



June 11, 2007

The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Facilitating Cross-Border Capital Markets Transactions

Dear Chairman Cox:

On behalf of SIFMA's¹ Joint Working Committee on International Regulatory Convergence (the "Committee"),² we are writing to express our support for the goals expressed recently by you and your Commission colleagues to facilitate cross-border capital markets transactions. The Committee believes that the goals set forth by the Commission acknowledge the global aspect of today's capital markets and that effective regulation of a global industry can only be realized through cooperation with other regulators.³ We also take note of the SEC Roundtable announced for June 12, 2007 on the topic of selective mutual recognition. The Roundtable should greatly assist the industry in further exploring these important issues, and we commend the Commission both on this effort and its recent statements.

We agree with the Commission that regulatory authorities should be open to accepting each other's regulatory differences when their regulation provides substantively equivalent outcomes. The current nationally-based regulatory framework increasingly does not adequately reflect the global nature of financial services. As technology provides investors with global access to financial services and products, recognition of other regulatory systems is an effective way of accommodating differences in national regulation while preserving investor protections. For this reason, SIFMA has long been an enthusiastic supporter of cross-border regulatory dialogues between US regulators and their overseas counterparts, including the EU, China and India, among others, as well as within IOSCO.

The Commission's current interest in exploring mutual recognition and related issues therefore comes at an opportune time when government officials and regulators globally are grappling with those same issues. We note, for example, the G7 Finance Ministers' recent statement that: "[t]o further liberalize cross-border capital markets, we agreed to explore within the G7 free trade in securities based on mutual recognition of regulatory regimes." More recently, the US and EU agreed to "[w]ork on greater regulatory convergence towards highest quality and most effective regulation

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.

² The Joint Working Committee is comprised of representatives from SIFMA's Federal Regulation Committee, Self-Regulatory and Supervisory Practices Committee, and International Committee.

³ For example, see "A Blueprint for Cross-Border Access to U.S. Investors: A New International Framework." Ethiopis Tafara and Robert J. Peterson, Harvard International Law Journal, Volume 48, Number 1, Winter 2007.

and, where appropriate, mutual recognition in the fields of securities regulation.”⁴ Finally, Canada’s budget proposal for 2007 sets forth a proposal to “...eliminate barriers to free trade in securities.”⁵

Because it is unlikely that regulators will ever adopt identical rules, we believe that some form of “recognition” should be pursued in today’s global marketplace. It is our view that the Commission’s statements and the upcoming Roundtable leave it well-positioned to take a leading role in establishing regulatory best practices and principles, including principles for cooperation, that respond flexibly to a fast-paced and increasingly global, marketplace. We also agree that continued and enhanced regulatory cooperation must include the areas of prudential supervision, inspection and enforcement, which will be critical to any new globally-oriented system.⁶ The Appendix describes certain specific areas in which we believe regulatory cooperation might be both appropriate and timely.

The Committee is strongly supportive of the Commission’s efforts to promote greater coordination of regulatory approaches. The Committee stands ready to work with you and others to ensure that today’s capital markets continue to provide the innovative financial products and services that our customers demand as well as the protections that they deserve and expect.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ira D. Hammerman". The signature is fluid and cursive, with the first name "Ira" being more prominent.

Ira D. Hammerman
Senior Managing Director and
General Counsel

c: Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Annette L. Nazareth
Commissioner Kathleen L. Casey

⁴ US-EU Summit Statement, Framework for Advancing Transatlantic Economic Integration Between the European Union and the United States of America, Annex 6, April 30, 2007.

⁵ Creating a Canadian Advantage in Global Capital Markets, Canadian Budget, March 19, 2007.

⁶ For example, see SEC-BAFIN MOU, April 26, 2007, and the SEC-FSA MOU, March 14, 2006. Also see, IOSCO’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, May 2002. IOSCO’s website also includes a partial list of bilateral MOUs signed by IOSCO members at: <http://www.iosco.org/library/index.cfm?section=mou>

APPENDIX

While our Committee prepares its more detailed views and recommendations related to recognition of other regulatory systems, we wish to provide the following views with respect to current SEC initiatives, certain US-EU Coalition on Financial Regulation issues, and a global framework for regulation. As the Commission pursues its efforts to facilitate greater cross-border activities, it may wish to consider adopting a multi-faceted approach: mutual recognition and even convergence of principles over the longer term accompanied, in the shorter term, by the adoption of specifically targeted efforts. This may include, for example, mechanisms to give foreign broker-dealers and foreign exchanges greater access to “sophisticated” or “large institutional” US investors.

A. Supporting the Current SEC Agenda Regarding Global Cross-Border Access

The SEC staff is currently working on a number of discrete issues that impact the ability to engage in a cross-border securities business. We note that the staff is working on initiatives to expand access by US investors to foreign exchanges and brokers-dealers, to facilitate international offerings, to facilitate foreign banks acting as custodians for sophisticated US investors, and to reconcile differing accounting standards. We support these important efforts and look forward to continuing to work with the SEC on these issues. Moreover, the SEC should, as appropriate, seek to move in a direction that attempts to fashion rules in this arena that acknowledge the global marketplace. These would include, for example, a harmonized and expanded definition of sophisticated investor that could embrace i) large institutional investors that may not be “qualified institutional buyers” and ii) appropriately experienced high net worth individual investors, and also rules that clarify that US broker-dealer employees expending efforts overseas for a prolonged period of time would not incur the need for re-testing in order to retain their domestic licenses.

Finally, we welcome and support the Commission’s Roundtable on mutual recognition as a significant step in the right direction and a basis for further productive discussion. The question as to whether long-term regulatory simplification is best achieved through mutual recognition, “substituted compliance,” or through rules’ convergence is an issue on which the Committee has yet to take a view.

B. Advancing Issues Identified in the US-EU Context

The US-EU Coalition on Financial Regulation (of which SIFMA is a member) was established in 2005 to set out a roadmap for working towards greater regulatory convergence by identifying regulatory inefficiencies, unnecessary conflicts, and duplications. The Coalition’s first step was to prioritize its efforts to establish a more coherent and cost-efficient framework of regulation for engaging in transatlantic business. In this regard, the Coalition divided its goals into short, medium and long term objectives: 1) short term: the reduction of regulatory conflict, duplication and cost; 2) medium term: the facilitation of the capability of banks and investment firms to develop common procedures, practices and documentation; and 3) long term: the enhancement and harmonization of investor protection standards and of investor understanding of risk and reward in financial services and products. The Committee believes that efforts to facilitate cross-border business between the US and EU will help make the transatlantic capital markets more efficient and accessible to investors and issuers.

* * *

In their own right, all these alternatives are worth pursuing – indeed, it may be the case that a multiple approach is needed here. Given the scope and breadth of pursuing recognition of other regulatory regimes, and what would necessarily be a long-term commitment of time and energy on the Commission’s part, we strongly recommend also adopting rules in the near term that facilitate greater cross border access to certain US investors by non-US brokers and non-US exchanges. Taking a bold step in the short term would speak loudly to the international community of the Commission’s intention and commitment – putting actions behind the Commission’s words, and ultimately helping to position the Commission more favorably with other regulators in its longer term goals of mutual recognition.