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August 8, 2016

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

U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-1090
Attn: Brent J. Fields, Secretary

Re: File No. S7-23-07
Temporary Rule Regarding Principal Trades with Certain Advisory Clients

Dear Mr. Fields:

The Securities Industry and Financial Markets Association ("SIFMA")[1] submits this comment to present our members' views on Rule 206(3)-3T (the "Rule") under the Investment Advisers Act of 1940 (the "Advisers Act"), which is currently scheduled to expire on December 31, 2016.

Upon its current sunset date, the Rule will have been in place for nine years and three months. This is SIFMA's sixth comment on the Rule.[2] We supported the initial adoption of the Rule in 2007 for a twenty-seven-month effective period. Thereafter, we supported the Rule's extension in 2009 for one year, in 2010 for two years, in 2012 for two years, and again in 2014 for two years. SIFMA's members continue to rely upon and support the Rule and urge the SEC to continue to make it available for the benefit of their clients.

Current Benefits of the Rule

The Rule is intended to permit advisers who are also registered as broker-dealers and who offer non-discretionary advisory accounts (which are subject to the requirements of the Advisers

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1 SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

2 SIFMA comment to SEC, dated November 30, 2007 (http://www.sifma.org/issues/item.aspx?id=212); SIFMA comment to SEC, dated August 21, 2009 (http://www.sifma.org/issues/item.aspx?id=442); SIFMA comment to SEC, dated December 20, 2010 (http://www.sifma.org/issues/item.aspx?id=22729); SIFMA comment to SEC, dated November 13, 2012 (http://www.sifma.org/issues/item.aspx?id=8589940917); and SIFMA comment to SEC, dated September 17, 2014 (http://www.sifma.org/issues/item.aspx?id=8589950935).

Act) to engage in principal transactions with their advisory customers without requiring transaction-by-transaction, written disclosure and consent. A number of SIFMA member firms continue to rely on the Rule as an alternative means of complying with Section 206(3) of the Advisers Act in order to sell customers securities from their proprietary accounts that the firms could not otherwise offer, or could only offer on an agency basis, often at a higher cost. Members who currently do not rely on the Rule continue to report that they would consider doing so if the Rule were permanent.

Principal trading benefits investors by providing them access to securities that may not be available on the open market or that are only available on an agency basis at higher prices. The Rule facilitates the conferment of those benefits by allowing firms to offer investors a greater variety of securities from firm inventories, execute trades in such securities more quickly, and offer customers better prices on such securities. SIFMA member firms that rely on the Rule trade a wide variety of securities, including fixed income securities, preferred shares, and eligible syndicate securities.

SIFMA recently conducted a survey of member firms that have relied on the Rule in the past two years (2014 – 2015). The following represents the aggregate responses of six member firms:

a. What is the approximate amount of assets in your firm's non-discretionary investment advisory accounts as of December 31, 2015? **$494,575,067,956**

b. What is the approximate number of accounts noted in a.? **1,490,323**

c. What is the approximate amount of assets in non-discretionary investment advisory accounts with which your firm is <u>eligible</u> to engage in principal trading under the Rule (i.e., to whom blanket disclosure has been provided and consent obtained to allow reliance on the Rule) as of December 31, 2015? **$247,580,809,399**

d. What is the approximate number of accounts noted in c.? **418,023**

e. What is the approximate amount of assets in non-discretionary investment advisory accounts with respect to which your firm has <u>actually</u> relied on Rule 206(3)-3T in the past two years? $**12,816,067,611**

f. What is the approximate number of accounts noted in e.? **19,633**

Costs of Allowing the Rule to Expire

If the Rule were allowed to expire, many firms continue to report that they would in many cases be unable to comply with Section 206(3) of the Advisers Act, which requires written disclosure and consent from customers before completion of each principal trade. Thus, firms would be required to eliminate or greatly reduce their offering of principal trades through advisory accounts, to the detriment of investors.

In addition, advisers would also be forced to incur significant costs over a period of many months to over a year to implement changes to their technological systems, procedures and disclosure documents necessary to offer principal trades in compliance with Section 206(3) even on a limited basis. Until advisers made these changes, their clients would either lose access to the securities currently offered through principal trades, or be forced to pay higher prices for these securities.

Finally, SIFMA supports the SEC's undertaking to review the standards of conduct and regulatory requirements applicable to broker-dealers and investment advisers. We also support a more permanent solution to the regulation of principal trading by investment advisers through the adoption of a new rule or modified version of Rule 206(3)-3T that provides greater flexibility to dual registrants while still providing robust investor protections.

If the Rule were allowed to expire now, advisory firms would need to incur significant costs in order to offer principal trading to clients and even then, the offerings might be far more limited. If the SEC later adopts new rules concerning principal trading under Dodd-Frank Section 913, for example, firms would be required to restructure their operations and client relationships for a second time. It would be inappropriate to allow the Rule to expire now, before the SEC adopts prospective broader changes to the regulation of broker-dealers and investment advisers, because it would likely require many firms to restructure their operations relating to principal trades on two occasions, within a potentially short time period, at significant expense.

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Based on the foregoing, SIFMA recommends as follows:

- **Permanently Extend the Rule.** The SEC should permanently extend the Rule. The temporary nature of the Rule and its short-term extensions creates unnecessary uncertainty that inhibits firms' ability to plan future business activities. Members who currently do not rely on the Rule continue to report that they would consider doing so if the Rule were permanent. The Rule now has a lengthy, nine-year, track record of protecting investors through the requirements of the Rule, coupled with regulatory oversight. None of the prospective abuses or negative consequences foretold by the detractors of the Rule has borne out. Moreover, as discussed above, if the SEC ultimately proceeds to rulemaking under Section 913 of Dodd-Frank, the requirements of the Rule would likely be the most logical way for broker-dealers to address principal transactions. Thus, the Rule represents an opportunity for the SEC to finalize now an important component of a broader, prospective uniform fiduciary rule, and thereby also avoid the inefficiency, duplication and cost to firms of restructuring their operations yet again, if the SEC allows the Rule to sunset, and then later restores the Rule as part of a uniform fiduciary standard.

- **Extend the Rule for Five Years.** Barring a permanent extension, the SEC should extend the Rule for at least another five years. The four short-term extensions since 2007 have proven inadequate. Given the history of this issue, we expect it will take significant time for the SEC to adopt permanent regulation of principal trading in the context of its broader regulation of broker-dealers and investment advisers. A five-year extension represents a more realistic projection of the time it will require to formulate more permanent regulation and give certainty and comfort to both investors and advisory firms.

- **Provide Class Exemptive Relief and Twelve Months' Transition Time.**

SIFMA strongly prefers that the SEC extend the Rule, but if it must sunset, then the SEC should consider a request for class exemptive relief as an alternative means of compliance with Section 206(3). A request for a class exemption would be preferable to customers losing access to securities currently offered through principal trades because of advisers' inability to comply with Section 206(3). In contrast, an approach that would require submitting, considering, and deciding potentially dozens of separate, individual requests for exemptive relief would be inefficient and time consuming and ultimately could leave some firms and their clients with considerable uncertainty.

In addition, if the SEC elects to sunset the Rule, SIFMA's members would respectfully request twelve months' time in order to transition and implement changes to their technological systems, procedures and disclosure documents necessary to offer principal trades in compliance with Section 206(3).

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If you have any questions regarding the foregoing, please contact the undersigned at [redacted] or [redacted].

Sincerely,

Kevin M. Carroll

Kevin M. Carroll
Managing Director and Associate General Counsel

cc: Mary Jo White, Chair
Michael S. Piwowar, Commissioner
Kara M. Stein, Commissioner
David Grim, Director, Division of Investment Management
Stephen Luparello, Director, Division of Trading and Markets