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March 2, 2016

The Honorable John Chiang
California State Treasurer
Chair, California Secure Choice Retirement Savings Investment Board
915 Capitol Mall – Room 110
Sacramento, California 95814

RE: FINAL REPORT OF OVERTURE FINANCIAL TO THE CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

Dear Treasurer Chiang:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is a national trade association which brings together the shared interests of hundreds of broker-dealers, banks and asset managers. Many of our members have a strong presence in California, where they provide services to investors and retirement plans, including advisory services, investment opportunities and plan recordkeeping.

We appreciate the opportunity to provide input to the California Secure Choice Retirement Savings Investment Board ("the Board") as it nears completion of its multi-year study on retirement savings in California and looks to pursue a state run IRA plan for private sector workers. We commend the Board for its commitment to improving retirement savings and for the many hours it has spent examining the issue. We agree that there is a retirement savings challenge in this country and that action must be taken to address this challenge. We, however, respectfully disagree with the report's conclusion that a state run retirement savings plan for private sector workers is an appropriate solution.

As the Board considers the final report from Overture Financial (Overture), SIFMA strongly urges you to take the following into account:

(1) **Access to Retirement Savings**. The market for retirement savings products in California is robust and highly competitive. There are more than 88,000 individuals employed by the securities industry in the state, and more than 550,000 employed in the broader category of finance and insurance. These industries all provide numerous, fairly priced retirement savings options, including 401(k), 403(b), 401(a) and 457(b) plans, as well as SIMPLE, SEP and traditional and Roth IRAs. Where an employer does not provide a plan, IRAs are readily available on-line and at most financial institutions.

We believe that lack of access to retirement savings options may not be the primary reason behind low retirement savings. Indeed, the Overture Report seems to acknowledge that access may not be the issue. On page 27 of the "Online Survey of Employees Without Workplace Retirement Plans" (found at Appendix 5), Overture quantifies that 71% of uncovered workers are in fact already saving for retirement. While Overture states that the average retirement savings rate for these

[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. For more information, visit http://www.sifma.org.

workers is 4.5% of household income, 26% are saving between 5 and 9% and 10% are saving an impressive 19% or more. Based on these numbers, it would appear that a state run program would not be filling a coverage gap for most "uncovered" workers. It is simply adding a new savings vehicle to an already robust market.

The question then becomes, "Would this program help the 29% of uncovered workers who are not saving?" Again the Report's online survey raises some questions. For example:

- Fourteen percent of those surveyed strongly agreed with the statement "It is hopeless for me to save anything." This fourteen percent likely makes up almost half of the 29% of uncovered workers who are not currently saving and who, quite frankly, are unlikely to save even with the state sponsored plan.

- Similarly, 14% of respondents somewhat disagreed or strongly disagreed with the statement "I really could save for retirement if I forced myself to do it." Again, these persons are unlikely to save with the state sponsored plan.

- Moreover, 14% of respondents said automatic enrollment with an option to opt-out is a somewhat poor or very poor idea. They presumably would also be unlikely to participate.

It is of course possible that the same 14% answered each of these questions. <u>If that is the case, then 71% of uncovered workers are already saving for retirement and 14% are unlikely to do so. This means that the proposed plan could newly benefit less than 15% of the identified, potential eligible workers</u>. This number could be even lower if the same 14% did not answer each of the above questions.

In short, before developing a complex and costly state run retirement savings structure that competes with the private marketplace, we would encourage you to more fully explore whether this program would assist the 29% of uncovered workers who the Overture report says are not currently saving or would instead simply take people from their existing savings plan and place them in a plan run by the state. We also believe that the study would have benefitted substantially from an analysis of whether education about the existing high quality, low cost options would have had similar impact at substantially lower cost.

(2) **<u>Underlying Obstacles to Saving</u>**. So if access isn't a primary issue, <u>what other factors may be keeping uncovered workers from either saving at all or saving as much as they might like</u>? Again, the Online Survey in the Overture Financial Report seems to shed some light on this issue.

The report says, on page 28 of Appendix 5, "The leading reasons for not saving more for retirement are not making enough money or needing to pay off debts." Indeed, not earning enough, paying off debt, unexpected expenses and a focus on helping family were the top four responses, affecting 74% of all respondents. A state run plan will not change this dynamic. <u>We would encourage the Board to further explore these underlying obstacles before creating a new retirement structure that may not address the real problem</u>.

(3) **<u>Uncertain Regulatory Environment and the Proposed Safe Harbor</u>**. As you well know, the U.S. Department of Labor ("DOL") has issued a proposed rule that would provide states with a

limited safe harbor from ERISA for certain state run retirement savings plans. Sixty-seven entities commented, raising a number of issues that need to be resolved. These include:

- What happens when circumstances outside the control of the State (i.e., the actions of individual employers) violate the terms of the safe harbor?

- Can the safe harbor be extended when the plan does not include employer mandated participation? You raised this concern in your letter to DOL saying, "The Proposed Safe Harbor suggests that such non-mandated employers could cause an entire program to fail the safe harbor and become an ERISA plan, with potentially disastrous consequences for the thousands of participating employers and millions of employees."

- Is the state a co-fiduciary since it is responsible for investing the employee savings or for selecting investment alternatives for employees to choose?

- Why does DOL have a "voluntary" for employees standard in this instance but requires that employee participation be "completely voluntary" in other instances? Is this new standard appropriate?

- Is the safe harbor contingent on the state assuming responsibility for the security of payroll deductions and employees savings? As you noted in your letter, the current language suggests this is the case.

- Is the safe harbor contingent on the state ensuring that employees are notified of their rights and of creating a mechanism for the enforcement of those rights? As you noted in your letter, the current language suggests that is the case.

We would encourage you to wait for DOL's final rule before moving forward with your own recommendation and proposed legislation.

Of course, even with a safe harbor, legal challenges are possible. Labor Secretary Perez himself has recognized the shortcomings of any proposal, stating publicly that "The [proposed] safe harbor is not an air-tight guarantee… The federal courts are the ultimate arbiter on the question of whether state retirement plans are legal or not."

(4) **<u>Employers With Strong Plans May Re-evaluate, Thereby Lowering Overall Retirement Saving</u>**. We also suggest that you consider whether the creation of a state sponsored plan would encourage employers with strong existing plans to drop their current plan in favor of the state alternative. The State is looking to enhance-- not reduce -- retirement saving, and offering options that encourage employers with existing plans to instead enroll in a state offering, with <u>lower permissible contribution levels and no matching funds</u>, would be counterproductive to that objective.

The 2016 Market Feasibility Study conducted by the Connecticut Retirement Security Board found that roughly <u>half of all employers would consider dropping their existing retirement plan in exchange for the state-sponsored option</u>. If even a small percentage of those who would consider dropping a plan choose to go through with it, the results could be devastating to the overall savings rate.

The problem could be further exacerbated if employers with existing savings plans are required to provide access to the state run plan for their part-time workers. Ease of administration may cause these employers to convert everyone to the state sponsored plan, with lower permissible contribution levels and no employer matching funds.

(5) **New Federal myRA** - As you may know, on November 4, 2015, after an almost year-long pilot program and years of careful research and development, the U.S. Department of Treasury launched a new retirement program known as myRA (www.myRA.gov). It is specifically targeted to help low-income workers, small businesses, and those without access to an employer-sponsored retirement program, and it is a simple, safe, affordable, and voluntary way for employees to save for retirement. In the words of U.S. Treasury Secretary Jacob Lew, "myRA has no fees, no risk of losing money and no minimum balance or contribution requirements. To make saving easier than ever, you can now put savings into myRA directly from your bank account." Payroll deduction and tax refund deposits are also available. SIFMA strongly supports the myRA program. Did the Board consider this program before developing a new state alternative, and if not, why not?

(6) **Financial Sustainability**– We continue to work to analyze and digest the Overture Financial report. We appreciate that a lot of time and effort was put into the final product. We would like to take the appropriate amount of time to fully understand and digest it. We, however, do have some initial thoughts:

- The Overture report has estimated the up-front financing costs of the program as somewhere between $79 Million and $129 Million. We would encourage you to compare these costs and benefits to other alternatives, such as investor education, the promotion of myRA accounts, or the development of a voluntary market-based public private partnership, similar to the law enacted in Washington State, which has been fully funded for only $526,000.

- Moreover, these estimates are just that, and are contingent upon the fact that each of the assumptions required to estimate cost prove correct. Some of these assumptions include:

  - The true opt-out rate would have to be roughly 25%;

  - The average income of full-time participants would have to be roughly $45,000;

  - Roughly 1.6 million workers would have to open accounts within the first year (including participants from roughly 30,000 employers with 100+ employees in the first year); and

  - More than 4 million workers would have to sign up within the first few years.

- Furthermore, while the report identifies a little more than 6 million workers who could be eligible, it notes that:

  - the workforce skews young (36% of eligible workers are identified as between the ages of 18 and 29 – and likely includes a large percentage of part-time employees attending school);

- it does not appear to exclude the nearly 750k Californians who work for employers with fewer than 5 employees; and

- 8% of participants could face income restrictions preventing them from participating in a plan (roughly 500,000 workers).

In short, the cost estimate is based on a lot of variables and any miscalculation in a single estimate or assumption could lead to significant cost swings.

(7) **Marketplace Programs**. As you may know, in May 2015, Washington State enacted and funded the first voluntary small business retirement plan "Marketplace" in the nation, which focuses on private providers and myRA and establishes a web-portal structure to connect private sector employers with qualifying plan vendors. A second-in-the-nation Marketplace was established in New Jersey in January 2016. We would encourage you to look at these Marketplace laws to see if their voluntary nature, strong education and outreach components, and low cost/low risk of liability approach are of potential interest before moving forward with a far more costly and comprehensive plan.

Notably, Marketplace programs were specifically highlighted in DOL interpretive bulletin 2015-02, and offer the greatest levels of investor protection and the lowest levels of cost and risk to the state of any option discussed in the bulletin or the proposed, partial safe harbor.

In short, there is a retirement savings problem in California, but we believe that a state sponsored retirement plan for private sector workers is not the answer. We appreciate your willingness to consider our concerns. Please do not hesitate to contact me at 212-313-1311 with any questions.

Sincerely,

Kim Chamberlain

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Managing Director and Associate General Counsel
State Government Affairs

Cc: Members, California Secure Choice Investment Board
Christina Elliot, Acting Executive Director, California Secure Choice Investment Board
Kevin de Leon, California Senate President Pro-Tempore