



January 6, 2004

Via Facsimile

Mr. Michael Macchiaroli
Associate Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549

**Re: No Action Request under Broker-Dealer Customer Identification Rule
(31 C.F.R. § 103.122)**

Dear Mr. Macchiaroli:

The Securities Industry Association (“SIA”)¹ is submitting this request on behalf of its member firms for No Action relief with respect to the reliance provisions in the customer identification rule (“CIP Rule”) issued pursuant to Section 326 of the USA PATRIOT Act.² The CIP rule requires broker-dealers to adopt written customer identification programs (“CIP”) that include risk-based procedures for verifying the identity of each customer.

SIA requests that broker-dealers be able to rely on registered investment advisers to perform some or all of the CIP. To that end, we request that the Staff of the Division of Market Regulation confirm that it will not recommend enforcement action against a broker-dealer that, in compliance with the conditions set forth in this letter, relies on a registered investment adviser under 31 C.F.R. § 103.122(b)(6) to perform some or all of its customer identification obligations prior to the promulgation of a final rule under Section 352 of the USA PATRIOT Act requiring such registered investment adviser to adopt a formal anti-money laundering program.

¹ The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In the year 2001, the industry generated \$198 billion in U.S. revenue and \$358 billion in global revenues. Securities firms employ approximately 750,000 individuals in the United States (More information about the SIA is available on its home page: <http://www.sia.com>.)

² “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,” (“PATRIOT Act”) Pub. L. No. 107-56 (2001), signed into law by President Bush on October 26, 2001.

- **CIP Rule Requirements**

On April 29, 2003, the U.S. Securities and Exchange Commission and the U.S. Department of the Treasury jointly issued a final rule that requires broker-dealers to adopt written customer identification programs. (31 C.F.R. § 103.122) The CIP Rule provides that a broker-dealer is required to implement a CIP that has procedures for: (1) verifying the identities of customers; (2) maintaining records related to the identification and verification of customers; (3) determining whether a customer appears on a designated list of terrorists or terrorist organizations; and (4) providing customers with notice that information is being obtained to verify their identities.

Under paragraph (b)(6) of the CIP Rule, a firm may rely on certain other financial institutions to perform any of the required elements of the CIP for customers that are also customers of the other institution. A broker-dealer may rely on another financial institution if the following criteria are met: (1) reliance is reasonable; (2) the other financial institution is subject to the anti-money laundering compliance program requirements of Section 352 of the PATRIOT Act, and is regulated by a Federal functional regulator; and (3) the other financial institution enters into a contract requiring it to certify annually to the firm that it has implemented its anti-money laundering program and that it will perform the specified requirements of the CIP, as outlined above.

SIA believes strongly that the reliance provisions of the CIP Rule play an important and necessary role in effective anti-money laundering compliance because intermediary and shared business relationships are a common and legitimate part of the securities industry and U.S. capital markets. Such reliance, by permitting two financial institutions with the same customer to rely on one another to perform some or all of the CIP requirements, avoids duplication of efforts and inefficient allocation of significant resources.

- **Reliance on Registered Investment Advisers**

Many broker-dealers would like to rely on registered investment advisers under the CIP Rule to perform some or all of the CIP obligations with respect to customers with whom both have a client relationship. At present, such reliance would not be permitted under the CIP Rule because investment advisers are not yet subject to the anti-money laundering compliance program requirements of Section 352, although a proposed rule was issued in April 2003 by the Financial Crimes Enforcement Network (FinCEN) of the Department of Treasury. It is anticipated that a final rule will be promulgated in the near future, at which time broker-dealers will be able to rely on registered investment advisers.

However, we believe the interaction between broker-dealers and advisers is the type of relationship intended to be covered by the reliance provisions, and should be available immediately to firms in a position to undertake such reliance. This is because advisers often have the most direct relationship with the customers they introduce to broker-dealers and are best able to obtain the necessary documentation and information

from and about their customers. Moreover, investment advisers are often reluctant to share their client information because they view the other institution as their competitor. Therefore, investment advisers are in many situations, in the best position to perform some or all of the requirements of the CIP Rule. In fact, we believe some advisers have already implemented AML programs and may be in a position to enter into reliance contracts.

However, because advisers are not presently subject to an AML rule, broker-dealers will have to implement CIPs that do not permit reliance on investment advisers. Thereafter, when a final AML rule becomes effective for registered investment advisers, broker-dealers may have to make significant changes to their compliance systems. Given that investment advisers will likely soon qualify for reliance under the CIP Rule, it would be burdensome and add significant compliance costs to require broker-dealers to wait until the proposed investment adviser rule is finalized before they can rely on such advisers. Therefore, SIA requests that pending finalization of the proposed rules relating to investment advisers, broker-dealers be able to rely on investment advisers -- that will be covered by the final 352 rule -- under the reliance provisions of the 326 Rule to perform some or all of the CIP.

Under our proposal, broker-dealers may treat registered investment advisers as if they are subject to an AML Rule for the purposes of paragraph (b)(6) of the CIP Rule (31 C.F.R. § 103.122(b)(6)) only where: (1) reliance is on an investment adviser that has a Federal functional regulator; (2) the investment adviser enters into a contract with the broker-dealer requiring it to certify annually to the broker-dealer that it has implemented its own anti-money laundering program consistent with the PATRIOT Act; (3) the investment adviser is covered by the proposed AML rule for registered investment advisers; and (4) the investment adviser will perform (or its agent will perform) the requirements of its own CIP.

If such relief is granted and Treasury ultimately determines not to issue an AML Rule for advisers, we request that broker-dealers be permitted to continue relying on advisers under paragraph (b)(6) until thirty days after Treasury makes such a decision.

- **No Action Request**

On the basis of the foregoing, SIA respectfully requests that the Staff advise us that:

- The Staff of the Division of Market Regulation would not recommend that the Commission take enforcement action against a broker-dealer that relies on a registered investment adviser under the reliance provisions in 31 C.F.R. § 103.122(b)(6) to perform some or all of the required CIP elements.

If you wish to receive additional information related to this request, please feel free to contact the undersigned.

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel
Securities Industry Association
(202) 216-2000

cc: Randall Roy
U.S. Securities and Exchange Commission