UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

February 26, 2014

Thomas F. Price
Operations, Technology & BCP
Securities Industry and Financial Markets Association ("SIFMA")
120 Broadway, 35th Floor
New York, NY 10271-0080

Re: Certain Amendments to Rule 15c3-3

Dear Mr. Price:

This responds to your letter dated February 26, 2014, wherein you request that the staff of the Division of Trading and Markets ("Division") of the Securities and Exchange Commission ("Commission") provide relief to broker-dealers with respect to a requirement to obtain prior written consent from a customer as required under amendments to Rule 15c3-3 that become effective on March 3, 2014.

On July 30, 2013, the Commission adopted amendments to the broker-dealer financial responsibility rules under the Securities Exchange Act of 1934.[1] The amendments include the adoption of new paragraph (j)(2)(ii) of Rule 15c3-3 which establishes customer disclosure, notice, and affirmative consent requirements for programs ("Sweep Programs") where a customer's free credit balances in a securities account are "swept" to a money market mutual fund or an account at a bank whose deposits are FDIC-insured.[2] The final rules became effective on October 21, 2013. The Commission issued an exemptive order providing broker-dealers a temporary exemption from the requirements of certain of the amendments, including paragraph (j)(2)(ii) of Rule 15c3-3, until March 3, 2014.[3]

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1 See Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51824 (Aug. 21, 2013).

2 17 CFR 240.15c3-3(j). See also 17 CFR 240.15c3-3(a)(17) (defining the term Sweep Program).

3 Order Providing Broker-Dealers a Temporary Exemption from the Requirements of Certain New Amendments to the Financial Responsibility Rules for Broker-Dealers under the Securities Exchange Act of 1934, Exchange Act Release No. 70701 (Oct. 17, 2013), 78 FR 62930 (Oct. 22, 2013).

Paragraph (j)(2)(ii)(A) of Rule 15c3-3 permits a broker-dealer to transfer free credit balances held in a customer's securities account opened on or after the effective date of the amendment into a product in its Sweep Program; provided the customer gives prior written affirmative consent to having free credit balances in the customer's securities account included in the Sweep Program after being notified of the general terms and conditions of the products available through the Sweep Program and that the broker-dealer may change the products available under the Sweep Program.[4]

In your letter you state that, with respect to certain account opening scenarios, it will be unfeasibly difficult and expensive for broker-dealers to implement procedures and controls and make necessary technology changes to obtain a customer's prior written consent as required by paragraph (j)(2)(ii)(A) of Rule 15c3-3 by the March 3, 2014 effective date. In particular, you state that it is current practice for some customers to place funds in their securities accounts before executing relevant account agreements and returning the agreements to the broker-dealer. You state that, even though written affirmative consent is not obtained at the time the customer opens the securities account, the broker-dealer will obtain the customer's verbal affirmative consent to have the free credit balances in the account included in a Sweep Program. However, because the customer has not yet executed the account agreements, the consent would not yet be documented in writing. You state that implementing measures to prevent free credit balances from being transferred from the customer's securities account to a product in the broker-dealer's Sweep Program until after the broker-dealer obtains the customer's written consent would be operationally difficult, in some cases, and would be contrary to the customer's expressed preference at the time of account opening that the free credit balances be transferred to a product in the broker-dealer's Sweep Program.

Based on the foregoing, for the period beginning on March 3, 2014 and ending on March 3, 2015, the Division will not recommend enforcement action to the Commission against a broker-dealer for not obtaining a customer's prior written consent to have free credit balances in the customer's securities account included in a Sweep Program if:

1. The broker-dealer has complied in full with all other provisions of paragraph (j)(2)(ii) of Rule 15c3-3 (which, as noted above, requires, among other things, that the broker-dealer obtain the affirmative consent of the customer after giving the customer notice of the general terms and conditions of the products available through the Sweep Program and that the broker-dealer may change the products available under the Sweep Program (see paragraph (j)(2)(ii)(A) of Rule 15c3-3);

2. The customer specifically consents that the free credit balances in the customer's securities account can begin being included in the broker-dealer's Sweep Program even though the customer has not yet executed the account agreement or other documentation containing the written consent required by paragraph (j)(2)(ii)(A) of Rule 15c3-3;

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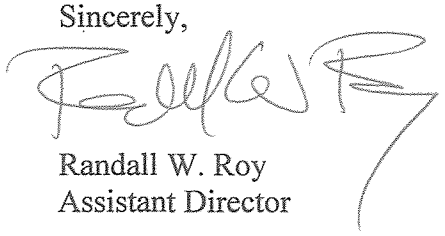
[4] See 17 CFR 240.15c3-3(j)(2)(ii)(A).

3. The broker-dealer documents at the time of the account opening that: (A) the broker-dealer obtained the affirmative consent of the customer after giving the customer notice of the general terms and conditions of the products available through the Sweep Program and that the broker-dealer may change the products available under the Sweep Program; and (B) the customer specifically agreed that the free credit balances in the customer's securities account can begin being included in the broker-dealer's Sweep Program even though the customer has not yet executed the account agreement or other documentation containing the written consent required by paragraph (j)(2)(ii)(A) of Rule 15c3-3; and

4. The broker-dealer has established a process that is reasonably designed to obtain the customer's written consent required by paragraph (j)(2)(ii)(A) of Rule 15c3-3 as soon as practicable but in no event later than 90-calendar days after the account opening, and to stop including free credit balances in a customer's securities account in the broker-dealer's Sweep Program if the broker-dealer does not obtain the customer's written consent within 90-calendar days.

This letter expresses a staff position with respect to enforcement only and does not purport to state any legal conclusion on this matter. Any material change in circumstances may warrant a different conclusion and should be brought immediately to the Division's attention. Furthermore, this position may be withdrawn or modified if the staff determines that such action is necessary in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the securities laws.

Sincerely,



Randall W. Roy
Assistant Director

sifma

Invested in America

February 26, 2014

Michael A. Macchiaroli
Associate Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-7010

Re: Request for No-Action Relief under the Financial Responsibility Rules Written Affirmative Consent Requirement for Sweep Programs (17 C.F.R. §240.15c3-3(j)(2)(ii)(A))

Dear Mr. Macchiaroli:

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 Financial Responsibility Rules requirement that a broker-dealer obtain prior written affirmative consent from a customer before that broker-dealer may place customer funds into a Sweep Program.[2]

The text of Rule 15c3-3(j)(2)(ii)(A) (the "Rule") permits a broker-dealer to transfer free credit balances held in a customer account opened after the Rule's effective date into a product in its Sweep Program[3] only if the customer has provided prior written affirmative consent to participation in the program after receiving specified disclosures. This Rule presents significant operational challenges that, without relief, may make it infeasible for many SIFMA member firms to comply with the Rule's requirements as written. Further, SIFMA member firms who are able to comply with the Rule will do so at significant expense, and compliance will involve manual and burdensome processes that may cause customer funds to remain uninvested until the firm receives the customer's written consent, which may negatively impact retail and private client customers. As such,

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[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] 17 C.F.R. §240.15c3-3(j)(2)(ii)(A).

[3] Financial Responsibility Rules for Broker Dealers, Exchange Act Release No. 70072 (July 30, 2013) 78 FR 51824 (August 21, 2013) at 51837 (Defining a 'sweep program' as "a program to routinely sweep [customer free credit balances] to a money market fund or bank account").

SIFMA, on behalf of its members, requests that Securities and Exchange Commission ("Commission") staff will not recommend enforcement action in the event broker-dealers follow an alternative consent process outlined below for Sweep Programs.

Operational Necessity for No-Action Relief

The prior written affirmative consent requirement of Rule 15c3-3(j)(ii)(A) represents a significant departure from current operational practices regarding account opening. The processes and technology around account openings involves many interconnected firm systems, and SIFMA Member firms with a private client focus may open thousands of accounts each day. As the Sweep Program is the primary default for funds that are not invested in higher yield instruments, the account opening technology at many firms has evolved to place customer funds in a Sweep Program awaiting further instructions from the customer.

Amending account opening processes and technology to require prior written affirmative consent to place customer funds in a Sweep Program is infeasible for many firms due to factors including, but not limited to, the following: (a) the lack of personnel to manually obtain and track prior written affirmative consent from customers as they open accounts; (b) circumstances, such as account opening via telephone, where obtaining prior written affirmative consent is not customary; and (c) the lack of time and resources to put in place a technology driven solution to obtain prior written affirmative consent before the Rule's current compliance date of March 3, 2014.

Further, many SIFMA member firms that are able to comply with the Rule will do so through manual, burdensome, and expensive processes. Most concerning to SIFMA members are the potential negative customer impacts of rushed compliance with the Rule as written. Some SIFMA firm solutions may cause customer funds to remain uninvested until the firm receives the customer's written consent. Other SIFMA member firms have considered not taking custody of customer funds where they cannot obtain prior written affirmative consent to place those funds in a Sweep Program due to operational complications related to holding customer cash. Irrespective of the expense and resources SIFMA member firms would need to expend to comply by March 3, 2014, SIFMA member firms stress the potential harm to customer experience and returns as grounds for No-Action relief from the Rule.

Alternative Sweep Program Consent Process

SIFMA, on behalf of its members, requests that the SEC allow the below proposed alternative Sweep Program consent process to meet the goals of Rule 15c3-3(j)(ii)(A) where the firm: (1) obtains prior verbal customer consent to place their funds in a Sweep Program, after receiving appropriate disclosures, documented in a record of the firm; and (2) obtains required written customer consent, with appropriate disclosures, within 90 days of placing a customer's funds in a Sweep Program.

Prior Verbal Consent to Place Customer Funds in a Sweep Program

In lieu of prior written affirmative consent outlined in the Rule, SIFMA requests the Commission accept the prior verbal affirmative consent of the customer to participate in a Sweep Program, which the firm would document and maintain as a record of the firm. Specifically, a financial advisor opening a customer account should: (a) verbally notify the customer of (i) the general terms and condition of the products available through the Sweep Program,[4] and (ii) the firms ability to change the products available under the Sweep Program;[5] (b) obtain the customers prior verbal consent to place customer funds in a Sweep Program; (c) obtain the customer's verbal consent to rely on their verbal consent to place their funds in a Sweep Program until the customer provides written affirmative consent; and (e) document the receipt of the customer's prior verbal consent on a document maintained as a record of the firm.

The acceptance of prior verbal affirmative consent, which is sufficient for many other important purposes currently (e.g., stock/bond purchase), documented in the firm's books and records fulfils the spirit of the Rule, while not creating the operational challenges associated with prior written consent outlined above. Further, SIFMA requests the Commission consider a written or electronic record (e.g., a checked box reflecting a financial advisors receipt of prior verbal affirmative consent with associated disclosures) sufficient to evidence prior verbal customer consent to participate in a Sweep Program.

Signed Written Affirmative Consent within 90 Days

Following prior verbal customer consent, documented and maintained on a firm record, the firm will obtain written affirmative customer consent, with appropriate disclosures, within 90 days of placing customer funds in a Sweep Program. The customer's prior verbal authorization would only apply to the Sweep Program as it was disclosed to the customer; the broker-dealer could not make changes to the Sweep Program applicable to the customer's account prior to receipt of the customer's written affirmative consent unless the client orally authorized the specific change to the Sweep Program.

If, at after 90 days, the firm has not obtained a customer's written affirmative consent to include their funds in a Sweep Program to which the customer consented verbally, the firm will place the account on 'hold' and not allow any new funds in that account to participate in the Sweep Program until the firm has obtained written affirmative consent.

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[4] 17 C.F.R. §240.15c3-3(j)(2)(ii)(A)(1).
[5] 17 C.F.R. §240.15c3-3(j)(2)(ii)(A)(2).

Request for No-Action Relief

Based on the above described operational infeasibility of compliance with the Rule's prior written affirmative consent requirement for sweep accounts, and the potential negative customer impacts and expense of solutions many SIFMA member firms would implement to meet the Rule's current compliance date of March 3, 2014, SIFMA respectfully requests No-Action relief on behalf of its members regarding to the Financial Responsibility Rules prior written affirmative consent requirement to place customer funds into a Sweep Program.

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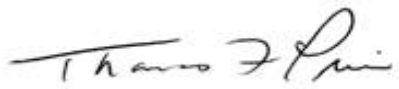
We thank you for the opportunity to submit this No-Action request. As we would be happy to discuss our request for No-Action relief, please do not hesitate to contact me if you would like to discuss these matters further.

Respectfully submitted,



Thomas F. Price
Managing Director
Operations, Technology & BCP
SIFMA

cc: John M. Ramsey, *Acting Director*, U.S. Securities and Exchange Commission
James R. Burns, *Deputy Director*, U.S. Securities and Exchange Commission
Randall W. Roy, *Assistant Director*, U.S. Securities and Exchange Commission
Bill Wollman, *Executive Vice President*, Financial Industry Regulatory Authority
Yui Chan, *Managing Director*, Financial Industry Regulatory Authority