



November 23, 2010

Via Electronic Mail (rule-comments@sec.gov)

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attention: Florence E. Harmon, Deputy Secretary

**Re: Notice of Filing of Proposed Rule Change To Adopt FINRA Rules
Regarding Books and Records in the Consolidated FINRA Rulebook, File
No. SR-Phlx-2010-121, Exchange Act Release No. 63181 (Oct. 20, 2010)
("Notice")**

Dear Ms. Harmon:

SIFMA¹ appreciates the opportunity to comment on the above-captioned notice regarding the incorporation of certain NYSE Rules and NASD rules related to books and records into the consolidated FINRA rulebook. SIFMA commends FINRA for taking the time to carefully consider the consolidation of these rules and hopes to continue a dialogue with FINRA regarding this and the remaining unconsolidated sections. SIFMA previously provided substantive comments on FINRA Regulatory Notice 08-25 ("RN 08-25"), and SIFMA continues to believe that the issues raised in that letter continue to be important concerns regarding this proposal which is substantially similar to the proposal in RN 08-25.² In addition to those concerns, SIFMA is highlighting some other important matters which must be addressed before finalizing the proposed rules.

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² Letter from Melissa MacGregor, SIFMA, to Marcia E. Asquith, FINRA, re: FINRA Regulatory Notice 08-24; Books and Records (June 11, 2008).

1. Use of Electronic Signatures

First, SIFMA continues to believe that additional guidance may be required with regard to use of electronic signatures to satisfy any FINRA signature requirements in a member firm's books and records. In the Notice, FINRA directs members to two interpretive letters which set out some criteria for using electronic signatures and automatic electronic approval procedures for new accounts.³ SIFMA does not believe that these letters provide adequate guidance for the use of electronic signatures by member firms because the letters are narrowly written – narrower than SEC guidance on the same issue.⁴

SIFMA requests that FINRA adopt a standard for use and retention of electronic signatures in all books and records related to the business of the member. Such guidance would further elaborate upon the SEC E-Sign Guidance and could be included within the interpretive material accompanying the FINRA proposed rule. Incorporating these interpretations into the rule (or the accompanying interpretations) would also be helpful to small firms which may have more limited compliance and legal resources. SIFMA welcomes the opportunity to discuss with the SEC and FINRA the details of such standards and how such standards could be applied.

2. Customer Account Information

a. Customer Age

Under proposed Rule 4512(a)(1)(B), members would be required to maintain certain information about their customers including “whether customer is of legal age.” SIFMA believes that collecting and retaining a customer's date of birth would be more feasible, more useful and more consistent with prevailing industry practice. Such information would enable a member to determine both whether customers are of legal age for the purpose of contracting, as well as assist with supervisory efforts, such as conducting surveillance of customers that are at an age when they are considered "seniors" and therefore subject to heightened supervision. Whether a customer is "of legal age" requires a conclusion by the person collecting the data, when compared to the customer's date of birth which is objective and straightforward

³ See Letter to Selwyn Notelovitz, Charles Schwab & Co., Inc., from Eric Moss, NASD, dated June 4, 2002 (available at: <http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/P002556>), and Letter to Jeffrey W. Kilduff, O'Melveny & Myers, LLP, from Nancy Libin, NASD, dated July 5, 2001 (available at: <http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/P005336>).

⁴ See Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000, Exchange Act Rel. No. 44238 (May 1, 2001) (“SEC E-Sign Guidance”).

b. Definition of “Natural Person”

SIFMA is also concerned about the potential scope of proposed Rule 4512(a)(3) which says, "the member shall maintain a record of the dated, manual signature of each named, natural person authorized to exercise discretion in the account." SIFMA is concerned that “natural person” could be interpreted to include other authorized agents (who are not associated persons of a broker-dealer) and in turn, that members would have to keep manual signatures of all authorized agents who exercise "discretion" in a client's account. Taken in conjunction with Regulatory Notice 09-63, it would appear as though this "natural person" language is directed towards associated persons and not other authorized agents of customers (which are addressed separately in proposed Rule 3260(b)). SIFMA requests that this point be clarified in the final rule.

3. Customer Complaints

SIFMA continues to believe that the four year recordkeeping requirement for customer complaints in proposed Rule 4513 is unnecessarily burdensome on member firms. Member firms are generally required to retain copies of communications for three years pursuant Rules 17a-3 and 17a-4 of the Securities Exchange Act of 1934 (“Exchange Act”). FINRA’s only stated reasoning for increasing the retention period for customer complaints is that FINRA has a four year examination cycle. SIFMA does not believe that the FINRA examination schedule alone should warrant a longer retention period for customer complaints, in contrast with any other document FINRA may review during an examination. Instead, SIFMA urges the Commission and FINRA to continue to permit member firms to retain customer complaints for three years pursuant to Exchange Act Rules 17a-3 and 17a-4. In order to function efficiently, broker-dealers should be subject to consistent recordkeeping requirements, which require procedures, technology and training to implement and which therefore should not be changed – particularly a well-established standard such as this one – without a more comprehensive discussion of all related issues including cost estimates compared to the anticipated benefits.

In addition, SIFMA is again requesting that the definition of “customer complaint” in proposed Rule 4513(b) be limited to “written” customer complaints. The definition of an oral complaint is highly subjective which may cause confusion. SIFMA proposes that the proposed definition be amended as follows: “For purposes of this Rule, ‘customer complaint’ means any written grievance by a customer or any person authorized...”

4. General Retention Requirement

SIFMA notes that proposed Rule 4511(b) imposes a new 6 year retention period on “books and records” where there is no specified retention period. SIFMA is not aware of a definition of “books and records” within the FINRA rules which would provide any further clarity for members. SIFMA requests that the proposed Rule 4511(b) be amended to mirror the definition in NASD Rule 3110(a) which appropriately cross-references the SEC record retention rules under the Exchange Act.

Finally, SIFMA requests that FINRA specifically state that the proposed rule requirements apply only to records generated after the effective date of the proposal.

* * *

Thank you for the opportunity to provide comments on this proposal. If you have any questions, please call me at 202-962-7385.

Respectfully submitted,

A handwritten signature in black ink that reads "Melissa MacGregor". The signature is written in a cursive, flowing style.

Melissa MacGregor
Managing Director and Associate General Counsel