September 8, 2008

Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-16-08; Rel. No. 34-58047
Exemption of Certain Foreign Brokers and Dealers

Dear Ms. Harmon:

I write this letter to provide our general comments on the Securities and Exchange Commission's ("SEC's" or "Commission's") proposal to amend Rule 15a-6 under the Securities Exchange Act of 1934 ("Exchange Act").[1] I have worked extensively in the area of cross-border financial services, representing both foreign and domestic broker-dealers and issuers. As a result, I have seen how Rule 15a-6 can both help and hinder cross-border movement of capital. This letter represents my personal and without prejudice comments (and not those of the firm or any client) with respect to the SEC's Rule 15a-6 proposals. Nonetheless, I hope that my comments, which are organized to follow the general outline of the proposing release, prove useful as you evaluate the proposed revisions to the rule.

A. Extension of Rule 15a-6 to Qualified Investors

With some modifications, I support the change in the categories of U.S. persons with whom non-U.S. broker-dealers can conduct a brokerage relationship. As a general proposition, I believe that the $25 million investment threshold is appropriate for both entities and individuals. That level is consistent with sufficiently extensive investment activity to provide assurance that these investors will be sophisticated in their dealings with non-U.S. broker-dealers, and are capable of bearing related investment risks. At such levels of investment involvement, I see no reason to distinguish between individuals and entities. Rather, individuals at this level of experience should not be denied the more direct (and less costly) international diversification opportunities available through the use of non-U.S. broker-dealers.

Other Sophisticated Investors

I suggest several additions to the categories of permitted U.S-based customers based on the principle of presumed financial sophistication that underlies the definition of "qualified investor." First, I suggest the inclusion of SEC-registered investment advisers acting for their

[1] 17 CFR 240.15a-6.

own accounts. I also suggest the inclusion of SEC-registered investment advisers, acting for the accounts of clients, where such advisers invest, on a discretionary basis, not less than $25 million in investments without regard to the size of the portfolios of individual clients. The involvement of a registered investment adviser subject to the requirements of the Investment Advisers Act of 1940 and to common law fiduciary standards provides reasonable assurance of financial sophistication without the need to impose any requirements on underlying accounts. Including registered investment advisers in the categories of permitted customers will enable small investors to benefit from more efficient international diversification with reasonable assurance that a person sophisticated enough to understand the differences between domestic and foreign investing will be guiding their accounts. I note that a registered investment adviser would be expected to act as prudently in implementing its recommendations as would a U.S. registered broker-dealer, with the added assurance that the adviser will be acting pursuant to fiduciary responsibilities. I submit that there is little reason to differentiate between such advisers and pension funds whose investments are guided by registered investment advisers, where, of course, many of the participants do not individually meet the $25 million threshold. Rather, both should be treated as "qualified investors" for purposes of Rule 15a-6.

With regard to paragraph (v) of Section 3 (a) (54) of the Exchange Act, I suggest that employee benefit plans be included on the basis described in the proposal where the plan fiduciary is either a bank, savings and loan association, insurance company, or registered investment adviser, but that such regulated plan fiduciaries not be required to make the relevant investment decisions if a plan has at least $100 million in investments. I have found that some very large and sophisticated pension funds have utilized foreign investment advisers to provide specific advice in circumstances where the foreign adviser relies on an exemption from registration with the SEC under Investment Advisers Act of 1940.[2] In other circumstances, many large pension funds utilize in-house investing capabilities. Plan fiduciaries in these instances should not be required to have managers with defined characteristics. In this regard, ERISA and state regulation in the case of State sponsored employee benefit plans provide additional and adequate protections to plan beneficiaries for plans that meet this size requirement.

Other Investors: Territorial Principle

I also suggest certain additions to the categories of permitted US-based customers based on the territorial principle reiterated in the proposing release and the practical necessities of an increasingly mobile population of investors. First, I submit that if a U.S. person works abroad and establishes a retirement or other tax-advantaged plan that resembles a self-directed IRA, 401K, education savings plan or similar plans or a non-US national has established such a plan and then moves to the United States, either permanently or temporarily, they should be free to continue to invest using foreign brokers as they did before when they lived abroad. In my experience, such plans are likely to be held in trust at a financial institution outside of the United States and may be subject to detailed investment guidelines governed by foreign law. The individuals guiding such accounts reasonably expect to invest through brokers in the jurisdictions

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[2] *See* Advisers Act Section 203 (b) (3).

where such plans were established.[3] Exemptive relief to allow such a brokerage relationship has previously been granted for Canadian tax-advantaged retirement plans.[4] Given the importance of retirement and other government sponsored investment programs and the increasing cross-border mobility of investors, I submit that it is imperative to remove barriers to such investment activity by generalizing such relief and extending it to all jurisdictions and tax-advantaged programs established in such circumstances.

Second, and also as a product of a mobile population and the needs of retirees, I submit that the proposal should accommodate family members in foreign countries who wish to rely on a close family member who is resident in the United States to manage their accounts where the account is already maintained at a foreign broker. There are a growing number of families with an aged parent or other family member located outside the United States who need the help of a U.S.-based relative in managing their accounts. In such cases, the U.S.-based relative often has authority to manage the assets under a power of attorney (POA) that survives the incapacity of the accountholder.[5] The US-based POA-holder will not typically be a professional fiduciary, but performs a function naturally expected of a family member. Even though orders will be given from the United States, they should not trigger broker-dealer registration in these narrow circumstances. Although this issue is not of paramount importance from a capital markets point of view, it reflects the very human effects of internationalization and should be permitted as readily as the accommodations for institutional investors. I suggest that this be addressed either as an addition to the definition of qualified investor or a clarification to the exemption afforded by proposed Rule 15a-6(b)(4), discussed below.

Third, I submit that paragraph (x) of Section 3 (a) (54) should be extended to foreign nationals employed by the government of any foreign country. Embassy and consular personnel are often present in the United States for indefinite periods of time such that they would not necessarily be considered temporary residents. They naturally expect to continue their normal investment activities in their home countries. I believe their ability to do so should be made explicit. In addition, the reference to governments of any foreign country should be amended to include subdivisions of such countries as well, and their employees who are foreign nationals in light of the number of foreign state and provincial offices in the United States.

Finally, and somewhat counter-intuitively, there are some cases where foreign securities firms will be disadvantaged by the change in the permitted categories of investors from major US institutional investors with a $100 million *total asset* threshold to a qualified investor category with a $25 million *investment* threshold. Such firms include advisory boutiques that provide exclusively merger and acquisition (M&A) advisory services. To illustrate: at present, a non-US M&A advisory firm may assist in the merger of a non-US company and a U.S.-based company, resulting in a sale of stock (subject to the existing conditions of Rule 15a-6), for

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[3] Nonetheless, I note that such accounts (as opposed to specific transactions) should not be solicited while the customer or prospective customer is a permanent resident of the United States.

[4] *In the Matter of the Investment Dealers Association of Canada*, Rel. No. 34-42906, 2000 SEC LEXIS 1189 (Jun. 7, 2000).

[5] Such a POA may or may not be shared with another person located in the foreign jurisdiction.

companies having substantial assets, regardless of whether the assets take the form of tangible property, intellectual property or investments. However, this would no longer be the case under the proposed amendments, except where the companies involved have substantial investments. I submit this is an unintended result, though it flows from the breadth of the definition of "broker" in the Exchange Act.

Thus, I submit that an asset threshold should be maintained for foreign firms advising entities involved in an M&A transaction that involves the sale of a business or business line where at least one of the parties to the transaction is a non-U.S. entity. The $25 million investment threshold was designed with a conventional brokerage relationship in mind and does not take into account specialized foreign M&A broker-dealers that are nonetheless subject to registration absent an exemption. In this context I submit that a $25 million asset threshold for a U.S.-based entity in such a transaction should be sufficient. Given the narrowing effect on ongoing business practices of the proposed change to an investments test, I do not believe that this issue can be deferred pending possible consideration of special treatment for M&A advisory broker-dealers generally, as has been proposed by some groups within the United States. Nor do I believe it would be efficient to require such foreign firms to seek no-action relief on a case-by-case basis. Existing Rule 15a-6 successfully accommodated such activities and I submit that such relief be retained and enhanced as I have suggested.

B. Unsolicited Trades

I support the continuation of the unsolicited transaction exemption in its current form. Notwithstanding the breadth of the concept of solicitation, it remains a valuable exemption in cases where U.S. resident affirmatively seek out foreign trading opportunities without any inducement by a foreign broker-dealer.

Furthermore, as to the dissemination of quotations by third party systems, I support the change to recognize that such systems provide a worldwide service that cannot be appropriately limited to services primarily provided outside the United States.

However, in our practice I have found that two other clarifications in the third party system interpretation are needed. First, foreign markets are increasingly providing information as to the depth of markets -- showing prices levels beyond just the best bid or offer. Such displays provide valuable market transparency that specialist-based systems were traditionally reluctant to provide. These depth of market displays often display broker identification information on those quotes, providing valuable information regarding potential counterparties prepared to transact at given prices, which may lead to institutional block trade negotiations. I wish to clarify that such displays by third party quotation systems in the United States, such as those operated by foreign stock exchanges, do not constitute solicitation that would deny the firms whose quotes are displayed the ability to otherwise effect unsolicited transactions. I believe that requiring foreign stock exchanges to suppress broker-dealer identification information would compromise transparency without any significant regulatory interest if transactions are otherwise effected in accordance with Rule 15a-6.

The second clarification I recommend in the third party system interpretation relates to the limitation that the system may not allow securities transactions to be executed between the

foreign broker-dealer and persons in the United States through the system. Direct market access by institutional investors is an increasing important means of trade execution. These arrangements are typically conducted on a broker-to-broker basis in accordance with paragraph (a)(4)(i) of Rule 15a-6 so that an institutional investor enters orders through a system operated by a U.S. registered broker-dealer, which electronically passes such orders through a system available to a local broker-dealer in the foreign market for ultimate entry in an exchange's trading systems. The U.S. broker dealer is fully responsible to its customer for broker-dealer responsibilities attendant with accepting and executing such orders. Since these orders can pass through the relevant systems and have an immediate impact on the foreign trading market, foreign securities regulators and self-regulatory organizations (SROs) have struggled with how best to ensure the traders entering the order are aware of the trading rules of the foreign market and do not engage in inappropriate or manipulative trading activity. Some proposed solutions have included a) specifically approving eligible traders to be authorized to have this type of access, b) requiring that any sponsoring firm certify that they have satisfied themselves that the traders have been adequately trained and c) securing a contractual commitment from the U.S-based trader in favor of the foreign exchange or regulator that they will abide by the rules of the market place and allow the foreign exchange or regulator to conduct trade desk reviews to ensure compliance. I submit that the third party interpretation should specifically refer to these types of trading arrangements and provide that they do not constitute a means of direct execution through such systems. I also submit that the regulatory arrangements I have described, and similar arrangements, between a U.S.-based trader and a foreign broker or dealer, exchange or SRO should not be regarded as the grant of a right of access by the foreign exchange that would constitute a "facility" of a stock exchange as defined in Section 3(a)(2) of the Exchange Act that would subject the foreign stock exchange to registration as a national securities exchange under Section 5 of the Exchange Act.

I support allowing non-US broker-dealers that operate ATSs to operate in the United States in accordance with Regulation ATS, but only if comparable treatment is accorded to foreign stock exchanges. Stock exchanges and ATSs are in direct competition and allowing more favorable regulatory treatment to one over the other in an amended Rule 15a-6 would interfere with the policy goal of increasing competition between markets without favoring one form over another. Rather than fully addressing this issue in the Rule 15a-6 context, it may be sufficient to clarify that a foreign exchange can form an affiliated ATS that affords access within the system itself and to the exchange without subjecting the exchange to registration as a national securities exchange.

C. Provision of Research Reports

I support the extension of the (a) (2) treatment of foreign research reports to qualified investors. However, I believe it important to codify or reiterate the position expressed in the 1989 Adopting Release[6] that a U.S.-registered broker-dealer can transmit foreign research reports to persons in the United States (whether institutional or not) as third party research provided that (1) the U.S. broker-dealer prominently states on the report that it accepts responsibility for its contents, (2) the report prominently indicates that persons receiving it

[6] *See,* Rel. No. 34-27017 (July 11, 1989) 54 FR 30013, 30023.

should effect transactions in the subject securities through the U.S. firm, and (3) transactions in such securities by recipients of the report are actually effected only through the U.S. firm.

Further, the Commission should clarify that assuming responsibility for the contents of the report requires only that the U.S. firm has conducted due diligence on the research function performed by the foreign firm overall and is reasonably satisfied that the research is appropriately conducted under the law of the jurisdiction of the foreign broker-dealer. If this recommendation is adopted, a notice stating that the registered broker-dealer assumes responsibility for the content based on such a general review, rather than a review of a specific research report, should be required to be prominently stated in each research report. I submit that it is unrealistic to have the U.S. firm assume responsibility for the contents of a specific report beyond diligence on the processes used by the foreign firm in producing such research on a periodic, perhaps yearly basis. Otherwise, assuming responsibility for the contents of the report would require repeating much of the work that went into producing the report or assuming responsibility regardless of whether a sufficient foundation to do so exists.

D. Solicited Trades

The (A) (1) Exemption and the Role of the U.S. Registered Broker-Dealer

I support eliminating the chaperoning requirement for qualified investors. In many, if not most cases, the participation by a U.S. broker-dealer in chaperoning arrangements has been nominal. Chaperoning has added barriers to efficient interaction with institutional customers resulting in duplicative responsibilities, extra costs and minimal contributions to investor protection. I believe, however, that the proposal's recordkeeping provisions reflect a lingering reliance on the chaperoning concept. The Commission certainly needs access to books and records involving transactions by foreign broker-dealers with U.S. customers, but I question whether it is necessary to have a U.S. broker-dealer keep them. Reserving this role to U.S. broker dealers will limit the opportunities for foreign firms who do not have US-registered affiliates since it will be difficult to induce a U.S. broker-dealer to perform this regulatory responsibility. U.S. broker-dealers will be concerned that customers will expect something more from them if they are holding these records -- even if the rule is clear that nothing more is required. Even with explicit disclosures, customers may assert that their U.S. brokers, especially prime brokers, should be monitoring account activity. It will be difficult to dispel this view, and it will be very difficult for U.S. broker-dealers to charge a meaningful amount for this service. As a consequence, qualified investors will be denied the full range of services that they could otherwise receive if a greater number of foreign firms could use the exemption. To the extent any U.S. broker-dealers are willing to provide this service to unaffiliated foreign broker-dealers, they are likely to be the same firms that have made a business of Rule 15a-6 chaperoning, and who largely, I submit, have charged significant fees for affording access without a meaningful contribution to customer service or investor protection. Thus, I suggest that this requirement would have significant anticompetitive effects.

Foreign firms should be permitted to maintain such records in the United States with a U.S. registered broker dealer if they so choose, but this should not be an exclusive requirement.[7] I suggest that it should be sufficient if the foreign broker-dealer:

> A. 1. Delivers to the Commission an undertaking to produce records to the SEC in the United States relating to transactions effected in reliance on Rule 15a-6 in a form similar to that required today by non-resident broker-dealers registering with the Commission pursuant to Rule 17a-7 *and* 2. is located in a jurisdiction with which the Commission has an information sharing agreement that could be utilized if the undertaking to produce records is not observed (in such instances, the Commission could also use its arsenal of enforcement tools directly against the foreign broker-dealer), or
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> B. Maintains such records with an electronic storage media vendor in the United States that provides the Commission with an undertaking to produce such records on the demand of the Commission. Such an undertaking would be similar to that required of vendors who store records for registered broker-dealers under Rule 17a-4 (f) (vii).[8]

The (A)(1) Exemption and the Role of the Foreign Broker-Dealer

I agree that foreign broker-dealers effecting solicited trades for U.S. investors should be regulated in respect of their activities by a foreign securities authority, provided that this authority may be a governmental regulator or a self-regulatory organization recognized by a governmental regulator. I submit, however, that the entities allowed to avail themselves of this exemption should also include subsidiaries of regulated broker-dealers that are not themselves directly regulated in jurisdictions where the financial authority with regulatory authority for the parent has the authority to regulate the consolidated group of companies that includes the subsidiary.

I appreciate the motivation to limit the (A) (1) exemption to foreign firms that are predominantly offering foreign securities to U.S. persons. Establishing an exemption (other than by mutual recognition) that would allow a foreign entity to predominantly effect transactions in U.S. securities with U.S. investors could promote destructive regulatory arbitrage and undermine the Commission's broker-dealer regulatory program. I submit, however, that the proposed definition of "foreign security" and its reliance on the definition of "foreign private issuer" in Rule 405 under the Securities Act of 1933[9] ("Securities Act") is not well designed for this purpose.[10] There is, of course, no master list of securities of foreign issuers and Rule 405's

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[7] Of course, if this course of action was chosen, the US broker-dealer could delegate such maintenance to the foreign firm if it makes the findings proposed.

[8] I also believe foreign firms that conduct such solicited transactions should comply with U.S. anti-money laundering requirements given the U.S. national interest in ensuring compliance and variations in international rules.

[9] 17 CFR 230.405.

[10] See Proposed Rule 15a-6(b)(3), (5).

definition includes subjective elements such as the location of assets or principal place at which a business is administered that do not lend themselves to inclusion in compliance systems. For example, a determination as to where intellectual property assets are "located" can be very elusive, and it can be difficult to say where a business is principally administered. In addition, Rule 405 calls for a determination of whether over 50 percent of an issuer's assets are located in the United States or elsewhere. Obviously, the value of assets always fluctuates and their fair market value -- which is relevant to the test -- will not be reflected in financial statements. The "foreign private issuer" definition originated in the context of certain specialized Securities Act registration forms that called for the issuer itself to determine if it qualified. Although the definition is well-suited for this purpose and for such users, it is far more difficult for a broker-dealer that is an outside party to apply it to a given issuer. Therefore, I believe that this test is unworkable.[11]

I submit that a reasonable alternative to the foreign issuer test that achieves its objective is to require that the 85% test apply to securities where the issuer has applied and been accepted to have its securities traded on full members of the World Federation of Exchanges other than those members that are U.S.-based national securities exchanges.[12] This test would not require that all transactions be executed on such exchanges, but only that the securities be traded there, and would be easy to administer. Moreover, customers wishing to trade qualified securities will not be disadvantaged by artificial constraints on the venues where trading occurs that might cause them to receive an inferior price.

I agree that the proposed disclosures to U.S. customers of foreign firms relying on the (A) (1) exemption are sufficient and appropriate for qualified investors. I do not believe that any additional more specific disclosures should be required, which would run the risk of being so specific that the general message that the investor is now leaving the protections of the U.S. regulatory system may be lost.

The (A)(2) Exemption

This exemption as proposed would be useful to customers utilizing U.S. custodial and prime brokerage services and would provide a useful alternative to the more extensive relief afforded under the (A) (1) exemption. However, I suggest that the exact meaning of the term "custody," which could be interpreted to foreclose use of the exemption, should be addressed, perhaps in interpretative statements by the Commission. For example, it would be useful for the Commission to clarify that:

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[11] In addition, certain U.S. domestic issuers apply to have their securities traded or interlisted on foreign markets, whether because of the existence of a large local investor following, the existence of substantial foreign operations or better and more efficient services to listed companies by the foreign exchange. Transactions in the securities of such issuers should not disable a foreign broker-dealer from relying on the (A) (1) exemption since these venues may offer the only execution opportunity for these securities or, in the case of interlisted securities, the best price.

[12] I use the phrase "applied and been accepted to have its securities traded" in order to include cases where an issuer takes affirmative steps to facilitate trading of its securities, as opposed to the equivalent of unlisted trading privileges. Likewise, I do not use the term "listed," since many European exchanges have moved away from the concept of trading based on issuer approval.

- Short sales effected by the foreign broker-dealer on behalf of the U.S. broker dealer to facilitate transactions effected under this exemption would not be deemed to involve custody of U.S customer property if the U.S. firm borrows securities to complete the sale or otherwise margins such short sales with the foreign firm. In such cases, it is likely that the U.S. broker-dealer will borrow the relevant foreign securities from the executing foreign dealer and that the foreign dealer will hold the sale proceeds plus additional collateral to secure such borrowings.
- Fails to receive or fails to deliver in transactions effected by the foreign broker would similarly not involve custody of customer assets, but would be accounted for as fails by the U.S. broker dealer in computing its net capital (notwithstanding that, as a result of a fail, the foreign broker-dealer will owe cash or securities to the U.S. broker-dealer, and ultimately its customer).
- A U.S. broker-dealer could hold customer assets through the foreign broker-dealer if the foreign firm directly, or as a participant in a foreign depository or clearing agency, was designated as a control location of the U.S. broker-dealer under paragraph (c) of Rule 15c3-3.

Finally, it should be clarified that the U.S. broker-dealer could arrange for its customers to obtain margin from the foreign broker-dealer and that collateral could be held by the foreign broker-dealer to secure the margin financing without disqualifying the foreign firm from the exemption since the delivery of collateral would be incidental to a financing and should not be regarded as constituting "custody." Under Federal Reserve Board margin rules, margin can be arranged by a U.S broker dealer for its customers and obtained by a U.S. person under foreign margin rules in respect of foreign securities.[13] If the SEC took a contrary view as to the permissibility of margin financing for transactions under the (A)(2) exemption, qualified investors may receive no margin value at a U.S. broker-dealer for certain foreign securities that are treated as liquid and fully marginable by a foreign broker-dealer under foreign margin rules on the basis that the security freely and actively trades in that jurisdiction. U.S. investors would be placed at a disadvantage under such circumstances.

Sales Activities

I agree that there must be some limit on the presence a foreign firm may have in the United States while operating under an exemption and that any test should be relatively simple. However, I believe that a flat 180 day period on a firm-wide basis is too simplistic and has a disproportionate effect on large global firms with personnel based outside of the United States..

Instead, I propose a two-fold test:

First, no single representative of a foreign broker-dealer would be permitted to spend more than 30 days in the United States in a calendar year while engaged primarily in sales activities. This would disregard instances where a representative is present in the

[13] *See* Federal Reserve Board Section 220.3 (g) of Regulation T and Regulation X.

United States for other reasons and has very brief, incidental, unscheduled sales contacts arising from social or professional interactions (such as an impromptu meeting at a continuing education conference where ideas about investment opportunities and business cards are exchanged).

Second, in-person sales contacts with a single representative of any qualified investor would be limited to four times per year by any number of representatives of a single foreign firm. This proposal recognizes that qualified investors frequently employ multiple decision-makers for different investment classes (e.g., precious metals, high yield, technology) and that quarterly in-person updates for each such person may be necessary to conduct an appropriate, customer-centered brokerage relationship.

Finally, I believe that any test that is based on the amount of time spent in the United States should exclude time spent working on M&A or other investment banking transactions involving existing clients on a temporary, deal-specific basis. Thus, the time that personnel spend in the United States helping with the negotiation of a cross-border merger or assisting in an institutional road show by a non-U.S. company effecting a Rule 144A offering, to use two examples, should not count toward any time limits.

Establishment of Qualification Standards

I agree that the qualification standards under proposed Rule 15a-6(a)(3) should prevent "bad actors" from utilizing the exemption and that the definition of "statutory disqualification" in Section 3(a)(39) of the Exchange Act is a natural starting point for this purpose. However, that definition incorporates discretion on the part of the Commission as to whether to institute proceedings to prevent a person subject to such a disqualification from remaining associated with an existing registrant and if so what conditions or limitations should be imposed. This framework is not readily applicable to established foreign broker-dealers that, like major securities firms in the United States, have been in business for extended periods and may have employees with disciplinary records. As with such U.S. firms, not all elements of the definition of statutory disqualification should bar personnel of foreign firms from having contact with qualified investors.

For example, subparagraph (E) of Section 3(a)(39) would disqualify all the personnel of a foreign firm if that firm had associated with it a person who is subject to a regulatory suspension from a foreign financial regulatory authority of less than 12 months (the subparagraph (I) disqualification). Of course, the person who is subject to the suspension should not be able to utilize the exemption. However, I question whether a sanction applicable to a single associated person should disqualify all other associated persons of a firm. Similarly, a finding in a settlement by a foreign financial regulatory authority of a violation of a foreign statute regarding transactions in securities, regardless of the sanction or other indication of materiality would preclude that individual from utilizing the exemption.[14] I believe this is an extreme and unnecessary result. The mere fact that a foreign financial regulatory authority has in fact addressed such a matter and not imposed an indefinite suspension provides some assurance that

[14] See Section 3(a)(39)(F), incorporating Exchange Act Section 15(b)(4)(G).

the foreign regulatory system, which is being relied upon by the qualified investor, has addressed the matter. I suggest this disqualification be removed or further circumscribed for the purposes of an amended Rule 15a-6.

Nonetheless, if appropriately circumscribed to remove disqualifications that may be reasonably common for established U.S. or foreign broker-dealers and that do not reasonably raise investor protection concerns, I suggest that the qualification requirements extend to foreign broker-dealers themselves in addition to their associated persons. At present and in the proposal, the qualification requirements are limited to foreign associated persons. In some cases conduct that would properly result in a disqualification may be imposed on the entity itself and apply in circumstances where the associated person has been terminated or is not allowed to utilize the Rule 15a-6 exemptions. It is therefore appropriate to apply the revised disqualifications to the firm itself.

Consistent with my views concerning any remaining quasi-chaperoning role for a U.S. registered broker-dealer, I do not believe that a U.S. broker-dealer should be required to obtain consents to service of process or representations regarding the absence of statutory disqualifications. This approach should be voluntary and is likely to be employed in cases where the foreign firm is part of a corporate group that includes a U.S.-registered broker-dealer. Rather, foreign broker-dealers should be permitted to file a Consent to Service of Process directly with the Commission in a form similar to Form 8-M, required for non-resident registered broker-dealers, but limited to Rule 15a-6 transactions. This document could also include a certification from the foreign firm that it has obtained comparable consents from its associated persons who will utilize the exemption. As to a representation of the absence of any statutory disqualification and the required background information of associated persons, I do not believe that making this representation to a commercial party, namely, a U.S. registered broker-dealer, adds any substantial protection to that afforded by the foreign firm being required to make and record this determination by virtue of the exemption itself. The potential consequences of not having perfected the exemption, including enforcement action and possible rescission of transactions as a result of a violation of the Exchange Act pursuant to Section 29 (b), is a sufficient deterrent.

E. Counterparties and Specific Customers

I support the continuation of the specific categories of persons presently included in Rule 15a-6 as a basis for exemption. I also support the codification of an exemption for U.S. based fiduciaries for foreign resident clients, but urge the Commission to employ a flexible approach in this area in order to permit a variety of arrangements that are not intended to evade U.S. broker-dealer registration requirements, and that can facilitate normal personal and corporate activities in a cross-border environment. In this regard, I note that this exemption was originally sought, by way of a request for a no-action letter, as an allowance for U.S.-based professional fiduciaries. As proposed to be codified, it would apply to individual fiduciaries for non-resident trusts and estates, and potentially to U.S. based individuals who have powers of attorney that confer fiduciary responsibilities. These individual fiduciaries with a very small number of beneficiaries would generally be exempt from registration as investment advisers under the Investment Advisers Act of 1940. As noted above, difficulties can arise where U.S. based family members are trustees or have powers of attorney governing the accounts of non-resident family

members. This exemption could reasonably cover that situation, and I suggest that the Commission issue a statement that this exemption is available for that purpose.

This exemption could also be useful to multinational corporations that have a centralized finance department located in the United States, where a director or executive officer with fiduciary responsibilities makes investment decisions for the accounts of foreign affiliates. I believe that this is also an appropriate use of the exemption and a statement to this effect would provide certainty to a significant number of such corporations.

I support making this exemption available to foreign broker-dealers that conduct a foreign business. Nonetheless, I believe it should also be separately available for foreign firms that utilize the (A)(2) exemption for solicited transactions, and do not meet the foreign business test, if all transactions effected for the account of U.S.-based fiduciaries for a foreign resident client involve foreign securities.[15] This will increase the range of alternative brokerage service providers to such fiduciaries while circumscribing the exemption to preserve the territorial principle for broker-dealer registration.

I also suggest that the determination of the status of the foreign resident client be required to be based on a certification of the fiduciary, to the best of its knowledge, absent actual information to the contrary in the possession of the foreign broker-dealer. This is necessary because the status of a foreign resident client frequently depends on tax determinations that will not always be cut and dry and that depend on information not necessarily in the fiduciary's possession.

F. Familiarization With Foreign Options Exchanges

I support the codification of the options familiarization doctrine. Recognizing, however, that most resulting transactions will be effected under Rule 15a-6(a)(3), I do not see why it should be limited to options markets. In this regard, foreign options were at one time less well understood than other foreign securities and other securities generally. However, securities and derivative securities can take many forms, and as indicated in the SEC's Rule 15a-6 proposal, there is a need to acquaint qualified investors with the characteristics of foreign securities, markets and the differences between U.S. and foreign regulatory structures. To this end, notices have been proposed and reliance is being placed on qualified investors to conduct their own due diligence. Yet, there is a role for foreign exchanges to play in informing qualified investors as to the range of securities traded on their markets, and the proposed exemption's limitation to options places an artificial restriction on the flow of such information. Indeed, such restricted information flow reduces transparency as to the depth and forms of trading on foreign markets, potentially placing U.S. investors at a relative disadvantage. Moreover, as financial instruments and derivatives evolve, I believe it inevitable that foreign exchanges will approach the Commission with a steady flow of no-action requests, as they did before this exemption was proposed to be codified. Securities exchanges are well able to prepare disclosure documents that explain the range of securities and differences in market structure and regulation that they offer or employ. Thus, I suggest that the exemption be generalized and apply to all securities that

[15] Our proposal as to the definition of "foreign securities" expressed above would also apply in this context.

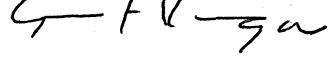
could be traded pursuant to our proposed definition of "foreign business," including, but not limited to, exchange-traded options as well as other derivative securities in addition to traditional securities.

I also support the introduction of the concept of an OTC options processing service as described in proposed Rule 15a-6(b)(6), but similarly recommend that this concept be extended to all securities. This would allow OTC trades in foreign securities to be executed outside the foreign stock exchange's normal trading hours, but then submitted for settlement by foreign clearing brokers to the related clearing agency. The involvement of the clearing agency in these instances will promote efficient clearance and settlement, benefiting U.S. investors and broker-dealers. Moreover, it could facilitate the interchangeability of ADRs and ordinary shares if the clearing agency were to view them as fungible for clearing purposes. I do not believe that a generalized clearing agency exemption is needed for this purpose, provided that the Commission reiterates its interpretation that a foreign clearing agency is not subject to registration if it conducts its activities outside the United States with foreign-based participants, which may or may not be affiliated with U.S. broker-dealers and may or may not relate to securities that are interlisted on U.S. markets. I believe this interpretation will help promote efficient cross-border clearance and settlement and avoids anti-competitive effects by not artificially limiting the range of products that can be cleared by foreign clearing agencies.

* * *

I recognize the hard work of the Commission and the Staff in preparing this proposal and thank you for this opportunity to provide you with our thoughts. I urge the Commission to carefully consider our suggestions and would be happy to discuss them with you at any time. Please do not hesitate to contact the undersigned (212-715-1130) or Andrew Shipe of our Washington, D.C. office (202-942-5049) if you wish to discuss any aspect of our comments.

Sincerely,



D. Grant Vingoe

The Honorable Christopher Cox, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Erik R. Sirri, Director, Division of Trading and Markets