Securities Industry Association
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April 7, 2006

VIA FEDERAL EXPRESS

Mr. Robert Colby
Acting Director
Division of Market Regulation
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Modernization of Exchange Act Rule 17a-4

Dear Mr. Colby:

The Securities Industry Association ("SIA")[1] respectfully requests that the Securities and Exchange Commission ("SEC" or "Commission") take the necessary steps to modernize its record retention requirements, particularly Rules 17a-4(b)(4) and 17a-4(f) under the Securities Exchange Act of 1934 ("'34 Act"), to meet broker-dealers' current and future technological needs and demands. While the SEC's record retention rules have remained static, the technology available to meet those guidelines has evolved and improved three or four times over. Moreover, given the rapidity at which technology evolves, only principles-based record retention rules will ever be able to keep pace with the rate of technological change. Further guidance from the SEC would enable broker-dealers to make informed decisions with respect to new technology and the necessary steps for implementing such technologies while remaining in compliance with SEC rules.

A confluence of events appears to be driving the effort to modernize the SEC's record retention rules. We understand that various industry groups including a taskforce organized by the New York Stock Exchange, Inc. ("NYSE") and a separate group organized by the National Investment Company Service Association ("NICSA") have recently met with, or will soon meet with, the SEC Division of Market Regulation and/or other divisions regarding electronic records issues. SIA has discussed the presentations with these groups and generally agrees with the principles being promoted by both the NYSE taskforce and NICSA. We

[1] SIA brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

further understand that the SEC Division of Investment Management is preparing to issue guidance clarifying registered investment advisers' electronic recordkeeping obligations. SIA has worked with the Committee on Investment Management Regulation of the Association of the Bar of The City of New York on its proposals and urges the SEC to follow their approach, but also to avoid creating new burdens on dual-registrants as further described below.

The SIA E-Records Modernization Taskforce[2] (the "SIA Taskforce") respectfully requests an opportunity to present our proposals for the modernization of the record retention requirements under the '34 Act. The following is a brief introductory outline of those recordkeeping issues which are most important to our members and which we believe require the Division's immediate attention. Each of these issues can be discussed in greater detail and particularity during an in-person meeting with our members.

Although formal guidance may be sufficient to modernize Rule 17a-4 in some instances, we urge the SEC to consider formal rulemaking to allow for public comment and ensure the long-term value of these amendments.

1. Clarify the definition of "business as such" and "communications" under Rule 17a-4(b)(4).

The interpretation of "business as such" under Rule 17a-4(b)(4) continues to be problematic for SIA members because of the lack of clear, explicit guidance from the SEC on its meaning. As a result, firms have applied varying interpretations and many firms have deemed it necessary to save ***all*** e-mails to or from ***all*** employees or associated persons of the broker-dealer regardless of an individual's department or position or the content of the e-mail.

This has led to significant problems when responding to the Office of Compliance Inspections and Examinations ("OCIE") and Division of Enforcement requests for e-mails. Because many firms are retaining all e-mails, responding to requests has become unnecessarily cumbersome, inefficient, costly, and time-consuming for firms. If broker-dealers were required to keep a more targeted universe of correspondence, firms may be able to respond to Enforcement and OCIE requests more efficiently and effectively.

The SIA Taskforce believes that this issue should be resolved by amending Rule 17a-4(b)(4) to limit the required retention of e-mails in such a way that the original intent of the rule is not compromised, while creating a more reasonable and cost-effective standard for securities firms. We understand that the NYSE is considering a pilot program where selected firms will limit e-mail retention according to department and/or job function. We fully support this initiative as a good first step in finding a solution to some of the record retention issues faced by broker-dealers today.

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[2] The Taskforce is made up of SIA member representatives who have broad legal, compliance, information technology, and other expertise. The Taskforce is particularly suited to working with the SEC to modernize the electronic recordkeeping rules.

Further, the related issue of what constitutes a "communication" (particularly in the context of electronic applications) continues to be undefined and subject to a variety of interpretations. In an era of increasingly complex technology, SIA members are without concrete guidance on what constitutes a communication which is required to be saved. To date, the SEC has provided interpretive guidance that e-mail and instant messages are included in the definition of "communications," but has not yet specifically addressed other technologies. Without clear up-front guidance, SIA members are put at a competitive disadvantage because they cannot utilize the most current technology which may have significant cost-savings and provide better quality customer service.

The SIA Taskforce believes that this issue can only be solved through clear written guidance on the types of communications that are required to be retained pursuant to Rule 17a-4. Regardless of technology used, those technologies falling outside of the guidance would not be required to be saved until the SEC formally instructs broker-dealers upon reasonable notice that such communications are required to be saved. The SIA Taskforce is available to assist the staff in putting together a list of such technologies and looks forward to discussing these issues with the Division staff during a future meeting.

2. Revise format standards for retaining electronic records under Rule 17a-4(f).

Under Rule 17a-4(f), broker-dealers are required to retain electronic records in a "non-rewriteable, non-erasable" format. When WORM was adopted in 1993 as a means for satisfying the non-rewriteable, non-erasable standard, it was only intended to set the parameters for protecting the integrity of the retained document, and not limit the technology available to satisfy the standard.[3] Since then, however, broker-dealers have become locked into using WORM technology as the only means of satisfying the Rule 17a-4(f) requirements, thus limiting firms' ability to utilize other more efficient technologies to store and retrieve electronic documents which are equally secure. This standard continues to be considerably more burdensome than the retention standards imposed on investment advisers, transfer agents, and public companies. In addition, some firms are often not able to quickly retrieve electronic records from WORM format platforms because they have much lower performance characteristics which negatively impact the firms' indexing and retrieval operations. Despite good intentions, these inefficiencies may cause significant difficulties and delays when responding to OCIE and Enforcement requests.

The SIA Taskforce urges the Commission to permit broker-dealers to use any current or future technology to satisfy the principles of record integrity, quality, and accuracy which underlie Rule 17a-4(f). This may be accomplished by amending Rule 17a-4(f) to include procedural standards that allow for the use of record preservation technologies and formats which reasonably prevent the alteration or destruction of records required to be retained pursuant to SEC rules. At a meeting with the Division, the SIA Taskforce will suggest specific proposed revisions to Rule 17a-4(f) which would make the retention standards more flexible and effective.

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[3] SEC No-Action Letter to SIA (June 18, 1993).

3. Resolve inconsistencies between broker-dealer and investment adviser recordkeeping requirements.

Currently, dual registrants (firms registered as both broker-dealers and investment advisers) are required to have two or more recordkeeping regimes. For instance, investment adviser regulations require e-mails to be retained for five years, while Rule 17a-4 requires e-mails to be retained for three years. Such inconsistencies make recordkeeping particularly inefficient for dually-registered firms and, as a result, SIA endorses the further alignment of the two recordkeeping regimes. In light of the recently reported efforts by the Division of Investment Management to issue guidance in this area, we would like to discuss these inconsistencies in the hope of bringing greater clarity and efficiency to the records management process for dual registrants.

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The SIA Taskforce requests a meeting with staff from the Division of Market Regulation to discuss these issues and any other issues surrounding electronic records that the Division so requests. If the Division finds it acceptable, we welcome the inclusion of staff from other divisions, particularly Enforcement, OCIE, Investment Management, and the Office of Risk Assessment. Please contact Michael Udoff at (212) 618-0509 or me at (202) 216-2045 to arrange a meeting or if you have any questions.

Very truly yours,

Ira D. Hammerman
Senior Vice President & General Counsel

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Annette L. Nazareth
Brian Cartwright, General Counsel, SEC
Charles Fishkin, Director, Office of Risk Assessment, SEC
Lori A. Richards, Director, OCIE, SEC
Linda C. Thomsen, Director, Division of Enforcement, SEC
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Thomas K. McGowan, Assistant Director, Division of Market Regulation, SEC
Richard Ketchum, Chief Regulatory Officer, NYSE
Grace Vogel, Executive Vice President of Member Firm Regulation, NYSE
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