



June 26, 2019

***Via Electronic Mail***

Michael A. Macchiaroli  
Associate Director  
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 regarding certain bank sweep receivables under Rule 15c3-1

Dear Mr. Macchiaroli,

The Capital Steering Committee of the Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> is writing to request assurances 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") will not recommend enforcement action pursuant to Rule 15c3-1 under the Securities Exchange Act of 1934 ("Exchange Act") if broker-dealers treat certain receivables resulting from bank sweep programs as allowable assets.

**Background:**

Under a "Sweep Program" as defined by CFR 240.15c3-3(a)(17) a broker or dealer may offer its customer the option to automatically transfer free credit balances in a securities account to either a money market mutual fund product or an account at a bank whose deposits are insured by the Federal Deposit Insurance Corporation, "FDIC". These bank sweep accounts may be held at an affiliate of the broker-dealer or a third party. When a customer wishes to withdraw or otherwise transact using those funds, the money is automatically transferred back to the customer's securities account either through proceeds from the redemption of money market mutual fund shares or remittance from the FDIC insured bank deposit account. These automatic transfers typically result in operational lags between the timing of the customer's request and when the funds are available for use by the customer. To provide a seamless customer experience, certain broker-dealers elect to fund the customer's account prior to the sweep transaction being completed so the customer has immediate use of the money. This prefunding of the customer's account creates a receivable at the broker-dealer which must be evaluated for capital treatment under SEA 15c3-1. Payables to the bank are also often

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<sup>1</sup>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 1 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. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

created as part of these transactions with cash normally settled on a net basis. The receivables discussed herein are considered on a 'net' basis (the extent that the receivable exceeds any payables to the bank that also are recorded as a part of these transactions).

**Relief Prescribed in Guidance:**

When a sweep transaction, as characterized above, involves the redemption of money market mutual fund shares, in accordance with SEA rule 15c3-3(Exhibit A - Item 10)/08, Customer Redemptions of Money Market Funds, Debit balances in customers' accounts arise from prepayments made by a broker-dealer on behalf of customers, which are expected to be covered the next day upon settlement of such customers' redemptions, are treated as a receivable from the fund. In accordance with SEA Rule 15c3-1(c)(2)(iv)(B), only those mutual fund redemptions outstanding more than 16 business days are considered not readily convertible into cash thus such receivables outstanding less than 16 business days are considered allowable under the current guidance.

When a sweep transaction, as characterized above, involves an FDIC insured bank sweep account, the broker-dealer has created a bank deposit receivable with cash delivery generally expected within three business days. As the nature of the receivable is cash held on deposit in a bank account which can reasonably be expected to settle within three business days, we believe this receivable would be considered readily convertible to cash in the same manner as if the funds were coming from a bank account of the broker-dealer. We further believe that this conclusion is not affected if the bank is considered a parent or affiliate of the broker-dealer. Under 15c3-1(c)(2)(iv)(C)/072, cash deposits with a parent or affiliated bank are considered to have net capital value to the extent the deposits represent normal day-to-day operating balances.

**Request for Relief:**

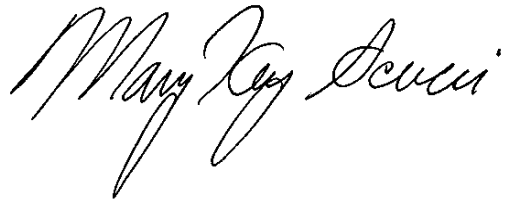
Based on the foregoing, we request that the staff of the Division not recommend enforcement action to the Commission if a broker-dealer, when calculating net capital treats certain receivables arising from a bank sweep program as an allowable asset consistent with the facts below:

- 1) A net receivable is created through pre-funding of a customer's brokerage account as part of a sweep program transaction, as defined above, or
- 2) The net receivable is with an FDIC insured Bank for which a sweep deposit account has been established; and
- 3) The broker-dealer reasonably expects to receive payment from the bank deposit account within three business days.

We also request that NYSE memo 05-11 dated February 15, 2005, which states that any receivable on the broker-dealer's books resulting from a sweep may be deemed to be a non-allowable asset, be formally rescinded. We believe this interpretation is no longer relevant in consideration of the facts outlined above. Finally, we have included as appendix A, a draft interpretation for the Financial Industry Regulatory Authority ("FINRA") manual.

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,

A handwritten signature in black ink that reads "Mary Kay Scucci". The signature is written in a cursive, flowing style.

Mary Kay Scucci, PhD, CPA  
Managing Director  
Securities Industry Financial Markets Association

cc: Brett Redfearn, Director, Division of Trading and Markets, SEC  
Tom McGowan, Associate Director, Division of Trading and Markets, SEC  
Randall Roy, Deputy Associate Director, Division of Trading and Markets, SEC

# Appendix A – FINRA Manual Interpretation

## Receivables arising from Bank Sweep Transactions

The broker-dealer may elect to treat a net receivable from deposit accounts insured by the Federal Deposit Insurance Corporation ("FDIC"), which may arise from the pre-funding of customer security accounts under a "Sweep Program" as defined by CFR 240.15c3-3(a)(17), as allowable provided the following conditions are satisfied:

- 1) A net receivable is created through pre-funding of a customer's brokerage account as part of a sweep program transaction, as defined above, or
- 2) The net receivable is with an FDIC insured Bank for which a sweep deposit account has been established; or
- 3) The broker-dealer reasonably expects to receive payment from the bank deposit account within three business days.

When the funds are held at a third-party bank, the net receivable would be considered readily convertible to cash in the same manner as if the funds were coming from a bank account of the broker-dealer. The net receivable is also considered to have net capital value if the bank is considered a parent or affiliate of the broker-dealer under paragraph (c)(2)(iv)(C)/072 of SEA Rule 15c3-1 to the extent the deposits represent normal day-to-day operating balances.