

STATEMENT OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
BEFORE THE
ASSEMBLY COMMITTEE ON CONSUMER AFFAIRS AND PROTECTION
HEARING ON
A. 2372 – CREDIT PRIVACY IN EMPLOYMENT ACT

April 28, 2015

The Securities Industry and Financial Markets Association¹ (SIFMA), which represents the shared interests of hundreds of securities firms, banks, and asset managers, holds that – at least in the financial services industry – the ability to conduct credit background reviews must be preserved in this bill in order for the industry to meet its regulatory responsibilities. While this legislation is well-intentioned, under Financial Industry Regulatory Authority (“FINRA”) rules, credit history is not only a relevant consideration when making hiring decisions, but is required to be considered. Therefore, we respectfully request your consideration of an amendment to your credit history legislation (A. 2372), which would allow financial services employers to continue to comply with all industry-specific rules and regulations and ensure that investors in New York can continue to be confident in the safety of their investments – an important exception already recognized in other states with credit history laws and most recently in New York City, as well as in New York State Assembly social media legislation (A. 4833 & A. 2891).

While a number of states have introduced legislation with the intent of protecting the privacy of job applicants by banning the use of credit background checks, legislation which prohibits an employer from performing credit background checks on job applicants conflicts with federal and state financial services licensure requirements and may jeopardize the assets under management and security of a financial services company. SIFMA believes that the financial services industry should be granted an exemption from banning the use of credit background checks. There are currently 10 states that restrict the use of credit background checks for employment purposes. These States are California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington – all of these states recognize the industry’s compliance obligation.

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA has offices in New York and in Washington, D.C. For more information, visit <http://www.sifma.org>.

Regulatory Requirements Regarding Financial Disclosure

Federal and state securities regulators have determined that knowing the personal financial circumstances of securities industry representatives is important to investor protection efforts. For instance, the financial services industry is required to comply with NASD Rule 3010(e), which provides that “a member firm must ascertain by investigation the good character, business reputation, qualifications and experience of a job applicant before the firm applies to register that applicant with FINRA.” FINRA is the largest independent regulator for all securities firms doing business in the United States, and has a stated mission “to protect America's investors by making sure the securities industry operates fairly and honestly.”² Compliance with this rule requires a thorough investigation of an applicant’s credit background.

In addition to Rule 3010(e), FINRA also requires, among other factors, that those seeking to be licensed as broker-dealer agents or investment adviser representatives with any of the 50+ state securities departments, or the 18 different Self-Regulatory Organizations (SROs), must electronically file a Form U4³. On page 14, 15, 19, and 33 of the form, applicants are required to disclose whether they have compromised with creditors, filed a voluntary or involuntary bankruptcy petition, have any outstanding judgments or liens, or had a bonding company deny, pay out or revoke a bond. On page 19, applicants also acknowledge that any jurisdiction, SRO, employer or prospective employer may conduct an investigative consumer report. Regulators then use the collected information as part of their assessment on whether a license should be granted.

The Financial Services Industry Must Continue to Be Able to Fully Vet Candidates who will be Entrusted with their Client’s Funds

In the financial services industry, employees are entrusted with the care and custody of their client’s funds – funds which represent the hard work, successes, dreams and life savings of your fellow New Yorkers. A money manager who has accumulated substantial debt or is in or near bankruptcy or foreclosure poses a risk to those funds, such as fraud, theft, or mismanagement. It is important that securities firms are aware of that potential risk before hiring, and that they have as many tools as necessary to ensure that they are able to safeguard the well-earned savings of the clients they serve.

Proposed Modifications to Credit Background Check Restrictions

Given the industry’s regulatory requirements regarding financial disclosure cited above, we recommend adding the following provision to your bill after paragraph (b):

- (c) This act shall not apply to an entity or an affiliate that is registered as an investment advisor, broker, or dealer with the state, Securities and Exchange Commission, or the Financial Industry Regulatory Authority.

² FINRA, *About FINRA*, <http://www.finra.org/AboutFINRA>.

³ FINRA Rev. Form U4, <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf>.

Of note, SIFMA supports both A. 2891 and A. 4388 (social media legislation), as they contain language that allows financial services firms' to continue to comply with their state, federal, or self regulatory organization obligations.

We appreciate your consideration of our concerns and look forward to future discussions on this important topic. In the meantime, please contact SIFMA's Albany Counsel, Robert Reid at 518-465-7330 or SIFMA's Nancy Lancia at 212-313-1200, if you have any questions concerning the securities industry, or visit our website at: www.sifma.org.