SwissBanking

Mr Christopher Cox
Chairman
Securities and Exchange Commission (SEC)
100 F Street NE
Washington, DC 20549-1090

By email to: rule-comments@sec.gov

Basel, 5 September 2008
J. 002 / HSI

Subject: Exemption of Certain Foreign Brokers or Dealers (Rule 15a-6) (File No. S7-16-08)

Dear Chairman Cox

The Swiss Bankers Association ("SBA")[1] appreciates this opportunity to comment on the SEC's proposal to amend and update Rule 15a-6 under the Securities Exchange Act of 1934. The SBA strongly supports the SEC's initiative to update the rules governing permissible contacts between non-U.S. broker-dealers and U.S. investors. As a general matter and subject to certain qualifications, we believe that the proposal strikes an appropriate balance between satisfying increased demand on the part of sophisticated U.S. investors for efficient and seamless access to investment opportunities and markets abroad, in line with the increased globalization of securities business, while at the same time maintaining sufficient levels of investor protection for U.S. investors.

The aspects of the SEC's proposed amendments to Rule 15a-6 that we most strongly believe achieve this balance are as follows:

- Expansion of the category of eligible U.S. investors that a foreign broker-dealer may contact for the purposes of soliciting securities transactions and/or providing research reports to include not just large institutional investors, but also sophisticated individuals.
- The introduction of two different alternatives through which a foreign broker-dealer may solicit qualified investors for trades, particularly the first such alternative, under which the foreign broker-dealer may under certain conditions provide custody securities and conduct all aspects of the resulting transactions, without books and records relating to the transactions having to be maintained by a U.S. broker-dealer in accordance with U.S. legal requirements; and

[1] The Swiss Bankers Association (SBA) was founded in 1912 in Basel as a trade association and today has nearly 800 institutional members and approximately 11,000 individual members. It represents all banks in Switzerland.

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- Codification of the existing SEC staff no-action letter permitting foreign broker-dealers to deal directly with U.S. fiduciaries acting for a foreign resident client. The proposed rule would permit transactions in both U.S. and non-U.S. securities in response to customer demand, in contrast to existing guidance that limits trading of portfolios containing both domestic and foreign securities.

At the same time, we note that there are certain specific areas in which technical clarifications and modifications are, in our view, much needed. We understand that the comment letters submitted by other industry organizations to which we belong will be addressing these areas in greater detail. Therefore, we will limit ourselves here to simply pointing out one important aspect of the proposed amended Rule 15a-6 that could render the first alternative for meeting the U.S. intermediation requirements for soliciting qualified U.S. investors impracticable or inefficient for many foreign broker-dealers:

- Foreign business test. Under the proposed revisions to Rule 15a-6, meeting this test on a rolling basis is a condition for foreign broker-dealers' being able to take advantage of the much-needed flexibility provided under the first alternative, permitting it to solicit trades from qualified investors, conduct all aspects of the resulting transactions and custody securities. We believe that the proposed foreign business test, however, is extremely complicated and burdensome and the time and expense entailed in this regard would be inordinately high. Moreover, we believe that the proposed test would give rise to innumerable questions as to whether specific types of instruments should be classified as "securities" versus "non-securities" under U.S. law and/or as "foreign securities" versus "U.S. securities", thus making extensive and ongoing interpretive guidance from the SEC imperative. Due to the complexity and expense entailed by ongoing compliance, the foreign business test could effectively deter many firms from using the first alternative.

The SBA concurs with the SEC's view, expressed in its announcement of March 24, 2008, that the proposed reform of Rule 15a-6 is an important short-term step towards facilitating more efficient cross-border securities business and the broader longer-term goal of mutual recognition. At the same time, the SBA encourages further actions on the part of the SEC to explore, develop and implement with its counterparts abroad a framework for mutual recognition to reduce regulatory barriers between international markets and to rely on greater international cooperation to ensure sufficient levels of investor protection.

We remain at your disposal for any further information you may need.

Yours sincerely,
Swiss Bankers Association

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