SIFMA
Securities Industry and
Financial Markets Association

March 23, 2007

Mr. Michael Macchiaroli
Associate Director
Division of Market Regulation
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Mr. Macchiaroli:

Thank you for taking the time to meet with members of the Securities Industry and Financial Markets Association ("SIFMA") E-Records Modernization Task Force ("Task Force"). This letter is the requested follow-up to that meeting and a response to several of the open issues regarding proposed revisions to Rule 17a-4 of the Securities Exchange Act of 1934 ("Exchange Act") discussed during that meeting.

1. Retention of Communications Related to the "Business as Such" (Rule 17a-4(b)(4))

As stated in our previous letters, we continue to believe revisions are necessary to Rule 17a-4(b)(4) governing the retention of communications related to a broker-dealer's "business as such." We thank the Division of Market Regulation staff for providing us with a draft rule proposal which we believe is a good starting point for the modernization of the rule. We, however, encourage the Securities and Exchange Commission ("Commission") to enhance the revisions further to meet our members' technological needs without, what we believe to be, any corresponding harm to the Commission's and the industry's investor protection efforts. To that end, we have made some additional revisions to your proposal which are attached hereto. Below we provide some additional explanations but would be happy to discuss each of these changes in more detail.

The primary change to the draft rule that was provided to us is to expand the exclusion to include external e-mails as well as internal e-mails. We believe that the excluded external emails to or from people serving in the delineated functions described in draft Rule 17a-4(b)(4)(ii)(C) would not be of interest to the Commission or other regulators, just as their internal e-mails would generally not be of interest.

As described in our most recent meeting with the staff, we have added legal and compliance functions that support functions which are outside the scope of the revised proposal. As a result, firms would be required to retain e-mails sent to and from legal and compliance personnel who directly support business functions, such as a trading desk

and investment banking. E-mails would not be retained, however, for legal personnel who directly support functions such as public company reporting, litigation, tax, and human resources.

The attached revisions also propose to exclude e-mails to and from internal audit staff. "Internal audit working papers" would still need to be retained pursuant to Rule 17a-4(b)(5). Also, as discussed and agreed during our meeting, we have added Corporate Communications to the excluded functions.

We have also proposed some additional revisions to the proposed requirements to maintain written policies and procedures relating to e-mails excluded under the rules. Our proposal would require firms to implement policies and procedures which describe the functions that are excluded from the firms' retention program. We believe that this is a more reasonable and manageable procedural requirement that would meet the needs that we believe your proposal was intended to address.

2. E-Records Requirements (Rule 17a-4(f))

As discussed during our last meeting, we believe the Commission should revise the electronic storage requirements under Rule 17a-4(f), particularly the "non-rewriteable, non-erasable" ("WORM") requirement. As stated in our previous letters, this requirement is technology specific and therefore restrictive while not providing any inherent guarantee regarding the integrity of the documents. We further believe that Rule 17a-4(f) should be amended to create a standard for broker-dealers similar to the reasonableness standard applicable to other regulated entities.

This principles-based approach, which would encompass alternatives to the current WORM provision, would require firms to employ controls providing reasonable assurance against unauthorized alteration, substitution, or deletion of electronic records. Satisfactory controls may include, for example: a) media controls; b) access controls; or c) audit controls, or a combination thereof.

1. Media Controls. Media controls would include WORM media and equivalent technologies as defined under applicable SEC regulations and interpretations.

2. Access Controls. Access controls would include technical means used to prevent system users or administrators from executing commands resulting in alteration, substitution or deletion of data comprising an electronic record, for the time period during which the record is required to be retained under applicable rules.

3. Audit Controls. Audit controls would include system-generated audit logs that record each event of data alteration, substitution, or deletion, noting its date and time, the state of the data prior to the event, and identifying the person initiating such event. The audit

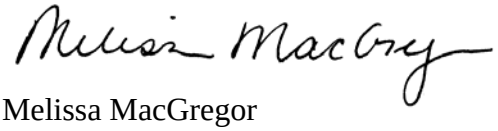
log would be subject to the same retention requirements as the affected record.

While we have sought to categorize the types of controls that exist today, we do not believe that rule language should specify types of controls due to the constant and increasingly rapid changing nature of technology. We believe each firm should have the flexibility to determine and the obligation to describe in policies and procedures the controls it has in place to meet the reasonableness standard. Furthermore, we believe the approach recommended would encourage competition among vendors on the basis of security features that can be offered in conjunction with systems that offer needed efficiencies in archival speed, searchability, and retrievability. We believe that such technologies, as well as our retention and records integrity proposal, would enhance the ability of firms to respond more quickly and efficiently to regulatory requests for applicable information.

We would be happy to assist you in drafting proposed revisions to Rule 17a-4(f) which would encompass the principles we have cited herein. Please let us know how we can be of assistance.

Again, we appreciate your attention to this matter. We would like to have another meeting in April to further discuss these proposals. If you have any questions regarding this letter or the attached proposals, please contact me at (202) 434-8447 or mmacgregor@sifma.org.

Regards,



Melissa MacGregor
Assistant Vice President
& Assistant General Counsel

Attachments

cc: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Roel C. Campos, Commissioner
The Hon. Annette L. Nazareth, Commissioner
The Hon. Kathleen L. Casey, Commissioner
Erik R. Sirri, Director, Division of Market Regulation, SEC
Brian Cartwright, General Counsel, SEC
Andrew Donohue, Director, Division of Investment Management, SEC
Charles Fishkin, Director, Office of Risk Assessment, SEC
Lori A. Richards, Director, OCIE, SEC
Linda C. Thomsen, Director, Division of Enforcement, SEC
Thomas K. McGowan, Assistant Director, Division of Market Regulation, SEC

Jennifer McHugh, Senior Advisor to the Director, Division of Investment Management, SEC
Grace Vogel, Executive Vice President of Member Firm Regulation, NYSE
Elisse B. Walter, Senior Executive Vice President, Regulatory Policy & Programs, NASD
Marc Menchel, Executive Vice President & General Counsel, Regulatory Policy & Oversight, NASD
Patrice Gliniecki, Senior Vice President & Deputy General Counsel, Regulatory Policy & Oversight, NASD
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