December 20, 2010

***Via E-Mail to:*** ***rule-comments@sec.gov***

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
Attn: Elizabeth M. Murphy, Secretary

**Re: File No. S7-23-07; Release No. IA-3118**
**Temporary Rule Regarding Principal Trades with Certain Advisory Clients**

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (SIFMA)[1] appreciates the opportunity to comment on the Securities and Exchange Commission (SEC) proposal to amend rule 206(3)-3T under the Investment Advisers Act of 1940 (the Rule) to extend the date on which the Rule will sunset from December 31, 2010 to December 31, 2012.[2] SIFMA strongly supports the extension of the Rule for an additional period of two years beyond its currently scheduled expiration date. The bases for our support are set forth below:

In the wake of the 2007 federal appellate court decision in *Fin. Planning Ass'n (FPA) v. SEC*,[3] the SEC developed the Rule to accommodate the interests of large numbers of fee-based brokerage clients and other advisory clients who would likely be harmed by

[1] 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.

[2] Release No. IA-3118; File No. S7-23-07 (Temporary Rule Regarding Principal Trades with Certain Advisory Clients) (December 6, 2010) (Proposing Release), available at http://sec.gov/rules/proposed/2010/ia-3118fr.pdf.

[3] 482 F.3d 481 (D.C. Cir. Mar. 30, 2007).

the *FPA* decision.[4] The Rule was scheduled to expire by its terms on December 31, 2009. In August 2009, SIFMA requested that the SEC extend the Rule for an additional two-year period on the grounds that there was no evidence to suggest that the Rule was not operating effectively or as intended, or that firms were not meeting their disclosure obligations or their obligations vis-à-vis their clients when they conducted principal trades.[5] In December 2009, the SEC extended the Rule for an additional one-year period until December 31, 2010.[6]

Since the Rule's implementation in 2007, firms both large and small have relied upon, and investors have benefitted from, the Rule.[7] Discontinuation of the Rule would create both near and long-term hardships for firms and clients alike. In the near-term, if the Rule were allowed to sunset, firms would require sufficient advance time to implement technological and infrastructure changes to restrict principal trading access for non-discretionary advisory programs and to modify client agreements and disclosures. Clients who hold certain securities purchased or sold on a principal basis or have come to rely on access to those securities that typically trade in the dealer market would need advance notice of these significant changes in their account relationship so that they and the firms that serve them can consider alternatives to serve the clients' best interests.

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[4] *See* 72 Fed. Reg. 55022, 55023 (Sep. 28, 2007) (17 C.F.R. pt. 275) ("…one group of fee-based brokerage customers is particularly likely to be harmed by the consequences of the FPA decision: customers who depend both on access to principal transactions with their brokerage firms and on the protections associated with a fee-based (rather than transaction-based) compensation structure.").

[5] Letter dated August 21, 2009 from Ira D. Hammerman to Elizabeth M. Murphy, available at http://www.sifma.org/WorkArea/showcontent.aspx?id=12974.

[6] See SEC Release No. IA-2965; File No. S7-23-07 (Dec. 23, 2009), available at http://www.sec.gov/rules/final/2009/ia-2965.pdf.

[7] Our sample of seven firms, both large and small, revealed the following aggregate data: (i) over nine-hundred thousand accounts enrolled in programs relying on the Rule (as of about Oct. 2010 for some firms and as of about Dec. 2009 for others); (ii) over one-hundred thousand principal trades effected in program accounts (for the period Jan. 2009, and in some cases later, through Sep. 2010, and in some cases earlier); and (iii) over $4 billion in gross value of securities traded in principal trades. Notably, this data represents only a portion of the overall total number of trades and gross value of securities traded in reliance on the Rule.

In the long-term, allowing principal trading under manageable and appropriate protections such as those of the Rule promotes investor choice in advisory accounts with access to the inventory of a diversified financial services firm. Those clients benefit from easier access to a wider range of securities for which they can receive both investment advice in a fee-based program and better pricing for their trades.[8] At the same time, the conditions under Rule provide a practical alternative for dually registered investment advisers to engage in principal transactions while upholding the Congressional purpose in enacting Section 206(3) of the Advisers Act – assuring that unmarketable securities are not "dumped" into client accounts.[9]

SIFMA also continues to support a uniform federal fiduciary standard for broker-dealers and investment advisers, about which we commented to the SEC in August 2010.[10] We believe that principal trading relief is fundamental to harmonizing the standard of care when providing personalized investment advice about securities to retail customers. Assuming appropriate disclosure and client consent, principal trading relief overwhelmingly works to the advantage of the investor who thereby gains access to a wider range of investments at prices that are very often more favorable than on an agency basis. We also believe that permanent and appropriately more expansive principal trading relief will ultimately lead to the best results for investors. Thus, we welcome the opportunity that the Rule's extension may provide to continue working with the SEC staff, and other interested groups, to better define and expand the conditions under which firms may conduct principal trades.

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[8] *See* Temporary Rule Regarding Principal Trades with Certain Advisory Clients, Investment Advisers Act Release No. 2653 (Sep. 24, 2007), 72 Fed. Reg. 55022 (Sep. 28, 2007) at Section VI.C.

[9] As the Proposing Release notes, the Commission's examination staff has not identified any instances of "dumping" securities in client accounts under the Rule. SIFMA and its members acknowledge the Commission's statement that firms that rely on the Rule should evaluate their ongoing compliance with all of the Rule's conditions and requirements. Proposing Release at [7].

[10] SIFMA comment letter to SEC on Obligations of Brokers, Dealers, and Investment Advisers (August 30, 2010), available at http://www.sifma.org/issues/item.aspx?id=22263. See also SIFMA testimony before House Financial Services Committee in July and October 2009, available at http://www.sifma.org/issues/item.aspx?id=1515 , and at http://www.sifma.org/issues/item.aspx?id=1519.

In sum, given the advantages to investors and the protections provided by the Rule, and the pendency of the SEC's study on the fiduciary issue, we support the SEC's proposal to further extend the Rule during the pendency of the study and rulemaking process for the benefit of the numerous firms and investors who currently rely upon the Rule.

If you have any questions regarding this matter, please feel free to contact me at 202.962.7373 or my colleague Kevin Carroll at 202.962.7382.

Sincerely yours,

Ira D. Hammerman
Senior Managing Director
and General Counsel

cc: The Hon. Mary L. Schapiro, Chairman
The Hon. Luis A. Aguilar, Commissioner
The Hon. Kathleen L. Casey, Commissioner
The Hon. Troy A. Paredes, Commissioner
The Hon. Elisse B. Walter, Commissioner
Robert W. Cook, Director, Division of Trading and Markets
Jennifer B. McHugh, Acting Director, Division of Investment Management