (31 C.F.R. § 1023.220) and Beneficial Ownership Requirements for Legal Entity Customers (31 C.F.R. § 1010.230)

Dear Ms. Russell:

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 program rule applicable to broker-dealers (the “CIP Rule”)² and the rule regarding beneficial ownership requirements for legal entity customers (the “Beneficial Ownership Rule”).³

More specifically, under the conditions of a letter dated December 12, 2016 (the “2016 No-Action Letter”),⁴ Division staff has granted no-action relief to broker-dealers that rely on SEC-registered investment advisers (“RIAs”) to perform some or all of the requirements of the CIP Rule and the

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly one million employees, we advocate for legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association. For more information, visit <http://www.sifma.org/>.

² 31 C.F.R. § 1023.220.

³ 31 C.F.R. § 1010.230.

⁴ See Letter from Emily Westerberg Russell, Senior Special Counsel, Division of Trading and Markets, SEC, to Aseel Rabie, Managing Director and Associate General Counsel, SIFMA, dated Dec. 12, 2016, *available at* <https://www.sec.gov/divisions/marketreg/mr-noaction/2016/securities-industry-financial-markets-association-120916.pdf>.

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Beneficial Ownership Rule. No-action relief was originally granted with respect to the CIP Rule in 2004⁵ and has since been extended a number of times.⁶ Under the 2016 No-Action Letter, the current relief, addressing the reliance provisions of both the CIP Rule and the Beneficial Ownership Rule, expires December 12, 2018.⁷ Because broker-dealer firms continue to rely on this relief, we urge the Division staff to continue to make it available.

Background

As you know, the CIP Rule 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 a broker-dealer to rely on another financial institution (including an affiliate) to perform CIP procedures with respect to shared customers. Such reliance is permissible under specified conditions, including that the relied-on financial institution is subject to an anti-money laundering program rule (an “AML Rule”) under 31 U.S.C. § 5318(h) of the Bank Secrecy Act (the “BSA”)⁸ and is regulated by a federal functional regulator.⁹ 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.

Similarly, under the Beneficial Ownership Rule, each broker-dealer is required to establish and maintain written procedures that are reasonably designed to identify and verify the identity of the beneficial owners of legal entity customers. Under the same conditions as set forth in the CIP Rule, the Beneficial Ownership Rule permits a broker-dealer to rely on the performance by another financial institution (including an affiliate) of the requirements of the Beneficial Ownership Rule

⁵ 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 Feb. 12, 2004.

⁶ See Letter from Nazareth to Sorcher, dated Feb. 10, 2005; Letter from Robert L.D. Colby, Acting Director, Division of Market Regulation, SEC, to Sorcher, dated July 11, 2006; Letter from Erik Sirri, Director, Division of Trading and Markets, SEC, to Sorcher, Vice President and Associate General Counsel, SIFMA, dated Jan. 10, 2008; Letter from Daniel M. Gallagher, Jr., Deputy Director, Division of Trading and Markets, SEC, to Ryan Foster, Manager, SIFMA, dated Jan. 11, 2010 (the “2010 No-Action Letter”); Letter from Lourdes Gonzalez, Acting Co-Chief Counsel, Division of Trading and Markets, SEC, to Foster, dated Jan. 11, 2011 (the “2011 No-Action Letter”); 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 Jan. 11, 2013 (the “2013 No-Action Letter”); Letter from Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, SEC, to Hammerman, Executive Vice President and General Counsel, SIFMA, dated Jan. 9, 2015 (the “2015 No-Action Letter”); and the 2016 No-Action Letter.

⁷ See the 2016 No-Action Letter at p. 3 (providing no-action relief until the earlier of (1) the date upon which an anti-money laundering program rule for investment advisers becomes effective, or (2) two years from the date of the letter).

⁸ 31 U.S.C. § 5311 *et seq.*

⁹ See 31 C.F.R. § 1023.220(a)(6).

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with respect to any legal entity customer of the broker-dealer that has an account or a similar business relationship with the other financial institution.¹⁰

Rationale for Relief

As indicated in our prior requests for no-action relief, SIFMA believes that the interaction between broker-dealers and RIAs is precisely the type of relationship intended to be covered by the reliance provisions. RIAs often have the most direct relationship with the customers they introduce to broker-dealers and are best able to obtain the necessary documentation and information from and about the customers. Moreover, RIAs are often reluctant to have a broker-dealer contact the customer because they view the broker-dealer as a competitor. RIAs are thus best positioned to perform some or all of the requirements of the CIP Rule and particularly to perform requirements under the Beneficial Ownership Rule, which pertains to information not about a customer but about the beneficial owners of that customer.

RIAs are regulated by a federal functional regulator, and many have established anti-money laundering (“AML”) programs consistent with 31 U.S.C. § 5318(h).¹¹ Permitting two regulated financial institutions with a common customer to rely on one another to perform some or all of the requirements under the CIP Rule and the Beneficial Ownership Rule avoids duplication of efforts and inefficient allocation of significant and costly resources. Extending the current no-action position with respect to the CIP Rule and the Beneficial Ownership Rule would appropriately recognize the interaction between broker-dealers and RIAs and allow broker-dealers to maintain existing practices concerning reliance on RIAs.

Conditions of Current Relief and Request for Extension

In the 2016 No-Action Letter, Division staff stated that it would not recommend enforcement action to the Commission 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 and/or paragraph (j) of the Beneficial

¹⁰ 31 C.F.R. § 1010.230(j).

¹¹ At the time the CIP Rule became effective, RIAs were the subject of a proposed AMLP Rule that had not been finalized. *See* Anti-Money Laundering Programs for Investment Advisers, 68 Fed. Reg. 23646 (May 5, 2003). As a result, broker-dealers were not permitted to rely on RIAs under the CIP Rule. SIFMA sought no-action relief to permit such reliance, and the Division staff, in consultation with the Financial Crimes Enforcement Network (“FinCEN”), granted the 2004 relief cited above. FinCEN withdrew its 2003 proposal in 2008 but has since issued a new proposal to subject RIAs to an AMLP Rule. *See* Withdrawal of the Notice of Proposed Rulemaking, 73 Fed. Reg. 65568 (Nov. 4, 2008); Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 Fed. Reg. 52680 (Sept. 1, 2015). Extensions of the Division staff’s no-action relief to date include four occasions after FinCEN’s withdrawal of the 2003 proposal but prior to the issuance of the 2015 proposal (*see* the 2010 No-Action Letter, 2011 No-Action Letter, 2013 No-Action Letter, and 2015 No-Action Letter), as well as the 2016 No-Action Letter issued after publication of FinCEN’s 2015 proposal, which remains pending.

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Ownership Rule, provided that the other provisions of the CIP Rule and the Beneficial Ownership Rule are met, and:

- (1) the broker-dealer's reliance on the investment adviser is reasonable under the circumstances¹²;
- (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 and/or the broker-dealer's beneficial ownership procedures in a manner consistent with Section 326 of the USA PATRIOT Act and the Beneficial Ownership Rule, respectively,
 - (c) it will promptly disclose to the broker-dealer potentially suspicious or unusual activity detected as part of the CIP and/or beneficial ownership procedures 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 and/or beneficial ownership procedures 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

¹² As to reasonableness, Division staff stated 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 its 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.

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(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, we believe the interaction between broker-dealers and RIAs is precisely the type of relationship intended to be covered by the reliance provisions of the CIP Rule and the Beneficial Ownership Rule. Because broker-dealers continue to rely on the no-action relief with respect to such reliance, SIFMA respectfully requests that the Division staff extend the no-action position stated in the 2016 No-Action Letter, subject to the conditions stated in that letter, prior to its expiration on December 12, 2018.

* * *

We thank you for the opportunity to submit this no-action request and would be pleased to discuss any of these matters further.

Respectfully submitted,



Aseel M. Rabie
Managing Director and Associate General Counsel

cc: Kenneth A. Blanco, Director, FinCEN
Jamal El-Hindi, Deputy Director, FinCEN
Andrea Sharrin, Associate Director, Policy Division, FinCEN
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John Fahey, Branch Chief, SEC