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Invested in America

October 30, 2023

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: ***Supplemental Letter from the Securities Industry and Financial Markets Association on the Safeguarding Advisory Client Assets Proposal, File No. S7-04-23***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciated the opportunity to meet with staff of the Securities and Exchange Commission ("SEC" or "Commission") on July 27, 2023 to share our views on the SEC's proposed new rule on safeguarding advisory client assets ("Proposal").[2] During the course of the discussion, and consistent with our May 8, 2023 comment letter ("May Comment Letter") on the Proposal,[3] we expressed concern that the Proposal's limitation on rehypothecation conflicts with long-existing practices that broker-dealers are permitted to engage in pursuant to Rule 15c3-3 under the Securities Exchange Act of 1934 ("Exchange Act") and that are subject to long-standing and effective customer protections. In response, staff indicated that the Proposal was not intended to override a broker-dealer's ability to rehypothecate a customer's margin securities as permitted by Exchange Act Rule 15c3-3. We very much appreciated this clarification from Commission staff. We are writing to confirm that the view expressed also applies to assets held at other U.S. and

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[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 one million employees, we advocate on 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 is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] See Release No. IA-6240 (February 15, 2023), 88 FR 14672 (March 9, 2023). The SEC re-opened the comment period on the proposal on August 23, 2023. See Release No. IA-6384 (August 23, 2023), 88 FR 59818 (August 30, 2023).

[3] See (https://www.sec.gov/comments/s7-04-23/s70423-186699-340582.pdf). In connection with the re-opening of the comment period, SIFMA and SIFMA's Asset Management Group ("AMG") also sent in another comment letter in which SIFMA and SIFMA AMG urged, among other things, that the "Commission not to adopt the Proposal in its current form." See Letter from Kevin Carroll, SIFMA, and Kevin Ehrlich, SIFMA AMG, to Vanessa Countryman, Secretary, Commission, dated October 30, 2023.

foreign qualified custodians where rehypothecation is agreed to or authorized in writing by the client and is not otherwise prohibited by any applicable regulatory regime.

In our May Comment Letter, and during the meeting with SEC staff on July 27, we noted that under Exchange Act Rule 15c3-3, fully paid for and excess margin securities must be segregated and kept within the broker-dealer's possession and control, but margin securities (securities held in margin accounts) may, up to certain limits, be "de-segregated" and rehypothecated. Similarly (and similar to cash maintained at a U.S. bank), cash credited to accounts held at a broker-dealer may be used to fund customer debits, while excess cash credits must be held in a special reserve account for the benefit of customers. In the event of an insolvency of the broker-dealer, under applicable law (the Securities Investors Protection Act of 1970 ("SIPA")), all customers have a claim for their "net equity," the amount that their assets (long securities and cash credits) exceed their obligations to the broker (short positions and cash debits).

In response to our comments, staff indicated during our meeting that the Proposal was not intended to override a broker-dealer's ability to rehypothecate a customer's margin securities as permitted under Exchange Act Rule 15c3-3. We believe that in expressing this view, there is a recognition at the Commission that the client consented to such rehypothecation and Exchange Act Rule 15c3-3 permits it. For these same reasons, we believe that this view should also apply to assets held at other U.S. and foreign qualified custodians where rehypothecation is agreed to or authorized in writing by the client and is not otherwise prohibited by any applicable regulatory regime. To accomplish this, we suggest that the Commission add the following language from paragraph (a)(1)(ii)(E) of proposed Rule 223-1 - "except to the extent agreed to or authorized in writing by the client" - to the end of paragraph (a)(1)(ii)(D) of proposed Rule 223-1. We believe that this addition would help address our concerns about the current rule text in the Proposal prohibiting the rehypothecation of client assets even when client consent to do so is provided. However, such suggested language should not be viewed by the SEC or its staff as a comprehensive fix or an endorsement of the segregation requirement, the other reasonable assurance requirements or any other aspect of the Proposal.

In submitting this letter, we are merely seeking confirmation that the view expressed regarding assets held at broker-dealers subject to Exchange Act Rule 15c3-3 applies equally to assets held at other U.S. and foreign qualified custodians where rehypothecation is agreed to or authorized in writing by the client and is not otherwise prohibited by any applicable regulatory regime. Our letter should not be viewed by the SEC or its staff as an endorsement of any aspect of the Proposal. In this regard, for example, we noted in our May Comment Letter that the Proposal would impose custodial requirements on assets that are not susceptible to custodial arrangements, including, without limitation, loans and various other securitized products; securities loans; repurchase agreements and reverse repurchase agreements ("Repos"); derivatives; and annuities. These assets, such as over the counter (OTC") derivatives, do not currently involve any custodial agent. They are fundamentally bilateral (i.e., two-party) arrangements. Indeed, as we stated in our May Comment Letter, we continue to recommend that the approach the SEC should take is to withdraw the Proposal until such time as it has fully

considered and can explicitly address the critical legal, regulatory, policy and practical concerns raised in that letter.

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We appreciate the opportunity to submit this letter in connection with our July meeting with Commission staff. As we noted, we are submitting this letter to seek confirmation as discussed above to the extent the Commission moves forward with the Proposal. This letter is not intended in any way to suggest that we support or endorse any aspect of the Proposal. Rather, as noted in our May Comment Letter, we continue to recommend that the SEC withdraw the Proposal until such time as it has fully considered and can explicitly address the critical legal, regulatory, policy and practical concerns raised in that letter.

If you have any questions, please do not hesitate to contact Rob Toomey at (212) 313-1124 or rtoomey@sifma.org or Joe Corcoran at (202) 962-7383 or jcorcoran@sifma.org.

Sincerely,

Robert Toomey
Managing Director, Associate General Counsel
Head of Capital Markets
SIFMA

Joseph Corcoran
Managing Director, Associate General Counsel
SIFMA