



August 21, 2009

**BY EMAIL TO:** [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Temporary Rule Regarding Principal Trades with Certain Advisory Clients  
Release No. IA-2653; File No. S7-23-07**

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> respectfully requests that the SEC extend Temporary Rule 206(3)-3T under the Investment Advisers Act of 1940, as amended, for an additional period of two years beyond its currently scheduled expiration date of December 31, 2009. The history, basis and rationale for our request are set forth below:

### **Background**

On June 27, 2007, in light of the then recent decision of the U.S. Court of Appeals for the D.C. Circuit in *Fin. Planning Ass’n v. SEC*,<sup>2</sup> SIFMA submitted to the SEC a request for rulemaking that, among other things, sought relief from the principal trading restrictions applicable to non-discretionary investment advisory accounts under the Investment Advisers Act of 1940.<sup>3</sup> In response, the SEC worked diligently and swiftly to develop Temporary Rule 206(3)-3T in order to accommodate the interests of large numbers of fee-based brokerage clients and certain other advisory clients who would likely be harmed by the consequences of the *FPA* decision.<sup>4</sup>

<sup>1</sup> SIFMA brings together the shared interests of more than 600 securities firms, banks and asset managers locally and globally through offices in New York, Washington, D.C., and London. Its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. SIFMA’s mission is to champion policies and practices that benefit investors and issuers, expand and perfect global capital markets, and foster the development of new products and services. Fundamental to achieving this mission is earning, inspiring and upholding the public’s trust in the industry and the markets.

<sup>2</sup> 482 F.3d 481 (D.C. Cir. Mar. 30, 2007).

<sup>3</sup> Letter dated June 27, 2007, from Ira D. Hammerman to Robert E. Plaze and Catherine McGuire, available at <http://www.sec.gov/comments/s7-23-07/s72307-8.pdf>.

<sup>4</sup> See Temporary Rule Regarding Principal Trades with Certain Advisory Clients (the “Adopting Release”), 72 Fed. Reg. 55022-01, 55023 (Sept. 28, 2007) (17 C.F.R. pt. 275) (“...one group of fee-based brokerage customers is particularly likely to be harmed by the consequences of the *FPA* decision: customers who depend both on access to principal transactions with their brokerage firms and on the protections associated with a fee-based (rather than transaction-based) compensation structure.”).

On November 30, 2007, SIFMA submitted its comment on Temporary Rule 206(3)-3T.<sup>5</sup> With respect to the two-year sunset provision built into the Rule, we urged the SEC to use this time period to evaluate the Rule and develop appropriate principal trading reforms, drawing on the lessons learned from the Rule, as well as insights learned from the highly anticipated Rand Study.<sup>6</sup>

### Current Posture

On June 17, 2009, the Treasury published a White Paper entitled, *A New Foundation: Rebuilding Financial Supervision and Regulation*<sup>7</sup> and on July 10, 2009, it released a related legislative proposal entitled, the *Investor Protection Act of 2009*.<sup>8</sup> Both of these pieces call for the harmonization of the regulation of broker-dealers and investment advisers, and the establishment of a fiduciary standard for each. On July 17, 2009, SIFMA expressed its general support for the Administration's proposals as related to a new federal fiduciary standard.<sup>9</sup>

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**1. Extension of the Temporary Rule.** The legislative process is in its nascency and requires sufficient time to develop, socialize, and flesh out some of the details of this historic proposal. In the meantime, we are unaware of any information to suggest that the Temporary Rule is not operating effectively or as intended, or that firms are not meeting their disclosure obligations, or their obligations vis-à-vis their clients, when they conduct principal trades. Accordingly, we recommend that the SEC extend the Temporary Rule while the legislative process runs its course, and use the intervening period to continue to evaluate the Temporary Rule together with other regulatory reforms designed to enhance investor protection by maximizing investor choice and access to the broader investment market. We suggest that a two year extension would provide ample time for this component of regulatory reform to come to rest.

**2. Timing of Relief.** Although the technical sunset date for the Temporary Rule is December 31, 2009, the actual date – from the industry's practical perspective – is significantly earlier. If, for whatever reason (the industry is currently unaware of any), the SEC does not intend to extend the Temporary Rule, a number of firms would require sufficient advance time to implement technological and

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<sup>5</sup> Letter dated November 30, 2007, from Ira D. Hammerman to Nancy M. Morris, available at <http://www.sec.gov/comments/s7-23-07/s72307-16.pdf>.

<sup>6</sup> *Id.* at p. 5.

<sup>7</sup> Available at [http://www.financialstability.gov/docs/regs/FinalReport\\_web.pdf](http://www.financialstability.gov/docs/regs/FinalReport_web.pdf).

<sup>8</sup> Available at <http://www.treas.gov/press/releases/docs/tg205071009.pdf>.

<sup>9</sup> Testimony of Randolph C. Snook, before the U.S. House of Representatives Committee on Financial Services in the July 17, 2009 hearing titled "Industry Perspectives on the Obama Administration's Financial Regulatory Reform Proposals," available at <http://www.sifma.org/legislative/testimony/pdf/Snook-testimony-7-17-09.pdf>.

infrastructure changes, and to modify client relationships, in order to comply with the rule change. If firms do not have sufficient time to implement the necessary changes, it could impose unnecessary hardship and costs not only on firms, but also on investors who rely upon these value-add accounts. Thus, there is a real time urgency for the industry to understand which course the SEC plans to take. It would be most useful and efficient if the SEC would provide us with guidance in this regard no later than September 30<sup>th</sup> (90 days prior to the sunset date).

**3. Permanent and More Expansive Relief.** Finally, while today we are requesting a time extension of the Temporary Rule because it is consistent with current regulatory reform proposals and would best serve investors, we believe that permanent and appropriately more expansive principal trading relief will ultimately lead to the best results for investors. We shared some of our thinking on this broader issue in our November 30, 2007 comment letter and, at the appropriate time, we hope to continue this important discussion with you.

If you have any questions regarding this matter, please feel free to contact me at 202.962.7373 or my colleague Kevin Carroll at 202.962.7382.

Sincerely,



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Ira D. Hammerman  
Senior Managing Director and General Counsel

cc: The Hon. Mary Schapiro, Chairman  
The Hon., Luis A. Aguilar, Commissioner  
The Hon. Kathleen L. Casey, Commissioner  
The Hon. Troy Paredes, Commissioner  
The Hon. Elisse B. Walter, Commissioner  
David Becker, General Counsel  
Andrew J. Donohue, Director, Division of Investment Management  
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