



January 9, 2020

VIA EMAIL

The Honorable Jay Clayton, Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

**Re: FIMSAC Recommendations Regarding Certain Principal Trades with
Advisory Accounts**

Dear Chairman Clayton,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ writes to request that the Securities and Exchange Commission (“Commission”) adopt the two recommendations of the Municipal Securities Transparency Subcommittee (the “Municipal Subcommittee” or “Subcommittee”) of the Fixed Income Market Structure Advisory Committee (“FIMSAC”) to consider a rule(s) that permits a broker-dealer to engage in certain principal transactions with advisory clients while meeting the requirements of section 206(3) of the Investment Advisers Act of 1940 (the “Advisers Act”).² Although exemptive relief may be available on an individual basis currently, we believe that a permanent, transparent rule would be more widely utilized to the benefit of investors.

Background

Previously, the Commission had a temporary rule, Rule 206(3)-3T under the Advisers Act, that permitted advisers who were also registered as broker-dealers and who offered non-discretionary advisory accounts to engage in certain principal transactions with their advisory

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 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).

² Recommendation Regarding Certain Principal Transactions with Advisory Clients in Negotiated Municipal Underwritings (Apr. 15, 2019), <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-negotiated-municipal-underwritings-recommendations.pdf>; Recommendation Regarding Certain Principal Transactions with Advisory Clients Seeking to Liquidate Bond Positions (July 29, 2019), <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-recommendation-muni-securities.pdf>.

customers without requiring transaction-by-transaction, written disclosure and consent required by Section 206(3) of the Advisers Act. The rule – whose purpose was to permit conflicted principal transactions when certain securities could not be obtained, or obtained on a favorable basis, for the client – was initially adopted in 2007 and extended several times until it sunsetted in December 2016. The Commission allowed it to sunset after finding that few firms relied on it.³ At this time, the Commission suggested that individual exemptive relief could nevertheless be obtained.⁴ SIFMA advocated for the rule to be permanently extended and reported that our members would have utilized a permanent rule.⁵

Recently, the Municipal Subcommittee of FIMSAC recommended that the Commission consider a rule(s) that allows a broker-dealer to sell negotiated new-issue municipal bonds, subject to conditions and restrictions, to advisory clients on a principal basis as well as to sell an advisory client’s bond positions by allowing the dealer to submit a “blind bid” on a principal basis against its advisory client while still in compliance with Section 206(3) of the Advisers Act without the need to comply with the current disclosure and consent requirements of the rule.⁶ The Subcommittee believes that a rule(s) permitting these principal transactions would be beneficial to investors by providing access to new issues at better prices than could otherwise be obtained on the secondary market and liquidity when needed to sell bond positions. SIFMA supports these recommendations.

The Need for Relief

Circumstances have changed notably since Rule 206(3)-3T sunsetted in 2016. Not only has the industry seen an increased and sustained trend in the use of advisory accounts, but also the Commission adopted Regulation Best Interest, whose compliance date is set for June 30, 2020. The effect of these changed circumstances will be an increased demand for relief from Section 206(3)’s disclosure and consent requirements, particularly during times of market stress. SIFMA urges the Commission to adopt a rule(s) that incorporates the Subcommittee’s recommendations. We believe that a rule(s) would be utilized, provide greater certainty to firms and their clients, and be more efficient for all parties, including the Commission, than individual exemptive relief. We echo the Subcommittee’s position that these particular transactions are not only beneficial to clients, but also there are protections in place such that a rule providing for an alternate means of compliance with Section 206(3) is appropriate.

³ See Letter from David W. Grim, Director, Division of Investment Management, SEC, to Ira D. Hammerman, Esq., Executive Vice President and General Counsel, dated Aug. 19, 2016, <https://www.sec.gov/divisions/investment/guidance/staff-letter-sifma-081916.pdf>. *Id.*

⁴ *Id.*

⁵ Letter from Kevin Carroll, Managing Dir. and Assoc. General Counsel, to Brent J. Fields, Secretary, SEC, dated Aug. 8, 2016, <http://www.sifma.org/wp-content/uploads/2017/05/sifma-submits-comments-to-sec-on-the-temporary-rule-regarding-principal-trades-with-certain-advisory-clients.pdf>.

⁶ *Supra* note 2.

Thank you for considering SIFMA's request. If any questions regarding the foregoing, please contact the undersigned at (212) 313-1130 or lnorwood@sifma.org, or (202) 962-7300 or bcanepa@sifma.org, respectively.

Sincerely,



Leslie M. Norwood
Managing Director
and Associate General Counsel



Bernard V. Canepa
Vice President
and Assistant General Counsel

cc: Robert J. Jackson Jr., Commissioner
Hester M. Peirce, Commissioner
Elad L. Roisman, Commissioner
Allison Herren Lee, Commissioner
Dalia Blass, Director, Division of Investment Management
Rebecca Olsen, Director, Office of Municipal Securities