EUROPEAN COMMISSION
Internal Market and Services DG

Director-General

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Secretary,
Securities and Exchange Commission
100 F Street, NE
USA – Washington DC 20549-1090

E-mail: rule-comments@sec.gov

Subject: **File Number S7-16-08: Proposed Rule on Exemption of Certain Foreign Brokers or Dealers**

Dear Sir/Madam,

This letter constitutes the response of the services of the European Commission to the call for comments made by the U.S. Securities and Exchange Commission ("SEC") in relation to amend Rule 15a-6 of the US Securities Exchange Act of 1934 ("Exchange Act") which provides conditional exemptions from registration under Section 15(b) of the Exchange Act for foreign broker-dealers that induce or attempt to induce the purchase or sale of any security by certain US institutional investors, if the foreign broker-dealer satisfies certain conditions.

The observations in this letter reflect consultations with the 27 Member States of the European Union as well as a number of associations representing European broker-dealers and European Exchanges.

The services of the European Commission welcome the proposal to reform Rule 15a-6. We think this is an important step towards granting enlarged access for US investors to European and other foreign broker-dealers' services while at the same time maintaining a high level of investor protection. We are convinced that the proposed rules will benefit both US investors and the financial industry at both sides of the Atlantic and beyond. A wider group of qualified US investors will profit from better information and research provided directly by European broker-dealers that are specialized in this field. This will contribute to better investment decisions, better allocation of capital and overall higher returns on investment. The efficiency of the services provided by foreign broker-dealers to US investors should increase and, correspondingly, the costs of transactions should fall, inter alia, because the "chaperone" requirement, perceived by many as burdensome and unnecessary, will be reduced in scope.

With regard to the substance of the proposal, the services of the European Commission are very supportive of the extension of the category of U.S. investors that foreign broker dealers can provide research to and solicit trades from to all investors that meet the "qualified investor" definition. Whereas the current exemption in rule 15a-6 of the Exchange Act is available mainly to major U.S. institutional investors which have more than 100 million USD in assets under management, the proposal foresees the extension of the category which could profit from the exemption to all "qualified investors" including any corporation, company, partnership or natural persons that owns and invest on a discretionary basis not less than 25 million USD in investments. We share your view that increased access to information about foreign securities markets due to advancements in communication technology has significantly enlarged the group of qualified investors who are sophisticated and experienced enough to assess the quality and reliability of foreign broker-dealers.

We further welcome that under Exemption (A) (1) the foreign broker-dealer can conduct all aspects of the transaction including the custody of funds and securities. It is also important that this approach would allow the intermediating US registered broker-dealer to maintain books and records with the foreign broker-dealer (provided that copies of the books and records can be promptly furnished to the SEC) in accordance with the local regulatory requirements to which the foreign broker-dealer is subject. This is a positive development as it will reduce costs of reporting which will benefit U.S. investors.

Notwithstanding our overall positive view of the proposal, we would appreciate clarification with regard to the concept of "foreign business". According to the proposal the more advanced Exemption (A) (1) is available only to foreign broker-dealers that conduct a "foreign business". Foreign broker-dealers shall conduct a foreign business if at least 85% of the aggregate value of securities purchased or sold by the foreign broker-dealer in transactions with U.S. investors was derived from transactions in foreign securities.

We have some doubts whether the calibration of the "foreign business test" limiting the business of foreign broker dealers in US securities to 15 % or below is economically rational. In the explanatory memorandum it is stated that industry representatives claim that under the current framework foreign broker-dealers do only a small percentage of business in U.S. securities (less then 10 %) and that you have no indication that foreign broker-dealers would seek to use an expanded exemption to increase their business in U.S. securities. If this is so, why would it be necessary to limit the business of foreign broker dealers in US securities at all? From our consultation with industry representatives we have some indications that the threshold of 15 % could be problematic in terms of practical application. We further think, that the enhanced disclosure requirements under Exemption (A) (1) are sufficient to protect against regulatory arbitrage.

We think that the definition of what constitutes "foreign securities" referring to Rule 405 of the Securities act of 1933 and containing subjective elements seems to be overall too complicated and costly for the foreign broker-dealers to monitor. In this regard we would encourage the SEC to check whether an easier and more evident test would be available.

While the European Commission services are pleased that the SEC is modernizing Rule 15a-6 offering instant benefits to US investors and foreign broker-dealers, we would still like to emphasize that the proposed reform should be seen as a complementary step to our

ongoing common efforts to set up a mutual recognition framework between the US and the EU and should neither substitute nor delay these efforts.

In our view mutual recognition, based on comparability assessments, could provide some important advantages over exemption regimes. Differently from many exemption regimes which follow a standardized global approach mutual recognition agreements provide for comparability assessments between a limited number of jurisdictions with comparable standards. As a consequence, the opening of the respective markets to firms covered by the other regulatory system considered to be equivalent may go further than the opening following a globally applicable exemptive relief. Also, the scope of firms which profit from mutual recognition agreements may be larger than those covered by a sectoral exemptive relief. In addition to broker-dealers that are covered by the current SEC proposal we believe it should be considered to extend the scope of a future mutual recognition framework to other financial institutions like securities exchanges.

We are open to discuss or explain these views further if you deem this necessary.

Yours sincerely,

Jörgen Holmquist

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