

June 12, 2008

Via E-mail: gary.goldsholle@finra.org

Gary Goldsholle
Vice President & Associate General Counsel
Office of General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006

Re: SR-FINRA-2007-035 (Options Supervision Requirements)

Dear Mr. Goldsholle:

The Securities Industry and Financial Markets Association ("SIFMA")¹ Equity Options Trading Committee ("Options Committee") appreciates the opportunity to comment on SR-FINRA-2007-035 relating to the Financial Industry Regulatory Authority ("FINRA") amendments to certain NASD rules governing Options Supervision Requirements. As stated on previous occasions, SIFMA appreciates FINRA's efforts to bring options supervision within the main supervisory structure of member firms, and this proposal takes certain major steps in that direction.

SIFMA applauds the elimination of the SROP and CROP designations which no longer served a meaningful supervisory purpose for firms. SIFMA also appreciates FINRA's efforts to address these concerns both through this proposed rule change. In particular, SIFMA member firms appreciate the ability to have multiple individuals fulfilling the options supervisory functions. This change provides firms with greater flexibility and potentially more robust supervisory structures.

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

There remain, however, a few points of clarification on which we ask FINRA to provide written guidance to member firms. In addition, we have some suggestions for additional measures that would more fully integrate options supervision within the overall supervisory structure of FINRA member firms.

Much of the current confusion about the new rule involves the licenses required to be a Registered Options and Security Futures Principal (“ROSFP”) for various supervisory activities. Based on informal conversations, SIFMA understands that FINRA is taking the view that the appropriate qualifying exam for a ROSFP is the Series 4, and that a Series 9/10 will not be sufficient in many cases. This appears to be inconsistent with the Chicago Board Options Exchange (“CBOE”) interpretation. SIFMA believes that a person holding a Series 9/10 should be able to perform many of the oversight functions of the ROSFP, who does not oversee single stock futures. SIFMA agrees that a Series 4 license should be required for the approval of communications and accounts related to single stock futures, but SIFMA argues that a Series 4 is not always necessary for options-related matters.

In that regard, SIFMA continues to urge FINRA and other SROs to clarify that principals holding a Series 9/10 *or* a Series 4 license can sign-off on options communications under proposed Rule 2220. SIFMA believes that individuals should not have to hold a Series 4 to supervise communications, and that the Series 9/10 should be sufficient for those communications which include only options information,² and do not include any information regarding single stock futures.

SIFMA also notes that there appears to be conflicting views between FINRA and CBOE as to whether a Series 9/10 principal sign-off (in lieu of a Series 4) for a non-discretionary options account agreement is sufficient. SIFMA requests, therefore, that FINRA clarify its interpretation of Rule 2860(b)(16) such that a principal holding a Series 9/10 may sign-off on new non-discretionary accounts. The CBOE currently only requires a Series 9/10 for such sign-off, and SIFMA urges FINRA to formally adopt the same interpretation.

Finally, SIFMA requests that FINRA eliminate the requirement to have a second ROSFP approve new discretionary accounts, unless the account representative is also the ROSFP are the same party. The elimination of this requirement would put options accounts more squarely within the overall supervisory structure of a member firm. In addition, SIFMA believes that in many


² At a minimum, SIFMA urges FINRA to confirm that Series 9/10-qualified principal would be sufficient to approve communications relating to conventional options, i.e., over-the-counter options. This interpretation represents an expansion of its view expressed in its March 5, 1999, letter to Foley & Lardner, in which NASD concurred that, with the exception of the general standards relating to untrue, false or misleading statements in options communications, “NASD Rule 2220 was intended to apply only to standardized options.”

cases, the second review of a discretionary options account is often done by a principal who does not sit in the branch office where the account was opened, thus making it difficult for that principal to perform a meaningful review of the account circumstances and sign-off on the account.

If FINRA does not decide to eliminate the second approval for discretionary accounts, SIFMA asks that FINRA formally adopt the same interpretation currently held by the CBOE which permits the preliminary sign-off to be done by a Series 4 or Series 9/10 licensed person, and the second sign-off to be done by a Series 4.

We look forward to continuing a dialogue on these important issues. If you have any questions, please call me at 202-962-7385 or email me mmacgregor@sifma.org.

Sincerely,


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Melissa MacGregor
Vice President & Assistant General Counsel

cc: Patricia Albrecht, Assistant General Counsel, FINRA
Lawrence J. Bresnahan, Vice President, Member Firm Regulation, CBOE
Ira D. Hammerman, Senior Managing Director and General Counsel
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