APCIMS

Working for the
Investment Community

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11 September 2008

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

Submitted electronically via rule-comments@sec.gov

Dear Ms Harmon

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

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) is the organisation in the UK that represents firms which act for the private investor and offer them services that range from execution only trading through to discretionary advice and full portfolio management for the high net worth individual. APCIMS' members do not manufacture or sell financial products; they depend on enduring long-term client relationships for their ongoing business; and they are paid in the main on a fee basis. They are not driven by the need to secure commission from a financial product provider. We have over 200 member firms working from more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands, and Gibraltar. APCIMS' members employ some 25,000 regulated staff, they have under management over £400 billion of private investor funds and undertook in 2007 some 20 million trades on their behalf.

APCIMS welcomes the opportunity to comment on the proposal to amend Rule 15a-6 under the Securities Exchange Act of 1934. We are strongly in favour of the SEC's decision to undertake a comprehensive review of this rule, which we see as timely in a number of respects. Globalisation of the international securities markets continues, and the events of the last year have demonstrated how interlinked they now are. While the legal framework in which regulatory authorities have to operate confines their oversight responsibilities in the main to specified jurisdictions, it is important that when developing appropriate regulation they take into consideration as necessary the effects of the global operation of regulated markets and firms. This includes their effect on the development of regulation in other jurisdictions and improvements to global regulatory standards. Rapid changes in technology and communications together with the mobility of individuals enhance global activity and strengthen the requirement for efficient service delivery across frontiers. Regulatory reform which addresses unnecessary barriers to this need is to be welcomed. In general, APCIMS concurs with the view that the proposed amendments to Rule 15a-6 should simplify and increase US investor access to regulated firms, markets and financial products outside the USA whilst maintaining investor protection but without duplicative, costly and unnecessary additional regulation.

There are several aspects of the SEC's proposed reforms which are especially welcome to APCIMS' members. They include:

- The expansion of the category of US investors with which a foreign regulated broker-dealer can interact without having to register with the SEC and undertake the reporting and other requirements of the Exchange Act and related rules in addition to meeting the regulatory requirements of its home jurisdiction. In this context APCIMS welcomes in particular:
  - the proposal to extend the qualified investor definition by reducing the asset threshold from $100 million to $25 million; and
  - the inclusion in the qualified investor definition of the category of "natural persons" who own or control investments of more than $25 million;
- The elimination of the "chaperone" requirement when visiting US clients;
- The concept of permitting foreign regulated broker-dealers to deal for US clients in both U.S. and non-U.S. securities; this will lower the cost to clients of accessing the global markets and facilitate business development on their behalf.

There remain however some specific concerns which in APCIMS' view require further consideration. These are set out below.

1. The exemption options for foreign regulated firms under the proposed rule both have conditions attached. To benefit from Option 1 a foreign broker dealer soliciting business from qualified US investors needs to meet the 'foreign business' test. Alternatively, the same firm under Option 2 must arrange for a US registered broker-dealer to maintain custody of the qualified investor's funds and securities in connection with any transactions, and books and records relating to those transactions. In APCIMS' view such constraints would be necessary only if they strengthened the protection of US investors in their dealings with foreign regulated firms not registered with the SEC. On the assumptions (i) that the SEC is able to make the new rule proposal extending the 15a-6 exemptions because of increased confidence in foreign (non-US) regulation, and (ii) that the limitations on the type of US investor that the foreign broker-dealer can access under the proposed arrangements assures a degree of investor capability, it seems questionable whether such strengthened protection is either provided or necessary. If not, these constraints become unnecessary burdens which add complexity and cost to business with no obvious benefit and serve to undermine the practical value of the proposed changes. In particular:

   - As regards Option 1, APCIMS does not see that US qualified investors transacting with foreign broker-dealers under Rule 15a-6 should need additional protection when dealings are in US rather than foreign (non-US) securities; as a result, it is not clear to us why the 85% limitation should be imposed; indeed, because of the costs and complexities involved in ensuring the limitation is met, and the potential opportunity costs that the limitation on choice might impose on a foreign broker dealer's ability to act fully in the best interests of the US client, the proposal as constructed could even act as a deterrent to uptake of the new exemption, which we presume is not the objective; on the contrary, with the continued globalisation of the financial markets it will be important for US qualified investors (and indeed other investors) to be served efficiently by well regulated firms dealing in US and non-US securities as best suited to the client's needs.

   - Similarly, with Option 2 APCIMS is unsure what additional investor protection or other benefits might accrue to US qualified investors under the proposed conditions that can be justified by cost-benefit analysis or in other ways; the custody arrangements would apply equally to non-US securities as well as to US securities and would seem to risk undermining existing custody arrangements that a foreign broker-dealer may have and that in most cases will have worked perfectly well on behalf of clients from different

parts of the world; there could certainly be risk of expensive and unnecessary duplication that could potentially add to inefficiencies while bringing no benefit; in APCIMS' view this exemption option and the perceived justification for it should be reconsidered in the light of the fact that foreign regulated broker-dealers are likely already to maintain acceptable custody arrangements for client funds and securities either within the USA or elsewhere.

2. Foreign broker-dealers undertaking transactions for US clients under an SEC exemption régime such as Rule 15a-6 should clearly be appropriately regulated in their home jurisdiction. However caution should be exercised regarding precise equivalence in the terminology relating to what functions a firm may be authorised to carry out. Regulatory categories and the way they are described differ between jurisdictions and equivalence of terminology and focus is hard to achieve. In this context APCIMS notes the requirement in the proposed rule that a foreign broker-dealer dealing with US qualified investors under the exemption régime should be regulated in its home jurisdiction for the specific securities activities which it intends to undertake for the US clients. APCIMS would urge caution with regard to this concept when drafting the final rule. Other jurisdictions with appropriate financial regulation may take different approaches which may involve different regulatory categories and terminology. On the other hand the desired outcomes of regulation in terms of, for example, standards of investor protection and market integrity may be the same. These issues of difference of approach but similarity of outcome, for example in terms of investor protection, arise in particular when comparing rules-based and principles-based regulatory régimes. APCIMS considers that the Commission should take account of this difference in its final drafting. It should not look for precise equivalence in the descriptions of the business a foreign firm is permitted by regulation to undertake, but rather that the firm is appropriately authorised and regulated in its home jurisdiction for its range of financial activities. In its dealings with US clients such a firm should operate within this range.

3. APCIMS would welcome further clarity from the Commission regarding the categories of persons covered by the "qualified investor" concept. We are concerned for example to know whether trusts and charities would be included. We believe that definitions and interpretations in this area, such as might be made of the phrase "corporation, company or partnership" should be sufficiently flexible to allow a broad range of persons and organisations to benefit from engagement with foreign broker-dealers under the exemption. A narrow or rigid definition might exclude US bodies that currently exist or might develop in the future and that might reasonably expect to be eligible for such access. This could be detrimental to the advantages that the proposed rule may be intended to offer.

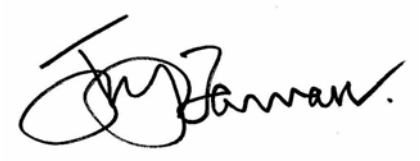
4. Finally, APCIMS would be most interested to know what impact the Commission considers that the proposed changes would have on the "14 persons rule". This means at present that a regulated foreign firm that acts for more than 14 US persons is required to register with the SEC. This rule, developed some time ago when financial markets were less globalised than now, has in recent years become a more complex issue because greater mobility has led to a rising number of US natural persons and organisations requiring the services of foreign broker-dealers living abroad. The "14 persons" ceiling has thus become applied much more frequently than was perhaps originally envisaged such that firms have had to turn away or lose clients for no other reason than that their ceiling has been met. It is difficult to see how in the current globalised world of financial markets and their regulation this arbitrary arrangement serves the interests of either the investor or the business. In APCIMS' view the 14 person limitation is increasingly anachronistic and should not have a place under the proposed new régime.

APCIMS hopes that the above commentary will be of interest and assistance to the Commission in its deliberations. We look forward to the next stages in the Commission's work to revise and

update Rule 15a-6 and to implement the final, new version. APCIMS strongly supports the work by regulators to strengthen their cooperation and collaboration in the supervision of the global financial markets and regards steps taken to improve the framework for the efficient operation of cross-border financial services while maintaining appropriate investor protection as crucial to this process. We welcome opportunities to work with the SEC and other regulators in this endeavour.

Should there be any questions or requirement to discuss issues further please do not hesitate to contact me on +44 (0)20 7448 7100 or at johnb@apcims.co.uk.

Yours sincerely



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