SIFMA
Securities Industry and
Financial Markets Association

January 12, 2007

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-NASD-2006-124

Dear Ms. Morris:

The Operations Committee (the "Committee") of the Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on NASD proposed Rule 2342, which would require members to advise all new customers in writing at account opening, and all customers at least once each year in writing, how to obtain information about the Securities Investor Protection Corporation ("SIPC"). The Committee supports the proposal but believes an exception from the disclosure requirement for institutional customers would be appropriate.

The NASD states that public customers will benefit from broader dissemination of information about SIPC. The Committee agrees. The required disclosures undoubtedly would be beneficial in helping those retail investors who choose to access the information become aware of the scope of coverage under the Securities Investor Protection Act ("SIPA"). However, institutional customers are sophisticated investors who are well aware of SIPC and the protections it affords.

Institutional customers generally execute securities transactions through many broker-dealers and settle those transactions in Delivery versus Payment/Receive versus Payment ("DVP/RVP") accounts, where securities are delivered against payment to the clearing firm, prime broker or custodian on the settlement date of the transaction. Receiving the required disclosures annually from each broker-dealer through which an

[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

institution executes transactions would create a flood of unnecessary and redundant disclosures that would simply be discarded by institutional customers. In addition, as discussed below, the customer account statement, which is the most likely vehicle for the required disclosures, will be suppressed for most institutional customers going forward as a result of rule changes recently proposed by the self-regulatory organizations and approved by the Securities and Exchange Commission ("SEC").[2]

The SEC appears to acknowledge that institutions do not require the same level of disclosure as retail customers. In recent months, the SEC has approved rule changes by the NASD and New York Stock Exchange LLC ("NYSE") that require member firms to include a legend in monthly account statements indicating that a customer should report promptly any inaccuracy or discrepancy in its account to its clearing firm and its introducing firm. The legend also would inform customers that any oral communications should be re-confirmed in writing to further protect customers' rights, including rights under SIPA.[3] At the same time, the SEC was considering and subsequently approved new NASD Rule 2340 noted above, which allows institutional customers conducting a DVP/RVP business to elect not to receive quarterly account statements subject to certain conditions.[4] Implicit in the elimination of the account statement requirement is the determination that DVP/RVP customers do not need the same level of disclosure as retail customers.

An exception for institutional customers from proposed Rule 2342 would be consistent with new Rule 2340. Firms that carry DVP/RVP accounts for institutional customers are realizing substantial savings in statement production and mailing costs as a result of the ability to suppress account statements where customers have determined they are of little or no use. Institutional customers also benefit because they are no longer required to receive materials that are unwanted and unnecessary. This relief will be negated to some extent if separate costly mailings are required to those institutional customers who have elected not to receive statements.

Given the stated purpose of the proposed rule change, the Committee believes the NASD should create an exception for institutional customer accounts that meet the prerequisites for the acceptance of DVP/RVP orders pursuant to self-regulatory

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[2] *See* Securities Exchange Act Release No. 54811 (Nov. 22, 2006), 71 FR 69161 (NASD-2006-066), allowing institutional customers conducting a DVP/RVP business to elect not to receive quarterly account statements subject to certain conditions. A similar rule change by the NYSE was approved in Exchange Act Release No. 54810 (November 22, 2006), 71 FR 69165 (NYSE-2005-90).

[3] *See* Securities Exchange Act Release No. 54411 (September 7, 2006), 71 FR 54105, amended in Securities Exchange Act Release No. 54411A (October 6, 2006), 71 FR 61115 (NASD-2004-171), and Securities Exchange Act Release No. 54904 (December 8, 2006), 71 FR 75600 (NYSE-2005-09) ("NYSE Release").

[4] *Supra* note 2.

organization rules.[5] If the Commission and the NASD believe that institutions require some form of disclosure, the Committee would explore with Omgeo the feasibility of providing the required SIPC disclosures on the Omgeo platform, either through the TradeSuite or Alert functionalities, which would serve the same purpose as the annual written disclosure requirement.[6]

On December 22, 2006, the NYSE issued Information Memo 06-87 regarding new Rule 409 and 409A, recently approved by the SEC,[7] which requires similar SIPC disclosures effective May 31, 2007. Although the Committee missed the opportunity to comment on that proposal, the NYSE was helpful to the industry in eliminating the requirement to send quarterly statements to institutional customers. Consequently, we believe the NYSE may be receptive to the Committee's request for an institutional exception regarding the annual SIPC disclosures. If the Commission and the NASD are amenable to such a change, we will request that the NYSE amend Rule 409A accordingly.

The Committee appreciates the opportunity to comment on this rule change. If you have questions, or would like to discuss our views further, please contact the undersigned or Richard Bommer, SIFMA Director of Operations, at 212.608.1500.

Sincerely,

Noland Cheng
Chairman
SIFMA Operations Committee

CC: Operations Committee
Gregory Taylor, NYSE
William Jannace, NYSE
Stephen P. Harbeck, SIPC

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[5] *See, e.g.,* NASD Rule 11860.

[6] Omgeo, LLC is a for-profit provider of institutional processing services. Omgeo currently is the leading industry provider for institutional processing services but other vendors, such as TradeWeb and FMC Net, could be required to provide the disclosures as well.

[7] *See* NYSE Release *supra* note 3. Rule 409 requires member organizations to add a legend to customer statements of account advising customers to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm and Rule 409A requires member organizations to advise customers, in writing, of the availability of information regarding SIPC.