September 9, 2008

VIA EMAIL
Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

RE: Proposed Rule for Exemption of Certain Foreign Brokers or Dealers (Release No. 34-58047; File No. S7-16-08)

Dear Ms. Harmon:

Citigroup Inc. ("Citi") appreciates the opportunity to comment on the Security and Exchange Commission's ("SEC") proposal to amend Rule 15a-6 of the Securities Exchange Act of 1934 (the "Proposal"). The Proposal makes a number of significant amendments to Rule 15a-6, which expands the ability of foreign broker-dealers to access US investors. Citi strongly supports the SEC's efforts to modernize Rule 15a-6, subject to our comments below.

I. Introduction

As the commentary to the Proposal notes, there continues to be "increasing internationalization in securities markets and advancements in technology and communication services."[1] These technological advancements have created new opportunities for US investors to participate in foreign markets. United States investors have access to increased information on both foreign and domestic issuers, and may execute trades electronically in foreign securities. Increases in technology have also allowed greater access by foreign intermediaries to US investors, including the ability to advertise their services, disseminate quotes, and distribute research, all on a global basis. The increasing integration of capital markets globally is evident in the increasing ownership of foreign securities by US investors – as SEC Chairman Cox recently noted, "[i]n 1980, U.S. gross trading activity in foreign securities was $53 billion. Today, it is over $7.5 trillion. . . . Roughly two-thirds of American investors own securities of non-U.S. companies, and that figure is up 30 percent from just five years ago."[2]

The SEC, to its great credit, has recently engaged in a number of regulatory actions to ensure that US securities regulation appropriately recognizes the increasingly global nature of the US capital markets, while at the same time ensuring such actions are consistent with the SEC's complementary mandates of investor protection and efficient capital formation. These actions include implementation of mutual recognition arrangements between the US and other

[1] Proposal at 39182.
[2] SEC Chair Christopher Cox, "Statement at Open Meeting on Amendments to Rule 15a-6," June 25, 2008, available here: http://sec.gov/news/speech/2008/spch062508cc_foreign.htm]

jurisdictions;[3] conforming accounting standards between the US and other jurisdictions;[4] and increasing flexibility for foreign issuers conducting business in the US.[5] We believe such actions are necessary not only in ensuring that cross-border transactions are conducted in an efficient manner, but also in protecting investors. Without such actions, all market participants – issuers, intermediaries, exchanges and investors – would be adversely affected as they struggled to comply with outdated and unduly burdensome regulatory requirements, leading to unnecessary increases in cost, complexity and operational risk, and less liquid markets.

Citi strongly supports the SEC's recent actions and believes that the Proposal represents one of several important steps the SEC is taking in recognition of the increasingly globalized nature of the financial markets. In particular, we look forward to the SEC continuing to pursue implementation of mutual recognition arrangements, which we believe hold the potential for even closer integration between jurisdictions, with benefits accruing to all market participants.

II. Comments

Citi participated in the drafting of the letter by the Securities Industry and Financial Markets Association ("SIFMA"), dated September 8, 2008 (the "SIFMA Letter"). Citi strongly agrees with the SIFMA Letter, and joins with SIFMA in supporting the SEC's efforts to modernize Rule 15a-6. We are writing separately to highlight those issues in the SIFMA Letter that we believe present the greatest risk of undermining the Proposal's laudable goals of accommodating greater access between US investors and foreign broker-dealers, and protecting US investors.

A. Foreign Business Test

Citi's primary concern with the Proposal pertains to the imposition of a "foreign business" test. As detailed below, Citi believes that the imposition of such test is unnecessary and runs counter to the Proposal's goal of facilitating cross-border transactions consistent with the SEC's investor protection mandate. In the event the SEC believes that a "foreign business" test is required, Citi strongly believes that the alternative approach set out in the SIFMA Letter, as described below, is a more workable approach.

The Proposal allows two alternative exemptions from broker-dealer registration when a foreign broker-dealer solicits trades with US investors. Under one exemption (the "(A)(1) Exemption"), foreign broker-dealers would be allowed to effect transactions directly with "qualified investors" (as defined under the Securities Exchange Act of 1934), custody their funds and assets, and generate books and records relating to the transactions (with the US broker-dealer maintaining copies of such books and records). In addition, under the (A)(1) Exemption, the foreign broker-dealer would not be required to intermediate such transactions through a US-registered broker-dealer as is currently required under Rule 15a-6.[6] The second exemption (the "(A)(2)

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[3] See, e.g., announcement of SEC and Australian mutual recognition framework, August 25, 2008, here: http://sec.gov/news/press/2008/2008-182.htm.

[4] See, e.g., announcement of "roadmap" towards global accounting standards, August 27, 2008, here: http://sec.gov/news/press/2008/2008-184.htm.

[5] See, e.g., Release No. 34-58465, "Exemption from Registration under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers, final rule, September 5, 2008.

[6] However, as the commentary accompanying the Proposal notes, in those instances where a foreign broker-dealer effects a transaction on an exchange, alternative trading system or with a market maker or an OTC dealer, a US registered broker-dealer would be involved in effecting the transaction and would be required to comply with the

Exemption") would provide less flexibility than allowed under the (A)(1) Exemption. In particular, the (A)(2) Exemption would require the foreign broker-dealer to intermediate solicited transactions with US investors through a US broker-dealer, and would require a US broker-dealer to custody funds and securities involved in the transaction.

Unfortunately, a foreign broker-dealer wishing to avail itself of the (A)(1) Exemption would be required to meet a "foreign business" test. This test would require the foreign broker-dealer to ensure that at least 85% of the aggregate value of the securities purchased or sold in solicited transactions by the foreign broker-dealer with qualified investors and foreign resident clients is derived from transactions in "foreign securities," as defined in the Proposal (as calculated on a rolling two-year basis). The rationale for the foreign business test is to prevent "creating opportunities for regulatory arbitrage vis-à-vis U.S. securities markets because the foreign broker-dealer's business in U.S. securities would be limited."[7]

For the reasons set out in the SIFMA Letter (and that we incorporate without repetition in this letter) Citi strongly agrees with SIFMA that i) the foreign business test does not further the goal of investor protection, and ii) the foreign business test would impose extensive and potentially unworkable requirements on foreign broker-dealers. In short, the complexity of the "foreign business" test will likely prevent foreign broker-dealers, including several of Citi's non-US subsidiaries, from using the (A)(1) Exemption, completely eliminating the utility of that part of the Proposal which would have provided the most flexibility for foreign broker-dealers wishing to access US investors. As a result, foreign broker-dealers will likely be limited to relying on the (A)(2) Exemption to solicit US investors. Citi believes that the (A)(2) Exemption represents a modest improvement over the current Rule 15a-6 exemption for solicited transactions. However, the (A)(2) Exemption alone does not provide sufficient flexibility to accommodate the increasingly interconnected nature of the US capital markets with other financial markets across the globe. For these reasons, and the reasons set out in the SIFMA Letter, Citi would respectfully urge the SEC not to condition the availability of the (A)(1) Exemption on the ability of a foreign broker-dealer to meet a "foreign business" test.

In the event the SEC determines that the potential for regulatory arbitrage represents a significant risk, Citi supports SIFMA's alternative approach. Specifically – the SEC should reserve to itself the authority to disqualify a foreign broker-dealer from relying on the exemption from registration under Rule 15a-6 if its U.S. securities activities rise to a level that the SEC believes requires registration of the broker-dealer. Should the SEC follow this approach, it should set out factors that it believes would raise concern that a foreign-broker was conducting a US business from offshore. Citi believes that this approach would address the SEC's concerns, given that a foreign broker-dealer would tailor its activities with US investors to prevent losing its exemption from registration.

In the event the SEC believes it is necessary to impose a more formal test to determine whether a foreign broker-dealer is conducting a "foreign business," Citi respectfully suggests that, in addition to setting out factors that would raise concerns, the SEC provide several alternative safe harbors that a broker-dealer could follow in order to demonstrate that it was conducting a foreign business. Safe harbors should be designed to permit a foreign broker-dealer to rely on the

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provisions of the federal securities laws, the rules thereunder and SRO rules applicable to such activity. Proposal at 39189.

[7] Proposal at 39191.

proposed exemption so long as (i) it does not hold itself out to customers in the United States as a market-maker in US listed equity securities (i.e., NMS stocks) and (ii) it can demonstrate, using any reasonable methodology suited to its business and consistently applied over time, that the preponderance of its securities transactions with US investors pursuant to the exemption are not in US-listed equity securities. We agree with SIFMA that these safe harbors should be based on several different alternative measures (e.g. the aggregate value of gross commissions from US-listed equity securities). A broker-dealer meeting any one of the alternative safe harbors should be able to rely on Exemption (A)(1).

Citi would also support de minimis exceptions, which would allow the foreign broker-dealer to avail itself of the (A)(1) Exception in the event that the foreign broker-dealer conducted limited transactions with US customers. As with the safe harbor approach above, Citi would respectfully suggest that a foreign broker-dealer should be able to qualify for such de minimis exception by meeting one of a number of alternative tests, such as conducting less than 500 transactions annually with US investors, *or* having annual gross revenues from qualified investors totaling less than $20 million, *or* having 1000 or fewer active accounts on behalf of US qualified investors.

B. Regulated in a Foreign Jurisdiction

Citi opposes the requirement that, in order to qualify for an exemption from registration under the Proposal, a foreign broker-dealer must be regulated in a foreign country by a foreign securities authority for the specific securities activities that the foreign-broker dealer conducts with US qualified investors. Citi would respectfully submit that such requirement is inapposite and unnecessary in the context of Rule 15a-6.

Rule 15a-6 is based on the premise that registration of a foreign broker-dealer is unnecessary when such foreign broker-dealer conducts transactions with a certain subset of sophisticated investors in the US. It is therefore unclear why the SEC would impose this additional condition, which provides absolutely no investor protection, on the one hand, and creates a significant risk of preventing a foreign broker-dealer from engaging in any number of transactions, on the other. Under the Proposal, it is possible that a foreign broker-dealer in a jurisdiction with a robust regulatory regime would be unable to avail itself of Rule 15a-6 because the specific transaction it wishes to engage in is exempt or otherwise not covered by its home regulator. On the other hand, a foreign broker-dealer in a jurisdiction with comparatively weak oversight would be able to transact with US investors, without regard to the relative weakness of their regulatory regime, if the transaction it wished to engage in was in some manner regulated by the foreign regulatory authority. We note this disparity not in order advocate for additional qualitative standards on foreign regulation, but to note that the imposition of such standards belongs in the implementation of a mutual recognition approach – not under an exemptive approach such as Rule 15a-6.

We join SIFMA in urging the SEC to eliminate this requirement altogether for the reasons stated above. Should the SEC believe that imposition of a "foreign regulation" requirement is necessary, we would urge the SEC to change the requirement so that a foreign broker-dealer soliciting trades with eligible US investors must disclose whether there is a securities regulatory authority in the foreign broker-dealer's home country, whether they are regulated by a foreign securities authority and, if so, to specify which authority or authorities have jurisdiction over them.. We agree with SIFMA that this approach would better accommodate the differing

regulatory frameworks among countries and would constitute a more feasible and meaningful requirement.

C. Exempt Transactions

Citi strongly agrees with SIFMA that Rule 15a-6 should be amended to allow foreign broker-dealers to conduct certain transactions with any US investor without requiring that such investors meet the qualified investor threshold.

Citi applauds the SEC for changing the threshold for eligible US investors under Rule 15a-6 to the "qualified investor" standard; however, we do not believe this threshold is justified in connection with transactions where US investors have substantial experience with the specific securities involved, or the nature of the transaction itself raises minimal investor protection concerns ("Exempt Transactions"). To the extent Exempt Transactions constitute solicited transactions, a foreign broker-dealer should be able to conduct them under 15a-6(a)(4):

- **Exercises of employee benefit plans**: As noted in the SIFMA Letter, a foreign broker-dealer should be permitted to act as an administrator for the employee benefit plans of a non-US issuer without the need for such non-US issuer to meet the qualified investor threshold. Preventing US employees from participating in their employer's benefit plans, or otherwise requiring the employer to engage in complex arrangements in order to allow US employee participation provides no investor protection benefits, while unnecessarily increasing costs and complexity.

- **Existing shareholders**: We agree with SIFMA that there is no investor protection justification for requiring foreign broker-dealers to register if they wish to effect transactions with US investors that are existing shareholders of an issuer - such as in connection with a tender offer or rights offerings by such issuer, or in those instances where a non-US issuer provides existing shareholders the opportunity to sell into an existing offering - merely because they fall below the "qualified investor" threshold. Requiring registration of a foreign broker-dealer could preclude US investors from engaging in such transactions, preventing them from reaping significant benefits that would otherwise be available to them.

D. Research

Citi commends the SEC for retaining the current exemption for the provision of research reports, and extending such exemption to allow foreign broker-dealers to distribute research directly to qualified investors (the "Research Exemption"). We agree with the SEC that Rule 15a-6 should not "restrict the ability of U.S. investors to obtain foreign research reports in the United States if adequate regulatory safeguards are present."[8] Unfortunately, the Research Exemption as currently structured does not accomplish this goal, nor does it accomplish the SEC's broader goal of updating Rule 15a-6 to reflect the increasingly interconnected nature of capital markets around the globe.

Citi believes that the SEC should clarify that a foreign broker-dealer is not foreclosed from soliciting transactions from or otherwise dealing with US qualified investors pursuant to Rule 15a-6 merely because such investor obtains research created by the foreign broker-dealer. As

[8] Proposal at 39188.

currently drafted, the Proposal could inadvertently forbid contact with US qualified investors by foreign broker-dealers whose research is obtained by US qualified investors (whether or not provided directly by the foreign broker-dealer, an affiliate, or an unrelated third-party). The consequence of this result would be to inappropriately restrict the provision of foreign research to US investors, or otherwise to unduly restrict the ability of foreign broker-dealers to transact with US investors in the event they are in receipt of its research report. This is particularly problematic for a global institution, such as Citi, which broadly disseminates research from its foreign broker-dealer affiliates.

Citi also supports the request by SIFMA that the SEC confirm the continued applicability of existing SEC guidance which allows an unregistered foreign broker-dealer to distribute research reports to any US investors through a registered US broker-dealer, subject to certain conditions.[9] We agree with SIFMA that such existing guidance has benefited investors by allowing them access to foreign research, while ensuring appropriate protections remain in place. We echo SIFMA's request that the SEC affirm the continued applicability of such guidance, particularly if the Proposal will supersede prior guidance with respect to Rule 15a-6 (as the commentary accompanying the Proposal has indicated).

E. Limited Voluntary Registration

We agree with SIFMA that it may be useful to allow foreign broker-dealers the option to register with the Commission and become subject to limited US regulatory jurisdiction on a voluntary basis. Citi would respectfully propose that the SEC consider permitting foreign broker-dealers to submit to a *voluntary* limited registration process, as detailed in the SIFMA Letter.

F. Major US Institutional Investors

Citi joins with SIFMA in urging the SEC to recognize the financial service industry's experience with conducting cross-border transactions with investors at very high thresholds under Rule 15a-6. Specifically, Citi supports adding a new customer category to Rule 15a-6(a)(4) modeled on the existing "qualified institution buyer" definition Rule 144A(a)(1) of the Securities Act of 1933, as set out the SIFMA Letter. Citi believes that such investors possess the sophistication to evaluate the risks and rewards of entering into cross-border transactions with foreign broker-dealers. Accordingly, Citi believes that a foreign broker-dealer should be permitted to directly effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

> any qualified institutional buyer (as defined in Rule 144A(a)(1) of the Securities Act of 1933) or any other entity, including any investment adviser (whether or not registered under the Investment Advisers Act), that owns or controls (or, in the case of an investment adviser, has under management) in excess of $100 million in aggregate assets.

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[9] SIFMA Letter, p. 17.

We appreciate your consideration of our comments. Should you have any questions, please do not hesitate to call Omer Oztan at 212.816.2101.

Sincerely,

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