



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
TRADING AND MARKETS

December 23, 2020

Stephanie R. Nicolas  
WilmerHale  
1875 Pennsylvania Avenue N.W.  
Washington, D.C. 20006

Re: **Status of Institutional Family Offices for Purposes of Regulation Best Interest, SEC File No. S7-07-18 (Sept. 10, 2019) and Form CRS Relationship Summary, SEC File No. S7-08-18 (Sept. 10, 2019).**

Dear Ms. Nicolas:

In your letter dated December 23, 2020,<sup>1</sup> (the "Request") on behalf of your client, the Securities Industry and Financial Markets Association, you request assurances that staff of Division of Trading and Markets (the "Staff") would not recommend that the Securities and Exchange Commission (the "Commission") take enforcement action against broker-dealers<sup>2</sup> that do not treat family offices<sup>3</sup> that qualify as "Institutional Family Offices" as "retail customers" for purposes of Regulation Best Interest ("Reg BI") when they make recommendations under the circumstances and based on the conditions described in your Request.<sup>4</sup> Similarly, you request that the Staff confirm that it would not recommend enforcement action

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<sup>1</sup> A copy of your Request is attached.

<sup>2</sup> The Request does not seek the Staff's views regarding investment advisers, including any broker-dealer that is also registered as an investment adviser and is acting in its capacity as an investment adviser.

<sup>3</sup> For purposes of this letter, a family office is a company (including its directors, partners, members, managers, trustees, and employees acting within the scope of their position or employment) that: (1) has no clients other than family clients; (2) is wholly-owned by family clients and is exclusively controlled (directly or indirectly) by one or more family members and/or family entities; and (3) does not hold itself out to the public as an investment adviser. Investment Advisers Act of 1940. Rule 202(a)(11)(G)-1.

<sup>4</sup> Each defined term in this letter has the same meaning as defined in your Request, unless we note otherwise.



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if broker-dealers do not treat Institutional Family Offices as “retail investors” for purposes of Form CRS requirements under the circumstances and based on the conditions described in your Request. This letter responds to your Request.

Based on the facts and representations set forth in your Request, and without necessarily concurring in your conclusions and analysis, the Staff will not recommend enforcement action to the Commission against broker-dealers that do not treat family offices that qualify as Institutional Family Offices as “retail customers” for purposes of Reg BI or as “retail investors” for purposes of Form CRS requirements.

The position of the Staff is based strictly on the facts and circumstances discussed in your Request, and any different facts or circumstances might require a different response.<sup>5</sup> Furthermore, this response expresses the Staff’s position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules. This position is subject to modification or revocation by the Staff at any time.

If you have any questions regarding this letter, please call me at (202) 551-5550.

Sincerely,

Russell, Emily

Digitally signed by Russell,  
Emily  
Date: 2020.12.23 13:09:03  
-05'00'

Emily Westerberg Russell  
Chief Counsel

Attachment

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<sup>5</sup> The Staff reminds firms that, under Section 29(a) of the Securities Exchange Act of 1934, a broker-dealer cannot waive compliance with Regulation Best Interest, nor can a retail customer agree to waive her protections under Regulation Best Interest.

Stephanie Nicolas

December 23, 2020

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***Via Electronic Mail***

Ms. Emily Westerberg Russell, Chief Counsel  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: Status of Institutional Family Offices for Purposes of Regulation  
Best Interest, SEC File No. S7-07-18 (Sept. 10, 2019) and Form CRS  
Relationship Summary, SEC File No. S7-08-18 (Sept. 10, 2019).**

Dear Ms. Russell:

On behalf of the Securities Industry and Financial Markets Association (“SIFMA”<sup>1</sup>), we request that the staff of the Division of Trading and Markets (“Staff”) confirm that it will not recommend that the Securities and Exchange Commission (“SEC” or “Commission”) take enforcement action under the Securities Exchange Act of 1934, as amended (“Exchange Act”) against broker-dealers<sup>2</sup> that do not treat family offices<sup>3</sup> that qualify as “Institutional Family Offices” (as defined below<sup>4</sup>) as “retail customers” for purposes of Regulation Best Interest

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<sup>1</sup> 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 the industry’s nearly 1 million employees, SIFMA advocates on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. SIFMA serves as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. SIFMA also provide a forum for industry policy and professional development. 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 <http://www.sifma.org>.

<sup>2</sup> This letter is not seeking the Staff’s views regarding investment advisers, including any broker-dealer that is also registered as an investment adviser and is acting in its capacity as an investment adviser.

<sup>3</sup> For purposes of this letter, a family office is a company (including its directors, partners, members, managers, trustees, and employees acting within the scope of their position or employment) that: (1) has no clients other than family clients; (2) is wholly-owned by family clients and is exclusively controlled (directly or indirectly) by one or more family members and/or family entities; and (3) does not hold itself out to the public as an investment adviser. See Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 (“Advisers Act”).

<sup>4</sup> At a high level, an “Institutional Family Office” is a family office that has one or more experienced securities or financial services professionals, manages total assets of \$50 million or more, does not rely on the broker-dealer for recommendations, and has professionals who are independent representatives of their family clients. See Section III of this letter.

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(“Reg BI”) under the circumstances and based on the conditions described below.

Similarly, we request that the Staff confirm that it will not recommend enforcement action if broker-dealers do not treat Institutional Family Offices as “retail investors” for purposes of Form CRS requirements under the circumstances and based on the conditions described below.

This request for relief is supported by the Private Investor Coalition (“PIC”), a nationwide organization consisting of single family offices who share a common interest in public policy issues impacting the single family office community.<sup>5</sup> A copy of PIC’s letter supporting this request is included as an exhibit to this letter.

## I. Background

### A. Definition of “Retail Customer” and “Retail Investor.”

Reg BI defines a “retail customer” as “a natural person, or the legal representative of such natural person who receives a recommendation of any securities transaction or investment strategy involving securities and uses the recommendation primarily for personal, family, or household purposes.”<sup>6</sup> Form CRS, in turn, defines a “retail investor” in a similar manner (*i.e.*, “a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family, or household purposes.”).<sup>7</sup> Reg BI and Form CRS Adopting Releases interpret the meaning of the term “legal representative” in these definitions.<sup>8</sup>

Notably, not all legal entities that represent the assets of natural persons are considered “retail customers” or “retail investors.” Instead, the Commission interpreted a “legal representative” of a natural person to be a “retail customer” or “retail investor” if that person is a non-professional legal representative (e.g., a non-professional trustee that represents the assets of a natural person and similar representatives such as executors, conservators, and persons holding a power of attorney for a natural person). The SEC clarified that the definition of “retail customer” or “retail investor” does not include regulated financial services industry professionals retained by

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<sup>5</sup> PIC describes itself as the recognized authority on legislative and regulatory issues affecting single family offices and as the primary resource for disseminating information on legislative, regulatory and compliance issues impacting single family offices. More information regarding PIC is available at <https://privateinvestorcoalition.com/>.

<sup>6</sup> Exchange Act Rule 15I-1(b)(1).

<sup>7</sup> General Instruction 11(E) to Form CRS.

<sup>8</sup> *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, SEC File No. S7-07-18 (Sept. 10, 2019) (“Reg BI Adopting Release”), at 110-119. *Form CRS Relationship Summary; Amendments to Form ADV*, SEC File No. S7-08-18 (Sept. 10, 2019) (“Form CRS Adopting Release”), at 189-201.

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natural persons to exercise independent professional judgment, such as registered investment advisers and broker-dealers, corporate fiduciaries (e.g., banks, trust companies and similar financial institutions) and insurance companies, and the employees or other regulated representatives of such advisers, broker-dealers, corporate fiduciaries and insurance companies.<sup>9</sup> As described below, family offices are subject to an exclusion from the Advisers Act; accordingly, family offices may not be considered “regulated financial services industry professionals” under the Commission’s interpretation of this phrase and thereby may fall under the definitions of “retail customer” and “retail investor.”

#### B. Statutory and Regulatory Treatment of Family Offices.

Family offices are legal entities established by wealthy families to manage their investments and provide other services, such as tax and estate planning.<sup>10</sup> Family offices may only serve “family clients.”<sup>11</sup> Historically, family offices sought and obtained Commission orders under the Advisers Act declaring those offices not to be investment advisers within the intent of the Advisers Act. The Commission reasoned that disputes among family members concerning the operation of the family office could be resolved within the family unit or, if necessary, through state courts under laws designed to govern family disputes. Congress recognized this practice and in the Dodd-Frank Act amended the Advisers Act to exclude family offices from regulation under the Advisers Act, instructing the Commission to define these excluded family offices “consistent with the previous exemptive policy” of the Commission and recognize “the range of organizational, management, and employment structures and arrangements employed by family offices.”<sup>12</sup>

But for the exclusion created by Congress, family offices and their personnel generally would meet the definition of “investment adviser” in Section 202(a)(11) of the Advisers Act because they are engaged in the business of providing advice about securities for compensation. This exclusion allows family offices to operate without being subject to the Advisers Act (including registration requirements). If family offices were subject to the Advisers Act, they would fall within the Commission’s interpretation of “professional legal representatives” of natural persons and therefore would not be covered by the definition of “retail customer” or “retail investor.” However, because family offices are not subject to the Advisers Act, they may

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<sup>9</sup> Reg BI Adopting Release, at 114. *See also* Form CRS Adopting Release, at 194-195.

<sup>10</sup> *See Family Office: A Small Entity Compliance Guide*, available at <https://www.sec.gov/rules/final/2011/ia-3220-secg.htm>.

<sup>11</sup> A “family client” is defined in Rule 202(a)(11)(G)-(1)(d)(4) under the Advisers Act and includes, among other persons, individual family members, estates, and trusts.

<sup>12</sup> Section 409(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

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be considered “non-professional legal representatives” of natural persons. Accordingly, absent the requested relief, broker-dealers would treat them as “retail customers” when making recommendations under Reg BI or “retail investors” when offering services under Form CRS. SIFMA believes that providing relief from the requirements of Reg BI and Form CRS to broker-dealers that provide recommendations or services to Institutional Family Offices recognizes Congress’s unique treatment of family offices and its determination to exclude family offices from regulation under the Advisers Act.

C. Institutional Family Office Interactions with Broker-Dealers.

Institutional Family Offices operate as institutional, and not retail customers in terms of their trading needs and the services they receive from broker-dealers. Specifically, staffed with their own financial services professionals, family offices do not receive the types of services that retail customers receive. Instead, they receive the institutional services that broker-dealers offer and interact as institutional investors. These differences in services reflect, in part, the significant amount of assets managed by family offices (i.e., \$50 million or more) and the nature of their investments and trades, which also may be significant in size.<sup>13</sup> For example, given their trading and investment needs, Institutional Family Offices may (i) be prime brokerage customers, (ii) have access to broker-dealers’ institutional-side order management systems that allow direct market access to exchanges and broker-dealer algorithms, and (iii) clear and settle their trades directly with broker-dealers and custodian firms through DTCC’s institutional trade processing services. Unlike retail customers, Institutional Family Offices may be customers of broker-dealers’ institutional sales and trading desks, have direct access to institutional traders and market makers, and receive market and trader commentary regarding products such as swaps, volatility trades, and exotic options that are not generally available to retail customers. Also, unlike retail customers, Institutional Family Offices may receive market color, trade ideas, and investment opportunities from multiple broker-dealers’ institutional sales and trading desks.

Like many institutional investors, Institutional Family Offices may have large or concentrated positions that they may seek to hedge through customized OTC derivatives or other hedges. Broker-dealers may offer tailored solutions to Institutional Family Offices and other institutional investors for these hedging needs. Institutional Family Offices also may want to participate in less conventional investment opportunities that are not available to retail investors, such as private equity investments, other private offerings and structured products. Some of these opportunities may be customized for the Institutional Family Office, such as a customized

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<sup>13</sup> Broker-dealers historically considered family office customers with assets of \$50 million or more as “institutional customers”, which is the threshold under FINRA’s definition of “institutional investor” and “institutional account” in FINRA Rules 2210(a)(4) and 4512(c)(3), respectively and is the threshold under the definition of “institutional counterparty” for purposes of determining which customers require customer-specific suitability obligations under the SEC’s security-based swap dealer business conduct standards rule, Exchange Act Rule 15Fh-3.

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structured product. These investment opportunities are only available to broker-dealers' most sophisticated customers who understand and can independently evaluate the risks they entail.

## **II. Need for Requested Relief**

While Institutional Family Offices make their own, independent investment decisions, there is concern that certain communications between broker-dealers and their Institutional Family Office customers may trigger Reg BI given that the definition of "recommendation" has been broadly defined as a "call to action" under federal securities laws. Additionally, the more individually tailored a communication is, the more likely it is to be viewed as a recommendation.

Accordingly, our requested relief from Reg BI and Form CRS requirements for these Institutional Family Offices is important in order to provide clarity to broker-dealers. It is also necessary because, without this requested relief, broker-dealers will likely reduce or eliminate the products or services they provide to Institutional Family Offices. To this end, many of the products and services provided by broker-dealers to Institutional Family Offices are only available to institutional customers and would not be available to "retail customers" or "retail investors" given their different trading and investment needs. SIFMA, along with the Private Investor Coalition, believe that this relief is important to avoid a reduction or elimination of the products or services that broker-dealers provide to Institutional Family Offices. In fact, we understand that some PIC members have already reported that certain product offerings and services have been reduced as a consequence of Reg BI.

## **III. Rationale and Conditions for Requested Relief to Permit Broker-Dealers to Treat Institutional Family Office Customers as Institutional Customers, rather than "Retail Customers" or "Retail Investors"**

SIFMA requests no-action relief from the requirements of Reg BI and Form CRS for broker-dealers that do not treat Institutional Family Offices as retail customers or retail investors. SIFMA believes no-action relief is appropriate because these entities operate as institutional investors and are distinguishable from those family offices that operate as retail customers or retail investors because of their (A) professional experience, (B) size, and (C) independent judgment. Moreover, providing relief to broker-dealers that provide services to Institutional Family Offices from the requirements of Reg BI and Form CRS recognizes the Congressional determination to exclude family offices from regulation under the Advisers Act.

With regard to (A), we believe it is necessary to distinguish family offices that have retained experienced financial services professionals from those that have not.<sup>14</sup> We believe that

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<sup>14</sup> Institutional Family Offices may retain financial services professionals through a variety of compensation and

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Institutional Family Offices should be considered *professionals* because they are in the business of acting as agents and advisers for their family clients; they are paid to manage their family clients' investments. They are *financial services professionals* because they are engaged in the business of managing securities investments. The family clients have hired and rely on the family office – and not the broker-dealer – to manage their investments. Finally, they are *sophisticated and experienced* based on the conditions for qualifying as an Institutional Family Office described below.

SIFMA recognizes that family offices and their staff are not professionals who are registered with the SEC or regulated under the Advisers Act more broadly. That being said, SIFMA believes it is appropriate to treat Institutional Family Offices as financial services professionals who are not “retail customers” or “retail investors” because, as noted above, they are not subject to the Advisers Act due to a Congressionally mandated exclusion.

With regard to (B), U.S. securities regulators have recognized size as a factor that distinguishes institutional investors from retail investors or retail customers, with assets being indicative of size. While we acknowledge that Reg BI and Form CRS do not define “retail customers” or “retail investors” based on an asset test, we believe such a test is useful in distinguishing those family offices that operate as Institutional Family Offices that seek a broker-dealer's institutional services, described above, from those that do not. To this end, the SEC recently defined “institutional counterparties” as persons with \$50 million or more of assets under management for purposes of determining which customers require customer-specific suitability obligations under its security-based swap dealer rule.<sup>15</sup>

With regard to (C), the SEC also made clear, in the Reg BI and Form CRS Adopting Releases, that not all legal representatives of natural persons (or entities representing the assets of natural persons) are considered “retail customers” or “retail investors.” Specifically, the Reg BI Adopting Release emphasizes that the regulation was intended to capture persons who rely directly on a broker-dealer for a recommendation: “Our definition is intended to capture natural persons and their legal representatives who rely directly on the broker-dealer for the recommendation.”<sup>16</sup> Because Institutional Family Offices exercise independent judgement and do not rely on broker-dealers for recommendations, SIFMA believes the requested relief is

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benefit arrangements, including as both “employees” or “independent contractors” as those terms are defined by applicable employment law.

<sup>15</sup> *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, SEC File No. S7-25-11 (Apr. 14, 2016), at 162, 646.

<sup>16</sup> Reg BI Adopting Release, at 114. *See also* Form CRS Adopting Release, at 195-196: “We agree with these commenters that delivery of the relationship summary to such regulated financial services professionals retained by natural persons to exercise independent judgment will not further our objective of facilitating retail investors’ understanding of their account choices.”

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appropriate and consistent with the objectives of Reg BI.

Based on the above, SIFMA seeks the Staff's assurance that it will not recommend enforcement action if a broker-dealer makes recommendations to Institutional Family Offices, without treating these investors as "retail customers" for purposes of Reg BI, subject to the conditions set forth in items (A)-(D) below. SIFMA also seeks the Staff's assurance that it will not recommend enforcement action if a broker-dealer provides services to Institutional Family Offices without treating these investors as "retail investors" for purposes of Form CRS, subject to the conditions set forth in items (A)-(D) below.

A. The Broker-Dealer Has a Reasonable Basis To Believe the Family Office Has Employed One or More Experienced Securities or Financial Services Professionals.

For a family office to qualify as an Institutional Family Office, the broker-dealer must have a reasonable basis to believe (i) the family office has employed<sup>17</sup> one or more persons who are experienced in the securities industry or investment-related fields (including experience gained at a family office); and (ii) any professionals who are identified to satisfy this condition are not subject to a "statutory disqualification" (as defined in Section 3(a)(39) of the Exchange Act or sanctions pursuant to Section 203(e) of the Advisers Act). In determining whether a family office employs experienced securities or financial services professionals, a broker-dealer must consider a variety of factors, including at a minimum, the following:

- the length and quality of such person's experience in or engaging with the securities industry or investment-related fields;
- the person's registration history (if any) with a self-regulatory organization or governmental agency and any other exams taken, such as those for certified financial planner or chartered financial analyst, that relate to the securities or the financial services industry;
- the person's education and/or professional credentials relevant to the securities or financial services industry, including experience advising on investment transactions or portfolio construction and/or analysis; and

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<sup>17</sup> We use the term "employ" here to mean hire, retain, use, or engage for services. The professional does not need to be an employee of the family office for purposes of employment law because different family offices have different organizational structures and the legal employer of a professional may not be a family office, but rather a different legal entity within the organizational structure.

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- whether the family office has retained any persons who are non-family members and the number of personnel retained by the family office.

For example, under this standard, we believe a broker-dealer could form a reasonable basis to believe that family office has retained one or more experienced securities or financial services professionals if the family office has retained personnel with at least five (5) years of experience: (i) as a licensed securities industry professional (with FINRA or another self-regulatory organization or governmental agency), (ii) in securities or investment-related fields, including time served with a family office, or (iii) in another position advising clients on securities or investment transactions, portfolio construction and/or portfolio analysis.<sup>18</sup> We note that FINRA considers several of the above factors when deciding to grant waivers or exemptions from its registration and qualification requirements.<sup>19</sup> We similarly believe these factors are appropriate indicators of sophistication and expertise for purposes of differentiating between family offices that are “institutional” in nature and those that should be treated as “retail” customers or investors for purposes of Reg BI and Form CRS.

B. The Broker-Dealer Has a Reasonable Basis to Believe the Family Office Manages a Significant Amount of Total Assets That Are Indicative of an “Institutional Account.”

To qualify as an Institutional Family Office, a family office also must have assets under management that are institutional in size. Specifically, the family office must manage total assets of \$50 million or more.

C. The Broker-Dealer Has a Reasonable Basis To Believe the Family Office Is Not Relying on the Broker-Dealer for Any Recommendations and Is Acting Independently of the Broker-Dealer.

In communicating about a specific security or investment strategy, the broker-dealer will treat as its customer the Institutional Family Office entity rather than any particular natural person family client, company or other investment vehicle managed by the Institutional Family

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<sup>18</sup> We expect registrants could determine Institutional Family Offices have retained experienced securities or financial services professionals with less experience, or require more experience, in each case depending on the particular facts and circumstances.

<sup>19</sup> Qualification Exam Waivers and Exemptions, FINRA (last accessed June 29, 2020), *available at* <https://www.finra.org/registration-exams-ce/qualification-exams/exam-waivers-and-exemptions>. Specifically, FINRA considers (i) the length and quality of the employees’ securities industry experience or professional experience in investment-related fields; (ii) the employees’ registration history; and (iii) other exams taken by employees, such as those for certified financial planner or chartered financial analyst that may be acceptable substitutes in conjunction with experience.

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Office. To qualify as an Institutional Family Office, a family office must acknowledge that:<sup>20</sup>

- it is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities;
- it will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons;
- it is a sophisticated investor with knowledge of and experience with regard to the securities or investment strategies involving a security or securities it trades or implements with the broker-dealer (if any);
- the family office professionals responsible for investment decisions have not and will not accept any compensation or items of value from the broker-dealer that would cause the professional to act in a manner that is inconsistent with the best interest of the family clients; and
- the family office meets the definition of “family office” under Advisers Act Rule 202(a)(11)(G)-1.

This last point is significant because, but for an exclusion provided by Congress, entities that qualify as “family offices” would meet the definition of “investment adviser” and would be considered “regulated financial services professionals” who are not retail customers for purposes of Reg BI or retail investors for purposes of Form CRS. By excluding Institutional Family Offices from coverage under Reg BI and Form CRS, the Staff would be recognizing the exclusion that Congress provided.

D. The Broker-Dealer Establishes, Maintains, and Enforces Reasonably Designed Policies and Procedures and Will Maintain Records Demonstrating Compliance with the Terms of This Relief.

Finally, as a condition for relying on this relief, a broker-dealer shall establish policies and procedures that are reasonably designed to comply with the terms of any granted relief and shall maintain records demonstrating compliance with the terms of the relief. To demonstrate that conditions (A)-(B) have been satisfied, a broker-dealer may rely on a variety of reasonably designed processes, such as obtaining written representations from the Institutional Family Office or obtaining and documenting verbal representations from the Institutional Family Office (in either case, absent “red flags” indicating that the information obtained is inaccurate), or

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<sup>20</sup> This acknowledgement may be provided in writing, electronically, or verbally.

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relying on research conducted by the broker-dealer or information the broker-dealer obtained in the course of dealing with the Institutional Family Office.<sup>21</sup>

#### IV. Conclusion

For the reasons set forth above, SIFMA respectfully requests that the Staff confirm that it will not recommend enforcement action if a broker-dealer makes recommendations to Institutional Family Offices, without treating these investors as “retail customers,” subject to the conditions set forth above. We also request that the Staff confirm that it will not recommend enforcement action if a broker-dealer provides services to Institutional Family Offices without treating these investors as “retail investors” for purposes of Form CRS, subject to the conditions set forth above.

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We welcome the opportunity to discuss this request with you. If you have any questions, please feel free to call me at (202) 663-6825 or my colleague Aaron J. Friedman at (202) 663-6469. On behalf of SIFMA, we appreciate the Staff’s consideration of this request.

Yours truly,

/s/ *Stephanie Nicolas*

Stephanie Nicolas

cc: Sarah ten Siethoff, Associate Director, Division of Investment Management  
Kevin Carroll, Managing Director and Associate General Counsel, SIFMA  
Timothy P. Terry, Secretary, The Private Investor Coalition

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<sup>21</sup> Under Reg BI, as with the approach under FINRA’s suitability rule, broker-dealers may generally rely on a retail customer’s responses absent “red flags” indicating that the information is inaccurate. *See* Reg BI Adopting Release, at notes 612, 620 and accompanying text.

# Exhibit



December 23, 2020

Ms. Emily Westerberg Russell  
Chief Counsel  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: Status of Institutional Family Offices for Purposes of Regulation  
Best Interest, SEC File No. S7-07-18 (Sept. 10, 2019) and Form CRS  
Relationship Summary, SEC File No. S7-08-18 (Sept. 10, 2019).**

Dear Ms. Russell:

The Private Investor Coalition (“PIC”)<sup>1</sup> strongly supports the request, as outlined in that certain letter dated December 23, 2020 (the “SIFMA Letter”) submitted by WilmerHale on behalf of the Securities Industry and Financial Markets Association (“SIFMA”), that the staff of the Division of Trading and Markets (“Staff”) confirm that it will not recommend that the Securities and Exchange Commission take enforcement action under the Securities Exchange Act of 1934, as amended, against broker-dealers that do not treat family offices that qualify as “Institutional Family Offices” (as defined in the SIFMA Letter) as “retail customers” for purposes of Regulation Best Interest (“Reg BI”) when they make recommendations to Institutional Family Offices under the circumstances described in the SIFMA Letter. The SIFMA Letter also contains a similar request with respect to the delivery of Form CRS.

Single family offices (“SFOs”) have traditionally been treated by broker-dealers as institutional clients because SFOs have the sophistication and assets under management to warrant such treatment. However, since Regulation BI and Form CRS went into effect, many broker-dealers have begun treating SFOs, including Institutional Family Offices, as retail customers causing significant disruptions in the products and services offered by broker-dealers to many SFOs and, consequently, impeding the flow of capital into the marketplace. Following are specific examples of this disruption:

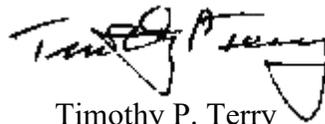
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<sup>1</sup> PIC is the recognized authority on legislative and regulatory issues affecting single family offices (“SFOs”) and serves as the primary resource for disseminating information on legislative, regulatory and compliance issues impacting SFOs.

- SFOs have been offboarded by a large, well known financial institution because that institution could not determine whether the SFOs were a “retail customer” for purposes of Regulation BI. That institution wanted no “foot faults” under the new regulation.
- An SFO reports that its broker-dealer denied its request to open accounts to participate in the Term Asset-Backed Securities Loan Facility (TALF)<sup>2</sup> which was reinitiated by the Federal Reserve in March 2020 to help in the recovery from the COVID-19 recession. During the recovery from the 2008 financial crisis, the SFO, working through this same broker-dealer, was the second largest buyer of SBA loans under the TALF program. Because of Regulation BI, this SFO is now unable to invest substantial capital in the ABS markets that would otherwise be available to help kickstart the current economic recovery through TALF which was specifically authorized by Congress and the Federal Reserve for this very purpose.
- Many SFOs have received institutional KYC documentation containing representations and warranties regarding their institutional status that they can no longer make due to Reg BI requirements. Consequently, new and existing account opening and maintenance has been complicated as SFOs work with their broker-dealers on proper account designations – retail customer or institutional client. Several SFOs have had to postpone investment opportunities or forego them altogether while working through this process.

In addition, PIC does not believe that Form CRS disclosures provide any material benefit to Institutional Family Offices and that requiring it be delivered to such Institutional Family Offices could lead to confusion and delay. For these reasons, as well as those outlined in the SIFMA Letter, PIC strongly encourages the Staff to provide the relief requested in the SIFMA Letter. PIC would be pleased to answer any questions you may have regarding the requested relief. Thank you for your attention to this matter.

Sincerely,



Timothy P. Terry  
Secretary

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<sup>2</sup> The Federal Reserve established the Term Asset-Backed Securities Loan Facility (TALF) on March 23, 2020 to support the flow of credit to consumers and businesses. The TALF will enable the issuance of asset-backed securities (ABS) backed by student loans, auto loans, credit card loans, loans guaranteed by the Small Business Administration (SBA), and certain other assets. See <https://www.federalreserve.gov/monetarypolicy/talf.htm>.