August 24, 2011

VIA ELECTRONIC MAIL (rule-comments@sec.gov)

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

Re: Release No. 34-64969; File No. SR-FINRA-2009-28; Filing of Amendment No. 1 to Proposed Rule Change to Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the referenced proposal, in which FINRA seeks the Securities and Exchange Commission's ("SEC") approval to adopt NASD Rule 2340 as FINRA Rule 2231, with a number of material substantive changes. Through the filing of Amendment No. 1, FINRA proposes to exclude certain account activities from the proposed monthly account statement delivery requirement, clarify when written consent is required to send account statements and other account communications to third parties, and require that members continue to send statements and other account communications to customers, even when directed by the customer in writing to send such account information to a third party.[2]

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[1] The Securities Industry and Financial Markets Association ("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 ("GFMA"). For more information, visit www.sifma.org.

[2] *See* Securities Exchange Act Release No. 64969 (July 26, 2011), 76 *Federal Register* 46340 (August 2, 2011) (hereinafter, the "Proposal").

Washington | New York

1101 New York Avenue, 8th Floor | Washington, DC 20005-4269 | P: 202.962.7300 | F: 202.962.7305

www.sifma.org | www.investedinamerica.org

SIFMA very much appreciates a number of specific changes that FINRA made from the original rule proposal,[3] which were responsive to the comments of SIFMA and others. In particular, we note that FINRA has:

- acknowledged through proposed Rule 2231(c)(2) that certain types of routine activity that do not involve the active participation of the customer ("passive activity") should not trigger a monthly account statement delivery obligation;

- revised the rule text to clarify that members are not required to obtain the written consent of the customer before sending statements or other account communications for employee-related accounts pursuant to NASD Rule 3050 and Incorporated NYSE Rule 407; and

- confirmed in the response to comments section of the Proposal that members are not required to send account statements to other broker-dealers.

While substantial improvements have been made, SIFMA remains concerned about various provisions in proposed FINRA Rule 2231. Respectfully, as described in detail below, we believe that certain of the changes required by the proposed Rule would impose significant additional costs on FINRA member firms that could outweigh the regulatory benefits of such changes, which have not been clearly articulated by FINRA in the Proposal. As always, SIFMA welcomes the opportunity to discuss with FINRA or the SEC staff any of our comments to the proposed rule changes. Our specific comments are as follows.

I. Exclusions for Passive Activity

A. General Comments

Although SIFMA fully supports and appreciates the intent of FINRA's proposed exclusions from the monthly reporting obligation for certain passive activities found in proposed Rule 2231(c)(2) and notes that these changes would help bring the Rule into better alignment with industry practices, we believe the passive activity exclusions need to be further refined. In our First Comment Letter, we identified five types of passive activity that, in our view, should not trigger a monthly account statement delivery obligation. The last category of passive activity was for "pre-authorized and regularly

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[3] Securities Exchange Act Release No. 59921 (May 19, 2009), 75 Federal Register 23912 (May 21, 2009) (hereinafter, the "Original Rule Filing"). SIFMA submitted comments on FINRA's Original Rule Filing in the Spring of 2009. *See* letter from Sean C. Davy, Managing Director, Corporate Credit Markets Division, SIFMA, dated June 11, 2009 (hereinafter "First Comment Letter"), *available at* http://www.sifma.org/issues/item.aspx?id=903.

scheduled investments in and redemptions from registered investment companies and related distributions from the account (*e.g.*, required minimum distributions from certain tax qualified accounts)." FINRA did not include this type of activity in the list of exclusions in paragraph (c)(2)(B) and offered no explanation for choosing not to. Given that these passive transactions are comparable to the other four activities proposed to be excluded from the monthly statement delivery obligation, we fail to understand why FINRA would not include them. If FINRA is concerned that fund redemptions and related distributions represent withdrawals from the account, thus presenting a greater fraud risk, SIFMA emphasizes again that these concerns should be mitigated by the fact that such transactions are pre-authorized, regularly-scheduled and systemic in nature. SIFMA, therefore, respectfully renews its request in this regard and urges FINRA to exclude the above-described activity from the monthly account statement delivery requirement.

SIFMA also is concerned that proposed Rule 2231(c)(3), which provides that members may rely on an exclusion in paragraph (c) "only if customers are provided access to current account information on their accounts via the Internet *and* by telephone," will substantially reduce the availability of the passive activity exclusions. We understand that, as a policy matter, FINRA wants customers to have ready access to their account information in order for member firms to be permitted to suppress the monthly statement and SIFMA fully supports the need for investor transparency. However, we respectfully submit that providing customers with access to such information *either* via the Internet *or* by telephone should suffice for these purposes, and would better accommodate the variety of size, structure and technology platforms among FINRA member firms.

In addition, we assume that what FINRA intends with this provision is to require that members *make available as an option* to customers online access to current account information, rather than requiring that customers actually "activate" or "enroll" online access for their accounts. If that was not FINRA's intention with this provision, the costs associated with this provision would be enormous.[4]

[4] We note that, for FINRA member firms with certain business models, "adoption rates" for online account access and electronic delivery of statements is relatively low. By way of example, one firm notes that only 11% of the approximately 5 million customer accounts it custodies have opted to receive statements electronically and only 40% of such customers have opted to view accounts online. If FINRA intended to condition the availability of the exemptions in the Rule on online account enrollment or activation, the Rule would result in 60% more account statements being printed and mailed monthly, instead of quarterly. For just the one firm in this example, this would equate to the mailing of an additional 925,000 statements per month, resulting in 7.4 million additional statements per year, at an additional annual cost of $5.7 million.

Accordingly, we respectfully submit that proposed Rule 2231(c)(3) be revised to read as follows:

> "A member may rely on an exclusion. . . .only if the member makes available to its customers the option to access current account information via the Internet or by telephone."

SIFMA also seeks confirmation that, for purposes of proposed Rule 2231(c), a clearing firm is permitted to rely on its introducing firm "clients" to satisfy the conditions to the exclusions from monthly delivery of account statements, including but not limited to: disclosing the fees and charges contemplated under (c)(2)(D); making available current account information via the Internet or telephone under (c)(3); and receiving written instructions for sending account statements and other account communications to other persons or entities under Supplementary Material .02. This would be consistent with the well established roles and responsibilities of introducing firms and clearing firms in the securities industry. We further request that FINRA specifically state in Rule 2231(c) or Supplementary Material that nothing in this Rule is intended to alter the allocation of responsibilities between a clearing firm and introducing broker-dealers as agreed to in fully-disclosed clearing agreements, amendments, related documents, or under course of conduct.

B. Bank Sweep Activity

Proposed FINRA Rule 2231(c)(2)(C) would exclude from the monthly account statement delivery requirement the following account activity: "the transfer of uninvested customer credit balances into or out of money market mutual funds or bank deposits pursuant to a 'sweep program' pursuant to consent of the customer and implemented consistent with applicable regulatory guidance, *except where the customer's balance in the bank deposit "sweep program" during the period exceeds the amount insured by the FDIC coverage.*" (Emphasis added). Although SIFMA greatly appreciates FINRA acknowledging that routine sweep account activity is not the type of account activity that should trigger a monthly statement, we believe the proposed limitation, for those instances in which the customer's bank sweep program balance exceeds applicable FDIC insurance limitations, should be deleted from the Rule.

SIFMA understands from its member firms that tying the generation or suppression of customer account statements to cash balances held in a customer's specific bank sweep account would be complex and would require significant and costly technology development enhancements to firms' systems. We understand that typical firm statement systems today are unable to generate or suppress statements based on the balances held in bank sweep deposit accounts, but rather would need to receive a file of accounts to include or exclude based on the balances and then apply "logic" to generate/suppress statements. The logic required to do this does not exist currently and would need to be developed and tested. We also understand that firms would need to create the necessary files to feed the

statement systems once the logic is built, although creating the file is a simpler task. We understand from one firm that the development work required to build the logic and create the file would take six months to implement and test – and this would only permit generation/suppression of statements by reviewing balances at the account level.

Even if firms were to make the necessary systems changes to trigger statements based on the balance a particular account has in a bank deposit account under a sweep program, however, SIFMA believes this approach could be potentially misleading to customers because the calculation in many cases simply could not take account of the complicated aggregation rules of FDIC insurance. Under the FDIC insurance regime, all of a person's deposits held in each ownership category must be aggregated for purposes of applying the coverage limitation. As such, if a client has multiple sweep accounts held in the same right and capacity, the deposit account balances must be counted together for FDIC insurance purposes. In addition, trust accounts are treated separately and the FDIC coverage varies depending on the type of trust and the number of beneficiaries, and in some cases, their proportionate interest. Beyond sweep deposits, to determine FDIC coverage, a firm also would need to review CDs and other deposits the client holds with the same bank. If the sweep bank is one that permits clients to open deposit accounts directly, such accounts also would affect the determination of a client's FDIC coverage and the broker-dealer in many cases will not have access to this information. Although registered representatives may help a client analyze the FDIC coverage applicable to all the accounts a client and the other members of the client's household maintain, systematically tracking this information in a way that would permit firms to generate or suppress account statements is simply not possible in many cases.

The Rule as proposed would require firms to expend significant amounts of time and money to implement systems that monitor and calculate bank deposits and provide notice, in the form of an account statement, to customers that *may have* exceeded FDIC coverage limits when such requirements are not imposed by any regulations governing the activities of the banks that are in receipt of the deposits. In fact, although the FDIC provides tools to assist depositors in determining whether or not they have exceeded the limits, it does not require that such calculations be performed, or notices be sent that the limits have been exceeded, by the banks which it insures. Such calculations are recognized as the responsibility of each depositor. Moreover, a monthly account statement, being nothing more than a report of the condition of an account at a specific point in time that, by necessity, is not received at least until several days after that point in time has passed, is not the best or most effective means of communicating the information that coverage limits may have been exceeded.[5] For example, as bank sweeps occur whenever there is a free credit balance in the brokerage account, the receipt of funds in the account, including the receipt of interest and dividends, at the end of one statement period (which pursuant to

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[5] We discuss below that FINRA should consider a broad investor education initiative on this point. *See* Section VII, "Opportunity for Investor Education," *infra*.

the proposed rule is an activity that by itself would not require delivery of a monthly statement), would require a statement to be delivered if the swept cash might cause an excessive amount to be on deposit at the bank, even if the funds that had been received are invested on the first day of the following statement period. Rather than the statement providing helpful information to the customer, it is more likely to generate confusion.

For the above reasons, we believe that the Rule requires much of broker-dealers in order to provide something that would be of very limited utility for customers. We believe that prominent disclosure on customer account statements and applicable website pages that uninvested cash amounts in excess of applicable FDIC insurance coverage limits are uninsured, along with compliance with the existing regulatory guidance on the use of bank sweep programs,[6] should be sufficient for customers to make an informed decision about whether to reduce the cash balance of their bank sweep accounts. Furthermore, we note that members may rely on this exclusion to provide statements quarterly instead of monthly only when customers are provided current information on customer accounts via the Internet and by telephone.[7] Accordingly, customers of firms relying on this exception already would have immediate access to this cash balance information.

II. Exclusion for Rule 10b-10 Activity

Proposed FINRA Rule 2231(c)(1) would permit quarterly account statements to be sent to customers instead of monthly account statements if "[t]he member relies on an appropriate rule, regulation, release, interpretation, 'no-action' position or exemption issued by the SEC or its staff that (A) specifically applies to the fact situation of the activity; (B) provides relief from the immediate transaction confirmation delivery requirements of SEC Rule 10b-10; and (C) permits quarterly delivery of customer account statements." SIFMA fully supports proposed Rule 2231(c)(1). However, proposed 2231(c)(3) provides that a member may rely on the exclusions in "this paragraph (c)" only if customers are provided access to current information on their accounts via the Internet and by telephone.[8]

SIFMA does not believe this condition should apply to the exclusion in paragraph (c)(1) for quarterly statements furnished by members pursuant to SEC guidance. Without exception, the SEC guidance upon which the member would be relying already would impose whatever conditions the SEC or its staff felt appropriate; indeed, FINRA

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[6] *See* NYSE Information Memo 05-11 (February 15, 2005). *See also* Securities Exchange Act Release No. 55431, 72 Federal Register 12862 (March 19, 2007) (proposing SEC Rule 15c3-3(j)).

[7] As noted above, SIFMA believes this condition should be revised to permit reliance on this and the other passive activity exclusions when customers are provided the option to access current information on their accounts *either* via the Internet *or* by telephone.

[8] *Id*.

specifically states in proposed Supplementary Material .01 that members remain subject to any conditions imposed by such guidance and that "FINRA Rule 2231 is not intended to alter any such conditions or requirements."

SIFMA, therefore, respectfully requests that the rule text be amended to make clear that the condition in proposed paragraph (c)(3) apply only to the "passive activity" exclusions in paragraph (c)(2) and not the exclusion for quarterly statements under existing SEC dispensations in paragraph (1).

III. Transmission of Statements to Other Persons or Entities

Proposed Supplementary Material .02, Transmission of Customer Account Statements to Other Persons or Entities, provides that "[e]xcept as required to comply with NASD Rule 3050 and Incorporated NYSE Rule 407, a member may not address and/or send account statements or other communications relating to a customer's account to other persons or entities, unless (a) the customer has provided written instructions to the member to send such statements or communications to such person or entity; and (b) the member continues to send such statements or communications, monthly or quarterly as applicable in accordance with this Rule, directly to the customer either in paper format or electronically as provided in Supplementary Material .03 below."

Although SIFMA appreciates that FINRA has clarified that members are not required to obtain the written consent of the customer before sending duplicate statements and other communications pursuant to NASD Rule 3050 and NYSE Rule 407, SIFMA believes this exception should be broadened under the same logic to permit members to send duplicates to an employer that is a Registered Investment Company or Registered Investment Adviser, both of which are also required to obtain this information about their associated persons' personal securities dealings pursuant to Rule 17j-1 under the Investment Company Act of 1940 and the provisions of an investment adviser's code of ethics as required by Rule 204A-1 under the Investment Advisers Act of 1940, respectively.

SIFMA also is very concerned about the impact of the new requirement in proposed Supplementary Material .02 (b) that requires members to continue to send account statements or other account communications to the customer directly, even when the customer has provided written instructions to send such account documentation to a third party. We believe that the approach of Incorporated NYSE Rule 409(b) has served both the investing public and the industry quite well and SIFMA is unaware of any problems in this area that would justify such a substantial and costly expansion of account statement delivery obligations. The cost burdens associated with this new requirement would be

particularly severe for member firms where customers have not elected to receive electronic account communications.[9]

Moreover, we believe that imposing an obligation to send sensitive customer information to the customer's address in all cases may in fact increase the risk of breaches of customer confidentiality and worse yet potential fraudulent account activity. For example, an elderly customer living in a nursing home may wish to send account statements and information directly to his or her attorney, as opposed to the nursing home or other permanent residence. Permitting the customer in this example to suppress delivery of statements to his or her address of record would enhance security of the account by greatly reducing the possibility that the account information would be intercepted by an unknown third party.

Accordingly, SIFMA respectfully requests that FINRA delete Supplementary Material .02 (b) from the proposed rule.

Alternatively, FINRA could model proposed Supplementary Material .02 after the requirements of Incorporated NYSE Rule 409(b) for accounts over which the customer has provided a power of attorney,[10] and set out the requirements of .02(a) and (b) disjunctively, thus providing firms with greater flexibility to comply with Rule.

If FINRA were to choose this route, Supplementary Material .02 could be revised to read:

> "Except as required to comply with NASD Rule 3050, Incorporated NYSE Rule 407, Rule 17j-1 under the Investment Company Act of 1940, and the provisions of an investment adviser's code of ethics as required by Rule 204A-1 under the Investment Advisers Act of 1940, a member may not address or send account statements or other communications relating to a customer's account to other persons or entities, unless (a) the customer has provided written instructions to the member to send such statements or communications to such person or entity; or (b) the member continues to send such statements or communications, monthly or

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[9] We note that one firm estimates that 500,000 of 5 million (or 10%) of customer statements are sent to an address other than the legal address of record for the account. Following the example in footnote 4 above, if only 11% of customers have consented to electronic delivery of statements, this could increase statement mailings by 89% for this 10% subset of accounts for both the monthly and quarterly statements cycle. This would translate to increased overall annual statement delivery costs of 8.9% (10% *.89). The firm with 5 million customer accounts sends an average of 34 million statements annually. Therefore, this would add an estimated additional 3 million statements per year, at a cost of $2.3 million.

[10] Incorporated NYSE Rule 409(b)(1) permits member first to send confirmations, statements or other communications in care of a person holding power of attorney over the account if: (A) the customer has instructed the member organization in writing to send confirmations, statements or other communications in care of such person; *or* (B) duplicate copies are sent to the customer at some other address designated in writing by him. (Emphasis added).

> quarterly as applicable in accordance with this Rule, directly to the customer either in paper format or electronically as provided in Supplementary Material .03 below.

This simple change would permit member firms to continue to honor the requests of their customers to direct account communications to a trusted adviser or attorney-in-fact and avoid the additional costs and potential account security concerns associated with sending account communications to the customer's address of record, even when the customer has designated a third party to receive them.[11]

However, if FINRA seeks approval for Supplementary Material .02 in any form, SIFMA strongly urges FINRA to make clear that the Rule only has prospective application and does not apply retroactively, thereby permitting firms to continue to rely on oral instructions provided by customers under the current regulatory regime prior to the Rule's effective date. This would avoid the burdensome exercise of reviewing and "remediating" existing accounts for which written instructions to address account statements and other account communications to a third party may not have been received, or for which duplicate statements are not sent to customers who have provided written instructions that their statements be sent to third parties in their place, both in reliance upon and in accordance with Incorporated NYSE Rule 409(b). SIFMA firmly believes that imposing such a regulatory cost on member firms is not warranted in this case where no evidence has been presented that the current regulatory regime has been anything less than effective.

Finally, SIFMA asks that FINRA bring to the attention of introducing firm members the impact of the proposed rule change on their obligations. In particular, introducing firms are in the best position to know the customer and, as long recognized through contract and in practice, and as permitted under FINRA Rule 4311, introducing firms are typically allocated the responsibility for opening accounts as well as maintaining and updating customer addresses, which of course ultimately drive the delivery of account statements.

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[11] We note that proposed FINRA Rule 3150 has the potential to intersect with this aspect of the Proposal insofar as member firms regularly receive requests from clients to send statements to third parties that are trusted agents for receipt of mail purposes. For example, this often happens in jurisdictions where mail delivery is not secure and poses security concerns for the customer and where the customer will appoint a local agent to receive his or her mail. Though cited as an acceptable reason for a "hold mail" request in Proposed Rule 3150, the arrangements described above are not by definition "hold mail" arrangements as the mail is actually delivered to the customer's agent as requested, for further delivery to the client. We note that, while such parties represent trusted "locations" for receipt of mail (as evidenced by the client instruction), such parties do not generally hold a power of attorney ("POA") over the account. We maintain that such arrangements should be permitted with written customer instruction as it would pose substantial issues in terms of managing customer expectations, as well as posing substantial implementation challenges if such arrangements could only be established under a formal POA arrangement. If a customer instruction to hold mail for an acceptable reason is enough to suppress the delivery of statements entirely, a similar instruction by a customer to deliver mail directly to a third-party for legitimate and acceptable reasons should also be sufficient. Under such circumstances as described in the example, requiring that duplicates be sent to the account holder would, in most instances, frustrate the purposes underlying the customer's instruction.

FINRA may wish to confirm the obligations of the introducing firm community in this regard in the Regulatory Notice announcing the final rule's adoption and effective date.

IV. Employee Retirement Plans

As SIFMA described in its First Comment Letter, unlike in some other brokerage contexts, monthly reporting would be a significant change from the quarterly reporting standard commonly used today for some employer-sponsored retirement plans. While many transactions effected by general securities members for retirement plans and plan participants are recurring in nature and qualify as 10b-10(b) exempt activity, such as transactions resulting from the regular, periodic contributions the participant makes to his retirement plan account, not all transactions fall into this category. Non-exempt broker-dealer activity that is not accepted as passive activity, such as participant allocation changes, or rebalancing among the plan investment options, would continue to require monthly reporting.

As a result, under the proposed rule change, plan participants would receive quarterly statements with respect to recurring transactions qualifying as 10b-10 exempt activity, while receiving both immediate confirmations and monthly statements for non-exempt activity and non-passive activity. This would create an awkward, bifurcated approach to statement reporting that will surely confuse plan participants. Additionally, it would require systems changes for general securities members to recognize the various transaction trigger points for statements (monthly vs. quarterly), which would be time-consuming and expensive.[12] Moreover, there are important characteristics that distinguish an employer-sponsored retirement plan account from a retail brokerage account and thus make quarterly statements a more sensible alternative. Unlike a retail brokerage account, through which customers generally have the ability to invest in an expansive array of investments, plan participants typically must choose from a limited pre-set menu of investment options selected by the plan sponsor. The investment options commonly consist of mutual funds and/or variable annuities. Additionally, plan rules and the Internal Revenue Code generally restrict withdrawals outside of limited instances such as demonstrated hardship withdrawals or upon retirement.

Accordingly, SIFMA respectfully urges FINRA to adopt a general exclusion to be incorporated in paragraph (c) as follows:

> "The activity is a transaction effected for an employer-sponsored retirement plan with respect to which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts in such plan, other than

[12] One member firm estimates the costs of developing the capability to provide monthly statements just for certain isolated transactions will exceed one million dollars.

> transactions in "brokerage windows," "self-directed brokerage accounts," or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan sponsor."

FINRA could then define in supplementary material:

> The term "employer-sponsored retirement plan" means employee pension plans covered by the Employee Retirement Income Securities Act of 1974, as amended, plans described in Internal Revenue Code ("IRC") sections 401(a), 401(k), 403(b), 408(k), 408(p)), 415(m) or 457(b), government and church plans defined in IRC section 414, deferred compensation plans of state and local governments and tax-exempt organizations under IRC section 457(f) (and similar workplace savings plans authorized under the IRC) and nonqualified deferred compensation arrangements established or maintained by employers or plan sponsors, as well as any investment alternatives designated by such plans into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts (but excludes "brokerage windows," "self-directed brokerage accounts," or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan).[13]

So-called "brokerage windows," "self directed brokerage accounts," and similar arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan have not been excluded from the monthly account statement delivery requirement. Such accounts allow the participant to invest in a wide variety of investments that are not typically pre-screened by the plan. Participant assets invested in a brokerage window option are held in a brokerage account individually titled in the name of the plan for the specific benefit of the participant. We recognize therefore that, as a policy matter, there is no reason to distinguish these types of arrangements from standard retail brokerage accounts for purposes of the frequency of account statement delivery.

V. DVP/RVP Accounts

Proposed FINRA Rule 2231(b) provides that account statements need not be sent to a customer pursuant to proposed FINRA Rule 2231(a) if, among other conditions, the

[13] This definition is modeled after the concept of a designated investment alternative that is set forth in the recent Department of Labor ("DOL") regulation governing participant disclosures. Under this regulation, a "designated investment alternative" is defined as "any investment alternative designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term 'designated investment alternative' shall not include 'brokerage windows,' 'self directed brokerage accounts,' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan. (*See* DOL Regulation § 2550.404-a-5(h)(4)). This concept is equally applicable to employer sponsored retirement plans not subject to ERISA and, therefore, we have tailored our proposed Supplementary Material definition of "employer sponsored retirement plan" accordingly.

"customer" consents to the suspension of such statements in writing. SIFMA wishes to confirm that members may treat an institutional customer trading pursuant to discretionary authority in the DVP/RVP account or the authorized person or institution that opened the account as the "customer" for these purposes and collect and maintain the consents from such institutions, instead of the underlying customers.

VI. Address Unknown Accounts

SIFMA also requests that FINRA include a new exception from the general requirements of Rule 2231(a) for those accounts that a member firm has identified as "address unknown" or "undeliverable mail" accounts as described below. When a member firm determines that mail is undeliverable, it is a common industry practice to take measures aimed at protecting client privacy and guarding against identity theft and to comply with the abandoned property laws of all U.S. states and territories, including suspending delivery of statements and other communications. In addition, the SEC has proposed amendments to Exchange Act Rule 17Ad-17, among others, to require brokers and dealers to conduct searches for lost securityholders, who are defined to include persons to whom account statements are returned in two consecutive periods.[14] Statement delivery to the incorrect address of lost securityholders serves no useful purpose and poses the risk that account information will be intercepted by an unknown third party or become lost in the mail, and that member firms may lose track of such information in view of the volumes of returned mail involved. SIFMA, therefore, requests that FINRA clarify that firms are not required to deliver statements to lost securityholders when a statement is returned for two consecutive periods, provided that firms follow the procedures otherwise applicable under abandoned property laws and any applicable requirements of Rule 17Ad-17.

VII. Implementation

We note that FINRA has set an implementation date that will be "no later than 365 days following Commission approval" of the proposed rules. If FINRA Rule 2231 is adopted as proposed it will require significant changes to systems and operational procedures that

[14] The amendment implements Section 929W of the Dodd-Frank Act which directs the SEC to revise Rule 17ad-17 ("Transfer Agents' Obligation to Search for Lost Securityholders"). A lost securityholder is defined in Rule 17Ad-17(b)(2) to mean "a securityholder: (i) to whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the resent item is returned as undeliverable; and (ii) for whom the transfer agent has not received information regarding the securityholder's new address." In SIFMA's comment letter regarding the SEC's amendments to the lost securityholder Rule 17Ad-17, dated May 9, 2011, SIFMA proposed to limit the type of correspondence which triggers the "lost securityholder" designation to returned annual tax forms (*e.g.*, Forms 1099), returned checks, or account statements returned in two consecutive periods.

will require extensive efforts to comply with the new Rule.[15] Furthermore, the SEC has proposed revisions to Exchange Act Rule 17a-5 that will require clearing members to file a new Custody Form report asserting compliance with various reporting rules including those related to delivery of account statements.[16] These compliance reports will be subject to review by external auditors. In view of the substantial compliance efforts expected to be required in connection with adoption of the new rule and increased regulatory significance of these obligations arising under independent rulemaking, we urge FINRA to provide members with the benefit of at least a full one-year period.

VIII. Opportunity for Investor Education

Finally, as discussed throughout this letter, SIFMA believes that investor transparency is important and that online or telephonic access to account information can provide investors with information on account activities and balances that is, in fact, much more timely than that included on periodic account statements. Although member firms have sought to encourage customers to take advantage of such access and to increase the adoption rate for electronic communications, such adoption rates remain relatively low for certain business models. SIFMA believes that this rulemaking proceeding presents an opportunity for FINRA to educate investors more broadly (through the FINRA website, for example) about alternatives for accessing timely information regarding their accounts.

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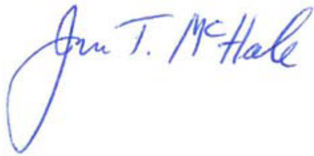
[15] *See e.g.*, notes 4, 9, and 12, *supra*.

[16] *See* Securities Exchange Act Release No. 64676, Broker-Dealer Reports, 76 *Federal Register* 37,572, at 37,590 (June 2, 2011).

SIFMA appreciates the opportunity to provide comments on the Proposal. We would be pleased to discuss the Proposal and our comments in greater detail with the SEC and its staff. If you have any comments or questions, please do not hesitate to contact me at (202) 962-7386 or jmchale@sifma.org.

Sincerely,



James T. McHale
Managing Director and Associate General Counsel

cc:

Ms. Lourdes Gonzalez, SEC
Mr. Marc Menchel, FINRA
Ms. Patrice Gliniecki, FINRA
Ms. Kosha Dalal, FINRA