



January 7, 2008

Ms. Barbara Z. Sweeney  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

Re: FINRA Regulatory Notice No. 07-58,  
Proposed Guidance Regarding International Prime Brokerage Practices

Dear Ms. Sweeney:

The Prime Brokerage Committee (“Committee”) of the Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to provide the Financial Industry Regulatory Authority (“FINRA”) with comments regarding your Proposed Guidance for International Prime Brokerage Practices.

For convenience, our comments are set forth below in substantially the same order in which they are proposed in Attachment A to the Regulatory Notice. We have also taken the liberty of marking-up Attachment A to include our proposed changes. Finally, the Committee suggests that due to the complexity of some of the provisions included in the proposed guidance, that broker-dealers be provided with at least six months from the date of issuance of these guidelines to come into compliance with them. In addition, since one of the new requirements is that foreign customers will have to execute U.S. agreements with an Executing Broker (“EB”), we recommend that those EBs who demonstrate a good faith effort to obtain such executed agreements will not be subject to regulatory penalties for failure to comply.

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<sup>1</sup>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.

- **Definitions** – The Committee recommends that FINRA should not limit the use of these practices to only prime broker customers who are foreign domiciled. Rather we believe that any customer, regardless of their domicile, who is permitted to engage in securities business with a Foreign Prime Broker (“FPB”), should be included in the definition of Prime Broker Customers (“PB customers”).

In addition, since the IPBC acts not only as custodian but also as settlement agent, the Committee recommends expanding the definition accordingly.
- **Account Arrangement** – The Committee believes that the omnibus account that the International Prime Broker Custodian (“IPBC”) establishes for the FPB should not be limited to a “cash” omnibus account but rather should also include a “margin” omnibus account. This would permit the IPBC to decide how they would like to conduct this business while providing for all the safeguards FINRA has proposed in their guidance.
- **Books & Records** – Proposed changes include eliminating the requirement that the omnibus account be a “cash” omnibus account, clarifying that “generally” customers of a foreign broker-dealer are exempt from the requirements of FRB Regulation T, and explicitly permitting the FPB to borrow securities from either the IPBC or any other lender when covering short sales in the margin omnibus account.
- **Documentation** – The Committee recommends that in lieu of requiring the IPBC and the EB to execute a “revised” SIFMA Form 150, they be permitted, if they jointly agree, to simply amend their currently executed SIFMA Form 150. In addition, the guidelines should specifically require a Form 1, Schedule A listing the name of the customer and the FPB when adding PB customers under SIFMA Form 150. This should alleviate some time-consuming and unnecessary documentation in complying with these new guidelines.

Finally, in order to avoid any doubt, the Committee recommends that the proposed guidance should explicitly state that the omnibus agreement is not subject to Incorporated NYSE Rule 382. This will insure that IPBCs do not have to submit the omnibus account agreements with their FPB to FINRA for their approval.
- **Confirmation of Trades** – In addition to permitting an EB to send the confirmation to the PB customer in care of the FPB if the PB customer has instructed the EB to do so in writing, the Committee recommends that the EB be permitted to send the confirmation to the PB customer in care of the FPB in care of the IPBC. This will allow the EB to use the Omgeo TradeSuite/CNS Interface for Prime Brokers to satisfy the requirements of SEC Rule 10b-10.

The Committee would be pleased to discuss any of these comments with FINRA's staff in greater detail, or to provide any other assistance that would help. If you have any questions, please do not hesitate to contact either the undersigned (212-272-1210), Robert O'Connor, Vice-Chair of the Committee (212-762-5335) or Gerard J. Quinn, Managing Director and Associate General Counsel of SIFMA (212-618-0507).

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey C. Bernstein". The signature is written in a cursive style with a large, stylized initial "J".

Jeffrey C Bernstein  
Senior Managing Director  
Bear, Stearns & Co. Inc.  
Chair, SIFMA Prime Brokerage Committee

cc: Grace Vogel, Executive Vice President  
Member Regulation  
Bernadette Chichetti, Senior Principal Associate,  
Risk Oversight & Operations Regulation