

**Securities Industry Association**

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August 23, 1996

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: SEC Proposed Trading Practice Rules Concerning Securities Offerings,

Release Nos. 33-7282; 34-37094; File No. S7-11-96; 61 Fed. Register 17108.

Dear Mr. Katz:

The Federal Regulation Committee and the Capital Markets Committee of the Securities Industry Association ("SIA") submit this addendum to our July 16 comment letter to the Securities and Exchange Commission ("SEC" or "Commission") regarding the Commission's proposed Regulation M concerning trading practice rules governing securities offerings.

The purpose of this addendum is to expand on one critical point in our earlier letter. As we noted previously, while Regulation M generally marks a substantial improvement over the current trading practice requirements, it is troubling insofar as it imposes greater restrictions on underwriters if they happen to be affiliates of the issuer. We noted on pages 5-7 of our July 16 letter that, for no discernible policy reason, this will deprive affiliated underwriters of a broad range of exemptions, such as the proposed de minimis exemption, the investment grade nonconvertible security exemption, and the exemption for actively-traded securities, among others. This is significant, because there are many instances in which the underwriter, for a variety of different types of structured securities, is affiliated with the issuer. Examples include asset-backed securities, equity-linked notes and unit investment trusts.

We want to call to your attention one additional extremely important example of the unfortunate results that flow from this conceptual flaw in Rule 102. Broker-dealer affiliates often underwrite debt financings for their parent entities. Transactions pursuant to these offerings are currently exempt from many or all of the restrictions of Rule 10b-6. For example, affiliated underwriters' transactions with other syndicate members in connection with the distribution are exempt from Rule 10b-6 under clause (a)(i) of the Rule. Moreover, in the case of investment grade debt offerings, all transactions by an underwriter affiliate are exempt from trading restrictions. Rule 101 preserves these exemptions. However, under proposed Rule 102 of Regulation M there are no comparable exemptions. If Rule 102 (rather than Rule 101) is applied to these financings for issuers' underwriter affiliates, for the first time an affiliated underwriter may be unable to provide underwriting and market-making services to its parent. There is no justification for this result.

Imposing the restrictions of Rule 102 on affiliated underwriters would result in unnecessary interference with the current business practices of underwriting firms and deprive affiliated underwriters of exceptions currently available under Rule 10b-6. The exceptions contained in Rule 101 reflect the need for underwriters to engage in activity that is essential to the offering process, and the principles underlying these exceptions are no less compelling in the context of affiliated underwritings than they are in the context of underwritings of securities of nonaffiliates.

This problem would not be adequately addressed by merely extending the investment grade debt exemption to Rule 102 because that would not address the participation by affiliated underwriters in many other types of offerings, such as unrated securities, non-investment grade debt, convertible securities, or asset-backed securities. The most effective answer, as highlighted on pages 5-7 of our July 16 letter, is to clarify that all distribution participants, whether affiliates of the issuer or not, receive the benefit of the exemptions contained in Rule 101.

We understand that the staff may be concerned about transactions by an underwriter in equity securities of an affiliated issuer that qualify for the actively traded securities exception. One simple and effective solution to this concern would be to apply Rule 101 to underwriters in all circumstances, but adding a proviso to the actively traded securities exception under Rule 101 to the effect that the exception shall not be available to any distribution participant that is an affiliate of the issuer. With the addition of this proviso, an affiliated underwriter would as a general matter (subject to appropriate exceptions, such as those for basket transactions and de minimis transactions) be unable to engage in offers for or purchases of the equity securities of an affiliated issuer during the applicable restricted period. There is no need, in addressing this concern, to apply Rule 102 in a manner that is likely to exclude underwriting firms altogether from legitimate underwriting and selling activities in connection with offerings by affiliated issuers.

If SIA or the Committees can provide further information please contact the undersigned, or George R. Kramer, SIA Assistant General Counsel, at (202)296-9410.

Sincerely,

Perry L. Taylor, Jr.
Chair
Capital Markets Committee

C. Evan Stewart
Chair
Federal Regulation Committee

cc:

The Honorable Arthur Levitt, Chairman, Securities and Exchange Commission
The Honorable Steven M. H. Wallman, Commissioner
The Honorable Norman S. Johnson, Commissioner
The Honorable Isaac Hunt, Jr., Commissioner
Michael E. Schlein, Chief of Staff, Office of the Chairman
Dr. Richard Lindsey, Director, Division of Market Regulation
Larry E. Bergman, Associate Director, Division of Market Regulation

Nancy J. Sanow, Assistant Director, Office of Trading Practices

For more information, please contact [George Kramer](#) or [Stuart Kaswell](#).