



September 12, 2005

Ms. Paula R. Jenson  
Deputy Chief Counsel  
Division of Market Regulation  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Paula,

Per our telephone conversations, the Securities Industry Association ("SIA") is providing for your consideration a list of additional regulatory relief that SIA member firms believe is necessary due to the damage caused by Hurricane Katrina. The SIA commends the Securities and Exchange Commission ("Commission" or "SEC"), the NASD and NYSE on providing substantial regulatory relief only days after the hurricane struck. Member firms affected by Hurricane Katrina are grateful for that relief, and now respectfully request your consideration of a few more areas where the Commission and/or self-regulatory organizations ("SROs") might issue additional relief or interpretive guidance.<sup>1</sup> If you require further information on these areas, please let us know. We very much appreciate your assistance, and that of the NASD and NYSE.

1. **Restoration of Damaged or Lost Records.** As you know, the guidance released by the NASD and NYSE requires firms affected by Hurricane Katrina to submit to their SRO a list of those records that cannot be restored or recreated from an electronic database or otherwise retrieved from a storage facility or service bureau. The guidance, however, does not make clear whether firms, if they still have the data available in some other type of form other than in the record that was lost or destroyed, can deem that data sufficient to satisfy the requirements of Rules 17a-3 and 17a-4 and related SRO rules and therefore not have to report those records to the SRO. For example, can firms use facsimile images that they have retained as satisfactory replacements, and/or can they rely on data-only records? Finally, it also is not clear from the guidance to what extent firms must go to obtain replacement documents for those permanently lost or destroyed, particularly in the case of new account records.

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<sup>1</sup> Please note that the relief requested here does not necessarily represent a consensus viewpoint of SIA member firms. This list was compiled simply from emails from different firms; we did not, as we usually do with SIA comment letters, seek concurrence from our member firm community at large before submitting the list. In the interest of time and per our telephone conversations, we are therefore forwarding them to you for your consideration as individual firm requests, but feel confident that many other firms share their viewpoint.

**Relief Requested:** We request that the SEC and SROs consider relieving firms of the requirement to report those records that are required under Rules 17a-3 and 17a-4 and the relevant SRO rules but which were lost or destroyed as a result of Hurricane Katrina if the relevant data is preserved in an alternative format, including electronic data-only sources. We also request clarification as to what types of records must ultimately be replaced (e.g., new account records).

2. **New Employee Background Checks.** Firms in areas affected by Hurricane Katrina, particularly Louisiana, will not be able to perform thorough background checks on new employees hired over the next several months. Members firms are required to conduct background checks, which often include a review of local court records and other sources, for information regarding a new employee's criminal history. In the case of courts in the affected areas, such records may not be available for review until the courts or other sources are operational again. In the interim, firms may perform background checks on new employees to the extent possible at the time of hire, and then complete the checks when the necessary information becomes available.

**Relief Requested:** In those instances where a firm finds that a new employee is statutorily disqualified once it is able to complete the background check and terminates that employee immediately thereafter, we recommend that the SEC and SROs consider not holding that firm responsible for failing to timely identify the disqualifying event.

3. **Auditor Independence.** Accounting firms may be able to assist firms in the affected areas in recovering records destroyed or damaged by the hurricane. Because such activities may not fall within their auditing duties, the accounting firms may be violating the auditor independence rules. Some member firms believe that accounting firms should be permitted to provide any and all possible assistance to affected firms to limit business interruptions as much as possible.

**Relief Requested:** We recommend that the SEC consider whether accounting firms should be permitted to provide any and all assistance to firms in the affected areas in reproducing or recovering records lost or destroyed during the storm without being held liable for violating auditor independence rules.

4. **State Registration.** Some firms plan to open branch offices, or have clients who are now residing, in states where the firm is not registered to do business, thus violating that state's broker-dealer registration rules. In addition, registered representatives may have been forced to relocate (either with or without their firm) to states where they are not currently registered.

**Relief Requested:** We request that the SEC encourage states to provide appropriate relief from registration requirements for firms and registered representatives who are now operating in that state due to the displacement of the firm, registered representative, or customer.

5. **Annual Branch Reviews.** Firms that were scheduled to perform annual branch office reviews in the affected areas during the last week of August, September or October most likely will not be able to complete their reviews for several months. As a result, such firms will be in violation of SRO rules if such reviews are not completed on a timely basis.

**Relief Requested:** We request that the timeframe for completing the annual branch office reviews required in August, September, or October be extended until such time as the branch office records and personnel are available for the review.

6. **Expedited Approval of Clearing Agreements.** Some clearing firms located in the affected areas may no longer be operating. Firms that clear trades through such clearing firms will be required to enter into new clearing agreements with other clearing firms in the very near term.

**Relief Requested:** We request that the SEC encourage the SROs to consider and to approve clearing agreements for such introducing firms on an expedited basis to avoid any further interruption in business.

7. **Discretionary Trades.** One member firm suggested that financial consultants be permitted to place trades on a discretionary basis in accounts where there is no discretionary trading agreement in place.

**Relief Requested:** We are forwarding this suggestion to the SEC for its consideration.

8. **Small Firm Relief.** Certain small firms with offices just in the affected areas are currently not operating and have indicated that they may need additional relief. We have not learned of what specific, additional relief may be needed at this time; if we do hear from smaller firms in this regard, we will be in touch with you.

Thank you again for your consideration of these additional areas that might require regulatory relief, and for the regulatory relief already provided.

Sincerely,

Ira D. Hammerman  
Senior Vice President and  
General Counsel

cc: Richard Strasser, SEC  
George Kramer, SIA  
Ann Vlcek, SIA  
Melissa MacGregor, SIA