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sifma asset management group

October 15, 2025

The Hon. Paul Atkins
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Modernizing Communications and Record Retention Rules for Broker-Dealers, Investment Advisers, and Security-Based Swap Dealers

Dear Chairman Atkins,

The Securities Industry and Financial Markets Association and its Asset Management Group (collectively, "SIFMA")[1] are requesting that the Securities and Exchange Commission ("SEC" or "Commission") take necessary steps to modernize the communications and records retention rules applicable to broker-dealers, investment advisers, and security-based swap dealers, including Rules 17a-4 and 18a-6 under the Securities Exchange Act of 1934 ("Exchange Act") and Rule 204-2(a)(7) under the Investment Advisers Act of 1940 ("Advisers Act") (together, "Communications Rules").

SIFMA urges the Commission to amend the Communications Rules to clarify the types and scope of communications that must be retained under the federal securities laws and to provide safe harbors for compliance with each of the Communications Rules. We are also proposing to eliminate the requirement that a third party, such as a cloud service provider, must file a third-party undertaking with the Commission that the third party agrees to provide access

[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 one million employees, we advocate on 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. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association ("GFMA").

SIFMA's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms that manage more than 50% of global AUM. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

to the broker-dealer's documents to the Commission under Exchange Act Rule 17a-4(i).

The settlements in the SEC's off-channel communications cases starkly exposed the challenges of complying with the existing communications retention requirements under federal securities laws. The SEC brought over 90 cases, imposing penalties of over $2.2 billion and burdensome undertakings on settling firms. Notably, Commissioners Peirce and Uyeda publicly recognized the issues with the Commission's prior settlements, chiefly that the enforcement actions brought by the Commission did not reveal the existence of any violations other than of the communications retention rules themselves or were otherwise administrative in nature. Moreover, the Division of Enforcement applied a strict liability approach without any credit given for good-faith efforts to prevent, detect, and limit off-channel communications.[2]

These requests aim to modernize the Commission's rules to reflect current and future uses of various communications tools and to ensure that broker-dealers, investment advisers, securities-based swap dealers, and transfer agents remain competitive in the financial markets. To do that, our members must meet customers' needs and therefore must communicate on the channels most used by their customers and clients. The existing Communications Rules have created burdensome, costly, and unnecessary roadblocks for firms in effectively managing their relationships with clients through seamless and modern communication. As a result, firms may be competitively disadvantaged against other types of financial institutions that do not have restrictive communications retention requirements.

1. Executive Summary

The Communications Rules impose outdated, overly broad, and strict liability standards that hinder firms' ability to communicate effectively with clients, using modern technologies, and remain competitive in global markets. Overall, SIFMA is proposing that the communications retentions rules be reformulated to apply in a consistent and easily understandable way to a discrete, defined universe of communications. In that regard, SIFMA is proposing that the Commission:

- **Narrow the retention obligation** to client-facing business communications substantively related to investment or securities advice or transactions, consistent with the original intent of the rules. The expansion of "communications" to include virtually all forms of electronic messaging has created unmanageable compliance burdens and costs without corresponding investor protection benefits.

- **Remove the "business as such" requirement** and, therefore, reduce uncertainty about the types of communications firms are required to retain.

- **Exclude categories of communications that provide no investor protection benefit**, such as emojis, unsolicited inbound messages, or ministerial messages such as "I am running late" and also, for the avoidance of doubt, exclude categories of materials that are

[2] SEC Commissioners Hester M. Peirce and Mark T. Uyeda, *A Catalyst: Statement on Qatalyst Partners LP* (Sept. 24, 2024), https://www.sec.gov/newsroom/speeches-statements/statement-peirce-uyeda-qatalyst-09242024.

not communications at all, such as AI-generated meeting transcripts and collaborative platform inputs.

- **Provide a safe harbor** for firms that implement and maintain reasonable policies and procedures. This would eliminate what might be deemed a strict liability standard in the existing Communications Rules.

- **Maintain supervisory responsibility** for communications. SIFMA is not proposing to change firms' supervisory obligations. As a result, firms may choose to retain communications for a period beyond what is required by the amended rules.

- **Harmonize retention periods** for communications across all registrants at three years. Retention requirements differ across rules (three years for broker-dealers, five years for advisers), creating complexity for dual registrants. SIFMA proposes harmonization to a uniform three-year standard.

- **Remove third-party undertakings** for record storage providers. The mandate that cloud service providers file undertakings under Rule 17a-4(i) deters adoption of secure modern technologies. Further, some cloud service providers refuse to provide them.

These amendments would modernize the Communications Rules to more accurately reflect how communication occurs today, reduce unnecessary costs, preserve firms' supervisory responsibilities, and maintain strong investor protections.

2. The SEC's Communications Rules Must Be Substantially Amended to Narrow the Scope of Electronic Communications That Must Be Retained.

The broker-dealer and investment adviser rules were originally drafted to encompass only formal written communications and intentionally excluded oral communications of any type, underscoring that retention obligations were not intended to apply to informal communications. Since then, communication has substantially moved away from paper communications towards e-mail, text messaging, message boards, social media, and other electronic messaging platforms. Many of these types of communications mirror what might have been communicated previously via a brief phone call, yet the SEC has continued to broaden the scope of its interpretation of the Communications Rules and failed to provide guidance on how firms should interpret these rules as technology continues to evolve. As a result, the scope of communications retained has expanded enormously.

It is time for the Commission to revise the Communications Rules, so they reflect current practices and technology, while ensuring that future advances in communications are not unnecessarily swept into their scope. SIFMA accordingly is proposing language for the Communications Rules that will achieve these goals through sensible reform that brings the rules back to their original intent and purpose and provides clear parameters to firms to allow for consistent practices.

Attachments A, B, C, and D include proposed amendment language for the

Communications Rules. The proposed Rule 17a-4 amendments are intended to limit the scope of communications firms would be required to retain to those sent to customers or prospective customers and specifically related to the business of the broker-dealer as defined in the FINRA bylaws.[3] For investment advisers, the proposed amendments are intended to limit the retention requirement to written communications between an investment adviser and external parties (e.g., a client or investor) that are substantively related to recommendations and advice regarding investments or securities. The proposed rules for security-based swap dealers are intended to align with the broker-dealer and investment adviser standards. This construct aims to limit the communications required to be retained to those that are fundamental to the business and help to achieve investor protection. As is the case currently, firms would continue to have the option to retain whatever communications and records they need to meet their other legal, compliance, or supervisory purposes.

Further, we propose that the following categories are not communications for the purposes of the Communications Rules and therefore, the retention requirement should specifically exclude:

a. Artificial intelligence-generated summaries, transcripts, or recordings created on online meeting platforms like Zoom AI Companion and Microsoft Teams;

b. Any inputs into and outputs from any artificial intelligence platforms or tools;[4]

c. Any system-generated or system-disclosed text derived from oral communications (*e.g.*, closed captioning);

d. Text entered or uploaded into collaborative tools or platforms (*e.g.*, Google docs); and

e. Text viewable in or downloadable from data rooms (whether operated by a broker-dealer, investment adviser, or third party).

Moreover, the retention requirement should specifically exclude the following categories which may have in some cases been considered communications under the Communications Rules:

a. Video recordings;

b. Graphical icons that react to electronic text (*e.g.*, "likes" or "emojis"); and

c. Any communications with regulators, law firms, or peers of the registrants in the context of industry associations.

[3] *See* FINRA By-Laws, Article I(u).

[4] Such content would be excluded under the proposed amendments to the Communications Rules because such inputs and outputs do not qualify as communications between natural persons, nor do they qualify as communications received from or sent to natural person customers, prospective customers, investors, third-party representatives, or other broker-dealers or investment advisers.

Finally, we recommend that the SEC eliminate the strict liability standard of compliance by requiring broker-dealers and investment advisers to establish and maintain policies and procedures reasonably designed (in light of the firm's business) to retain required communications; a failure to retain communications should not create a presumption that the firm's policies and procedures were not reasonably designed or implemented.

3. Supervisory Responsibilities Will Not Change.

SIFMA is not proposing to reduce the supervisory responsibilities of the entities impacted by these proposed rule changes. We support and accept the firms' duty to supervise employees, including employee communications, but we believe firms should be able to make their own reasonable judgments about how best to comply with this responsibility in light of their own business models, including which communications to review and retain. The SEC and FINRA do not need to dictate a one-size-fits-all approach.

4. Retention Periods for All Categories of Communications Under All SEC Rules Should Be Harmonized at Three Years.

Exchange Act Rules 17a-4 and 18a-6(b) currently require that firms retain communications for three years, and for the first two years in an "easily accessible place." By contrast, the Investment Advisers Act requires firms to retain communications for five years from the end of the fiscal year during which the last entry was made on such record (first two years in an "appropriate office of the investment adviser"). These time periods should be harmonized across all of the federal securities laws to three years for all communications. This timeframe has demonstrably proven to provide ample time for review and supervision of communications, as well as for regulators to request necessary communications in examinations and investigations. No rationale exists supporting the retention of investment adviser communications for a longer period than for broker-dealers.

Creating a unified retention period across the federal securities laws will reduce the burden on dually registered firms, as they will no longer be required to undertake the burdensome process of parsing communications between the two registration categories to comply with two materially different retention periods. Given the practical impossibility of separating broker-dealer and investment adviser communications, dual registrants will be relieved of the burden of complying with the longer investment adviser retention period as a default.

5. The Third-Party Service Provider Requirements for Recordkeeping Should Be Eliminated.

The SEC should eliminate Rule 17a-4(i), which requires third-party service providers that retain a broker-dealer's records on their servers or storage devices to submit an undertaking with the Commission stating that the third party will surrender those documents to the Commission upon request. In practice, this has become a major hurdle for many broker-dealers seeking to use cloud service providers, because those services generally do not have independent access to the broker-dealer's records. Cloud services are specifically designed to not allow such access by the

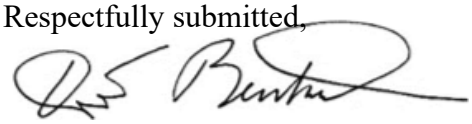
provider, thus making the storage system more secure than other offsite storage systems. Therefore, some cloud service providers refuse to file the undertaking required under Rule 17a-4(i). As a result, firms are faced with a dilemma of whether to enter into a cloud services agreement without fully complying with this provision, if the provider will not make the required Rule 17a-4(i) certification. The SEC has not seen fit to impose these requirements on any other type of regulated entity, including investment advisers.

This provision is not necessary because the Commission has sufficient tools and penalties at its disposal to compel production of documents from a broker-dealer or senior leadership within the firm. Further, the Commission has rarely—if ever—invoked this provision and used a third-party provider to access a broker-dealer's documents. We urge the Commission to investigate the utility of this provision through a comprehensive cost-benefit analysis and historical review.

* * * * *

We welcome the opportunity to meet with the Commission staff to discuss this request in further detail and to answer any questions the staff may have. Please contact Melissa MacGregor, Managing Director and Deputy General Counsel, SIFMA, at mmacgregor@sifma.org with any questions or to arrange a meeting.

Respectfully submitted,



Kenneth E. Bentsen, Jr.
President & CEO

Attachments

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
Brian T. Daly, Director, Division of Investment Management
Jamie Selway, Director, Division of Trading and Markets
Michael A. Macchiaroli, Associate Director, Division of Trading and Markets
Robert W. Cook, President and CEO, FINRA
Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA
Melissa MacGregor, Deputy General Counsel & Corporate Secretary, SIFMA

Attachment A

Proposed Amendments to Broker-Dealer Communication Retention Rules
Exchange Act Rules 17a-4(b)(4) and (m)

Proposed language:

17a-4(b)(4)

(i) Communications received or sent (and any approvals thereof) by the member, broker, or dealer that relate substantively to the business carried on by the broker, dealer, or member, of (i) underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others, or (ii) holding itself out as a dealer in security-based swaps or entering into security-based swaps with counterparties for its own account; either:

> **(a)** Between a person(s) who is required to be registered with the broker-dealer under the rules of a self-regulatory organization or who effects or is involved in effecting security-based swaps for the broker-dealer and one or more natural persons who are customers, prospective customers (including natural person agents of customers or prospective customers), or other members, brokers, or dealers;[5] or
>
> **(b)** Within the broker-dealer, to multiple natural persons who are required to be registered with the broker-dealer under the rules of a self-regulatory organization or who effect or are involved in effecting security-based swaps.

(ii) As used in paragraph (b)(4)(i), the term *communications* means only written (including electronic) materials. Solely for purposes of section 15F(g)(1) of the Act (15 U.S.C. § 78o-10(g)(1)), the term *communications* also includes audio recordings of telephone calls.

(iii) As used in paragraphs (b)(4)(i) and (ii), the term *communications* shall exclude:

> **(a)** System-generated or system-displayed written text derived from oral communications;[6]
>
> **(b)** Electronic or digitally created transcripts, summaries, videos, or other recordings of oral communications;
>
> **(c)** Written text entered or uploaded by natural persons into collaborative tools or collaborative electronic platforms that permit one or more natural persons to edit or view the written text;[7]
>
> **(d)** Written text viewable in, or downloadable from, a data room, website, or repository, whether operated by the member, broker or dealer, or a third party;

[5] *See* FINRA By-Laws, Article I(u). Administrative emails related to such matters as password resets would not be subject to retention based on this standard.
[6] Such as closed captions or transcripts.
[7] Such as SharePoint, Jira, or Google Docs.

(e) Reactions to electronic communications that are graphical icons (*e.g.*, likes or emojis); and

(f) Any communications that are administrative or logistical in nature.

(iv) No member, broker or dealer shall be deemed to have violated this Rule 17a-4(b)(4) if such member, broker, or dealer has established and maintained policies and procedures reasonably designed, taking into consideration the nature of its business, to comply with the retention of communications covered by this Rule 17a-4(b)(4). The failure to retain communications shall not create a presumption that the policies and procedures were not reasonably designed to comply with this rule.

[…]

17a-4(m) When used in this section:

~~**(5)** The term *business as such* includes security-based swap activity.~~

Proposed Amendments to Investment Advisers Communications Retention Rule
Investment Advisers Act Rule 204-2(a)

Proposed language:

204-2(a) Every investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. § 80b-3) shall make and keep true, accurate, and current for a period of not less than three years the following books and records relating to its investment advisory business;

[…]

(7) Written communications that such investment adviser received from or sent to an external party who is a natural person client, investor, prospective client or investor, or other registered investment adviser, or written communications between multiple natural persons who are supervised persons of the investment adviser, relating substantively to:

(i) Any recommendation made and any advice given;

(ii) Any receipt, disbursement, or delivery of funds or securities;

(iii) The placing or execution of any order to purchase or sell any security; and, for any transaction that is subject to the requirements of § 240.15c6-2(a) of this chapter, each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received;

(iv) Predecessor performance (as defined in § 275.206(4)-1(e)(12) of this chapter) and the performance or rate of return of any or all managed accounts, portfolios (as defined in § 275.206(4)-1(e)(11) of this chapter), or securities recommendations; Provided, however:

(A) That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

(B) That if the investment adviser sends any notice, circular, or other advertisement (as defined in § 275.206(4)-1(e)(1) of this chapter) offering any report, analysis, publication, or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular, or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular, or advertisement a memorandum describing the list and the source thereof.

[. . .]

(l) For purposes of subsection (a)(7),

(i) The communications that are required to be retained under this subsection shall not include:

(A) Any system-generated or system-displayed written text derived from oral communications;[8]

(B) Any electronic or digitally created transcripts, summaries, videos, or other recordings of oral communications;

(C) Written text entered or uploaded by natural persons into collaborative tools or collaborative electronic platforms that permit one or more natural persons to edit or view the written text;[9]

(D) Any written text viewable in, or downloadable from, a data room, website, or repository, whether operated by the registered investment adviser or a third party;

(E) Any reactions to electronic communications that are graphical icons (*e.g.*, likes or emojis); and

(F) Any communications that are administrative or logistical in nature.

(ii) No registered investment adviser shall be deemed to have violated Rule 204-2(a)(7) or Rule 206(4)-7 if such registered investment adviser has established and maintained policies and procedures reasonably designed, taking into consideration the nature of the business, to comply with the retention of communications covered by Rule 204-2(a)(7). The failure to retain written communications shall not create a presumption that the policies and procedures were not reasonably designed to comply with these rules.

[8] Such as closed captions or transcripts.
[9] Such as SharePoint, Jira, or Google Docs.

Proposed Amendments to Security-Based Swap Dealers (no prudential regulator)
Communications Retention Rules
Rule 18a-6(b)(1)(iv)

Proposed Language:

Rule 18a-6(b)(1)(iv) Communications received or sent (and any approvals thereof) that:

(A) **(1)** in the case of a security-based swap dealer, relate substantively to the business carried on by the security-based swap dealer of entering into security-based swaps with counterparties for its own account; and

(2) in the case of a major security-based swap participant, relate substantively to entering into security-based swaps for the major security-based swap participant's own account; and

(B) either are:

(1) between a person(s) who effects or is involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant and one or more natural persons who are or who represent third parties; or

(2) within the security-based swap dealer or major security-based swap participant, to multiple natural persons who effect or are involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant.

As used in this paragraph (b)(1)(iv), the term *communications* means only written (including electronic) materials. Solely for purposes of section 15F(g)(1) of the Act (15 U.S.C. § 78o-10(g)(1)), the term *communications* also includes audio recordings of telephone calls. As used in this paragraph (b)(1)(iv), the term *communications* shall exclude:

(a) System-generated or system-displayed written text derived from oral communications;

(b) Electronic or digitally created transcripts, summaries, videos, or other recordings of oral communications;[10]

(c) Written text entered or uploaded by natural persons into collaborative tools or collaborative electronic platforms that permit one or more natural persons to edit or view the written text;[11]

[10] Such as closed captions or transcripts.
[11] Such as SharePoint, Jira, or Google Docs.

(d) Written text viewable in, or downloadable from, a data room, website, or repository, whether operated by the registered investment adviser or a third party;

(e) Reactions to electronic communications that are graphical icons (*e.g.*, likes or emojis); and

(f) Any communications that are administrative or logistical in nature.

No security-based swap dealer or major security-based swap participant shall be deemed to have violated this Rule 18a-6(b)(1)(iv) if such security-based swap dealer or major security-based swap participant has established and maintained policies and procedures reasonably designed, taking into consideration the nature of its business, to comply with the retention of communications covered by this Rule 18a-6(b)(1)(iv). The failure to retain communications shall not create a presumption that the policies and procedures were not reasonably designed to comply with this rule.

Proposed Amendments to Security-Based Swap Dealers (with prudential regulator)
Communications Retention Rule
Rule 18a-6(b)(2)(ii)

Proposed Language:

Rule 18a-6(b)(2)(ii) Communications received or sent (and any approvals thereof) that:

(A) **(1)** in the case of a security-based swap dealer, relate substantively to the business carried on by the security-based swap dealer of security-based swaps or entering into security-based swaps with counterparties for its own account; and

(2) in the case of a major security-based swap participant, relate substantively to entering into security-based swaps for the major security-based swap participant's own account; and

(B) either are:

(1) between a person(s) who effects or is involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant and one or more natural persons who are or who represent third parties; or

(2) within the security-based swap dealer or major security-based swap participant, to multiple natural persons who effect or are involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant.

As used in this paragraph (b)(2)(ii), the term *communications* means only written (including electronic) materials. Solely for purposes of section 15F(g)(1) of the Act (15 U.S.C. § 78o-10(g)(1)), the term *communications* also includes audio recordings of telephone calls. As used in this paragraph (b)(2)(ii), the term *communications* shall exclude:

(a) System-generated or system-displayed written text derived from oral communications;

(b) Electronic or digitally created transcripts, summaries, videos, or other recordings of oral communications;[12]

(c) Written text entered or uploaded by natural persons into collaborative tools or collaborative electronic platforms that permit one or more natural persons to edit or view the written text;[13]

[12] Such as closed captions or transcripts.
[13] Such as SharePoint, Jira, or Google Docs.

(d) Written text viewable in, or downloadable from, a data room, website, or repository, whether operated by the registered investment adviser or a third party;

(e) Reactions to electronic communications that are graphical icons (*e.g.*, likes or emojis); and

(f) Any communications that are administrative or logistical in nature.

No security-based swap dealer or major security-based swap participant shall be deemed to have violated this Rule 18a-6(b)(2)(ii) if such security-based swap dealer or major security-based swap participant has established and maintained policies and procedures reasonably designed, taking into consideration the nature of its business, to comply with the retention of communications covered by this Rule 18a-6(b)(2)(ii). The failure to retain communications shall not create a presumption that the policies and procedures were not reasonably designed to comply with this rule.