UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

January 11, 2011

Mr. Ryan D. Foster
Manager, SIFMA
Office of General Counsel
1101 New York Avenue, NW, 8th Floor
Washington, DC 20005

Re: **Request for No-Action Relief Under Broker-Dealer Customer Identification Rule (31 C.F R. § 103.122)**

Dear Mr. Foster:

In your letter dated January 11, 2011, you request assurances that the staff of the Division[1] will not recommend enforcement action to the Commission under Exchange Act Rule 17a-8 if a broker-dealer relies on a registered investment adviser to perform some or all of its CIP obligations, subject to certain enumerated conditions set forth in your incoming letter. Specifically, you request that the Division take a no-action position similar to a no-action position that it took in 2004, and again in 2005, 2006, 2008, and 2010.[2]

On February 12, 2004, the Division, in consultation with 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 ("AML Program Rule") under 31 U.S.C. 5318(h) for the purposes of paragraph (b)(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 By its terms, the 2004 Letter was to be withdrawn without further notice on the earlier of: (1) the date upon which an AML Program Rule for investment advisers becomes effective, or (2) February 12, 2005.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 no-action position in the 2004 Letter was extended for an additional 18 months on February 10, 2005, for an

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1 Unless otherwise noted, each defined term in this letter has the same meaning as those defined directly or by reference in your letter.

2 See Letter from Annette L. Nazareth, Director, Division, Commission, to Alan Sorcher, Securities Industry Association ("SIA"), dated February 12, 2004 (the "2004 Letter"); Letter from Annette L. Nazareth, Director, Division, Commission, to Alan Sorcher, SIA, dated February 10, 2005; Letter from Robert L.D. Colby, Acting Director, Division, Commission, to Alan Sorcher, SIA, dated July 11, 2006; Letter from Erik Sirri, Director, Division, Commission to Alan Sorcher, SIFMA, dated January 12, 2008; Letter from Daniel M. Gallagher, Jr., Deputy Director, Division, Commission, to Ryan Foster, SIFMA, dated January 11, 2010 (the "2010 Letter").

additional 18 months on July 11, 2006, for an additional 2 years on January 10, 2008, and for an additional 12 months on January 11, 2010.

In your letter, you indicate that broker-dealers have come to rely on the no-action position that was taken in the 2004 Letter, and ask that the Division take a position similar to that of the 2004 Letter, but with additional conditions imposed.

Response

Without necessarily agreeing with your assertions, the Division, following further consultation with FinCEN staff, extends the no-action position in the 2004 Letter for an additional 2 years from the date of this letter, subject to some modifications.

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 (b)(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 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[3], (d) it will certify[4] annually to the broker-dealer that the representations in the reliance

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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. § 103.19(a)(2).

[4] We understand that some broker-dealers may cease to enter into reliance agreements pursuant to the terms set forth in this 2011 letter. In those cases, a broker-dealer that had been obtaining forward-looking certifications need not obtain further certifications regarding an investment adviser's activities. For example, if the next certification due from the investment adviser would have applied to the upcoming year, from January 11, 2011, through January 11, 2012, then a broker-dealer ceasing the reliance relationship as of January 11, 2011, would not be required to obtain such a certification from the investment adviser.

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 an SRO 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) an SRO that has jurisdiction over the broker-dealer, or (iv) an authorized law enforcement agency.[5]

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 anti-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.

So that broker-dealers wishing to avail themselves of the relief being granted pursuant to this letter have sufficient time to become compliant with its terms, the relief granted pursuant to the 2010 Letter is hereby extended for 120 days from the date of this letter, until May 11, 2011. After that date, the 2010 Letter will be withdrawn without further action, and the terms of this January 11, 2011, no-action letter shall control.

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

Lourdes Gonzalez
Acting Co-Chief Counsel

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[5] 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 (April 29, 2003), 68 FR 25113, 25123 n. 132 (May 9, 2003).

sifma
Invested in America

January 11, 2011

Via Email and Courier

Lourdes Gonzalez
Acting Co-Chief Counsel
Office of Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for No-Action Relief Under Broker-Dealer Customer Identification Rule (31 C.F.R. § 103.122)

Dear Ms. Gonzalez:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is submitting this request on behalf of its member broker-dealers for No-Action relief with respect to the reliance provisions in the customer identification rule ("CIP Rule") applicable to broker-dealers (31 C.F.R. §103.122) issued pursuant to Section 326 of the USA PATRIOT Act.[2]

As you know, the CIP Rule requires broker-dealers to adopt written customer identification programs ("CIP") that include 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-upon financial institution is subject to an anti-money laundering program ("AML Program") rule ("AMLP Rule") under 31 U.S.C. § 5318(h) of the Bank Secrecy Act ("BSA")[3] and regulated by a Federal functional regulator; and (3) the relied-upon financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented an AML Program, and that it (or its agent) will perform specified requirements of the CIP.[4] The reliance provision is designed to permit two financial institutions with mutual customers to reach agreements between themselves as to how they will allocate performance of the requirements of

[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 600 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.
[2] "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," ("PATRIOT Act") Pub. L. No. 107-56 (2001), signed into law by President Bush on October 26, 2001.
[3] 31 U.S.C. § 5311 *et seq.*
[4] 31 C.F.R. § 103.122(b)(6).

the CIP Rule and, thereby, rely on one another to avoid unnecessary duplication of efforts with respect to a given customer.

Although registered investment advisers ("RIAs") are regulated financial institutions and were subject to a proposed AMLP Rule,[5] because the AMLP Rule was not yet finalized at the time the CIP Rule went into effect, broker-dealers were not technically permitted to rely upon RIAs to perform any part of their CIP requirements. For that reason, SIFMA specifically sought and received assurances from the U.S. Securities and Exchange Commission ("Commission") Staff on a number of occasions that it would not recommend enforcement action if a broker-dealer relied on an RIA under 31 C.F.R. §103.122(b)(6) to perform some or all of its CIP obligations with respect to shared customers.

SIFMA is writing again to seek assurances from the Staff of the Division of Trading and Markets ("Division")[6] that it will not recommend enforcement action to the U.S. Securities and Exchange Commission ("Commission") if a broker-dealer, subject to the conditions set forth in this letter, relies on an RIA pursuant to 31 C.F.R. § 103.122(b)(6) to perform some or all of its customer identification program obligations.

Previous No-Action Requests Have Been Granted

The requested relief was first issued by the Commission's Division of Trading and Markets (f/k/a Division of Market Regulation) (the "Division"), in consultation with the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"), in 2004 and has been renewed on a number of occasions since that time. (*See* Letters from the Division to the SIA[7] dated February 12, 2004, February 10, 2005, July 11, 2006, and to SIFMA dated January 10, 2008.)[8] In each of its prior No-Action Letters, the Division stated that it would not recommend to the Commission that enforcement action be taken under Rule 17a-8 of the Securities Exchange Act of 1934 ("Exchange Act") [9] if a broker-dealer relies on an RIA, prior to such adviser becoming subject to an AMLP Rule for the purposes of paragraph (b)(6) of the CIP Rule, provided that all of the other provisions of the CIP regulations were met *i.e.*, "(1) reliance on the investment adviser is reasonable under the circumstances; (2) the investment adviser is registered with the Commission; (3) the investment adviser enters into a contract with the broker-dealer requiring it to certify annually to the broker-dealer that it has implemented its own AML Program that is consistent with the requirements of 31 U.S.C. 5318(h); and (4) the adviser (or its agent) performs the specified requirements of the broker-dealer's CIP.**"**[10] In addition, the Division routinely provided reasonable time limits to its No-Action relief, *i.e.*,

[5] 68 Fed. Reg. 23646 (May 5, 2003)
[6] The Division was formerly known as the Division of Market Regulation.
[7] SIFMA was previously known as the Securities Industry Association ("SIA") before its merger with the Bond Market Association.
[8] See Letter from Annette L. Nazareth, Director, Division, Commission, to Alan Sorcher, SIA, dated February 12, 2004; Letter from Annette L. Nazareth, Director, Division, Commission, to Alan Sorcher, SIA, dated February 10, 2005; Letter from Robert L.D. Colby, Acting Director, Division, Commission, to Alan Sorcher, SIA, dated July 11, 2006; Letter from Erik Sirri, Director, Division, Commission, to Alan Sorcher, SIFMA, dated January 10, 2008.
[9] 17 C.F.R. § 240.17a-8.
[10] See, e.g., Letter from Daniel M. Gallagher, Jr., Deputy Director of Division of Trading and Markets, Commission, to Ryan Foster, SIFMA, dated January 11, 2010 ("2010 Letter"). In the context of the bank FAQs (in response to a question raised by SIFMA), FinCEN clarified that the program need not be the Bank's but need only follow the elements of the CIP Rule required to be in a bank's CIP. See FAQ: Final CIP Rule, Guidance on Customer Identification Regulations, FinCEN, at 9 (Jan. 2004), *available at* http://www.fincen.gov/statutes_regs/guidance/pdf/finalciprule.pdf.

the earlier of: (1) 12-18 months from the date of the No-Action Letter, or (2) the date upon which an AMLP Rule for advisers becomes effective.

Shortly before the Division's last No-Action Letter was set to expire, by letter dated January 7, 2010, SIFMA once again approached the Division with its request for renewal of the No-Action relief. However, by that time, the AMLP Rule that FinCEN had proposed in May 2003 had been withdrawn (effective November 4, 2008). Although FinCEN stated that it would not proceed with an AMLP requirement for investment advisers without publishing a new proposal, it also noted its view that, as it continues to consider the extent to which BSA requirements should be imposed on investment advisers, the activity of investment advisers is not entirely outside the current BSA regulatory regime.[11]

On January 11, 2010, the Division again issued a No-Action Letter stating that it would not recommend to the Commission that enforcement action be taken under Rule 17a-8 of the Exchange Act on these same conditions.[12] Because RIAs were no longer subject to a proposed AMLP Rule at the time of SIFMA's last request, and were not defined as a covered financial institution under an AMLP Rule, the Division's Staff apparently had concerns about renewing the No-Action relief beyond January 10, 2011. Hence, although the Division again agreed to extend the prior No-Action relief, its January 11, 2010 response indicated -- in language not previously used in this context -- that "[t]he no-action position taken by this letter will be withdrawn without further action on January 10, 2011." [13] (A copy of the letter is attached).[14] The Division acknowledged that it had consulted with FinCEN and that it would reconsider its position if FinCEN were to re-propose an AMLP Rule for investment advisers before January 10, 2011.

Reliance on Registered Investment Advisers

As we have previously indicated in our prior No-Action relief requests to the Commission, SIFMA broker-dealer members have come to rely on RIAs under the CIP Rule to perform some or all of the CIP obligations related to customers with whom 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 AMLPs 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 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 should continue to be available

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[11] 73 Fed. Reg. 65568-69 (Nov. 4, 2008).
[12] 2010 Letter.
[13] Id.
[14] In contrast, when the Commodity Futures Trading Commission ("CFTC") granted similar relief to futures commission merchants and introducing brokers in March 2005, with respect to their reliance on commodity trading advisors ("CTAs"), the CFTC stated that its no-action relief letter "will be deemed withdrawn automatically, without further action . . . upon the earlier of (a) the date upon which AMLP Rules for CTAs become effective, or (b) 30 days after FinCEN publicly announces that it will not issue AMLP Rules for CTAs." See CFTC letter No. 05-05 (Mar. 14, 2005).

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 reluctant to have the broker-dealer contact the customer because they view the other institution as their competitor. Accordingly, SIFMA member firms would like to continue to rely on RIAs under the CIP Rule to perform some or all of the CIP obligations with respect to customers with whom both have a customer relationship.

Request for No-Action Relief

In connection with the renewal of this No-Action relief, SIFMA has been advised by the Division's Staff, that, given the withdrawal of the proposed AMLP Rule and the fact that an RIA is not a defined covered financial institution, the Staff would not recommend the extension of the No-Action Letter unless additional conditions were added to the No-Action Letter, which would, in the Staff's view, enhance the ability of a broker-dealer to ascertain the reasonableness of its reliance on the RIAs in order to comply with its own anti-money laundering obligations.

Based on our discussions with the Staff and FinCEN, SIFMA is submitting a request for No-Action relief based on the following proposal, which we believe addresses the Staff's concerns. We understand from our discussions that the Staff does not intend, by the addition of these new conditions, to impose any supervisory obligations on the broker-dealer with respect to the investment adviser.

Under this proposal, broker-dealers may treat an RIA as if it were subject to an AMLP Rule for the purposes of paragraph (b)(6) of the CIP Rule (31 C.F.R. § 103.122(b)(6)) where, provided that the other provisions of the CIP Rule are met: (1) the broker-dealer's reliance on the RIA is reasonable under the circumstances, as discussed in more detail below; (2) the RIA is a U.S. investment adviser registered with the Commission under the Investment Advisers Act of 1940; and (3) the RIA enters into a contract with the broker-dealer in which the RIA 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 ("SRO") 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) an SRO that has jurisdiction over the broker-dealer, or (iv) an authorized law enforcement agency.

To confirm that the broker-dealer's reliance on the RIA is reasonable under the circumstances, the broker-dealer would undertake appropriate due diligence on the RIA that is commensurate with the broker-dealer's assessment of the AML risk presented by the RIA and the RIA's customer base. For example, an affiliate might be considered lower risk than a less well known RIA. 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. Consistent with the broker-dealer's

assessment of the risk and the nature of the relationship, examples of appropriate due diligence, either at the outset or during the relationship, might include obtaining a copy of (or a summary of) the RIA's CIP processes or procedures, obtaining a completed questionnaire from the investment adviser regarding its CIP program, or obtaining attestations from the RIA relating to the adviser's performance of CIP. Such attestations could include, by way of example, that an affiliate is in compliance with the parent company's global CIP.

SIFMA respectfully requests that the Commission issue No-Action relief that allows broker-dealers to continue to rely on RIAs to perform CIP with respect to common customers based on the conditions proposed herein.

In the event that the Commission grants our No-Action request, SIFMA requests that the Commission provide additional time for our broker-dealer members to become compliant with the new conditions. Among other steps, broker-dealers would need to contact all of the RIAs upon whom they have relied in good faith for years, establish and implement multiple procedures to address the new steps necessary under the Commission's No-Action position, and ensure that the necessary technology and personnel resources are trained and in place. Because it will take broker-dealers some time to alter their existing procedures and implement new ones, we respectfully request that broker-dealers, which have determined to rely on the No-Action position taken by the Commission, be provided a sufficient period of time to become compliant with the terms of such position. Under this proposal, such broker-dealers would become compliant with a No-Action position taken by the Commission within 120 days from the date of such No-Action position being issued by the Commission. In addition**,** we request that the Staff confirm that broker-dealers who, pursuant to the prior No-Action Letters, have previously relied on a particular investment adviser to perform CIP and who have determined not to do so on a going forward basis, need not obtain any further certifications for those customer accounts subject to the prior No-Action relief.

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We thank you for the opportunity to submit this letter. We would be happy to discuss with you any of the comments described above or any other matters you feel would be helpful in your review of the No-Action Request. Please do not hesitate to contact Ryan Foster at 202-962-7388 or via email at rfoster@sifma.org if you would like to discuss these matters further.

Respectfully submitted,

Ryan D. Foster
Manager, SIFMA
Office of General Counsel

cc: James H. Freis, Jr. Director, FinCEN
Jamal L. El-Hindi, Associate Director, FinCEN
John Fahey, U.S. Securities and Exchange Commission