

Florence E. Harmon
Acting Secretary
Securities & Exchange Commission
100 F Street, NE
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United States of America

rules-comment@sec.gov

8 September 2008

Dear Ms. Harmon

Subject: SEC's Proposed Amendments to Rule 15a-6 (File No. S7-16-08)

The International Banking Federation (IBFed)¹ welcomes the opportunity to comment on the SEC's proposal to amend Rule 15a-6. IBFed welcomes the move and sees it as an important contribution not only to US regulatory reform but also to the wider process of facilitating effective regulation of global securities markets. The proposed amendments to Rule 15a-6 are therefore of **great interest to the global securities markets community and should be seen as a very worthwhile complement to broader efforts to facilitate mutual recognition** between the SEC and other jurisdictions worldwide as well as to IOSCO's commitment to work further on its Principles as a basis for enhanced possibilities for mutual recognition between securities regulators in the future.

Generally, **the SEC should be congratulated for responding to the needs of the global securities business by setting out proposed amendments to Rule 15a-6.** The 2007-8 credit contraction and its impact on the global financial services industry in general has underscored the need for dialogue between the official and private sectors on sensitive issues that require an appropriately sensitive regulatory response. We feel that the SEC's proposed amendments will continue to ensure high standards of fitness and propriety of financial market participants thereby inculcating confidence and protecting investors during these trying economic times. Through the proposed amendments to Rule 15a-6 the SEC also recognises that the nature of

¹ The countries represented by IBFed collectively represent more than 18,000 banks with 275,000 branches, including over 800 of the world's top 1000 banks which alone manage worldwide assets in excess of \$68 trillion. The Federation represents every major financial centre and its members' activities take place in every time zone. This worldwide reach enables the Federation to function as the key international forum for addressing legislative, regulatory and other issues of interest to the global banking industry. The members of the IBFed are the American Bankers' Association, the Australian Bankers' Association, the Canadian Bankers' Association, the China Banking Association, the European Banking Federation, the Indian Banks' Association and the Japanese Bankers' Association.

the securities business is global and that challenging economic conditions are best confronted by taking confident measures to reduce regulatory arbitrage and drive down unnecessary costs for business and their customers by removing overly burdensome regulatory requirements of internationally active firms.

More specifically, **the proposed amendments contain a number of features that we very much welcome, such as:**

- **the expansion of the Rule² to a range of persons which an un-registered person may contact;**
- **the corresponding decrease in the qualifying thresholds from USD100mn in assets for a “major” or “institutional investor” to USD25mn for a “qualified investor;” and**
- **the elimination of the chaperoning requirements in the current Rule, thereby enabling a broker-dealer from outside the US to offer all aspects of a transaction in foreign securities.³**

Taken together, **these proposed amendments would help to facilitate access to the US institutional investors whilst reducing the burden of doing so in today’s regulatory environment.** Furthermore, the proposed amendments would provide a degree of momentum to further future cross-border initiatives provided that an appropriate balance between access and investor protection could be struck.

To optimise the potential benefits of the proposed amendments, we feel that there are a number of areas of the proposed amendments which require further refinement and/or clarification, such as:

- **the minimum asset level to determine qualifying thresholds.** Whilst we recognise that the proposed decrease from USD100mn to USD25mn is a constructive step, we would urge that the SEC maintain a dialogue with the private sector on this point - bilaterally and through IOSCO – to ensure that there is sufficient flexibility within the amended Rule to accommodate any future standardisation of the definition of institutional investors and/or counterparties at the global level;
- **the foreign business test.** We suggest that the SEC clarify that for purposes of the test it is only the transactions that result in a transference of economic or market risk that count towards the qualification of “relevant securities.” This way the Rule would rightly - in our opinion - exclude repurchase transactions and securities lending transactions, thereby maximising the benefits of the proposed amendments for the interested parties;
- **regulation of custody business.** The custody business is increasingly globalised and concentrated.⁴ A major requirement of their business is to be able to service their

² Rule 15a-6(a)2 and (a)3.

³ Provided it generally conducts “foreign” business as defined, and makes certain disclosures to investors.

⁴ The majority of global custodians are US-registered firms, with important activities in all major jurisdictions. The arrangement is mutually beneficial: these custody banks generate wealth and shareholder value for US investors, while providing employment worldwide.

clientele from a number of jurisdictions involving a wide range of securities, both domestic and foreign, wherever so located. We therefore miss the logic behind the proposal to, on the one hand, enable a foreign broker dealer to affect all aspects of a transaction in foreign securities with a qualified investor but on the other hand, restrict non-US entities from having custody of the qualified investors' foreign securities purchased through a foreign broker. In this case we would favour an approach that would enable the investor to decide where and why to deposit securities for custodianship purposes; and

- **the definition of "foreign securities."** This may prove to be too narrow and cumbersome and therefore not work well in the context of the transatlantic discussions on mutual recognition. A simpler test whether securities are regarded as "foreign" - especially the deletion of the requirements to establish the residency of the majority of shareholders and directors and the location of the assets - would generally reduce compliance costs and thus enhance the benefits of the proposal. Definitions for "foreign securities" as well as "US securities" would ideally be the same used elsewhere (such as in qualified intermediary agreements) to allow for the use of single IT platforms and in doing so improve operational efficiency.

In sum, notwithstanding the important points we have highlighted for further consideration by the SEC, the SEC's proposal constitutes a first good step in the right direction that is welcome and arguably over due in today's globalised securities business. Investors and financial market participants in the US and globally stand to gain from the proposed amendments. We therefore **encourage the SEC to make further strides in this direction by locking down the important advantages to be gained from the proposed reform of Rule 15a-6 whilst developing a viable and accessible mutual recognition framework** with global regulatory and supervisory partners that reflects the increasingly integrated nature of today's global financial markets.

IBFed looks forward to working with the SEC directly - and within the framework of IOSCO - going forward. We remain at your entire disposal for any questions you may have about this letter and for any communication in the future.

Yours sincerely,



Sally Scutt
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IBFed



Pierre de Lauzan
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cc: Mr Greg Tanzer, IOSCO Secretary General