



MEMORANDUM

To: Gary Gensler, SEC Review Team Lead

From: SIFMA Global Advocacy Staff

Date: November 25, 2008

Subject: Securities and Exchange Commission Transition Issues

The current financial crisis underscores the need for effective financial services oversight. As the premier securities industry trade association representing over 650 member firms, the Securities Industry and Financial Markets Association (SIFMA) is uniquely positioned to speak to the issues affecting our capital markets. Our goals as an organization for 2008 have been to:

- Promote effective and efficient regulation
- Facilitate more open, competitive and efficient global capital markets
- Champion investor education, retirement preparedness and savings
- Ensure the public's trust in the securities industry and financial markets

The Securities and Exchange Commission plays a key role in the financial markets in which our members operate as the primary regulator of broker-dealers, investment advisors, securities markets and securities clearance and settlement systems. The SEC implements rules and sets policies on a broad range of regulatory issues, including capital standards, business conduct and customer protection rules, disclosure requirements and accounting standards. It also has examination and enforcement authority. Each of these mandates, when properly implemented, can further the important goals of fair, efficient and orderly markets and foster greater investor confidence and ultimately greater participation in our capital markets. When poorly implemented, however, regulation can raise the costs of doing business and drive commerce offshore.

At this critical time, the selection of a strong SEC Chairman who is knowledgeable about the financial markets and who has demonstrated management experience is essential. The SEC is an agency with nearly 4000 employees spread across its Washington, DC headquarters and its regional offices. It has a budget of over \$800 million. These resources need to be deployed



efficiently and effectively. The SEC needs a visionary leader who can clearly articulate the mission of the agency both to the public and to the employees of the agency.

There has been an exodus of experienced staff in recent years. It will be imperative that a new SEC Chairman be a leader who can attract and retain talent to assume key positions in the agency.

This is clearly an inflection point in the history of financial services oversight. We need an SEC that embraces the following principles of effective regulation:

- Foster a consultative relationship between regulators and industry participants
- Require robust cost-benefit analyses before promulgating new regulations or rules
- Establish a bifurcated regulatory regime for wholesale and retail markets
- Link enforcement actions to regulatory policy objectives
- Focus on meaningful investor protection rather than compliance with technical rules, and avoid promulgating rules that do not prevent material harm to investors
- Avoid a one-size-fits-all approach to regulation
- To the full extent possible, shift from a rules-based approach to regulation to a principles-based approach for regulators and industry participants
- Prudential oversight is instrumental to the success of a principles-based approach. This entails a consultative relationship between a regulator and an industry participant whereby the regulator proactively assists the industry participant to develop a robust control and compliance environment

There will be a vigorous policy debate in Congress in the coming months, and perhaps years, over the optimal structure of financial regulation in the United States. SIFMA welcomes the opportunity to participate in that debate. Having an SEC Chairman who is well prepared to promote the strengths of the agency and who can adapt to a potentially changing regulatory landscape will also be important. For example, if the U.S. adopts a regulatory model in which the Federal Reserve or another agency acts as a systemic risk regulator, the SEC will need a Chairman who will foster the necessary coordination between the agencies. In addition, the SEC may need a Chairman who can redeploy employees or merge agencies if, for example, the SEC and the CFTC are combined into a single agency. SIFMA is on record as supporting such an approach in order to promote regulatory efficiency.

The SEC's focus has traditionally been almost uniformly focused on domestic issues. But today, financial markets are international in nature, characterized by products and services offered by institutions that operate across the globe without regard to geographical boundaries. SIFMA believes the SEC must embrace the need for strengthening international cooperation and building on the existing global infrastructure and standards. Too often today, firms are subject to disparate rules across multiple jurisdictions that are aimed at the same policy objectives. The differences add compliance costs for multinational firms and also lead to inconsistent outcomes



from country to country, resulting in regulatory arbitrage. SIFMA has advocated international cooperation and coordination in financial services regulation. Indeed, most recently we presented our views on the importance of international cooperation to the White House in advance of the G-20 Economic Summit.

In addition to our overarching interest in a well functioning SEC, SIFMA also has a number of specific issues it hopes will be address in the Obama administration. These include:

- Rule 15a-6 and mutual recognition issues
- Market data – SRO market data fee proposals should be subject to notice and comment and held to a fair and reasonable standard (that is, based on the cost of collecting, consolidating and distributing market data)
- The convergence of the investment advisory and broker-dealer sales models and the need to rationalize the rules applicable to both
- The need to achieve harmonization and streamlining of SRO trading regulations (e.g., make uniform firms’ trade reporting requirements, SRO sponsored access and direct market access rules, and upstairs SRO trading rules)
- Short sales – work with the industry on appropriate changes to current short sale regulations and proposals. Also, before instituting any new short sale bans, locate or delivery requirements, end-of-day or intra-day trading halts or bans, a new tick or price test, or disclosure requirements, ensure that the benefits will outweigh the costs to the industry (both in terms of market impact, such as the impact on liquidity, and implementation costs)
- Focus on market, liquidity and disclosure issues for municipal securities
- Finalize valuation guidelines pending at Division of Investment Management applicable to asset management firms
- Finalize new prime brokerage guidance in a no-action letter

Once again, we thank you for your outreach to SIFMA as a key stakeholder and we are committed to being a constructive voice on the many policy issues that will be debated in the coming months. In the meantime, if you have any questions, or need anything further, please contact Michael Paese, Head of Global Advocacy, or Ira Hammerman, General Counsel at 202-962-7300.