



September 17, 2014

**Via E-Mail to:** [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington DC 20549-1090  
Attn: Brent J. Fields, Secretary

**Re: Release No. IA-3893; File No. S7-23-07  
Temporary Rule Regarding Principal Trades with Certain Advisory Clients**

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the Securities and Exchange Commission (“SEC”) proposal to extend the sunset date of Rule 206(3)-3T (the “Rule”) under the Investment Advisers Act of 1940 (“Advisers Act”) for an additional two years from December 31, 2014 to December 31, 2016 (the “Proposal”).<sup>2</sup>

Upon its current sunset date, the Rule will have been in place for seven years and three months. This is SIFMA’s fifth comment letter on the Rule, all in support. SIFMA supported the initial adoption of the Rule, including its initial twenty-seven month effective period, and SIFMA supported its subsequent extensions in 2009, 2010 and 2012 for one year, then two years, then two years again, respectively.<sup>3</sup> SIFMA likewise strongly supports the current Proposal to further extend the sunset date of the Rule beyond its nine-year anniversary.

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<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> *Temporary Rule Regarding Principal Trades with Certain Advisory Clients*, Investment Advisers Act Release No. 3893, 79 Fed. Reg. 159 (Aug. 18, 2014).

<sup>3</sup> SIFMA comment to SEC, dated Nov. 30, 2007, available at: <http://www.sifma.org/issues/item.aspx?id=212>; SIFMA comment to SEC, dated Aug. 21, 2009, available at: <http://www.sifma.org/issues/item.aspx?id=442>; SIFMA comment to SEC, dated Dec. 20, 2010, available at: <http://www.sifma.org/issues/item.aspx?id=22729>; SIFMA comment to SEC, dated Nov. 13, 2012, available at: <http://www.sifma.org/issues/item.aspx?id=8589940917>.

Although we strongly support further extension of the Rule, we recommend a longer extension period of five years to ensure the SEC has adequate time to consider broader rulemaking regarding the standard of conduct applicable to broker-dealers and investment advisers under Section 913 of the Dodd-Frank Act, as well as adequate time to develop and implement more permanent regulation of principal trading, and avoid the uncertainty caused by the need for further sunset date extensions in the future.

We would also like to respond to the specific questions posed in the Proposal:

- ***Should we allow the rule to sunset? If so, what costs would advisers that currently rely on the rule incur? What would be the impact on their clients?***

The Rule should be extended, rather than allowed to sunset. The Rule is intended to permit advisers who are also registered as broker-dealers and who offer non-discretionary advisory accounts (which are subject to the requirements of the Advisers Act) to engage in principal transactions with their advisory customers without requiring transaction-by-transaction, written disclosure and consent. The Rule continues to serve that purpose well. A significant number of SIFMA member firms continue to rely on the Rule as an alternative means of complying with Section 206(3) of the Advisers Act in order to sell customers securities from their proprietary accounts that the firms could not otherwise offer, or could only offer on an agency basis, often at a higher cost.<sup>4</sup>

Principal trading benefits investors by providing them access to securities that may not be available on the open market or that are only available on an agency basis at higher prices. The Rule facilitates the conferment of those benefits by allowing firms to offer investors a greater variety of securities from firm inventories,<sup>5</sup> execute trades in such securities more quickly, and offer customers better prices on such securities.

If the Rule were allowed to expire, most firms continue to report that they would in most cases be unable to comply with Section 206(3) of the Advisers Act, which requires written disclosure and consent from customers before completion of each principal trade. Thus, firms would be required to eliminate or greatly reduce their offering of principal trades through advisory accounts, to the detriment of investors.

If the Rule were allowed to expire, advisers would also be forced to incur significant costs over a period of many months to over a year to implement changes to their technological systems, procedures and disclosure documents necessary to offer principal trades in compliance with Section 206(3) even on a limited basis. Until advisers made these changes, their clients would either lose access to the securities currently offered through principal trades or be forced to pay higher prices for these securities.

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<sup>4</sup> See Proposal at footnotes 20 and 27-29 and accompanying text.

<sup>5</sup> SIFMA member firms that continue to rely on the Rule trade a wide variety of securities, including fixed income securities, preferred shares, and eligible syndicate securities.

Moreover, if the Rule were allowed to expire, and the SEC subsequently implemented rulemaking pursuant to Section 913 of Dodd-Frank, or otherwise that impacted principal trading, firms would be required to restructure their operations and incur significant costs for a second time.

- ***If we allow the rule to sunset, should we consider exemptive requests from investment advisers that are registered with us as broker-dealers for exemptive orders providing an alternative means of compliance with section 206(3)?***

SIFMA strongly prefers that the SEC extend the Rule but believes that requests for exemptive relief as an alternative means of compliance with Section 206(3) and the further extension of the Rule are not mutually exclusive, and that advisers should not be precluded from seeking exemptive relief based on their own particular circumstances.

There is considerable efficiency for both the SEC staff and registrants in dealing universally with the issues the Rule is intended to address. If the Rule were allowed to sunset, SIFMA believes it would be necessary for the SEC to consider a request for class exemptive relief as an alternative means of compliance with Section 206(3). An exemptive relief process that would entertain a request for a class exemption would be preferable to customers losing access to securities currently offered through principal trades because of advisers' inability to comply with Section 206(3). In contrast, an approach that would require submitting, considering, and deciding potentially dozens of separate, individual requests for exemptive relief would be inefficient and time consuming and ultimately could leave some firms and their clients with considerable uncertainty.

- ***Are there any developments since the last extension that would make an extension not appropriate?***

As noted in the Proposal, further extension of the Rule "maintains the status quo" which in this case is entirely appropriate. The Rule now has a lengthy, seven-year, proven track record of protecting investors through the requirements of the Rule, coupled with regulatory oversight. The SEC's recent 2014 examination also confirms that firms that rely on the Rule generally maintain written policies and procedures designed to comply with the Rule's requirements. None of the prospective abuses or negative consequences foretold by the detractors of the Rule has borne out. If anything, the SEC's continuing commitment to broadly review the regulatory requirements applicable to broker-dealers and investment advisers strongly supports the further extension of the Rule, pending the completion of that process.

- ***If we extend the rule's sunset date, is two years an appropriate period of time to extend the sunset date? Or should we extend the rule's sunset date for a different period of time? If so, for how long?***

SIFMA recommends a five-year extension of the sunset date, rather than a two-year extension. The temporary nature of the Rule, and its short-term extensions, creates unnecessary uncertainty that inhibits firms' ability to plan future business activities. The Proposal represents the fourth extension of the Rule, which will extend its life to more than nine years. Given the

history of this issue, we believe it will likely take longer than two years for the SEC to adopt permanent regulation of principal trading in the context of its broader regulation of broker-dealers and investment advisers. Then, two years hence, yet another extension of the Rule would likely be required. A five-year extension represents a more realistic projection of the time the SEC will require to formulate more permanent regulation and give certainty and comfort to both investors and advisory firms. Of course, if the SEC's regulatory efforts proceeded at a faster pace, then the SEC could always amend or abrogate the Rule at that time.

- ***Is it appropriate to extend rule 206(3)-3T's sunset date for a limited period of time in its current form while we complete our broader consideration of the regulatory requirements applicable to broker-dealers and investment advisers?***

SIFMA strongly supports extending the Rule until the SEC completes its consideration of the regulatory requirements applicable to broker-dealers and investment advisers. If the Rule were allowed to expire now, advisory firms would need to incur substantial costs in order to offer principal trading to clients and even then, the offerings might be far more limited. If the SEC then adopted new rules concerning principal trading, firms would be required to restructure their operations and client relationships for a second time, potentially at substantial expense.

SIFMA supports the SEC's undertaking to review the standards of conduct and regulatory requirements applicable to broker-dealers and investment advisers. We would also support a more permanent solution to the regulation of principal trading by investment advisers through the adoption of a new rule or modified version of Rule 206(3)-3T that provides greater flexibility to dual registrants while still providing robust investor protections.

It would be inappropriate to allow the Rule to expire now, before the SEC adopts prospective broader changes to the regulation of broker-dealers and investment advisers, because it would likely require many firms to restructure their operations relating to principal trades on two occasions, within a relatively short time period, at substantial expense.

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In sum, the Rule should be extended because it is extensively relied upon by dual registrants and investors, and it benefits investors. Investors benefit from access to a wider range of securities available through principal trading. If the Rule were allowed to expire, it would substantially limit the availability of securities offered through principal trades and force advisory firms to either incur significant costs in order to comply with Section 206(3) or stop offering principal trades. Any expiration or modification of the Rule should be delayed until after the SEC completes its review of the regulatory standards of conduct applicable to broker-dealers and investment advisers. Although we support the Proposal to extend the Rule for two more years, we respectfully urge the SEC to extend the Rule for five years.

If you have any questions regarding this letter, please contact the undersigned at 202.962.7382 or [kcarroll@sifma.org](mailto:kcarroll@sifma.org).

Sincerely,

A handwritten signature in dark ink, reading "Kevin M. Carroll". The signature is fluid and cursive, with a long horizontal stroke at the end.

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Kevin M. Carroll  
Managing Director and Associate General Counsel

cc: The Hon. Mary Jo White, Chairman  
The Hon. Luis A. Aguilar, Commissioner  
The Hon. Daniel M. Gallagher, Commissioner  
The Hon. Michael S. Piwowar  
The Hon. Kara M. Stein  
Norman B. Champ III, Director, Division of Investment Management  
Stephen Luparello, Director, Division of Trading and Markets