

June 11, 2008

Via E-mail: pubcom@finra.org

Marcia E. Asquith
Senior Vice President and Corporate Secretary
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 08-25: Books and Records

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on Regulatory Notice 08-25 regarding proposed consolidated FINRA rules governing books and records requirements. SIFMA applauds FINRA’s efforts to streamline the books and records rules, to group those rules according to similar subject matter, and to eliminate obsolete or duplicative rules. SIFMA appreciates the staff’s work to move these and other proposals forward as a part of the consolidation effort.

SIFMA would, however, like to address several issues in this proposal. As an overall comment on these and future proposals regarding FINRA’s books and records requirements, SIFMA urges FINRA to confer with the SEC since any such changes will also need to conform to Securities Exchange Act (“Exchange Act”) Rules 17a-3 and 17a-4. SIFMA believes that the requirements in Rules 17a-3 and 17a-4 are sufficiently inclusive to satisfy investor protection interests. Thus, SIFMA requests that FINRA should use caution when it considers imposing additional recordkeeping requirements for member firms.

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

In addition, SIFMA requests that the use of “supplementary material” be limited in use in the books and records proposals. In the case of these books and records rule proposals particularly, the supplementary material should be incorporated into the rule itself wherever possible, and not separated from the main text. For example, the new definitions of “maintain” and “preserve” should probably be included in the main part of the rule instead of in the supplementary material. SIFMA also asks for clarification as to whether these new definitions would be applied to other FINRA rules. SIFMA generally endorses the use of supplementary material for future interpretations and clarifications, as opposed to separate interpretive letters or guidance, but using supplementary material in an entirely new rule defeats the purpose of rewriting the rulebook.

1. Customer Account Information (Proposed FINRA Rule 4512)

SIFMA is generally supportive of the changes proposed by FINRA regarding customer account information in proposed FINRA Rule 4512. In response to FINRA’s specific request, SIFMA does not believe that the registered representative signature requirement under NASD Rule 3110(c)(1) has any practical purpose because of the volume and electronic nature of accounts and, therefore, SIFMA supports eliminating this requirement.²

SIFMA also believes that the term “associated person” has broader meaning than “registered representative,” thus making the proposed rule more confusing. Given FINRA and SEC rules, if there is someone “responsible” for an account, it would likely have to be a registered representative. In addition, the proposed requirement to maintain the name of a registered representative as “responsible for an account” is not practical in all cases, particularly for an institutional account, where different individuals, depending on the product, cover an account. There are even instances where a team of people would be assigned to take orders and other instructions for a particular retail account. As a result, SIFMA believes that designating a single person as responsible for the account would be arbitrary and relatively meaningless.

Furthermore, SIFMA requests that firms be given the flexibility to designate an appropriate person to approve an account without limiting such person to a “partner, officer, or manager.” We instead propose that the language be amended to encompass any person the firm designates. Furthermore, SIFMA requests that the rule be clarified to allow firms to denote acceptance in any manner they wish –

² We note that Exchange Act Rule 17a-3(a)(17)(i)(A) requires the firm to have a record of each account owned by a natural person which includes “whether it has been signed by the associated person responsible for the account.” If FINRA removes the requirement to obtain a signature, SIFMA will urge the Commission to delete this requirement from Rule 17a-3 to be consistent.

either manually or electronically. We have proposed language below which we believe would provide firms the necessary flexibility.

SIFMA further believes that the requirement for a partner, officer, or manager to denote that an account has been “accepted in accordance with the member’s policies and procedures for acceptance of accounts” is unnecessary because members are required to follow their policies and procedures for all activities, including account opening procedures. Further, the proposed rule may be interpreted to require a partner, officer, or manager to manually sign a document for each account that he/she “has accepted the account in accordance with the member’s written policy and procedures,” which would be enormously burdensome and not serve any practical purpose.

We would, therefore, request that the language in proposed Rule 4512(a)(1)(C) be modified to read:

(C) name of the registered representative, if any, responsible for the account, and evidence of approval by the person designated by the member;

Finally, SIFMA requests that the requirement to maintain authorized traders for institutional accounts in proposed Rule 4512(a)(1)(D) be eliminated. This requirement, which previously existed in NASD Rule 3110(c)(1)(D), has caused significant operational burden on firms and may put firms at regulatory risk. Some clients use this provision to attempt to shift the burden of enforcing compliance with the client’s internal policies and controls from the client to the firm through the use of authorized trader letters. If firms were required to comply with these letters, they would have to make a significant technological investment as well as a significantly slow down trading as the letters are checked for authorized traders.³ Instead, clients should rely on their own internal controls and the confirmation/settlement process. Although many firms send refusal letters when they receive authorized trader letters from a client, the firms are still faced with potential regulatory liability because the FINRA rule requires firms to obtain a list of authorized traders which, in turn exposes the firm to liability if they do not maintain such a list. In addition, keeping such lists current is enormously burdensome, thus many such lists are left unaltered after account opening. As a result, by eliminating this requirement, firms would be given greater flexibility in dealing with institutional customers and reduce operational burden.

³ In 2006, the Global Document Steering Committee (“GDSC”) issued a policy statement advising firms to send refusal letters to clients who send these trader authorization letters, and which lends further credence to SIFMA’s concerns regarding these letters and this rule. The GDSC policy statement is available here: http://www.newyorkfed.org/globaldoc/Trader_Authorization_Letters_10_23_06.pdf

2. Customer Complaints (Proposed FINRA Rule 4513)

SIFMA generally concurs with FINRA's proposed Rule 4513 related to written customer complaints, but requests that the current three-year retention period for customer complaints be retained in the new rule. SIFMA does not believe that the FINRA examination cycle is a sufficient or persuasive reason to increase the retention period. First, the current three-year period directly reflects the existing retention period for complaints under Exchange Act Rules 17a-3(a)18 and 17a-4(b)(1) and correspondence under Exchange Act Rule 17a-4(b)(4). Written customer complaints are deemed correspondence; thus, the retention periods, at present, should be identical.

Furthermore, as a practical matter, the vast majority of retention periods under the securities laws are three years or six years, and firms have already established policies and procedures relating to these retention periods. A new four-year retention period would create an operational burden with little apparent benefit. Indeed, the adoption of a four-year period would create an odd result – customer complaints would have a longer retention period than confirmations, order tickets, and various written agreements.

Finally, SIFMA is pleased that FINRA intends to exclude oral complaints from the definition of customer complaints in these and other FINRA rules. Although this rule effectively eliminates oral complaints, the construction of the rule is unclear. SIFMA recommends that FINRA revise the definition of "customer complaint" in proposed Rule 4513(b) to expressly include only a "written grievance," as opposed to modifying the application of the definition to "written customer complaints" in proposed Rule 4513(a). SIFMA also requests that the definition of "customer complaint" be consistent across all FINRA rules, particularly when incorporating NASD Rule 3070 into the consolidated rulebook.

3. Authorization Records for Negotiable Instruments (Proposed Rule 4514)

SIFMA continues to urge FINRA to adopt principles-based rules whenever possible, and FINRA's proposed Rule 4514 seems to be an ideal candidate for principles-based regulation. A principles-based rule would give firms the flexibility to develop reasonable policies and procedures to address these issues. For example, firms could establish a threshold where check requests over a certain dollar amount require written authorization, whereas requests for checks in smaller amounts would require only a verbal authorization with a follow-up phone call or e-mail.

SIFMA also opposes the proposed requirement to retain all such authorizations for three years from the expiration of the request. The proposed

retention period is difficult to track because it is based on an end date and not a start date, and is also inconsistent with the existing record retention period for communications. The preservation period for such authorizations should be three years from the date of the request.

4. Approval and Documentation of Changes in Account Name or Designation (Proposed Rule 4515)

SIFMA agrees with the general purpose and meaning of proposed Rule 4515, but is concerned that the requirement to document “the essential facts” and have a principal give his/her approval to an account name change or account designation (including error accounts) is impractical and could be unnecessarily burdensome on member firms. We believe the requirement, as drafted could have a potentially adverse impact on investors by affecting the timing and price of orders that were executed or booked erroneously. In addition, the rule poses an operational problem in that for firms to prove that such facts were documented prior to execution, they would have to implement a time-stamp or similar system at considerable expense.

Depending on the interpretation of the breadth of the proposal, these operational difficulties may be exacerbated for institutional accounts. For example, if allocations of subaccounts fall within the rule, then such a sign-off requirement could cause a significant delay in execution while “essential facts” are documented and appropriately dated and/or time-stamped. SIFMA recommends that the rule be amended to permit documentation and approval after execution for all accounts, but, at a minimum, for institutional accounts.

Finally, SIFMA requests some additional clarification in proposed Rule 4515, particularly that the principal’s indication of approval may be done electronically (such as in an electronic supervisory system). SIFMA would like to confirm that no written hard copy is required to be retained, and that such electronic approval is sufficient to comply with the rule.

* * *

We look forward to working with you on these proposals. If you have any questions, please contact me at (202) 962-7385 or mmacgregor@sifma.org.

Sincerely,

Signature removed for security purposes

Melissa MacGregor
Vice President & Assistant General Counsel

cc: Afshin Atabaki, Assistant General Counsel, FINRA
Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA
Amal Aly, Managing Director and Associate General, SIFMA