sifma

Invested in America

December 7, 2018

Via Electronic Mail

Ms. Emily Westerberg Russell
Senior Special Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request for No-Action Relief under Broker-Dealer Customer Identification Program Rule (31 C.F.R. § 1023.220) and Beneficial Ownership Requirements for Legal Entity Customers (31 C.F.R. § 1010.230)

Dear Ms. Russell:

On behalf of its member broker-dealers, the Securities Industry and Financial Markets Association ("SIFMA")[1] hereby requests that the staff of the Division of Trading and Markets (the "Division") of the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") extend the no-action relief currently in effect with respect to the reliance provisions of the customer identification program rule applicable to broker-dealers (the "CIP Rule")[2] and the rule regarding beneficial ownership requirements for legal entity customers (the "Beneficial Ownership Rule").[3]

More specifically, under the conditions of a letter dated December 12, 2016 (the "2016 No-Action Letter"),[4] Division staff has granted no-action relief to broker-dealers that rely on SEC-registered investment advisers ("RIAs") to perform some or all of the requirements of the CIP Rule and the

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate for legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association. For more information, visit http://www.sifma.org/.

[2] 31 C.F.R. § 1023.220.

[3] 31 C.F.R. § 1010.230.

[4] *See* Letter from Emily Westerberg Russell, Senior Special Counsel, Division of Trading and Markets, SEC, to Aseel Rabie, Managing Director and Associate General Counsel, SIFMA, dated Dec. 12, 2016, *available at* https://www.sec.gov/divisions/marketreg/mr-noaction/2016/securities-industry-financial-markets-association-120916.pdf.

Beneficial Ownership Rule. No-action relief was originally granted with respect to the CIP Rule in 2004[5] and has since been extended a number of times.[6] Under the 2016 No-Action Letter, the current relief, addressing the reliance provisions of both the CIP Rule and the Beneficial Ownership Rule, expires December 12, 2018.[7] Because broker-dealer firms continue to rely on this relief, we urge the Division staff to continue to make it available.

Background

As you know, the CIP Rule requires each broker-dealer to adopt a written customer identification program ("CIP") that includes risk-based procedures for verifying the identity of each customer. The CIP Rule permits a broker-dealer to rely on another financial institution (including an affiliate) to perform CIP procedures with respect to shared customers. Such reliance is permissible under specified conditions, including that the relied-on financial institution is subject to an anti-money laundering program rule (an "AMLP Rule") under 31 U.S.C. § 5318(h) of the Bank Secrecy Act (the "BSA")[8] and is regulated by a federal functional regulator.[9] The reliance provision is designed to permit financial institutions with shared customers to agree as to how they will allocate performance of the CIP requirements and, thereby, rely on one another to avoid unnecessary duplication of efforts with respect to a given customer.

Similarly, under the Beneficial Ownership Rule, each broker-dealer is required to establish and maintain written procedures that are reasonably designed to identify and verify the identity of the beneficial owners of legal entity customers. Under the same conditions as set forth in the CIP Rule, the Beneficial Ownership Rule permits a broker-dealer to rely on the performance by another financial institution (including an affiliate) of the requirements of the Beneficial Ownership Rule

---

[5] *See* Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Alan Sorcher, Vice President and Associate General Counsel, Securities Industry Association ("SIA"), dated Feb. 12, 2004.

[6] *See* Letter from Nazareth to Sorcher, dated Feb. 10, 2005; Letter from Robert L.D. Colby, Acting Director, Division of Market Regulation, SEC, to Sorcher, dated July 11, 2006; Letter from Erik Sirri, Director, Division of Trading and Markets, SEC, to Sorcher, Vice President and Associate General Counsel, SIFMA, dated Jan. 10, 2008; Letter from Daniel M. Gallagher, Jr., Deputy Director, Division of Trading and Markets, SEC, to Ryan Foster, Manager, SIFMA, dated Jan. 11, 2010 (the "2010 No-Action Letter"); Letter from Lourdes Gonzalez, Acting Co-Chief Counsel, Division of Trading and Markets, SEC, to Foster, dated Jan. 11, 2011 (the "2011 No-Action Letter"); Letter from Emily Westerberg Russell, Senior Special Counsel, Division of Trading and Markets, SEC, to Ira Hammerman, Senior Managing Director and General Counsel, SIFMA, dated Jan. 11, 2013 (the "2013 No-Action Letter"); Letter from Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, SEC, to Hammerman, Executive Vice President and General Counsel, SIFMA, dated Jan. 9, 2015 (the "2015 No-Action Letter"); and the 2016 No-Action Letter.

[7] *See* the 2016 No-Action Letter at p. 3 (providing no-action relief until the earlier of (1) the date upon which an anti-money laundering program rule for investment advisers becomes effective, or (2) two years from the date of the letter).

[8] 31 U.S.C. § 5311 *et seq*.

[9] *See* 31 C.F.R. § 1023.220(a)(6).

with respect to any legal entity customer of the broker-dealer that has an account or a similar business relationship with the other financial institution.[10]

Rationale for Relief

As indicated in our prior requests for no-action relief, SIFMA believes that the interaction between broker-dealers and RIAs is precisely the type of relationship intended to be covered by the reliance provisions. RIAs 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 the customers. Moreover, RIAs are often reluctant to have a broker-dealer contact the customer because they view the broker-dealer as a competitor. RIAs are thus best positioned to perform some or all of the requirements of the CIP Rule and particularly to perform requirements under the Beneficial Ownership Rule, which pertains to information not about a customer but about the beneficial owners of that customer.

RIAs are regulated by a federal functional regulator, and many have established anti-money laundering ("AML") programs consistent with 31 U.S.C. § 5318(h).[11] Permitting two regulated financial institutions with a common customer to rely on one another to perform some or all of the requirements under the CIP Rule and the Beneficial Ownership Rule avoids duplication of efforts and inefficient allocation of significant and costly resources. Extending the current no-action position with respect to the CIP Rule and the Beneficial Ownership Rule would appropriately recognize the interaction between broker-dealers and RIAs and allow broker-dealers to maintain existing practices concerning reliance on RIAs.

Conditions of Current Relief and Request for Extension

In the 2016 No-Action Letter, Division staff stated that it would not recommend enforcement action to the Commission if a broker-dealer treats an investment adviser as if it were subject to an AMLP Rule for the purposes of paragraph (a)(6) of the CIP Rule and/or paragraph (j) of the Beneficial

[10] 31 C.F.R. § 1010.230(j).

[11] At the time the CIP Rule became effective, RIAs were the subject of a proposed AMLP Rule that had not been finalized. *See* Anti-Money Laundering Programs for Investment Advisers, 68 Fed. Reg. 23646 (May 5, 2003). As a result, broker-dealers were not permitted to rely on RIAs under the CIP Rule. SIFMA sought no-action relief to permit such reliance, and the Division staff, in consultation with the Financial Crimes Enforcement Network ("FinCEN"), granted the 2004 relief cited above. FinCEN withdrew its 2003 proposal in 2008 but has since issued a new proposal to subject RIAs to an AMLP Rule. *See* Withdrawal of the Notice of Proposed Rulemaking, 73 Fed. Reg. 65568 (Nov. 4, 2008); Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 Fed. Reg. 52680 (Sept. 1, 2015). Extensions of the Division staff's no-action relief to date include four occasions after FinCEN's withdrawal of the 2003 proposal but prior to the issuance of the 2015 proposal (*see* the 2010 No-Action Letter, 2011 No-Action Letter, 2013 No-Action Letter, and 2015 No-Action Letter), as well as the 2016 No-Action Letter issued after publication of FinCEN's 2015 proposal, which remains pending.

Ownership Rule, provided that the other provisions of the CIP Rule and the Beneficial Ownership Rule are met, and:

> (1) the broker-dealer's reliance on the investment adviser is reasonable under the circumstances[12];
>
> (2) the investment adviser is a U.S. investment adviser registered with the Commission under the Investment Advisers Act of 1940, as amended; and
>
> (3) the investment adviser enters into a contract with the broker-dealer in which the investment adviser agrees that:
>
> (a) it has implemented its own AML program consistent with the requirements of 31 U.S.C. § 5318(h) and will update such AML program as necessary to implement changes in applicable laws and guidance,
>
> (b) it (or its agent) will perform the specified requirements of the broker-dealer's CIP and/or the broker-dealer's beneficial ownership procedures in a manner consistent with Section 326 of the USA PATRIOT Act and the Beneficial Ownership Rule, respectively,
>
> (c) it will promptly disclose to the broker-dealer potentially suspicious or unusual activity detected as part of the CIP and/or beneficial ownership procedures being performed on the broker-dealer's behalf in order to enable the broker-dealer to file a suspicious activity report, as appropriate based on the broker-dealer's judgment,
>
> (d) it will certify annually to the broker-dealer that the representations in the reliance agreement remain accurate and that it is in compliance with such representations, and
>
> (e) it will promptly provide its books and records relating to its performance of CIP and/or beneficial ownership procedures to the Commission, to a self-regulatory organization that has jurisdiction over the broker-dealer, or to authorized law enforcement agencies, either directly or through the broker-dealer, at the request of

[12] As to reasonableness, Division staff stated its understanding that broker-dealers seeking to rely on the no-action position in the letter "will undertake appropriate due diligence on the investment adviser that is commensurate with the broker-dealer's assessment of the money laundering risk presented by the investment adviser and the investment adviser's customer base. Such due diligence would be undertaken at the outset of the broker-dealer's relationship with the investment adviser, and updated during the course of the relationship, as appropriate." The staff stated further that a broker-dealer's assessment of the money laundering risk presented by an investment adviser and its customer base would depend on the particular facts and circumstances, and that an investment adviser's status as an affiliate is one of many factors that may be relevant to such a risk assessment.

> (i) the broker-dealer, (ii) the Commission, (iii) a self-regulatory organization that has jurisdiction over the broker-dealer, or (iv) an authorized law enforcement agency.

As indicated above, we believe the interaction between broker-dealers and RIAs is precisely the type of relationship intended to be covered by the reliance provisions of the CIP Rule and the Beneficial Ownership Rule. Because broker-dealers continue to rely on the no-action relief with respect to such reliance, SIFMA respectfully requests that the Division staff extend the no-action position stated in the 2016 No-Action Letter, subject to the conditions stated in that letter, prior to its expiration on December 12, 2018.

* * *

We thank you for the opportunity to submit this no-action request and would be pleased to discuss any of these matters further.

Respectfully submitted,

Aseel M. Rabie
Managing Director and Associate General Counsel

cc: Kenneth A. Blanco, Director, FinCEN
Jamal El-Hindi, Deputy Director, FinCEN
Andrea Sharrin, Associate Director, Policy Division, FinCEN
Lourdes Gonzalez, Assistant Chief Counsel, SEC
John Fahey, Branch Chief, SEC