March 30, 2020

Kevin Zambrowicz
Managing Director and Associate General Counsel
Securities Industry and Financial Markets Association
120 Broadway, 35th Floor
New York, NY 10027-0080

Re: Request for No-Action Relief Regarding Certain Bank Sweep Receivables under Rule 15c3-1

Dear Mr. Zambrowicz:

The Capital Steering Committee of the Securities Industry and Financial Markets Association (“SIFMA”) has requested that the staff of the Division of Trading and Markets (“Staff”) not recommend enforcement action to the Securities and Exchange Commission (“Commission”) for non-compliance with Rule 15c3-1 under the Securities Exchange Act of 1934 (“Exchange Act”) if broker-dealers treat certain receivables resulting from bank sweep programs as allowable assets, as set forth more fully below.

Based upon our discussions, the Staff understands that under a “Sweep Program,” as defined in paragraph (a)(17) of Rule 15c3-3 under the Exchange Act, a broker or dealer may offer its customer the option to automatically transfer free credit balances in a securities account to a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) on a “pass-through” for the benefit of the broker-dealer’s customers. The staff understands further that a bank sweep account may be held at an affiliate bank of the broker-dealer or a third party bank. When a customer wishes to withdraw or otherwise transact using those funds, the broker-dealer instructs the bank to transfer money to the broker-dealer who then deposits the funds into the customer’s securities account. SIFMA has explained that there may be an operational lag between the timing of the customer’s request and when the funds are available for use by the customer. However, in order to provide a seamless customer experience, certain broker-dealers elect to fund the customer’s account before the bank transfers the money to the broker-dealer so the customer has immediate use of the money. SIFMA has explained that the prefunding of the customer’s account creates a receivable owed to the broker-dealer, which must be evaluated for net capital treatment under Rule 15c3-1 under the Exchange Act.1

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1 Your letter explains that the receivables discussed are considered on a ‘net’ basis (the extent that he receivable exceeds any payables to the bank that are also recorded as a part of these transactions).
Generally speaking, paragraph (c)(2)(iv)(B) of Rule 15c3-1 under the Exchange Act provides that a broker-dealer must deduct unsecured receivables from its net worth when measuring net capital. When a broker-dealer has instructed a bank to transfer funds from an FDIC insured sweep account to the broker-dealer’s account, the broker-dealer has created a bank deposit receivable with cash delivery generally expected within one business day. SIFMA has represented that there is no ability for the customer to access the FDIC insured bank sweep account directly and/or without going through the broker-dealer. Further, SIFMA asserts that given that the nature of the receivable is cash held on deposit in a bank account that can reasonably be expected to settle within one business day, this receivable should be considered readily convertible to cash in the same manner as if the funds were coming from a bank account of the broker-dealer. In our discussions, SIFMA has contended that this conclusion should not be affected if the bank is considered a parent or affiliate of the broker-dealer.

Based upon your representations and our discussions as have been memorialized above, the Staff will not recommend enforcement action to the Commission if a broker-dealer calculating net capital pursuant to Rule 15c3-1 under the Exchange Act treats a receivable from a bank account established as part of a Sweep Program as an allowable asset that is not deducted from net worth for net capital purposes under 15c3-1 for one business day from the date the receivable is created, provided that the following conditions are satisfied:

1) A net receivable is created through pre-funding of a customer’s brokerage account as part of an FDIC insured bank Sweep Program transaction, as defined above;

2) The net receivable arises from a receivable from an FDIC-insured bank for which a Sweep Program deposit account has been established;

3) The broker-dealer has a legally enforceable right to demand and receive payment of the receivable from that bank; and

4) There is no ability for the customer to access the FDIC insured bank sweep account directly and/or without going through the broker-dealer.

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2 For purposes of the Rule 15c3-3 Reserve Formula, a broker-dealer utilizing this Staff no-action position should treat any debit balance created in a customer’s account arising from a prepayment as set forth in Exhibit A – Item 10/08 (Customer Redemptions of Money Market Funds). See Interpretations of Financial and Operational Rules, Customer Protection – Reserves and Custody of Securities, at 2728 (available at: https://www.finra.org/sites/default/files/sea-rule-15c3-3-interpretations.pdf).
This Staff position is based on the facts you have presented and the representations you have made in your letter. Any different facts and circumstances from those set forth in this letter may require a different response. This response, furthermore, expresses the Staff’s position regarding enforcement action only and does not purport to express any legal conclusions on the question presented. The Staff expresses no view with respect to any other questions that the activities discussed above may raise, including the applicability of any other federal or state laws, or rules of a self-regulatory organization. This position is subject to modification or revocation at any time.

If you have any questions regarding this letter, please call me at (202) 551-5521, or Michael Macchiaroli at (202) 551-5525.

Sincerely,

Tom McGowan
Associate Director
Division of Trading and Markets

Cc: Yui Chan, Senior Director, FINRA