



March 25, 2020

Via email

Brett Redfearn
Director, Division of Trading and Markets
US Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Request for Regulatory Relief in Connection with COVID-19 Situation

Dear Mr. Redfearn:

The Securities Industry and Financial Markets Association (SIFMA)¹ and our member firms greatly appreciate the recent efforts of the Securities and Exchange Commission (the "Commission") and the Division of Trading and Markets to assist the industry in navigating the COVID-19 crisis and to provide relief from certain regulatory requirements.

Over the last decade, securities market participants have been developing and refining their contingency plans to manage potential disruptions created by epidemics and pandemics. We have been continually reviewing and evaluating these plans in light of COVID-19 events and would like to bring to your attention, for regulatory relief consideration, the following non-exhaustive list of issues raised by industry participants to date:

- **Wet Signatures.** Given the current operating environment, with many executives and staff working remotely, broker-dealers will face significant challenges in obtaining manual signatures for the FOCUS reports that will need to be filed with the Commission. With month end approaching, we request relief from the requirement to maintain manual signatures for the FOCUS reports and request that firms be permitted to maintain email approvals instead of manual signatures for the March FOCUS reports

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate for legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, DC, SIFMA is the US regional member of the Global Financial Markets Association (GFMA).



and any future FOCUS reports as needed. In addition, we request relief from any other manual signature requirement pursuant to the Commission's rules and regulations (*e.g.*, Form 144, certain ATS forms) to the effect that email approval or an electronic signature can substitute for a manual signature, and we request relief from any notarization requirements (*e.g.*, certain ATS forms).²

- **DTCC Processing of Physical Securities.** DTCC has suspended all physical processing services until, at the earliest, Monday March 30. Impacted firms may require related relief from physical processing timelines, good control location treatment, and regulatory reporting requirements. Broker-dealers are subject to a variety of rules related to defined timeframes associated with the delivery of physical and other securities. These include Rule 15c3-3, Uniform Practice Code Buy-In rules and Regulation T. Broker-dealers are therefore asking for no-action relief during this time period for any failure to comply with physical processing timelines, possession or control, and regulatory reporting requirements related to DTCC's suspension of physical processing.³
- **Regulation SHO.** In light of DTCC's suspension of all physical processing services, limited relief with respect to Regulation SHO's locate and closeout requirements consistent with that granted after Hurricane Sandy in 2012⁴ would be appropriate. We note that just as in 2012, physical certificates are not available and it is unclear when they will be available.
- **Brokers Relying on Rule 15c3-3(k)(2).** Under this provision, a broker-dealer must forward checks received from its customers by noon the next business day. We understand that a receiving institution's personnel may be unable to access mail or deliveries at an office location due to the institution's business continuity plan in response to circumstances related to COVID-19, or due to quarantine of mail or deliveries based on guidance related to the length of time the virus may survive on surfaces. Accordingly, we request flexibility to allow personnel to visit their office

² We note that the March 24, 2020 Staff Statement Regarding Rule 302(b) of Regulation S-T in Light of COVID-19 Concerns applies only to documents electronically filed with the Commission, which would appear to exclude FOCUS reports, manually filed Forms 144, and certain ATS forms. See <https://www.sec.gov/corpfin/announcement/staff-statement-regarding-rule-302b-regulation-s-t-light-covid-19-concerns>.

³ The staff of the Division of Trading and Markets issued such relief on December 21, 2012 in connection with Hurricane Sandy, the flooding of DTCC facilities, and the inaccessibility of physical certificates. See <https://www.sec.gov/divisions/marketreg/mr-noaction/2012/sifma-122112-15c3.pdf>.

⁴ See Release 34-68419, December 12, 2012, <https://www.sec.gov/rules/exorders/2012/34-68419.pdf>.



locations and process mail or deliveries when advisable and then submit by noon the day following processing.⁵

- **Quarterly Box Count Requirements.** In California and other states, some firms have been told to limit groups to under 10. Many firms currently have a large portion of their operations teams working remotely from home, and the box count would require firms to put together a group of sometimes more than 50 staff in tight office locations contrary to current health and safety recommendations. We request relief from physical count requirements and recommend that firms be permitted to issue an electronic inventory report until such time as physical counts are able to resume.
- **Medallion Processing.** We understand that the medallion program is used as a valid signature on many documents, including those related to corporate actions and negotiable documents, such as physical certificates and related negotiability paperwork. Many firms still have skeleton staff on site with access to medallion stamps, but a forced quarantine by state, local or federal officials would pose challenges. There have been discussions of having these stamps used from home, but a number of hurdles exist with this proposal and firms have identified two potential alternatives, as specified below, to allow market participants to treat signatures as valid. SIFMA requests that the Division of Trading and Markets clarify that it would view either of the following alternatives as not unreasonable for a transfer agent's compliance with Rule 17Ad-15(g)(3), and that it would not recommend enforcement action against a transfer agent for accepting and processing documents that do not meet their pre-existing standards and procedures but do satisfy either of these alternatives:⁶
 - The first option would recognize as acceptable the presence of a digital stamp on a document coming from an email domain associated with the firm for which the stamp is being applied.⁷ Where signatures are required, we would request that those be permitted to be digital as well, as some firms have printing restrictions for associates working from home or other limitations with manual signatures.

⁵ See relief from the staff of the Division of Investment Management (Question II.1, updated March 16, 2020), providing that an adviser would not be considered to have received client assets at an office location until firm personnel are able to access the mail or deliveries at that location, available at https://www.sec.gov/divisions/investment/custody_faq_030510.htm.

⁶ Many other parties that are not transfer agents also require stamped medallion signature guarantees even though this is outside the scope of the original establishment of the various signature guarantee programs. To the extent any of these parties is regulated by the Commission, SIFMA requests that similar relief be extended to these parties.

⁷ E.g., an electronic document with the image of a medallion stamp affixed.



- The second option would be use of an authorized signer list at a firm level, similar to a corporate resolution, for documentation related to asset services events (*e.g.*, conversions, exercises, unit splits, redemptions, bankruptcies, etc.). Documents would be signed by a member of the authorized signer list, or accompanied by encrypted or secure email evidence that a member of the list has signed off on the documents, and a copy of the authorization would be attached.⁸ A similar approach is currently used in most international transactions, as well as by smaller issuers and agents for various transactions. Typically, firms recognize an authorized signer list for six months, but under current circumstances the physical signing of all authorized signatures would be challenging to update. SIFMA's member firms therefore believe that authorized signer lists should be valid for use for an additional three to four months.
- **Transfer Agent Exemptions.** Recently, the Commission issued an exemptive order around rule compliance for some transfer agents. Parties other than transfer agents were only given relief for obligations under Rule 17f-2 (fingerprinting requirements). This means that broker-dealers have not been given relief with respect to obligations as a "reporting institution" under Rule 17f-1 (missing, lost and stolen securities), or under Rule 17Ad-17 (lost security holders and unresponsive payees), although transfer agents do now have exemptions if required. We request that the Commission's exemptive order be expanded to include all reporting institutions as defined in Rule 17f-1, including broker-dealers, as well as broker-dealers under Rule 17Ad-17.

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We appreciate your consideration of these issues. Please feel free to reach out to me at 212-313-1260 if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas F. Price". The signature is fluid and cursive, with the first name "Thomas" and last name "Price" clearly distinguishable.

Thomas F. Price
Managing Director
SIFMA

⁸ Encrypted or secure email could also be used to provide any required documentation of insurance maintained by the firm for which the stamp is being applied, or confirmation that previously provided information has not changed.