March 23, 2012

Via email to rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Comment Request for Study Regarding Financial Literacy Among Investors (Release No. 34-6614; File No. 4-645)

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("**SIFMA**"),[1] through its Private Client Legal Committee, appreciates the opportunity to provide its views to the Securities and Exchange Commission (the "**SEC**") on the Commission's study regarding financial literacy among investors. SIFMA and its members fully support the study's goal of promoting financial literacy.

Indeed, SIFMA and its members have worked for many years to increase investors' understanding of finance, investments, and the markets through various financial literacy and investor education initiatives. Much of this important work is performed by the SIFMA Foundation.[2] The Foundation was established, and operates with the support of SIFMA members, to promote financial literacy among investors. The Foundation develops and distributes investor educational materials and programs that empower people with financial skills and knowledge.[3] SIFMA's website also includes a detailed investor education section, which contains numerous, useful consumer

---

[1] 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, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

[2] Information on the SIFMA Foundation and its extensive investor education efforts is available at http://www.sifma.org/foundation/.

[3] For a detailed description of the SIFMA Foundation's investor education initiatives, see Letter to the Securities and Exchange Commission from the SIFMA Foundation (June 21, 2011) available at http://www.sec.gov/comments/4-626/4626-67.pdf.

resources.[4] And our individual members undertake their own investor education initiatives. We believe that, now more than ever, promoting financial literacy among investors will benefit both investors and financial services providers.

I. Introduction

Section 917 of the Dodd-Frank Act requires the SEC to conduct a study of financial literacy among investors. This requirement is part of several Dodd-Frank provisions focused on ensuring that investors receive clear, concise, and useful information from their broker-dealers and investment advisers about the financial services and financial products available to them.[5]

Among the statutorily mandated goals of the study is to identify information about financial services and products, and financial service providers, that is useful and understandable to retail investors in making informed decisions about engaging a financial services provider or purchasing an investment product. The study also must seek to identify methods to improve the timing, content, and format of disclosure provided to investors by financial service providers and methods to increase transparency of expenses and conflicts of interest in transactions involving investment services and products.

This letter provides SIFMA's views on these topics, and in particular on the approaches the SEC should explore when conducting its qualitative and quantitative analysis for the study. In short, we believe that efforts to enhance financial literacy should focus on ensuring that investors have the information they need, when they need it, in a way that is efficient and cost-effective for investors and their financial services providers.

II. Recommendations for Focus of Study

We believe that the SEC study provides an opportunity for the SEC to reconsider its traditional approach to investor disclosure and to implement themes it has considered in recent proposals in the investment company and broker-dealer areas. Critical to this process is recognizing that *more* disclosure is not necessarily *better* disclosure.

To this end, the SEC study should focus on several key aspects of financial disclosure that are critical to whether such disclosure is effective. In particular, the study should

[4] http://www.sifma.org/education/.

[5] *See* Dodd-Frank Act §§ 913, 918, 919, 919A, and 919B.

consider the ways investors use and access information from their service providers, particularly in light of technological advances that should be harnessed to improve delivery of information to investors. The study also should consider the benefits of clear disclosure standards and guidelines to ensure that investors receive the types of information, including about fees, conflicts of interest, and other key topics, at the time that information is most relevant to them in making decisions about financial products and services. In developing these standards, the study should balance the need for investors to receive timely, pertinent information with the additional costs to financial service providers and their customers of disclosure requirements that could hamper the service provider's ability to offer particular products or services.

A. Layered Disclosure[6]

We believe that ensuring that investors receive all relevant information, with the appropriate level of detail, when they need it, is at the heart of improving investor financial literacy. We strongly agree that investors should have available all useful disclosures from their financial services professionals. The critical question is the best means of communicating this information effectively to investors. Providing extensive amounts of information at one time can obscure the key facts most important to investors at that time.

We believe that information is most effectively provided to investors in layers, with the most pertinent information provided to an investor when the investor is making a decision about a particular financial service or product. To avoid masking the most essential information, other additional details about that service or product, and other important but less immediately relevant topics, should be made available separately.

For example, we believe that investors should receive information about fees, overviews about available products and services, and descriptions of potential material conflicts of interests of a financial advisor at account opening. But providing other types of disclosure at the same time – for example, disclosure relevant only to certain types of services or about particular financial products – may be counterproductive. Investors are less likely to read large amounts of disclosure when they do not perceive its relevance to their immediate activities. And when background disclosure is bundled

[6] Letter from SIFMA to the Financial Industry Regulatory Authority on FINRA Regulatory Notice 10-54 (Dec. 2, 2010), available at http://www.sifma.org/workarea/downloadasset.aspx?id=22482; Letter from SIFMA to the Securities and Exchange Commission on the Framework for Rulemaking under Section 913 (Fiduciary Duty) of the Dodd-Frank Act (Jul. 14, 2012), available at http://www.sifma.org/workarea/downloadasset.aspx?id=8589934675.

with more targeted information, investors may miss the targeted information altogether.

The SEC study should assess what types of disclosure and what level of detail is most useful and relevant to investors at a given point in time, based on the particular decisions the investors are making about financial services providers and financial products. The SEC study should take into account other disclosures mandated by the SEC or FINRA related to specific products, such as mutual funds, and leverage such disclosures instead of requiring financial services providers to restate information readily available to investors. The result of the study should help inform the SEC in developing a disclosure framework that incorporates a layered approach.

B. Web-Based and Electronic Disclosure[7]

Investors increasingly use the internet to access financial information about their accounts and investment choices, including through websites of financial services providers[8] and by email. The development of better mobile technologies facilitates immediate access to websites and electronic documents. Indeed, many investors of all generations and wealth profiles find these sources of information more easily accessible and convenient than paper. This growing electronic acumen and orientation provides a golden opportunity to improve the efficacy of disclosures. As compared to paper disclosure, web-based and other electronic disclosure can be updated more quickly, can be distributed faster by posting to a website or by email, and is more cost-effective for the provider. Web-based and electronic disclosure is also easily archived and available to investors long after they have recycled their paper copies.

The SEC study should carefully and quantitatively assess the benefits of web-based and electronic disclosure for investors and identify the circumstances, and the types of disclosure, that should be permitted to be provided in this manner. We suggest three specific areas that the SEC should include as a focus of its study.

- *Notice and access.* Where a customer has the ability to effectively access documents furnished in electronic form, a "notice and access" delivery option

[7] *Id*.

[8] For example, in a September 2010 report, the Investment Company Institute noted that more than 80 percent of mutual fund investors use the internet for financial purposes. Investment Company Institute, Research Fundamentals (Sept. 2010) at 17, available at http://www.ici.org/pdf/fm-v19n6.pdf; s*ee also* Abt-SRBI, Report to the Securities and Exchange Commission, Mandatory Disclosure Documents Telephone Survey (Jul. 2008).

should be available. Under such an option, a financial services provider can meet disclosure obligations by posting material on its website and sending a notice to a customer informing the customer that the materials are available online. The financial services provider is not required to ensure that the customer has, in fact, sought to review the materials. The SEC has successfully followed this approach in several contexts, for example under its recently amended e-proxy rules[9] and in connection with requirements for delivery of a final prospectus in connection with the sale of securities in a registered offering.[10]

- *Eliminating redundancy in paper disclosures.* The SEC study should assess the benefits of reducing redundancy of electronic and paper disclosures by allowing a financial services provider to meet disclosure requirements through electronic delivery *unless* a customer does not have electronic connectivity to the financial services provider or declines to accept disclosures through electronic means. Paper and electronic delivery requirements duplicate the cost of delivery and are redundant. Where a customer has access to web-based or other electronic disclosure, and the disclosures are communicated to the customer through her chosen electronic method, we believe that paper disclosure should be provided at the customer's request only, not required as a matter of course. If a customer does not have access to web-based or electronic disclosure, or declines to accept disclosures through those means, a financial services provider should be required to deliver paper copies of the disclosure to the customer.[11]

- *Incentives to switch to electronic or web-based delivery.* Based on the experience of our members, we understand that some investors may be hesitant to move entirely to electronic delivery for financial disclosures, even if those investors have convenient access to the internet. The SEC study should investigate whether, given appropriate incentives, these investors would be

[9] Securities and Exchange Commission, Amendments to Rules Requiring Internet Availability of Proxy Materials, Securities Act Rel. No. 33-9108, Exchange Act Rel. No. 34-61560 (Feb. 22, 2010), available at http://www.sec.gov/rules/final/2010/33-9108.pdf.

[10] Securities Offering Reform, Securities Act Rel. No. 33-8591 (Jul. 19, 2005) available at www.sec.gov/rules/final/33-8591.pdf.

[11] The Department of Labor endorsed this approach in its revised rules relating to disclosure by pension plan service providers of compensation and potential conflicts of interest. Department of Labor, Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure (Feb. 3, 2010), available at http://www.gpo.gov/fdsys/pkg/FR-2012-02-03/pdf/2012-2262.pdf.

> more willing to embrace electronic delivery of financial disclosures and whether, having done so, investors believe the switch to electronic disclosure was beneficial.

C. Incorporation by Reference

The study should assess the benefits to investors of permitting financial services providers to incorporate by reference information contained in disclosure documents that are made available, but not automatically provided, to an investor. This approach has been followed, and has worked well, in the context of mutual fund prospectus delivery.

Under rules adopted by the SEC in 2009, a mutual fund may satisfy its prospectus delivery obligations by providing an investor (or prospective investor) with a concise summary prospectus.[12] The mutual fund must post additional information about the fund on its website and provide this information upon request. These additional materials are incorporated by reference into the summary prospectus delivered to investors. In adopting these rules, the SEC concluded that:

> investors will benefit greatly from receiving a shorter document, such as the Summary Prospectus. [It] also concluded . . . that, to a significant extent, investors will not realize these benefits unless [the SEC permits] incorporation by reference because many funds are unlikely to use the Summary Prospectus if incorporation by reference is prohibited.[13]

Incorporation by reference permits a mutual fund to provide and make available all required disclosure to investors and prospective investors while avoiding flooding these investors with detailed information they may wish not to receive.[14] It reflects the layered approach we describe above and is efficiently implemented through web-based disclosure. We believe the study should assess other contexts in which incorporation by reference of readily available disclosures are beneficial to investors and should be permitted.

---

[12] Securities and Exchange Commission, Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Rel. No. 2858, 74 Fed. Reg. 4546 (Jan. 26, 2009), available at http://sec.gov/rules/final/2009/33-8998fr.pdf.

[13] *Id.* at 4570.

D. Timing of Disclosures

The study should seek to evaluate not only what information is most useful for investors and the method of delivery, but also *when* disclosure should be provided. As mentioned above in connection with the layered approach, we believe that investors benefit from receiving disclosure at the time the information is most relevant to a particular decision about a financial service or product, which is not necessarily at account opening.

To further inform future SEC rulemaking, the study should consider the types of information investors would benefit from receiving at (i) account opening or (ii) point of sale, if any. It should also assess the benefits to investors of receiving periodic disclosure updates via a website or other electronic means. Below we set out the specific types of disclosure on which the study should focus.

- *Account opening.* We believe that a concise, uniform disclosure document containing targeted information on fee arrangements, investment strategies, and potential conflicts of interest would be most useful for an investor at account opening. The study should assess the usefulness of the following types of information when provided to a customer at the time the customer opens an account with a financial services provider:
    - the types of relationships available, and the scope of the standard of conduct that would apply to those relationships;
    - the services that would be provided as part of each type of relationship and information about applicable fees;
    - material potential conflicts of interest that arise under these relationships, including conflicts arising from compensation arrangements, proprietary products, underwritten new issues, and principal transactions;
    - disclosure regarding aggressive or sophisticated investment strategies, including concentrated positions; and
    - disclosures of the background of the firm and of its associated persons, building upon existing systems, such as FINRA’s BrokerCheck database.

We believe that customers should be allowed to consent to the disclosed conflicts in this context.

- *Point of sale disclosure*.[15] We believe that the utility and costs of point of sale disclosure should be carefully considered with a focus on determining the key items that may be best communicated in the point of sale context. More specifically, we believe that point of sale disclosure is most useful to investors when it is about the particular product category that is the subject of the immediate transaction. In addition, we believe that any point of sale disclosure regime should be sufficiently flexible to allow for verbal disclosures with further details made available via confirmation or online information. The study should evaluate the benefits of point of sale disclosure, including verbal point of sale disclosure. And, to the extent that point of sale disclosure is required, the study should examine the usefulness of providing information to investors about:

    - the nature of the particular product;
    - the nature of the fees involved;
    - the availability of similar products in the same product category but that may have different fee structures or are from other providers; and
    - the specific conflicts of interest applicable to that product.

- *Disclosure updates*. The study should examine the benefits of providing updates, other than with respect to specific information relevant to an investor's particular account or services, through an annual notification that provides a website address where the updated disclosure is provided and the changes to the disclosure are highlighted. We believe that disclosure updates provided in this fashion are effective and useful for many investors.

E. New Disclosures or Consents for Existing Customers

Disclosure requirements adopted by the SEC under the Dodd-Frank Act could result in financial services providers needing to make significant amounts of new disclosure to

[15] *See also* Letter from George R. Kramer, Vice President and Acting General Counsel, Securities Industry Association, to, Jonathan G. Katz, Secretary, SEC (Apr. 12, 2004) (comments on proposed point of sale disclosure requirements for transactions in certain mutual funds), available at http://www.sec.gov/rules/proposed/s70604/sia041204.pdf.

their existing customers. The SEC has an opportunity in this new context to consider the most effective and efficient means of disclosing the required information. Mass mailings of voluminous disclosure materials may not be the best choice: they would not only be unduly expensive for financial services providers, but also unhelpful for those customers.

We believe that the SEC should carefully study the costs and benefits of the value and method of communicating to existing customers under any new disclosure requirements, such as those that could be required by rules issued under Section 913 of the Dodd-Frank Act. The study should consider how these requirements may affect financial services providers differently. Likewise, the study should assess whether customer consent requirements can be practically implemented and readily integrated into the current operational model of broker-dealers. This should include consideration of whether an existing customer can consent to conflicts of interest by continuing to accept or use account services after receiving the required disclosure. We believe this type of consent is of critical importance for relationships with retail customers because they often do not provide direct affirmative responses, even to repeated requests for consent. Requiring written, affirmative consents would risk significant and potentially harmful interruption of services for these customers.

F. Clear Standards and Guidelines for Disclosure

We believe that clear disclosure standards and guidelines are critical to financial services providers in ensuring that they meet requirements for disclosing fees, conflicts of interest, and other topics essential for investors.[16] We firmly believe that at key moments in the investment process, "less is more"—investors need clear, targeted and simple disclosure on key factors for their investment. But the reflexive, defensive response to disclosure is to provide for more than key factors to avoid liability for failure to disclose.

The absence of clear support for focused disclosure results in financial services providers being faced with uncertainty about whether they have met their disclosure obligations and exposes them to the risk that the adequacy of disclosure will be second guessed by courts and arbitrators. This uncertainty may cause some financial service providers to provide overly lengthy disclosure and in some cases even limit the types of services they provide or the types of products they offer. The SEC study should

---

[16] *See also* our Comment Letter to the Commission on the Framework for Rulemaking under Section 913 (Fiduciary Duty) of the Dodd-Frank Act; File No. 4-604 (Jul. 14, 2011), available at http://www.sifma.org/workarea/downloadasset.aspx?id=8589934675.

inform the SEC in developing clear disclosure standards and guidelines for all financial services providers. These standards and guidelines should take into consideration the benefits, and costs, of particular standards and guidelines for investors and their financial services providers.

III. Conclusion

We appreciate the chance to comment on the direction of the study required by Section 917 of the Dodd-Frank Act. We believe that the SEC, in conducting the study, should focus on each of the topics described above. Doing so would provide the SEC with valuable information about the types of information, level of detail, and methods of delivery of disclosure that would effectively communicate critical information about financial services and products to different types of investors.

The question of how to communicate effectively to investors is of supreme importance and goes to the heart of the SEC's investor protection mission. We believe that investors should have ready access to all levels of information about their financial services providers and products. In our experience, "less is more" at key decision points for investors. Thus, it is critical to determine what information should be presented in what form at these key decisions points. We stand ready to assist in this inquiry.

If you have any questions regarding this comment, please contact the undersigned SIFMA staff advisor to the Private Client Legal Committee at 202.962.7382 or kcarroll@sifma.org.

Sincerely,

Kevin M. Carroll

Kevin M. Carroll
Managing Director and
Associate General Counsel

cc: Lori J. Schock, Director, Office of Investor Education and Advocacy, SEC
Robert W. Cook, Director, Division of Trading and Markets, SEC
Eileen Rominger, Director, Division of Investment Management, SEC