

MEMORANDUM

TO: File Number S7-19-21

FROM: Timothy C. Fox, Branch Chief
Office of Financial Responsibility, Division of Trading and Markets
U.S. Securities and Exchange Commission

DATE: May 23, 2022

RE: Webex Meeting with SIFMA Representatives

On May 11, 2022 Commission staff participated in a meeting conducted by Webex with representatives SIFMA staff, its members and its counsel to discuss the proposed amendments to the Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants (Release No. 34-93614).

Commission staff in the meeting included Michael Macchiaroli, Thomas McGowan, Randall Roy, Raymond Lombardo, Joseph Levinson, and Timothy Fox

Ruben Winitch from Morgan Stanley & Co., Levi Richardson from LPL Financial, Melissa MacGregor from SIFMA, and Chris Salter, Derek Manners and Adele Hayer from Allen & Overy participated in the meeting.

Shortly following the meeting, SIFMA staff provided Commission staff with the email and attachment, attached as Appendix A below.

APPENDIX A

From: [MacGregor, Melissa](#)
To: [Fox, Timothy C.](#); [Roy, Randall W.](#)
Cc: [Christopher Salter - Allen & Overy LLP \(Chris.Salter@AllenOvery.com\)](#); [Derek.Manners@AllenOvery.com](#)
Subject: Re: SIFMA 17a-4 Discussion
Date: Friday, May 13, 2022 8:47:06 PM
Attachments: [Redundancy 17a-4 Revisions - May 2022.docx](#)

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Tim and Randall -

Please see the attached proposed language on redundancy. Our thinking in paragraph (B) is that it makes clear that the system must include the redundancy capability to meet the standard and removes references to "sets" of records which is not entirely accurate for modern recordkeeping.

Happy to answer any questions.

Melissa

From: Fox, Timothy C. <FoxT@SEC.GOV>
Sent: Wednesday, May 11, 2022 11:39 AM
To: MacGregor, Melissa <mmacgregor@sifma.org>; Roy, Randall W. <RoyR@SEC.GOV>
Cc: Christopher Salter - Allen & Overy LLP (Chris.Salter@AllenOvery.com) <chris.salter@allenovery.com>; Derek.Manners@AllenOvery.com <derek.manners@allenovery.com>
Subject: RE: SIFMA 17a-4 Discussion

Thanks Melissa.

Regards,
Tim

Timothy C. Fox
Branch Chief
Division of Trading and Markets
U.S. Securities and Exchange Commission
(202) 322-3238

From: MacGregor, Melissa [mailto:mmacgregor@sifma.org]
Sent: Wednesday, May 11, 2022 11:37 AM
To: Fox, Timothy C. <FoxT@SEC.GOV>; Roy, Randall W. <RoyR@SEC.GOV>
Cc: Christopher Salter - Allen & Overy LLP (Chris.Salter@AllenOvery.com) <chris.salter@allenovery.com>; Derek.Manners@AllenOvery.com
Subject: SIFMA 17a-4 Discussion

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Thank you all for inviting us to further discuss the proposal. It certainly feels like the open issues are getting a bit more narrow. Attached is what we proposed back in 2020 for 17a-4(i). It's a relatively small fix. We will revert back on redundancy issues in the next couple of days.

Participating today:

Reuben Winitch - Morgan Stanley

Levi Richardson - LPL

Chris Salter, Derek Manners, Adele Hayer – Allen & Overy (counsel to SIFMA)

Melissa MacGregor – SIFMA

Melissa MacGregor

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Exchange Act Rule 17a-4(i)

(1) If the records required to be maintained and preserved pursuant to the provisions of §§ 240.17a-3 and 240.17a-4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to § 240.17a-3(b)(2), or other recordkeeping service on behalf of the member, broker or dealer required to maintain and preserve such records, such outside entity must file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the member, broker or dealer required to maintain and preserve such records and will be ~~surrendered~~made available promptly on request of the member, broker or dealer and including the following provision if such records are available and retrievable by the outside entity:

With respect to any books and records maintained or preserved on behalf of [BD], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current ~~hard~~ copy of any or all or any part of such books and records.

(2) Agreement with an outside entity will not relieve such member, broker or dealer from the responsibility to prepare and maintain records as specified in this section or in § 240.17a-3.

Exchange Act Rule 18a-6(f)

(1) If the records required to be maintained and preserved pursuant to the provisions of §§ 240.18a-5 and 240.18a-6 are prepared or maintained by a third party on behalf of the security-based swap dealer or major security-based swap participant, the third party must file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the security-based swap dealer or major security-based swap participant and will be ~~surrendered~~made available promptly on request of the security-based swap dealer or major security-based swap participant and including the following provision if such records are available and retrievable by the outside entity:

With respect to any books and records maintained or preserved on behalf of [SBSD or MSBSP], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete, and current ~~hard~~ copies of any or all or any part of such books and records.

(2) Agreement with an outside entity will not relieve such security-based swap dealer or major security-based swap participant from the responsibility to prepare and maintain records as specified in this section or in § 240.18a-5.

(v)(A) Includes a backup electronic recordkeeping system that meets the other requirements of this paragraph (f) and that retains the records required to be maintained and preserved pursuant to §§2570.17a-3 and 240.17a-4 in accordance with this section in a manner that will ~~serve as a be~~ redundant ~~set of records~~ if the original electronic recordkeeping system is temporarily or permanently inaccessible; or

(B) ~~Retains~~ Has a recordkeeping system that has redundancy capability that ensures access to one or more additional sets of the records required to be maintained and preserved pursuant to §§2570.17a-3 and 240.17a-4 ~~in a manner that the additional set or sets of records will serve as a redundant set of records if the primary set of records are temporarily or permanently inaccessible.~~