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Invested in America

September 5, 2012

The Honorable Edmund G. Brown, Jr.
State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: AB 1844(Campos) - Employer Use of Social Media: Request for Veto

Dear Governor Brown:

The Securities Industry and Financial Markets Association (SIFMA)[1] respectfully requests that you veto AB 1844 when it reaches your desk. This legislation would, among other things, prohibit employers from requiring employees to provide access to their personal social media accounts except in very limited instances. The bill, while well-intended, conflicts with the duty of securities firms to supervise, record, and maintain business-related communications as required by the Financial Industry Regulatory Authority ("FINRA"). If the bill is signed, firms will be placed in the untenable position of having to violate either state law or their FINRA obligations.

The securities industry has absolutely no interest in accessing employee accounts that are used exclusively for personal use. The problem, however, is that many people use the same account for both personal and business activity. According to a 2012 American Century Investments study, nearly nine out of ten financial services professionals have a social media profile or account. Fifty-eight percent of these professionals use social media for business at least several times per week; twenty-seven percent use it for business on a daily basis.[2] SIFMA strongly believes that a "personal" account that is used for business purposes must be treated as a business account.

FINRA is the largest independent regulator for all securities firms doing business in the United States and is considered a self-regulatory organization under federal securities laws. To protect investors, FINRA requires, among other things, that securities firms supervise, record and maintain their employees' business communications – including those disseminated on social media sites. This is spelled out in several different FINRA rules and regulatory notices, including:

- Securities firms must establish procedures for the review of registered representatives' written and electronic business correspondence. (NASD Rule 3010(d))

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[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**.

[2] https://www.americancentury.comm/pdf/Financial_Professionals_Social_Media_Adoption_Study.2012/pdf

- "Firms must adopt policies and procedures reasonably designed to ensure that their associated persons who participate in social media sites for business purposes are appropriately supervised …." (FINRA Regulatory Notice 10-6)

- "The content provisions of FINRA's communications rules apply to interactive electronic communications that the firm or its personnel send through a social media site." (FINRA Regulatory Notice 10-6)

- A firm's procedures "must be reasonably designed to ensure that interactive electronic communications do not violate FINRA or SEC rules, including the content requirements of NASD Rule 2210, such as the prohibition on misleading statements or claims and the requirement that communications be fair and balanced." (Regulatory Notice 11-39)

Denying securities firms access to personal social media accounts where business is being conducted directly conflicts with FINRA regulations. It also puts customers at risk, as it will be much harder for firms to detect serious problems, including: (1) misleading claims by an employee, such as the promise of an unrealistically high rate of return on investment; (2) insider trading, Ponzi schemes and other fraudulent activity; and (3) inappropriate conduct such as the selling of investment products that are not approved by the firm.

During the bill's consideration, SIFMA sought a narrow industry exemption which read:

> *"This act shall not apply to the personal social media accounts or devices of a financial services employee who uses such accounts or devices to carry out the business of the employer that is subject to the content, supervision, and retention requirements imposed by federal securities laws and regulations or a self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, as amended."*

This language, however, was rejected by the bill sponsor. The bill was amended to permit an employer to obtain social media information from the employee in connection with an investigation of allegations of employee misconduct. While this language is helpful, account access is permitted only after alleged misconduct is somehow discovered or reported. It does not address securities firms' need to monitor, record, and retain business-related communications on personal social media sites.

We therefore encourage you to veto the legislation. Please feel free to contact me at 212-313-1311 or SIFMA's lobbyist, Joanne Bettencourt, at 916-447-8229 should you have any questions.

Sincerely,

Kim Chamberlain

Kim Chamberlain
Managing Director and Associate General Counsel
State Government Affairs

Cc: Assembly Member Campos