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

DIVISION OF
TRADING AND MARKETS

May 15, 2020

Kevin Zambrowicz
Managing Director and Associate General Counsel
Securities Industry and Financial Markets Association
120 Broadway, 35th Floor
New York, NY 10271

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

Dear Mr. Zambrowicz:

In your letter dated May 15, 2020, the Capital Steering Committee of the Securities Industry and Financial Markets Association ("SIFMA") requested that the staff of the Division of Trading and Markets ("Staff") not recommend enforcement action to the Securities and Exchange Commission ("Commission") regarding 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.[1]

Based upon SIFMA's letter, 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" basis for the benefit of the broker-dealer's customers. A bank sweep account may be held at an affiliate bank of the broker-dealer or a third party bank. As SIFMA explained in its letter, 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's letter 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, SIFMA's letter stated that, 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's letter 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 pursuant to Rule 15c3-1 under the Exchange Act.

[1] This letter supersedes, but does not otherwise alter the substance of, the letter from the Division of Trading and Markets to Mr. Kevin Zambrowicz, dated March 30, 2020.

Generally speaking, paragraph (c)(2)(iv) 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's letter 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 your letter, 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 the representations in your letter, 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 Rule 15c3-1 for one business day from the date the receivable is created, provided that:

1) A 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 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.[2]

[2] For purposes of the Rule 15c3-3 Reserve Formula, a broker-dealer utilizing this Staff no-action position should not include as a debit in the Reserve Formula the debit balances in customers' accounts arising from prepayments made by the broker-dealer on behalf of customers.

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,

THOMAS MCGOWAN

Digitally signed by THOMAS MCGOWAN
Date: 2020.05.15 12:45:38 -04'00'

Thomas K. McGowan
Associate Director
Division of Trading and Markets

Cc: Yui Chan, Senior Director, FINRA