

June 4, 2007

Mr. Franklin L. Widmann  
Chief, Bureau of Securities  
New Jersey Department of Law & Public Safety  
153 Halsey Street  
6<sup>th</sup> Floor  
Newark, NJ 07102

**Re: Secondary Market Trading – Exempt Transactions**

Dear Frank,

I am writing to you on behalf of the Securities Industry and Financial Markets Association (“SIFMA”)<sup>[1]</sup> as a member of the Securities Subcommittee. At the Spring Ombudsman meeting in Washington, D.C., I presented the foreign exemption issue to the group and it was well received. We are very interested in working with you to encourage New Jersey’s adoption of three specific secondary market transaction exemptions, one of which would improve investor access to well-known foreign stocks without sacrificing investor protection. This letter lays out our request in greater detail for your consideration.

As you are aware, the Uniform Securities Act was revised in 2002 (“RUSA”) both to harmonize the Act with the National Securities Markets Improvement Act of 1996 and the Securities Litigation Uniform Standards of 1998 and to modernize the Act with respect to significant changes in the technology of securities trading, regulation and international aspects of securities transactions. RUSA has been endorsed by the North American Securities Administrators Association (“NASAA”), the American Bar Association (“ABA”) and SIFMA, and it has been adopted in thirteen states to date.

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<sup>[1]</sup> 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.

SIFMA continues to endorse RUSA and encourages all states to adopt this version of the Act. However, in the interim, we are highlighting three specific secondary market transaction exemptions (non-issuer transactions) as they currently appear in RUSA, and we are requesting that you consider them for inclusion in the New Jersey Securities Act. Our request specifically provides exemptions for the following: (1) investment grade securities; (2) foreign securities that are deemed marginable under the Board of Governors of the Federal Reserve System standards; and (3) transactions in managed accounts by federal covered investment advisers.

## **I. Exemptions for Investment Grade Securities**

SIFMA requests that states that have not already done so adopt the exemptions for investment grade securities currently found in Section 202 (5) of RUSA.

### Language:

#### **RUSA - SECTION 202. EXEMPT TRANSACTIONS.**

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

- (i) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and
- (ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

### Rationale:

This will provide an easy to verify exemption in the secondary market for fixed income securities rated by a nationally recognized statistical rating organization in one of its four highest rating categories. Nationally recognized statistical rating organizations have been identified by the Securities and Exchange Commission and include such organizations as Moody's and Standard & Poor's. Rating categories typically begin with AAA and under the Act would include BBB as the fourth highest rating category.

## **II. Exemptions for Foreign Securities that are Deemed Marginable under the Board of Governors of the Federal Reserve System**

SIFMA requests that states that have not already done so adopt the exemption for foreign securities that are deemed marginable under the Board of Governors of the Federal Reserve System found in Section 202(3) of RUSA.

### Language

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

### Rationale

This will provide an easy to verify exemption in the secondary market for foreign securities that are deemed margin eligible by the Board of Governors of the Federal Reserve System ("Board") under Regulation T. The Board's criteria for determining which securities are eligible for margin include securities listed on the Financial Times/Standard & Poor's World Actuaries Indices (the "FTS&P") and securities deemed to have a "ready market" by the Securities and Exchange Commission ("SEC") pursuant to Rule 15c3-1 (the "Net Capital Rule") of the Securities Exchange Act of 1934. The criteria for stocks included in the subset of the FTSE All-World Index Series that is deemed marginable by the Board under Regulation T is based on three main factors: size, liquidity and free float, and the minimum market capitalization is 100 million US dollars. This will cover many seasoned, substantial, reputable foreign securities with significant domestic market appeal that also possess a high level of liquidity, capitalization and market presence (e.g., Nestle, Nissan Motor, Nintendo, Roche Holdings, Volkswagen AG, Sharp Corporation, L'Oreal Co., Puma AG, etc.). The following nineteen states currently have such an exemption: California; Connecticut; Idaho; Illinois; Iowa; Kansas; Maine; Missouri; New Mexico; Oklahoma; South Carolina; South Dakota; USVI; Utah; Vermont and Virginia. Hawaii, Indiana and Minnesota have also adopted this exemption, but the laws have not gone into effect yet. Tennessee legislation incorporating all three of these exemptions is currently on the governor's desk.

## **III. Exemptions for Transactions in Accounts Managed by Federal Covered Investment Advisers**

SIFMA requests that states that have not already done so adopt the exemption for transactions in accounts managed by federal covered investment advisers found in Section 202(8) of RUSA.

Language:

8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

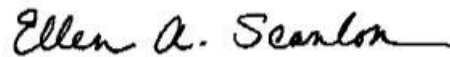
Rationale:

This will provide an exemption for non-issuer transactions with federal covered investment advisers that are sophisticated financial professionals capable of determining the merits of a security.

We believe that these exemptions provide the industry with the ability to diversify client portfolios without compromising investor protection and also modernize the Act to take into consideration accounts that are managed by federal covered investment advisers.

On behalf of SIFMA members again, we appreciate the opportunity to present to you our comments and suggestions. Please do not hesitate to contact me at (201) 830-5241 or Nancy Donohoe Lancia at SIFMA at (212) 618-0533 should you have any questions or require additional information with respect to the above.

Sincerely,

A handwritten signature in black ink that reads "Ellen A. Scanlon". The signature is written in a cursive, flowing style.

Ellen A. Scanlon  
SIFMA Securities Subcommittee  
Vice President, Morgan Stanley

Cc: Joseph P. Borg  
Karen Tyler  
Russel Iuculano