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Invested in America

May 19, 2011

VIA ELECTRONIC MAIL (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 11-14 (the "Notice"); Proposed New FINRA Rule 3190 Third-Party Service Providers

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on proposed FINRA Rule 3190, which seeks to clarify a member firm's obligations and supervisory responsibilities regarding outsourcing arrangements.[2] Outsourcing has been critical to improving the efficiency of our industry, enabling firms to provide improved customer service, and maintaining industry and firm competitiveness internationally.

SIFMA understands FINRA has made this Proposal in response to industry questions and FINRA's concerns regarding risks associated with outsourcing, but SIFMA is concerned over the potential disruption the Proposal may have on industry outsourcing arrangements undertaken in conformity with FINRA's existing regulatory guidance. Depending on how FINRA applies the proposed Rule, clearing and carrying member firms could be required to either restructure existing arrangements or unwind and rebuild existing infrastructure around such arrangements. This would create disruption in the industry and impact member firms' ability to achieve scale and efficiency, and ultimately impact cost structure and competitiveness in the marketplace. In addition, the intersection between the Proposal and

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[1] The Securities Industry and Financial Markets Association ("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 ("GFMA"). For more information, visit www.sifma.org.

[2] FINRA Regulatory Notice 11-14 (March 2011) (hereinafter, the "Proposal").

FINRA's Operations Professional Proposal[3] creates regulatory redundancy and raises concerns with respect to associated person and registration requirements, as described further below.

SIFMA also does not believe the Proposal adequately articulates a basis or risks that would justify the potentially dramatic regulatory changes proposed or how those risks are not adequately addressed by the current regulatory framework. In fact, the regulatory framework under NTM 05-48 and related interpretive guidance[4] has effectively served as the foundation for how member firms establish and oversee the covered support functions they have outsourced to third-party service providers. Firms have relied upon this guidance extensively for over five years and have continued to enhance their technology, control and supervisory control systems without material industry disruption due to the outsourcing of support for regulated businesses of member firms. The result is an improved supervisory infrastructure that is interwoven into member firms' third-party service provider arrangements that largely has alleviated the concerns raised in NTM 05-48 and the 2004 industry survey that gave rise to it.[5] SIFMA therefore disagrees with FINRA's justification for proposed Rule 3190(c) in the Proposal that outsourcing under the current regulatory regime, involving the movement of assets, presents systematic risk or would "undermine investor confidence in the securities industry." SIFMA members have long utilized outsourced services to increase efficiency and reduce risk in accordance with NTM 05-48 and other applicable regulatory guidance.

For these reasons and those described below, SIFMA believes that the current Proposal, as drafted, is premature. If FINRA nevertheless determines to move forward with the rulemaking instead of conducting additional research and analysis as well as soliciting further industry feedback, we submit that FINRA should amend the current Proposal to more clearly codify existing guidance and not introduce additional restrictions and requirements without a clear factual justification. We would welcome the opportunity to engage in a constructive industry dialogue with FINRA to ensure that any regulatory response in the outsourcing area is consistent with established risks and known industry problems – to the extent they exist – with respect to current outsourcing arrangements in support of regulated functions of member firms.

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[3] SEC Release No. 34-64080; File No. SR-FINRA-2011-013, March 14, 2011; SIFMA Comment Letter Re: FINRA's Operations Professional Proposal, April 29, 2011.

[4] NASD Notice to Members 05-48 (April 2005) (Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers) ("NTM 05-48"); FINRA Office of General Counsel Interpretive Memorandum, dated August 15, 2006 (A Member's Responsibilities Regarding the Outsourcing of Certain Activities).

[5] NASD and the New York Stock Exchange conducted a joint survey in October 2004 of a select number of broker-dealers to determine whether broker-dealers had procedures in place to determine the proficiency of service providers, whether outsourced business functions were properly monitored, and whether broker-dealers were in compliance with applicable regulations pertaining to the privacy of customer information in connection with such outsourcing arrangements.

I. The Movement of Customer or Proprietary Cash or Securities

As noted, SIFMA is concerned over the potentially disruptive impact of the Proposal on the industry approach to outsourcing under the existing regulatory framework. Most importantly, proposed Rule 3190(c)(1) – under which FINRA would permit only associated persons of a clearing member to have "authority and responsibility" for the movement of customer or proprietary cash or securities – could be applied by FINRA to curtail the ability of member firms to continue to outsource administrative support for functions involving the movement of assets in an efficient manner subject to a proper control environment.

As a threshold matter, SIFMA believes that the heightened restriction in 3190(c)(1) is unnecessary and redundant of the other provisions of proposed Rule 3190(a), (b), and (d), regarding member retention of responsibility, supervision, due diligence and oversight of service providers, which have been operative through NTM 05-48. Rule 3190(c)(1) also redundant of proposed Operations Professional Proposal 1230(b)(6)(B)(iii), which requires service provider consultants who act in a supervisory capacity for a member firm in the "[r]eceipt and delivery of securities and funds, account transfers" to become registered Operations Professionals acting as associated persons of the customer clearing firm. If 1230(b)(6) is promulgated, SIFMA believes the only arguably non-redundant effect of proposed Rule 3190(c)(1) would be that unregistered line level consultants who do not perform a supervisory role for a customer clearing firm, but who have "authority and responsibility" for moving member clearing firm assets, may be required to become unregistered associated persons of the clearing member firm. SIFMA objects to such a requirement that *unregistered* individual consultants become associated persons of the clearing firm. This would establish a burdensome requirement on both member firms and third-party service providers and extend the concept of "associated person" status beyond what is currently contemplated by the federal securities laws and FINRA rules.[6]

If FINRA nevertheless imposes the heightened restrictions under proposed Rule 3190(c)(1), SIFMA believes that FINRA should clarify in the Proposal that, in practice, the Rule would not prohibit a clearing member from tailoring its outsourcing arrangements in support of functions involving asset movements in a manner in which the firm will retain authority and responsibility for asset movements and will outsource only administrative, support functions governed by onshore supervision and controls.[7] Specifically, proposed Rule 3190(c)(1) read in conjunction with proposed Rule 3190(f)(1) should not restrict a clearing firm from supporting a function involving asset movements by arranging for administrative support services that are governed by appropriate layers of supervision and control, such as: (i) detailed procedures manuals setting forth each step to be taken by consultants in an administrative manner that

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[6] See also Section II below.

[7] FINRA has similarly excluded persons performing "clerical and ministerial" activities from the scope of proposed Rule 1230(b)(6), in which FINRA declined to define the phrase on the grounds that it is "well understood in the industry." SIFMA and its members understand the terms "ministerial" or "clerical and ministerial" to include delimited administrative activities that do not involve discretion.

does not allow for the exercise of discretion; (ii) written supervisory procedures by which a firm employee exercises comprehensive supervision over the services on behalf of the firm; (iii) systematic controls to retain member firm authority and responsibility for asset movements and transactions; (iv) contractual provisions with the service provider setting forth the clearly defined scope of support, service levels, customer ability to take corrective action, customer right to approve subcontractors, governance procedures, audit rights, liability, indemnity, remedies and other standard legal terms and conditions for outsourcing agreements; and (v) firm-wide policies and procedures applicable to outsourcing engagements, including those requiring due diligence and ongoing monitoring of service providers.

In commentary to the companion restriction in proposed Rule 3190(c)(3) against the adoption or execution of compliance or risk management systems, FINRA correctly permits such structured systematic support arrangements:

> "[T]he proposed rule does not prohibit a firm from using a third-party service provider or its systems *as part of the member firm's compliance and risk management solutions, provided the member firm adopts such services and systems in a manner consistent with the regulatory requirements as they apply in light of the firm's size, businesses and business model, retains control over their implementation and use within the firm, and independently determines that they achieve compliance with the applicable securities laws and FINRA and MSRB rules*." (emphasis added)

FINRA should clarify in its Rule commentary that just as the restriction against the adoption or execution of compliance or risk management systems in proposed Rule 3190(c)(3) does not apply when the clearing firm customer adopts the services or systems in an administrative, controlled manner consistent with regulatory requirements, a clearing member retains the flexibility under proposed Rule 3190(c)(1) to structure its outsourcing arrangements efficiently and effectively – *i.e.*, in a manner in which the member firm will retain authority and responsibility for asset movements and will outsource only administrative support governed by onshore supervision and controls.

II. Associated Persons, Operations Professionals and Supervision

SIFMA is concerned about the potential combined impact and consequences of the Proposal and Operations Professional Proposal on outsourcing arrangements between members and third-party service providers as it relates to associated persons.[8] In some outsourcing arrangements member firms have the requisite "control" over individual personnel employed by third-party service providers who are performing "covered functions" that would require registration of those third-party personnel as Operations Professionals on behalf of the member firm. A member firm may terminate the services of individual consultants, have a

[8] Though member firms have relied on NTM 05-48 to establish their supervisory programs, we also are concerned about the intersection of NTM 05-48 and the Proposal with FINRA's Operations Professional Proposal. SEC Release No. 34-64080; File No. SR-FINRA-2011-013, March 14, 2011 (FINRA's "Operations Professional Proposal"); SIFMA Comment Letter Re: FINRA's Operations Professional Proposal, April 29, 2011.

cause of action against them personally and/or may have the ability to directly oversee such persons at the third party performing the function. In such situations, SIFMA acknowledges such persons may be associated persons of the member and, may need to obtain registrations if the Operations Professional Proposal is adopted and such person performs a role that requires registration.

In some other outsourcing arrangements, however, the member firm exercises supervision and control over the third-party vendor and the services it provides, as opposed to over every relevant individual person at the third-party vendor.[9] Specifically, member firms have built supervisory and control infrastructures around their oversight of the third-party vendor, established service levels to monitor performance and governance models to manage the services, and maintained the right to "hire or fire" the vendor itself, as opposed to individuals at the vendor. We believe that in this example, treating individual persons at third-party vendors as "associated persons" is contrary to the industry's understanding under existing law and regulations. Further, such arrangements generally do not call for individuals at the third party to be "associated persons" because effective oversight, supervision and control are carried out through a member firm's systems through oversight of the vendor itself and the services it provides. The vendor is in a far better position in these arrangements to control and manage each individual vendor employee who may provide services.

Further, we believe that requiring associated persons in such a situation would raise a series of unanswered questions and unintended consequences. For example, it is unclear whether FINRA would expect that an individual at an affiliated or unaffiliated service provider performing an applicable function on behalf of several member firms be a registered or associated person at each member firm. In addition, it is unclear how such individual would be subject to each member firm's written supervisory and compliance policies and procedures, including, for example, email retention and review, and personal trading policies. These are just a few examples of potentially and unnecessarily burdensome consequences to extending the concepts of registered or associated person status to individuals of third-party service providers.

We believe limiting the application of the new Operations Professional registration to "associated persons" of member firms, as reflected in applicable law and existing FINRA registration rules, would resolve the complicated jurisdictional and practical issues otherwise arising from the lack of clarity in the scope of the Operations Professional Proposal, in tandem with NTM 05-48 and this Proposal. Should the SEC approve FINRA's Operations Professional Proposal in its current form before completing the rulemaking and comment process for this Proposal, FINRA effectively would expand its regulation of outsourcing arrangements.

Further, FINRA should provide guidance that the mere fact that persons are acting as Operations Professionals does not establish their physical location as a "branch office" under

[9] Such employees typically are not controlling, controlled by or under common control with the member firm, within the meaning of section 3(a)(21) of the Securities Exchange Act of 1934 or FINRA's By-Laws.

FINRA rules, absent other qualifying indicia of branch office activities.[10] We also request that FINRA clarify that for affiliated broker-dealers, if an employee supports more than one such affiliate in one or more covered functions, such employee is only required to register with one of the broker-dealers and not all of them.

III. Scope

A. Scope of Functions or Activities

Further to the comments above, SIFMA would like to confirm that the Proposal, as it relates to such prior guidance, was not intended to expand the scope of functions or activities applicable to a member firm's responsibilities when outsourcing to third-party service providers. For example, proposed Rule 3190 is intended to apply to a member's use of a third-party service provider to perform "functions or activities *related to the member's business as a regulated broker-dealer*." In contrast, NTM 05-48 noted that "covered activities" were "activities and functions that, if performed directly by members, *would be required to be the subject of a supervisory system and written supervisory procedures pursuant to Rule 3010*." SIFMA seeks confirmation that by describing the scope of functions and activities in different terms, FINRA did not intend to create a new or different standard of covered functions or activities. Accordingly, SIFMA recommends that the scope of covered functions and activities in proposed Rule 3190(a)(1) be amended to mirror the specific language in NTM 05-48.

Alternatively, should the SEC approve FINRA's Operations Professional Proposal in its current form, perhaps an even more congruent approach would be to define the scope of covered functions and activities in this Proposal as the same functions covered by the Operations Professional Proposal. If FINRA adopted this approach, SIFMA believes that the prescriptive provisions with respect to clearing and carrying firms would be unnecessary. While we acknowledge that the Operations Professional Proposal categories have not been finalized and the industry has raised certain questions as to whether all are appropriate as separate functions, particularly the concept of posting to books and records, we submit that the regulatory focus on these functions, once finalized, should inform the issue of which functions, if outsourced, should be subject to the proposed Rule.

In either case, we request that certain references to the scope of functions or activities be clarified. For example, in proposed Rule 3190(a)(1), it states that "[n]o member shall delegate its responsibilities for, or control over, *any* functions or activities…" We recommend that the reference to "any" be replaced with "such" to clarify that the requirement applies only to the

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[10] In this regard, we note NASD Rule 3010(g) generally defines the term "branch office" as any location where one or more associated persons of a member regularly conducts the business of effecting securities transactions and specifically excludes locations established solely for "back office type functions." However, Rule 3010(g)(2)(B) effectively provides that, notwithstanding this general definition and exclusion, any "location" that is responsible for supervising the activities of associated persons at one or more non-branch locations is considered to be a branch office. As such, this provision could be read to require a vendor's physical location to be registered as a branch office of the member firm, a result that SIFMA does not believe FINRA intends.

scope of functions or activities set forth in the proposed Rule. FINRA should make similar clarifying amendments to proposed Rule 3190(a)(2) and (b)(1).

Further, SIFMA agrees with the standard set forth in paragraph (a)(2) that requires member firms to have supervisory systems and written procedures that are "reasonably designed to achieve compliance with applicable securities laws…" However, we believe the standard should relate to a member firm's oversight of third-party service providers. Specifically, proposed Rule 3190(a)(2) should be amended such that the supervisory systems and written procedures "with respect to functions and activities performed by third-party services providers are reasonably designed to oversee such services and functions and activities to achieve compliance with applicable securities laws…."

B. Scope of Third-Party Service Provider – Application of Proposal to Affiliates and Regulated Entities

SIFMA understands that FINRA intends to cover affiliates of member firms as third-party service providers in Supplementary Material .01. We believe that FINRA should acknowledge in its Proposal that member firms can tailor their oversight programs in furtherance of the requirements of the Proposal to their business size, the nature of their organizational structures, and whether such third-party service providers are subject to similar regulatory schemes. Specifically, SIFMA believes that there is not a "one-size-fits-all" approach to conducting due diligence on third-party service providers, or supervising and monitoring the activities or functions performed by such third-party service providers. In particular, SIFMA questions whether these concepts should mean the same thing with regard to an affiliate of a member firm or an entity subject to similar regulatory schemes (*i.e.*, an SEC-registered broker-dealer, SEC-registered transfer agent or other financial institution subject to a substantially equivalent regulatory regime), as it does with respect to an independent or unregulated third-party service provider. As such, SIFMA recommends that FINRA revise Supplementary Material .01 to indicate that third-party service providers shall include affiliates or entities subject to similar regulatory schemes only with respect to Sections (a) and (b) of the Rule but *not* with respect to Sections (c), (d), and (e) of the Rule applicable to clearing and carrying member firms.

C. Scope of Third-Party Service Provider – Application of Proposal to Sub-Vendors

SIFMA believes FINRA should not extend the proposed Rule to "sub-vendors." Third-party service providers include sub-vendors with respect to each aspect of the Rule due to repeated parenthetical reference. We believe this reference imposes an unrealistic expectation for firms to perform independent supervision, due diligence, and oversight of a third-party service provider's sub-contractors, which may be numerous and not precisely ascertainable depending on the type of arrangement. Moreover, third-party service providers may be unwilling to provide information regarding sub-vendors or changes thereto in consideration of confidentiality agreements or competitive concerns (e.g. losing business to its sub-contractors). Moreover, FINRA members may not be able to perform the requisite supervision or due diligence with respect to sub-vendors in the absence of contractual privity.

In the alternative, if FINRA determines it is necessary to include sub-vendors within the scope of Rule, it should only be with respect to a clearing or carrying member's obligation to approve a transfer of duties and not with respect to the more general supervision and due diligence requirements.

D. Due Diligence of Third-Party Service Providers

Further, SIFMA believes that the general requirements set forth in proposed Rule 3190(a), including our suggested revisions to (a)(2) noted above in Section III.A, should be consistent with the due diligence standards in paragraph (b). To that end, we recommend that paragraph (b)(2) be amended as follows: "the member has a supervisory system and written procedures with respect to functions and activities performed by third-party services providers that are reasonably designed to oversee such services and functions and activities to achieve compliance with applicable securities laws and regulations and with applicable FINRA and MSRB rules."

IV. Restrictions Applicable to Clearing or Carrying Members

Proposed Rule 3190 provides that a clearing or carrying member "shall vest an associated person of the member with authority and responsibility for: (1) the movement of customer or proprietary cash or securities; (2) the preparation of net capital or reserve formula computations; and (3) the adoption or execution of compliance or risk management systems."

In addition to the comments described above in Section I with respect to movement of assets, we request FINRA that confirm that "an associated person vested with the authority and responsibility for such activities" is intended to be the person who is charged with supervisory responsibility or control over such covered activities or functions, and not the person carrying out the covered activities or functions (such as a clerk with instructions or procedures directing him or her to push a button to implement such instructions or procedures). If the Proposal is intended to cover each individual at the vendor providing such administrative support for a function, the Proposal could have a significant impact on, and unintended consequences for, arrangements between members and affiliated and unaffiliated third-party service providers. As noted above, the term "associated person" of a member is well understood in the industry to apply to a person who, among other things, is "engaged in the investment banking or securities business who is *directly or indirectly controlling or controlled by a member*…"[11] Accordingly, we seek clarification on this point to avoid unnecessarily burdensome requirements that could result in an employee of a third-party service provider becoming an "associated person" of every member firm for which he or she performs such administrative functions or activities.

[11] *See Supra* Note 9, and accompanying text.

SIFMA further requests that FINRA confirm it did not intend that a member firm is required to supervise every person at the third-party service provider, but rather the member firm retains the responsibility for the third-party service provider's outsourced duties. Further, in a situation where the "vested" person is the associated person charged with supervisory responsibility, SIFMA requests that FINRA confirm that such person could be either on the premises of the member firm or the third-party service provider for the purposes of carrying out his or her supervisory responsibilities for the member firm under this requirement.

A. Posting to Books and Records

Proposed Supplementary Material .02 provides that the requirements with respect to the movement of cash or securities do not preclude a service provider from posting items to a member's books and records, "provided that the member reviews *each* posting prior to the close of the business day following the posting." FINRA states in the commentary that it generally would permit this review to be performed by "substantiation of financial balances and *spot-check reviews of individual entries*, rather than an actual sign off on each individual entry." Accordingly, SIFMA requests that FINRA amend proposed Supplementary Material .02 to specifically state that a spot-check review of individual entries is permissible as opposed to requiring the review of "each" individual entry.

Further, SIFMA wishes to confirm that systemic pre- or post-entry edits or validation mechanisms can serve as a substitute for the spot-check review of individual entries that would ordinarily be required. Systematic controls and validation mechanisms help to ensure there is proactive, automatic and consistent application of controls around entries or their posting to a member's books and records. Such systematic controls and validations cannot consistently be replicated through manual review. SIFMA seeks to confirm that such systematic review and validation can serve as the required spot check.

B. The Preparation of Net Capital or Reserve Formula Computations

SIFMA believes that the limitations with respect to the use of third-party service providers in the preparation of net capital or reserve formula computations is a reasonable approach. Specifically, proposed Rule 3190(c)(2) and related commentary provide a clear explanation as to the types of functions that may be performed by a third-party service provider and which functions must be performed by the member firm and its properly registered associated person directly responsible for this function.

C. The Adoption or Execution of Compliance or Risk Management Systems

SIFMA appreciates FINRA's clarification of the scope of permissible outsourcing of compliance and risk management functions. The commentary confirms that FINRA is focused primarily on the functions or activities performed by individuals of third-party service providers as opposed to the member firm's adoption of third-party systems or software to support the member firm's compliance and risk management solutions. We also appreciate that FINRA recognizes that member firms can calibrate their supervision and due diligence of these functions and activities based on the firm's size, businesses and business model.

Notwithstanding the foregoing, SIFMA does not understand the need to limit clearing firms from outsourcing compliance functions or activities generally. As with any covered outsourced function, a member firm has the ultimate supervisory responsibility with respect to the firm carrying out its compliance functions in accordance with applicable laws and regulations. Unless there are specific examples of problems with respect to outsourcing in this area or a clearly articulated regulatory reason to establish limits, we believe that so long as firms have the appropriate controls and supervisory framework in place, they should be able to utilize third parties to perform compliance functions on behalf of the member firm.

In the event that FINRA determines that such limits are necessary, SIFMA believes that it would be helpful if FINRA could acknowledge there is not a "one-size-fits-all" approach. To that end, SIFMA reiterates its suggestion that FINRA should acknowledge in its Proposal that member firms can tailor their oversight programs in furtherance of the proposed Rule requirements to their business size, the nature of their organizational structures, and whether such third-party service providers are affiliates of the member firms or subject to similar regulatory schemes.

V. Oversight of Third-Party Service Providers by Clearing or Carrying Members

SIFMA understands the importance of oversight of third-party service providers by clearing and carrying members; however SIFMA recommends that proposed Rule 3190 only apply to carrying or clearing related activities and functions that, if performed directly by members, would be required to be the subject of a supervisory system and written supervisory procedures pursuant to Rule 3010. Therefore, SIFMA believes that non-clearing or carrying outsourced functions should not be covered by paragraph (d). Alternatively, as discussed above, our preferred approach would be to reconcile the applicable scope with the categories of functions outlined in FINRA's Operations Professional Proposal.

VI. Notifications by Clearing or Carrying Members

Proposed Rule 3190 requires a clearing or carrying member entering into any outsourcing agreement within 30-days of execution of the outsourcing agreement and within three months of the effective date to "notify FINRA of all outsourcing *arrangements* in effect as of the [effective date]." For consistency, SIFMA requests that paragraph (e)(1) of the proposed Rule be amended to relate to outsourcing *arrangements* rather than outsourcing *agreements*. Further, SIFMA recommends that the scope of paragraph (e) be limited to carrying or clearing related activities and functions that, if performed directly by members, would be required to be the subject of a supervisory system and written supervisory procedures pursuant to Rule 3010. Again, in the alternative, our preferred approach would be to reconcile the applicable scope with the categories of functions outlined in FINRA's Operations Professional Proposal.

Because FINRA is proposing to impose such heightened requirements for carrying and clearing firms, SIFMA believes that the information most relevant to FINRA for these member firms should be *material* and related specifically to their regulated clearing and carrying activities, as immaterial outsourcing arrangements and those relating to non-clearing

or carrying activities can be reviewed by FINRA as part of their regular examination process. Therefore, SIFMA recommends that FINRA amend the Proposal to instead require that that clearing firms report a list of material outsourcing relationships that support their regulated businesses.

As stated previously in Section III.B, SIFMA recommends that FINRA revise Supplementary Material .01 to indicate that third-party service providers shall include affiliates or entities subject to similar regulatory schemes only with respect to Sections (a) and (b) of the Rule but *not* with respect to Sections (c), (d), and (e) of the Rule applicable to clearing and carrying member firms. SIFMA believes this is particularly so with respect to notification obligations under Section (e), given the limited regulatory value of providing notification concerning activities "outsourced" to affiliates.

VII. Compliance Date

For all of the reasons discussed above, we believe that if FINRA continues to pursue rulemaking as currently proposed, it should extend the proposed compliance date for *all* aspects of the Rule to twelve months from the effective date in order avoid undue burden associated with inventorying and amending arrangements as needed and preparing and submitting reports with the information required in paragraph (e)(3).

VIII. Exceptions

Under paragraph (f) FINRA has included certain exceptions relating to ministerial activities and activities performed pursuant to a carrying agreement approved under FINRA Rule 4311. SIFMA believes additional specific relationships should be excluded altogether from the Rule's requirements when the third-party is another SEC-registered broker-dealer, SEC-registered transfer agent, registered adviser, regulated bank, or other financial institution subject to a substantially equivalent regulatory regime. Such efforts would be duplicative of currently existing reporting, regulatory and examination programs.

Some examples include common utilities and shared service providers that perform services the member firm cannot, as a practical matter, perform itself or which historically have been performed by such utilities. These include, for example, depositaries, custodians, and trading utilities. Similarly, the proposed Rule should exempt the practice of engaging registered or non-registered fingerprinted persons to perform regulated functions as associated persons of a member firm (in which case the activities will be regulated already so no further regulation should be necessary). In addition, the proposed Rule should exempt other agreements that involve services provided by third parties subject to a regulatory scheme addressing the particular function or activity, including mutual fund dealer agreements, shareholder servicing agreements, and banking arrangements. Furthermore, FINRA should make clear either as an express exception under paragraph (f) or in the release commentary that mere use of a vendor's software applications or information services (e.g., news, quotation, pricing services) would not in itself constitute an outsourcing arrangement.

Finally, we believe that, given the substantive and longstanding arrangements and rulemaking related to clearing and outsourcing arrangements, 3190(f)(2) should be revised to state that the provisions of this Rule shall not "apply to" as opposed to "restrict" activities performed pursuant to a carrying agreement approved under FINRA Rule 4311.

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SIFMA appreciates the opportunity to provide comments on the Proposal. We would be pleased to discuss proposed Rule 3190 and our comments in greater detail with FINRA and its staff. If you have any comments or questions, please do not hesitate to contact Melissa MacGregor, Managing Director and Associate General Counsel, at (202) 962-7385, James McHale, Managing Director and Associate General Counsel, at (202) 962-7386, or me at (202) 962-7300.

Sincerely,

/Ira D. Hammerman/

Ira D. Hammerman
Senior Managing Director and General Counsel

cc: Grace Vogel, Executive Vice President, Member Regulation, FINRA
Patricia Albrecht, Associate General Counsel, FINRA
John Ayanian, Partner, Morgan, Lewis & Bockius LLP