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Submitted Written Statement of

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Financial services are crucial to U.S. economic prosperity, helping fuel economic activity across all industries, including manufacturing, agriculture and technology. Free and fair-trade agreements promote U.S. economic growth and job creation by expanding opportunities for financial services firms to compete in overseas markets and better serve their clients. U.S. exports of financial services are worth around $100 billion every year and the U.S. also records a persistent surplus on this trade – around $70 billion in 2016.

Similarly, inbound investment by foreign financial institutions contributes to the vitality of the U.S. economy through direct investments and job creation. The Securities Industry and Financial Markets Association (SIFMA)[1] supports an open, rules based, global economy in which financial services can boost exports, investment and global economic growth.

SIFMA believes that trade agreements should be comprehensive, broadening market access for financial services firms and addressing issues specific to the 21st century economy in digital trade, to enhance U.S. economic competitiveness in the 21st century. To that end, we encourage policymakers to: (i) expand the free flow of goods and services around the world and maximize cross-border investment opportunities; (ii) coordinate regulatory approaches across borders to ensure a level playing field for domestic and international firms; (iii) address the rise of digital protectionism. This submission explores these priorities in more granular detail.

NAFTA

SIFMA 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

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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 with Canada, and a $1.1 billion trade in financial services surplus with Mexico[2]. 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.

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 caution the administration against pulling out of NAFTA should efforts to modernize the agreement fail to reach a consensus.

We encourage the Trump administration 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; and (iii) enhancing investor protections in the investor-state dispute settlement mechanism.

Regulatory Cooperation

The capital markets support robust trade and investment within and between the U.S., Canada and Mexico. As we look towards the third decade of the 21st Century, it is vital that policymakers and regulators have the right tools to support the robust cross-border capital flows needed for economic growth and job creation. Effective regulatory cooperation is a vital component of those tools.

Since the inception of NAFTA in 1994, financial services have expanded significantly – both in terms of the volume of transactions and sophistication of financial instruments. At the same time, the financial services industry has been subjected to growing amounts of regulation. Much of these regulatory impulses have originated through the G20 and its associated fora, such as the FSB. The U.S., Canada and Mexico are all members of these groups.

2 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.

The architects of NAFTA could not have anticipated the growth of regulation and how it would increasingly govern cross-border financial services in the 21st century. When NAFTA was created, a financial services committee was established as a platform for the three countries to ensure all three trading partners implemented the financial services aspects of the trade agreement. Thus, the foundations of the committee were in market access issues. By contrast, in 2018 barriers to cross-border financial services are more likely to arise from inconsistent regulations than from conventional 'text-book' trade barriers.

Therefore, a new mechanism, co-existing with the existing NAFTA financial services committee and housed outside NAFTA, to support regulatory cooperation between the three countries is needed. SIFMA has welcomed the news that the partner countries have begun work on establishing such a regulatory cooperation facility.

The existing forum between the EU and the U.S. can serve as a model for this new platform among NAFTA signatories. But the EU/U.S. dialogue should be regarded as a starting point – not something to be replicated. While the EU/U.S. Forum has many strengths and has been improved in recent years, there is still further to go in enhancing its effectiveness. In this regard, the new U.S./Canada/Mexico Forum should lead and not follow.

The architects of this new mechanism therefore have an opportunity to establish an ambitious system of regulatory cooperation. Establishing an effective coordination regime would yield benefits in terms of regulatory coherence, cross-border investment and growth and allow the U.S., Canada and Mexico to lead the world in regulatory cooperation and coordination, influencing the future shape of other bilateral, trilateral and multilateral fora. SIFMA believes that, to maximize the effectiveness of this new forum, it should (be):

- *Forward-looking* – Regulatory cooperation between the U.S., Canada and Mexico should be proactively used to identify potential cross-border divergences when policies are being devised. Relatedly, well-defined and clearly communicated timetables for the coordination of regulations between the three will be important to the success of the new forum. At the most fundamental level, it is crucial that the dates for meetings of the group are arranged and announced well in advance, in the same way, for example, that G20 meetings are arranged and announced.
- *Supportive of Similar Outcomes* – Deference or mutual recognition to other regimes is a vital approach to successfully pursuing coordinated regulation across borders. These regulatory tools are

even more vital in the context of a trading bloc like that to which the U.S., Canada and Mexico belong. Clear, detailed standards for comparability assessments, as well as mechanisms for the ongoing assessment of regimes as rulemaking and implementation progress, will be necessary to make the new trilateral forum a success.

- *Predictable* – Clearly defined fact-based policy objectives will facilitate cooperation and should be set out by the three partners. Predictability enhances market certainty between these economies and within each of them.

- *Transparent* - To ensure that the most pressing issues, with the greatest implications for financial services in the economies of the U.S., Canada and Mexico, are resolved in a timely and appropriate manner, it is vital that the Forum allows for input from industry. The new forum, and its agenda-setting, should therefore be underpinned by consistent means of consultation and dialogue with market participants and industry bodies. In addition, reasonable timelines will be necessary for market participants to consider and respond under.

- *Evidence-based* – Understanding the consequences of proposed regulatory actions domestically and on the other two economies should be paramount in evaluating the options available to regulators and rule-writers. For that to happen, the work of the Forum should be supported by substantive, wide-ranging analysis.

- *Enhance Market Certainty* – Regulatory cooperation between the U.S., Canada and Mexico should include clear timelines for making consistency findings.

- *Strengthen Supervisory Coordination* – While it will be important for the three economies to have major meetings, clearly signaled in advance and held at regular intervals, regulatory cooperation should be regarded as a continuous process. Enhanced communication channels should be established between regulatory authorities through a principles-based approach to the interpretation and implementation of international standards, including more timely and comprehensive information-sharing.

- *Supportive of conflict mitigation* – At present, in both multilateral and bilateral fora, the absence of flexibility by supervisory agencies to employ forbearance, no-action letters, or other dispute-resolution mechanisms, potentially prolongs and prevents countries moving towards mutually satisfactory outcomes. Successful regulatory cooperation will require these concepts to be used much more extensively to ensure consistent rules and a level playing field between institutions from the three economies.

- *Proportionate* – Due regard should be considered where policies are designed to restrict cross-border financial activity to address identifiable local risk to market integrity and financial stability. In such circumstances, a new regulatory cooperation framework should help measures be designed in a targeted as way as possible.
- *Enhance Cross-Border Investments and Market Integrity* – Regulatory cooperation needs to strike the balance between facilitating frictionless cross-border flows and price discovery and respecting the integrity of internal markets. But enhanced regulatory cooperation between the U.S., Canada and Mexico would help reduce operational complexity and increases the utility of supervisory oversight to foster the integrity of the market place.

Regulatory cooperation is important between *all* jurisdictions – not just the U.S., Canada and Mexico. The G20 economies committed in Pittsburgh in 2009 to 'implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage'. Therefore, to improve regulatory outcomes and deliver on the benefit of reforms, SIFMA's global affiliate, the Global Financial Markets Association[3], recently called on global financial regulators to agree to principles to design regulatory cooperation arrangement(s) to develop consistent regulatory regimes and supervisory practices[4]. These principles are fully consistent and aligned with those set out above in relation to the U.S., Canada and Mexico.

Data Localization

SIFMA supports an open global economy in which financial services can boost international trade and investment and global economic growth. With the rise of the digital economy, policymakers around the world have rightfully began to consider policies to ensure data privacy and security, while also enabling digital cross-border trade that contributes increasingly to global economic growth. We encourage policymakers to consider the following paradigm to achieve these policy objectives while avoiding imposing requirements that restrict the flow of data across borders, which is critical to the growth of the digital economy.

3 GFMA serves as a forum that brings together its existing regional trade association members to address issues with global implications. SIFMA is a member of the GFMA from North America, along with AFME in the EU and ASIFMA in Asia.

4 http://www.gfma.org/News/Press-Releases/2018/GFMA-Releases-Principles-for-Achieving-Consistent-Regulatory-Regimes-and-Supervisory-Practices/

Cross-border trade of digitally-deliverable services is on the rise. Global e-commerce reached almost $28 trillion in 2016[5], leaving some observers to conclude that "[v]irtually every type of cross-border transaction now has a digital component."[6] The ability to use and transfer consumer data across borders is essential to support trade and investment in the 21st century. Cross-border data flows have increased global GDP by 10 percent over the last ten years.[7] Digital trade is important for every sector of the economy, and financial services exports engender a multiplier effect for trade and investment by manufacturers, agriculture producers, and other service providers that further contribute to the digital economy. In this new digital economy, data security, and efficiency is critically important to businesses, governments, and consumers.

Yet amidst the rise of digital trade, several jurisdictions have introduced new data localization requirements that restrict cross-border data flows. Data localization refers to a country's laws and regulations that require firms to store, process, or handle consumers' data within its borders. Localization is also impacted by employment laws—to the extent that they may undermine firms' abilities to effectively monitor staff to defend against insider threats to cybersecurity—and outsourcing restrictions. Data localization policies have quadrupled since 2000[8]. Limitations on the free flow of data have serious implications for global firms, the end-users they serve, and economic growth more generally. Policymakers engage in these localization practices assuming that they will improve privacy and security, or that requiring local servers or computing facilities will foster innovation, spur technology transfer, or bolster domestic economic growth.

However, the proliferation of data localization requirements and policies that hinder the free flow of data across the globe have not been supported by credible evidence that such rules bolster security, ensure access to data, or mitigate privacy concerns.[9] Such concerns are best addressed through the rigorous and high-standard systems employed by financial institutions. Furthermore, data localization requirements and policies that hinder the free flow of data increase cyber risks and erect barriers to trade, competition, and innovation. Data localization not only impairs financial services firms' ability

5 U.S. International Trade Commission, "Despite Huge Growth in Global Digital Trade in Recent Years, Some Countries Seek to Slow Adoption, Reports USITC," September 2017, https://www.usitc.gov/press_room/news_release/2017/er0928ll836.htm.

6 McKinsey, "Digital globalization: The new era of global flows," March 2016, https://www.mckinsey.com/business-functions/digital-mckinsey/our-insights/digital-globalization-the-new-era-of-global-flows.

7 Ibid.

8 U.S. International Trade Commission, "Despite Huge Growth in Global Digital Trade in Recent Years, Some Countries Seek to Slow Adoption, Reports USITC," September 2017, https://www.usitc.gov/press_room/news_release/2017/er0928ll836.htm, page 414.

9 See more information on perceived drivers of data localization and their unintended consequences at the Future of Privacy Forum's "Financial Data Localization: Conflicts and Consequences," 7 December 2017, https://fpf.org/2017/12/07/financial-data-localization-info-graphic-conflicts-and-consequences/.

to serve their customers and the economy, but they also negatively impact overall data security and create inefficiencies for multinational companies. The resources required for compliance with data localization laws often deter firms from entering or expanding in a market, limiting job creation and investment. These costs are passed along to consumers and therefore reduce their access to goods and services. The costs of data localization policies ultimately constrain the rise of digital trade, as well as global economic growth. The Information Technology and Innovation Foundation estimates that barriers to cross-border data flows reduce U.S. GDP by 0.1-0.36 percent, and by 0.7 to 1.7 percent in Brazil, China, the European Union, India, Indonesia, Korea, and Vietnam.[10]

The financial industry supports global regulatory authorities' legitimate concerns to protect consumer and investor data privacy and security. We also recognize that financial institutions must provide appropriate data to regulators for them to perform their regulatory and supervisory roles. However, policymakers should reconsider translating those objectives into measures that are a form of digital protectionism and do not accomplish those objectives. These measures are ineffective and have many negative implications for the digital economy and economic growth. The location of the computing facilities or use of cloud services that house the data have no bearing on the ability of financial institutions to ensure access to necessary data for regulatory or supervisory purposes. Policymakers and financial institutions need to partner to ensure that there is sufficient information provided to regulators to enable them to perform their financial stability and market oversight objectives, without inadvertently creating vulnerabilities in firms' cybersecurity programs or engaging in digital protectionism.

Conclusion

The financial services industry is enthusiastically engaged in the current trade and investment agenda and aspires for comprehensive agreements that allow this industry to play a full role in delivering the gains to jobs and prosperity that positive trade policy can be the foundation for. At present, a top priority for the financial services industry is to be given equal treatment in a modernized NAFTA, especially in terms of prohibitions on data localization requirements – which pose policy risks beyond NAFTA - and access to dispute resolution. Our industry also continues to strongly support enhanced

10 ITIF, "Cross-Border Data Flows; Where Are the Barriers, and What Do They Cost?" May 2017, https://itif.org/publications/2017/05/01/cross-border-data-flows-where-are-barriers-and-what-do-they-cost.

regulatory cooperation between G20 economies – the recent development between the U.S., Canada and Mexico to build on their own regulatory cooperation is welcome.