NAFTA Negotiations

June 12, 2017

The Honorable Robert Lighthizer
U.S. Trade Representative
600 17th St NW
Washington, DC 20006

Dear Ambassador Lighthizer,

SIFMA[1] welcomes the President's efforts to modernize the North American Free Trade Agreement (NAFTA) and we believe there are several issues in the financial services sector that will improve the rules that govern the trilateral relationship. Canada and Mexico are important export markets for American financial services firms, as evidenced by the U.S.'s $4.3 billion surplus in trade in financial services with Canada, and a $1.1 billion surplus in trade in financial services with Mexico.[i] Expanding trade and investment opportunities for the financial services sector in the NAFTA renegotiation would have a positive multiplier effect on economic activity across all industries, allowing financial intermediaries to provide capital to manufacturers, agriculture producers, and others. We should also recognize the valuable contribution that financial institutions from Canada and Mexico make to the U.S. economy, through direct investments and job creation, and should ensure that a modernized NAFTA enables that to continue.

We encourage you to improve upon the existing agreement by: (i) Maintaining and expanding on the existing market access that U.S., Canadian and Mexican financial services institutions enjoy in each other's economies; (ii) modernizing the agreement to address the rise of digital protectionism; (iii) updating the agreement to improve financial regulatory coordination; and (iv) enhancing investor protections in the investor-state dispute settlement mechanism. We expand on each of these priorities below.

Maintaining and expanding market access commitments

SIFMA and its members not only support securing new market access in the financial sector but also in the sectors represented by our clients, for example in the energy, manufacturing, and telecommunications industries. Financial institutions drive economic growth by providing the financial

[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $18.5 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

services necessary to support the export goods and agricultural products, investment abroad, trade services cross-border, and building and maintaining supply chains. Ensuring high standard market access and a level playing field means that financial services firms will be able to continue to fulfill this role and contribute to the vitality of the American economy. NAFTA modernization should not only codify existing levels of openness in financial services, but also expand market access to benefit broader economic goals. Specifically, NAFTA permitted exceptions that allow discrimination against foreign financial institutions. The Trans-Pacific Partnership (TPP) updated that list of exceptions to lock in and further liberalize market access in the financial services sector. We are continuing to review these exceptions.

Protecting the financial services sector from data localization requirements

Technology, and the way that businesses use it, has evolved significantly since the original NAFTA agreement. The ability to transfer data across borders and locate servers where needed, as well as decide where and how to structure information technology infrastructure, is crucial for U.S. financial services firms operating in a global environment. However, at a time when we are seeing the proliferation of data localization requirements and policies that hinder the free flow of data (without any evidence to support such policies), NAFTA does not adequately protect the financial services sector from digital protectionism and neither did TPP. The exclusion of financial services from such provisions in TPP was the primary reason SIFMA did not support the agreement until the Obama Administration agreed to address our members' concerns. A modern NAFTA must include the policy change achieved in 2016 by Treasury and USTR which ensures that financial services, like every other sector, are protected from policies that constrain the free flow of data and require locating servers in particular jurisdictions. Addressing this issue is paramount for SIFMA members to serve their clients and customers.

Improving financial regulatory cooperation between countries

The NAFTA renegotiation also presents an opportunity to strengthen regulatory cooperation. The Financial Services Committee (FSC) established under the original NAFTA should be expanded to set out a clear process for regulators to coordinate regulatory objectives and identify and resolve concerns or inconsistencies in regulation. For instance, the renegotiation should expand the scope of the FSC to mandate more integrated cooperation on regulatory matters; as well as require the FSC to consult with the private sector and increase transparency on meeting agendas. Improving regulatory cooperation has the potential to strengthen areas such as anti-money laundering as well as help prevent unnecessary divergences that hamper competition, trade, investment, and economic growth and ensure a level playing field for U.S. financial institutions across the NAFTA market.

Enhancing investor-state arbitration protections

The financial services industry's long-standing concern is that NAFTA (and subsequent FTAs) have not provided the same degree of investor protections and access to an effective enforcement mechanism (investor-state arbitration) secured for every other sector of the economy. For example, both NAFTA and TPP unfortunately failed to ensure an effective enforcement mechanism through investor-state dispute settlement (ISDS) for breaches of national treatment and most-favored-nation in the financial services industry. It is important that the NAFTA modernization raise the standards on these issues for the financial sector. Specifically, NAFTA should ensure that the financial sector has the same broad coverage of investor protections, and ISDS as the enforcement mechanism, as afforded to other sectors.

Trade agreements represent valuable opportunities to grow our economy, and the capital markets can help translate those into jobs and prosperity for all Americans. As such, while we welcome efforts to modernize the agreement, we would strongly advise against pulling out of NAFTA should efforts to modernize the agreement fail to reach a consensus.

Please feel free to contact Peter Matheson (pmatheson@sifma.org or 202-962-7324) should you desire additional information.

Sincerely,

Kenneth E. Bentsen, Jr.
President and CEO
SIFMA

CC:

- The Honorable Steven T. Mnuchin, Secretary, U.S. Treasury
- The Honorable Wilbur L. Ross, Jr., Secretary, Department of Commerce
- Lailee Moghtader, Director, Trade and Investment Office, U.S. Treasury
- Daniel Bahar, Assistant U.S. Trade Representative for Services and Investment, U.S. Trade Representative
- Mathew Haarsager, Special Assistant to the President and Senior Director for Global Economics and Finance, National Security Council and National Economic Council
- Richard Steffens, Executive Director, Office of the Western Hemisphere, Department of Commerce
- Patrick Krissek, Mexico Desk Officer, Office of the Western Hemisphere, Department of Commerce
- Israly Echegaray, International Trade Specialist, Office of Financial and Insurance Industries, Department of Commerce

[i] U.S. Commerce Department, Bureau of Economic Analysis, International Services, 2015 data, https://www.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=7&isuri=1&6210=4&6200=246&6211=252.