



November 14, 2014

By Electronic Mail (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-35, FINRA Requests Comment on a Revised Proposal to Adopt Consolidated FINRA Rule 2231 (Customer Account Statements)

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the revised proposal to adopt consolidated Financial Industry Regulatory Authority (“FINRA”) Rule 2231 (“Customer Account Statement Proposal” or the “Proposal”) that FINRA put forth in Regulatory Notice 14-35. SIFMA understands and fully supports FINRA in its effort to protect sensitive customer information from unauthorized persons. Further, SIFMA greatly appreciates the changes FINRA made to its original proposal to maintain the quarterly customer account statement period, consistent with industry practices and rules. However, SIFMA continues to have significant concerns with the Proposal.

SIFMA’s comments below outline the material concerns of members regarding the Customer Account Statement Proposal. Of greatest concern, SIFMA believes that the Proposal’s requirement to send duplicate account statements to customers in contravention to the express wishes of a customer or a person with appropriate legal authority over the customer’s affairs, while intended to help mitigate investment fraud and related concerns, could potentially result in an increased risk of customers’ privacy being violated, account compromises and/or identity theft. The Proposal’s potential to erode the legal authority of

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 support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

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a person granted a Power of Attorney also deeply concerns SIFMA members. Further, the duplicate account statement requirement outlined in the Proposal would be costly and poses various operational and administrative challenges for firms. Separately, if the Proposal is adopted in any form, SIFMA stresses the need for prospective application, due to material operational challenges, which include persons who have become incapacitated since providing the original instruction to direct mail to a third party, as well as the significant costs associated with remediating hundreds of thousands of account relationships. As such, SIFMA respectfully asks that FINRA amend the Proposal as outlined below.

I. Transmission of Customer Account Statements to Other Persons or Entities

Proposed Supplementary Material .02, Transmission of Customer Account Statements to Other Persons or Entities, provides the following:

[e]xcept as required to comply with NASD Rule 3050 and Incorporated NYSE Rule 407, a member may not address or send account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding power of attorney over the customer's account unless (a) the customer has provided written instructions to the member to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account; and (b) the member sends duplicates of such statements or other communications in accordance with this Rule directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 below;

A. Proposed Rule Supplementary Material .02 – Registered Investment Companies & Advisors

Although SIFMA appreciates that FINRA has clarified that members are not required to obtain the written consent of the customer before sending duplicate statements and other communications pursuant to NASD Rule 3050 and NYSE Rule 407, as stated in previous comment letters, SIFMA believes this exception should be broadened under the same logic to permit members to send duplicates to an employer that is a Registered Investment Company or Registered Investment Adviser, both of which are also required to obtain this information about their associated persons' personal securities dealings pursuant to Rule 17j-1 under the Investment Company Act of 1940 and the provisions of an investment adviser's code of ethics as required by Rule 204A-1 under the Investment Advisers Act of 1940, respectively.

B. Proposed Rule Supplementary Material .02 (b) Significant Duplicate Account Statement Concerns

SIFMA remains concerned about the impact of the new requirement in proposed Supplementary Material .02 (b) requiring members to continue to send account statements and other account communications to the customer directly, even when the customer has provided specific instructions to send such account documentation to a third party or where a third party has otherwise been properly authorized to receive such documents on behalf of the customer. Generally, SIFMA believes that customers should have the power to direct their statements pursuant to their specific instruction, or the specific instruction of a person with the legal authority to act on behalf of the customer. The SEC has also acknowledged the right of a customer to designate a third-party to receive important disclosure information in the context of an Investment Adviser relationship, without the need to deliver duplicates of the information to the client.² SIFMA believes that the approach of Incorporated NYSE Rule 409(b) has served both the investing public and the industry well, and FINRA has not established widespread complaints or problems in this area that would justify such a substantial, potentially risky, and costly expansion of account statement delivery obligations. In addition, the cost burden associated with this new requirement would be particularly severe for member firms where customers have not elected to receive electronic account communications.

SIFMA believes that imposing an obligation to send sensitive customer information to the customer's address in all cases may, in fact, increase the risk of a breach of customer confidentiality, privacy or lead to potential fraudulent account activity or identity theft. Importantly, the increased risks of fraud do not end at the customer's mailbox. An account statement or other sensitive information sent to customers who do not want it, even if safely received, still remains a danger to the customer until destroyed. Some examples where these risks are most evident include elderly and/or diminished capacity customers, foreign customers, and high net worth customers, as outlined below.

² The SEC, in adopting amendments to the custody rule under the Investment Advisers Act of 1940, recognized that some clients may not wish to receive the custodial reports that an Adviser is required to direct its qualified custodian to send "directly to clients" under the Rule. The SEC included in the amended rule new section (a)(7) that allows for delivery of the required statements and reports to an "independent representative" designated by the client to receive them on the client's behalf. "Independent Representative" is generally defined in Rule 206(4)-2(d)(4) as a person that acts as agent for an advisory client and by law or contract is obligated to act in the best interest of the advisory client and who is not controlled by, under the common control of, or within the past two years, has not had a material business relationship with, the adviser. As this rule is designed to meet the desires of a client that does not want to receive the required disclosures and information, there is no requirement that the client also receive duplicates of the information that is delivered to the designee. (*See* Final Rule Release No. IA-2176 and 17 CFR 275.206(4)-2.)

i. Elderly or Diminished Capacity Clients

An elderly customer moving to, or living in, a care facility or person who has experienced a decline in capacity and cannot regularly receive mail often directs a firm to send account statements and other information directly to a designated third party, as opposed to the care facility or other permanent residence. Permitting the customer in this circumstance to suppress delivery of statements to his or her address of record enhances security of the account by greatly reducing the risk that a third party with fraudulent intent can intercept this sensitive information.

Fraud based on the interception of customer account statements intended for elderly or incapacitated individuals is not just a speculative occurrence, and the concern regarding such fraud forms the basis for many customer requests to firms that mail be sent to third parties whom they know and trust. Preventing broker dealers from following a customer instruction to stop sending mail to their residence in such circumstances will not serve to mitigate risk, but may, in fact, increase the risk compromise of a customers' confidential, personal, and sensitive information.

ii. Foreign Customers

In certain jurisdictions, mail delivery is not secure and poses security concerns for the customer. In the most extreme circumstances, in areas where kidnap for ransom is not uncommon, the display of wealth may endanger the customer and the customer's family.³ As such, foreign customers with these concerns often appoint a local agent to receive his or her mail. Supplementary Material .04 incorporates Rule 3150, which cites safety and security as an acceptable reason for a "hold mail" request. However, the arrangements described above are not by definition "hold mail" arrangements as the mail is actually delivered to the customer's agent as requested, for further delivery to the client. We note that, while such parties represent trusted "locations" for receipt of mail (as evidenced by the client instruction), these agents do not generally hold a power of attorney ("POA") over the account.

SIFMA maintains that such arrangements should be permitted with written customer instruction. If such arrangements could only be established under a formal POA arrangement, it would pose substantial issues in terms of managing customer expectations, as well as posing substantial implementation challenges. If a customer instruction to hold mail for an acceptable reason is enough to suppress the delivery of statements entirely, a

³ *Kidnap for Ransom Today*, Catlin Group Limited, October 2012 (available at <http://www.catlin.com/flipbook/kidnap-and-ransom-today/files/inc/342692550.pdf>)

As high-profile and wealthy individuals have become more security-conscious, kidnappers in countries like Mexico, Nigeria, India and Pakistan have turned their attention to more accessible victims, including ordinary workers, local merchants, mid-level managers, professional people and government employees. Such local residents remain the favored target of kidnappers and extortion gangs throughout the world. They are more numerous and less well protected. Their abduction tends to receive less police attention, and ransom payments, if smaller, are usually faster.

similar customer instruction to deliver mail directly to a third-party for legitimate and acceptable reasons should also be sufficient. Under such circumstances as described in the example, requiring firms to send duplicate customer account statements and other materials to the account holder would, in most instances, frustrate the purposes underlying the customer's instruction.

iii. High Net-Worth Customers

High net-worth individuals and families often delegate the handling and review of statements and other account materials to trusted advisors in a family office. Many high net-worth customers expressly do not want the sensitive information contained within statements delivered to their homes, as the receipt, control, and destruction of this sensitive information is not a priority for them individually. Further, the frequent travel and multiple residences of many high net-worth customers create unique challenges related to the receipt, control, and destruction of this sensitive information. As such, the requirement to send duplicate account statements to the home of a high net worth customers would serve as a nuisance and potentially drive high net-worth customer to other financial service providers (e.g., custodial arrangements) not subject to these requirements.

C. Power of Attorney and Specific Client Approval

Proposed Rule Supplementary Material .02(b) requires written consent from the customer to send statements to an agent appointed under a POA. The POA relationship is a powerful one, in which a formal legal document drafted and effected pursuant to state law outlines the scope and the limits of an agent's power under the POA. In not allowing the agent or attorney-in-fact to act in the legal capacity specifically granted to them by the customer, SIFMA believes that the Proposal erodes the legal authority of an agent or attorney-in-fact in a manner that may be inconsistent with applicable state laws. Further, the Proposal potentially harms customers for whom the POA is a crucial legal structure for protecting his or her legal rights and finances. The below example outlines one aspect of the potential deleterious effect the Proposal may have if adopted as written.

i. Power of Attorney Example

- Customer A, in consultation with an attorney, executes a POA appointing his daughter, Carey Caregiver, as agent consistent with state law.
- Customer A follows the appropriate process to file the POA with Broker Dealer XYZ, who manages Customer A's account.⁴
- Fifteen years later, Customer A has reached an advanced age where the receipt, control, and destruction of sensitive mailings, such as customer account statements, have become a challenge. Further, Customer A has increasing

⁴ SIFMA notes that an agent of a POA may, and often does, file an executed POA with the broker dealer directly, especially in the instances of a person who has experienced a decline in capacity.

health challenges that require home care, giving rise to the danger that a person may intercept her mail and use the information for fraudulent purposes.

- Carey Caregiver, now stepping up to care for her mother, contacts Broker Dealer XYZ to discuss Customer A's account, including the following:
 - Updating Customer A's investment objectives due to her changes health condition;
 - Liquidating certain assets to cover Customer A's increased care; and
 - Directing Customer A's statements to Carey Caregiver, and stopping mailing to Customer A directly to prevent potential fraud.
- If the Proposal is approved as written, Broker Dealer XYZ would follow Carey Caregiver's instructions as to changing investment objectives and liquidating assets, if appropriate under the POA, but not allow Carey Caregiver to re-direct Customer A's statements, as Customer A did not "provided written instructions to the member to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account."

SIFMA believes the requirements of the Proposed Rule undermine and erode the ability of agents and attorneys-in-fact to properly exercise their fiduciary responsibilities, and are inconsistent with the power given agents or attorneys-in-fact under state law. Further, the Proposal's requirements will negatively impact customer plans to address a future where they may require assistance in managing their legal and financial affairs.⁵

ii. Springing Power of Attorney – Additional Challenges.

In addition to the above scenario, a client may create a power of attorney specifically for use only when he or she lacks capacity (a "Springing Power of Attorney") and is therefore unable to provide written consent. This creates a "catch 22" where a person with the power to stand in the legal shoes of an incapacitated person, and perform many other aspects of his or her legal rights, cannot redirect mail away from an address at which an incapacitated person once resided.

A detailed example of the springing POA scenario is as follows:

- Customer B properly executes and notarizes a "springing" POA consistent with state law that gives Randy Responsible the power to act in the place of Customer B should she become incapacitated, and files this POA with Broker Dealer ABC, who manages Customer B's account.

⁵ SIFMA understands there is a concern that the person exercising the power granted under the POA may, in fact, be the person who is taking advantage of the customer. However, while SIFMA agrees such situations do exist, SIFMA contends that the vast majority of financial arrangements that include the grant and use of a POA involve conduct consistent with the fiduciary obligations imposed upon the attorney-in-fact and operate consistent with the customer's best interest.

- Customer B is involved in a motor vehicle accident, which causes an incapacitating traumatic brain injury.
- Following the assessment of their personal physician, and with the pre-condition of incapacity met, the springing POA give Randy Responsible the legal power to act in the place of Customer B.
- Randy Responsible, who, pursuant to the grant in the POA, has the power to act in Customer B's account in all other capacities (e.g., place trades, pay bills), seeks to direct Customer B's statements to Randy Responsible's legal office. This is important, as Customer B, recovering from the above traumatic brain injury, is incapable of monitoring and safeguarding her mail, as well as incapable of providing written instruction to re-direct her mail.
- If the Proposal is approved as written, Broker Dealer ABC would not allow Randy Responsible to re-direct Customer B's statements, as Customer B did not "provided written instructions to the member to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account."

In the above scenarios, and others not noted here, the Proposal appears to limit the usefulness of a POA. Many state laws define the powers of an attorney-in-fact or agent under a POA in ways that may potentially conflict with the Proposal. Further, approximately 17 states have laws that outline penalties for financial institutions that refuse to respect the legal standing of a person acting with the authority of a POA. For example, Florida's POA state law outlines penalties for loss that arises from a third person who, in violation of this section, rejects a power of attorney.⁶ It is not difficult to envision material loss resulting from fraud the proximate cause of which is a statement sent to a customer in contravention of the direction of the POA agent. As such, the constraints this proposal puts on the agent or attorney-in-fact under a POA conflicts with many state laws and may create legal risk to financial institutions.

D. Statements in Lieu of 10b-10 Confirms

Generally, Rule 10b-10(a) requires that a broker dealer send a written confirmation to a customer that outlines the material elements of a transaction in that customer's account at or before completion of the transaction. SIFMA understands from its discussions with FINRA, that the requirement, under proposed Supplementary Material .02, for firms to send duplicate account statements and other materials to a customer if originals are sent to a third-party, has been drafted to track commentary noted in the SEC's November 10, 1994 Final Rule release 34-34962 announcing the adoption of amendments to Rule 10b-10. Specifically, in its release, the SEC acknowledged that a customer may waive the personal receipt of immediate transaction confirmations—with such confirmations delivered instead

⁶ Power of Attorney and Similar Instruments, Fla. Laws title XL, ch. 709, 709.2120(5) (outlining the penalties associated with inappropriately rejecting a legitimate power of attorney, including liability for damages).

to a fiduciary with discretion over the customer's account—under the following conditions:

[t]he broker-dealer must (1) obtain from the customer a written agreement that the fiduciary receive the immediate confirmation; and (2) send to the customer a periodic report, not less frequently than quarterly, containing the same information that would have been contained in an immediate confirmation. [Citation omitted] The customer may not waive this periodic report.⁷

The stated reason for these requirements was “to ensure that the beneficial owner of the account receive[d] material information needed to verify the transaction in the account.” In a footnote to this commentary, the SEC acknowledged comments it received that the requirements regarding delivery of a periodic statement in lieu of immediate transaction confirmations were not consistent with the provisions in then NYSE Rule 409(b).⁸ The incorporated NYSE Rule permits firms to send confirmations, customer account statements, or other communications to a non-member person holding power of attorney over a customer account if the firm had received written instructions from the customer to do so, or duplicate copies of the information are sent to the customer at some other address the customer has designated in writing. The SEC did not invalidate the NYSE Rule. Rather, the Commission noted that, “to the extent the rules of ... any self-regulatory organization, conflict with the Commission's stated policy, the more restrictive requirement would govern.”

As noted above, the SEC requirements are designed to provide material information to a customer. However, in an effort to protect an investor from potential investment fraud, the rigid application of these rules exposes certain customers to potential identity theft and other fraudulent acts. In the 20 years since the SEC made these comments, the world has changed significantly with respect to access to mechanisms for effectuating identity fraud and the capabilities of those who are intent to do so. SIFMA believes that FINRA should adopt a rule for statement delivery that is reasonable in light of the customer concerns already noted in this letter. Specifically, a rule that would meet customers' desires to protect themselves from potential financial abuse, or who simply prefer that someone else receive and review their statement information, irrespective of any potential conflict with Rule 10b-10.

Importantly, FINRA has a “know your customer” rule that imposes upon member firms a requirement to not only know their customer but to also know essential facts about anyone who has authority over a customer's account. The “know your customer” rule can serve to mitigate concerns that a customer might be taken advantage of by an individual who has authority over his/her financial affairs. Member firms are also required to have reasonable procedures to identify and react to “red flags” that might indicate the occurrence of

⁷ Securities and Exchange Act Release No. 34-34962 (November 9, 1994), 60 FR 59612.

⁸ *Id.* at note 36.

potential fraud. There are no sure-fire methods for totally eliminating the greed that leads to financial abuse and neither the requirements of 10b-10, or NYSE Rule 409(b), have successfully prevented financial crimes from occurring. Neither will proposed Rule 2231, whether it is adopted as proposed or modified consistent with this comment letter or any other comments FINRA receives. However, FINRA should allow broker dealers to honor a customer's legitimate concern, or the concerns of those charged with their care, that sensitive financial information not be sent directly to the customer, especially when doing so will help prevent potential financial abuse.

From a customer protection perspective, SEC Rule 10b-10 and proposed FINRA Rule 2231 are, in large part, rules of "disclosure," which require broker dealers to keep a customer informed regarding the material aspects of his or her account. Disclosure only protects a customer to the extent a customer is competent, capable of, and willing to review the information that has been disclosed. If the customer is not one or all three of these, disclosure may cease to be informative, protective or curative and may, instead, lead to material harm. As such, a customer, or person with legal authority to act on behalf of the customer, should have the power to direct a broker dealer to disclose important information to someone they trust and whom they believe has the competence, capability, and willingness to act in his or her best interest. In such circumstances, rules that require broker dealers to burden customers with the receipt, control, and destruction of statements and other sensitive information do not work in the best interest of the customers, but instead provide opportunity for those who could do them harm.

To the extent FINRA's final rule remains less restrictive than the requirements of SEC Rule 10b-10, firms would still be required to comply with the SEC rule until such time as the SEC provided more flexibility in its requirements to account for legitimate customer concerns.⁹ On this point, SIFMA plans to seek out interpretive guidance from the SEC that provides firms the flexibility to mitigate the identity theft and fraud risks to customers.

E. Alternative to Written Consent Process

In circumstances where customers wish to continue to receive statements and also direct duplicates to a third party, unlike above, SIFMA members strongly prefer the operational flexibility to allow customers to orally direct a firm to send statements to a third party, with appropriate ongoing documentation of that direction. Specifically, where a customer orally directs a firm to send statements to a third party, the Rule should allow for acceptance of the customer instruction with subsequent and ongoing notice to the customer of the changes. For example, this confirmation could consist of including the third party's

⁹ Interestingly, if the proposed rule is adopted by FINRA as written, it will be the more restrictive rule as applied to the delivery of account statements in connection with the custody of advisory accounts. As noted in footnote 2, duplicate statements are not required to be sent to customers when a designee has been appointed under Rule 206(4)-2 OF THE Investment Advisers Act of 1940. The FINRA rule would, however, require the delivery of duplicate statements.

identity prominently on the statements to the customer going forward. This process would be consistent with current practice, and would prevent the operational challenge of obtaining written consent in instances where written consent is impracticable.

Separately, DVP/RVP¹⁰ accounts generally instruct broker dealers to suppress statements orally, as DVP/RVP customers closely monitor their account activity, making the summary statements superfluous. Firms often follow up this oral request to suppress statements with a confirmation and notice process. Permitting firms to continue this confirmation and notice process following a verbal request for DVP/RVP accounts would be consistent with current practice, and would similarly prevent the operational challenge of obtaining written consent.

F. Alternative Proposed Rule 2231.02 Text

For the reasons outlined in the above sections, SIFMA respectfully requests that FINRA either delete Supplementary Material .02 (b) from the proposed rule, or model proposed Supplementary Material .02 after the requirements of Incorporated NYSE Rule 409(b) for accounts over which the customer has provided a power of attorney, and set out the requirements of .02(a) and (b) disjunctively replacing “and” with “or,” thus providing firms with greater flexibility to comply with the Rule. If FINRA were to accept this approach, Supplementary Material .02 could be revised to read:

Except as required to comply with NASD Rule 3050, Incorporated NYSE Rule 407, Rule 17j-1 under the Investment Company Act of 1940, and the provisions of an investment adviser's code of ethics as required by Rule 204A-1 under the Investment Advisers Act of 1940, a member may not address or send account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding power of attorney over the customer's account, unless (a) the customer has provided specific instructions to the member to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account; *or* (b) the member continues to send duplicates of such statements or communications in accordance with this Rule, directly to the customer either in paper format or electronically as provided in Supplementary Material .03 below. For the purposes of Supplementary Material .02, a “customer” includes a person with the legal authority to act on behalf of an account holder, including, but not limited to, a person holding a Power of Attorney, a court appointed guardian or conservator, or a person with similar legal authority;

¹⁰ Receipt Versus Payment (RVP) services allow an institutional seller to require cash payment before delivering its securities at settlement. Delivery Versus Payment (DVP) services allow an institutional buyer to pay for its purchased securities only when the securities are delivered. Generally, firms only extend RVP/DVP privileges to their institutional customers.

This simple change would permit member firms to continue to honor the requests of their customers and those with appropriate legal standing on behalf of their customers to direct account communications to a trusted adviser or attorney-in-fact and avoid the additional costs and potential account security concerns associated with sending account communications to the customer's address of record, even when the customer, or a person with the legal authority to act on behalf of the customer, has designated a third party to receive them.

G. Prospective Applicability

If, however, FINRA seeks approval for Supplementary Material .02 in any form, SIFMA strongly urges FINRA to make clear that the Rule only has prospective application and does not apply retroactively, thereby permitting firms to continue to rely on oral instructions provided by customers under the current regulatory regime prior to the Rule's effective date. This would avoid the burdensome exercise of reviewing and "remediating" existing accounts for which written instructions to address account statements and other account communications to a third party may not have been received, or for which duplicate statements are not sent to customers who have provided written instructions that their statements be sent to third parties in their place, both in reliance upon and in accordance with Incorporated NYSE Rule 409(b). A SIFMA firm with approximately 7.4 million accounts provided a cost estimate of over 14 million dollars just for the postage and mailings associated with the nearly 2.2 million accounts potentially impacted by the prospective application of proposed Supplementary Material .02. These costs do not include the staffing and technology costs associated with such remediation, which would be substantial. As such, SIFMA firmly believes that imposing such a regulatory cost on member firms is not warranted in this case where no evidence has been presented that the current regulatory regime has been anything less than effective.

H. Clearing Firm Reliance on Introducing Brokers

SIFMA would like clarity regarding the Proposal's obligation to obtain written authorization from a customer regarding the mailing of statements to a third party, and the ability of a clearing firm to rely on introducing brokers in asserting the authenticity of a written approval. As an introducing broker generally retains the "know your customer" requirements regarding, among other things, activity in customer accounts, introducing brokers are better suited to assess the authenticity of requests from customers to direct mail to a third party.

Additionally, SIFMA asks that FINRA bring to the attention of introducing firm members the impact of the proposed rule change on their obligations. In particular, introducing firms are in the best position to know the customer and, as long recognized through contract and in practice, and as permitted under FINRA Rule 4311, introducing firms are typically allocated the responsibility for opening accounts as well as maintaining and updating customer addresses, which ultimately drives the delivery of account statements.

I. Other Communications

As stated in our previous comment letter, read broadly, the proposed Rule 2231 Supplementary Material .02 requirement for sending of duplicate copies of “other communications” to customers could encompass a myriad of operational communications with third parties (e.g., custodians, issuers and transfer agents, counterparties to trades, banks in connection with disbursement and deposits and a member firm’s own vendors) where firms need to send “communications” about a customer’s account in order to provide the services requested for the customer. SIFMA seeks clarity from FINRA regarding the scope of “other communications” in the context of proposed Rule 2231 Supplementary Material.02(b), including examples of the type of communications FINRA would consider “other communications.”

J. Householding of Customer Statements

When two or more customers share the same address firms often combine all account statements for the same address in a single envelope that is addressed to one of the members of the household. This process, generally known as “householding” is generally outlined in customer account agreements. Firms offer customers the ability to opt out of the bundling of statements if he or she desires through a request for separate statements. SIFMA believes that, pursuant to the current practice, in place for as long as many firms have records, the firm does not require written or verbal authorization to put one family member’s account statement in the same envelope addressed to another, such as a spouse. Changing this long-standing practice would cause significant disruption in the current statement process. For example, in a household where 2 spouses have individual accounts, IRAs, a joint account, and separate trusts, firms would see those as 7 different account holders who would have to be named. As such, SIFMA would like to confirm that under the Proposal, unless a customer requests otherwise, a firm may combine account statements for accounts of two or more customers sharing the same address in the same envelope addressed to one member of the household.

K. Address Change Confirmation

In the event FINRA were to adopt Supplementary Material .02 as proposed, SIFMA believes FINRA should clarify in new Supplementary Material, rule release commentary, or an adopting regulatory notice that while firms must continue to comply with SEC and FINRA rules regarding confirmation and supervision of address changes, consolidated Rule 2231 does not create any additional obligation to validate a new address is that of the customer’s beyond the existing requirements of SEC Rule 17a-3(a)(17)(B)(2), which requires notification of an account address change be furnished to the old account address, and NASD Rule 3012(a)(2)(B)(ii),¹¹ which requires reviews of changes to account information including address changes.

¹¹ To be consolidated under FINRA Rule 3110(c)(2)(A)(v), effective December 1, 2014.

L. Consent from Multiple Accountholders

In the event FINRA were to adopt Supplementary Material .02 as proposed, SIFMA believes FINRA should accept the specific consent of one accountholder on a joint account to send statements to a third party, provided the accountholder making the request is not seeking to suppress customer account statements to the original accountholders. To require all accountholders to consent in such circumstances would pose a significant operational challenge with no offsetting regulatory benefit.

II. DVP/RVP ACCOUNTS

Proposed FINRA Rule 2231(b) provides that account statements need not be sent to a customer pursuant to proposed FINRA Rule 2231(a) if, among other conditions, the “customer” consents to the suspension of such statements in writing. SIFMA wishes to confirm that members may treat an institutional customer trading pursuant to discretionary authority in the DVP/RVP account or the authorized person or institution that opened the account as the “customer” for these purposes and collect and maintain the consents from such institutions, instead of the underlying customers.

III. Use of Logos, Trademarks, etc.

Generally, Proposed FINRA Rule 2331 Supplementary Material .07 outlines that logos, trademarks and other similar identification of a person should not be used on a customer statement “in a manner that is misleading or causes customer confusion.” SIFMA members request that FINRA provide additional clarity as to what FINRA may consider as “misleading” or causing “customer confusion.” SIFMA members would greatly appreciate specific examples of what does, and what does not, constitute logo use that may “mislead” or cause “customer confusion.”

IV. Use of Third Party Agents

FINRA proposes to delete and not transfer over the NYSE’s Rule Interpretation 409.03 to FINRA Rule 2231, which requires a written undertaking to the NYSE representing certain conditions are satisfied when using third party agents to prepare and/or transmit customer account statements. SIFMA supports the removal of this requirement and requests that FINRA confirm in rule release commentary or an adopting regulatory notice that conditions in 409.03 no longer apply but that firms may continue to rely on 409.03 for pre-existing agreements that utilize Third Party Agents.

V. Specific FINRA Questions Outlined in Regulatory Notice 14-35

A. FINRA Request for Comment

Q1. Does the revised proposal to retain the quarterly delivery requirement address the operational and cost concerns commenters raised about the proposed monthly delivery requirement in the initial filing?

SIFMA greatly appreciates FINRA moving away from monthly statement requirements, and this does address the portion of the potential costs outlined in our previous comments related to monthly statements only. However, the current Proposal does not mitigate the material costs to SIFMA members regarding the system, process and technology changes necessary to comply with Supplementary Material .02 if adopted as proposed.

Q3. What impact will proposed Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons) have on existing practices with respect to the transmission of account statements and other documents to third parties?

As outlined above, the material impact to firm practices of proposed Supplemental Material .02 will result from the requirement to send duplicate account statement to customers and the inability of firms to rely on the direction from the customer, or a person with the legal standing to act on behalf of the customer, when directing statements away from a customer's address.

Q5. Should the proposed rule include specific exemptions that would allow firms not to send account statements to customers under identified situations?

Yes. If duplicate statements will be required, FINRA should recognize that there are instances where the customer's best interests are better served by not forcing delivery of account statements to them. However, as outlined above, SIFMA believes that the proposed rule should not include the requirement to send duplicate account statements to a customer. Where other rules might require such delivery, such as the requirements under SEC Rule 10b-10(a) regarding confirms, FINRA and its member firms must defer to the SEC rule. SIFMA plans to advocate for common sense customer account delivery standards for mitigating identity theft and fraud where necessary. This advocacy will occur at the federal level, and the inclusion of restrictive language in the FINRA rule will frustrate this effort.

B. FINRA Request for Economic Impact

Q1. What direct and indirect costs will result from proposed Supplementary Material .02?

Direct costs include, but are not limited to, additional postage printing, and mailing expense where mailing duplicate customer account statements and other materials. Should the Proposal's requirements be retroactive, the costs to remediate customer accounts with mail relationships already in place would be substantial. A SIFMA firm with approximately 7.4

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million accounts provided a cost estimate of over 14 million dollar just for the postage and mailings associated with the nearly 2.2 million accounts potentially impacted by the prospective application of proposed Supplementary Material .02. These costs do not include the staffing and technology costs associated with such remediation, which would be substantial.

Indirect, but material costs include the fraud that will likely arise from identity theft and fraud where duplicate customer accounts are sent to customers against his or her request or the request of a person with the legal authority to act on behalf of the customer. In addition to the fraud concerns, the Proposal may have a material negative impact on the client experience, and serve to drive clients to advocacy models without this rigorous duplicate disclosure requirement.

Q2. Are the costs imposed by proposed Supplementary Material .02 warranted by the potential protection to customers from receiving duplicate account statements?

SIFMA members do not believe the “potential protection to customers from receiving duplicate account statements” outweighs the increased risk to customers of theft, fraud, and abuse where sending duplicate statements is contrary to the direction of a customer or a person with an appropriate legal authority (e.g., an agent granted authority under a POA).

Q3. What benefits or burdens would result for customers from proposed Supplementary Material .02?

SIFMA is unable to identify appreciable benefits that arise from the changes to existing practices outlined in Supplementary Material .02. Conversely, the proposal as written will significantly increase costs associated with consent and mailings (e.g., postage and printing). Further, customers bear the burden of receipt, control, and destruction of materials that have instructed firms not to send to their address.

Q4. What impact, if any, would proposed Supplementary Material .02 have on business practices and competition in the financial industry?

As outlined above, in the context of high-net-worth customers, the requirement to send duplicate account statements to the home of a high net worth customers would serve as a nuisance and potentially drive high net-worth customers to other financial service providers (e.g., custodial arrangements) not subject to these requirements.

Ms. Marcia E. Asquith

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VI. CONCLUSION

The Securities Industry and Financial Markets Association (“SIFMA”) appreciates the opportunity to comment on the Customer Account Statement proposal the Financial Industry Regulatory Authority (“FINRA”) put forth in Regulatory Notice 14-35. As outlined above, SIFMA continues to have material concerns about the Proposal. Of particular concern, it is SIFMA’s belief that there are circumstances, some detailed in this comment, where the requirements of Supplemental Material .02 as proposed do not operate in the best interest of customers.

If you have any questions or require further information, please contact the undersigned at (212) 313-1260.

Sincerely,

A handwritten signature in cursive script that reads "Thomas F. Price".

Thomas F. Price
Managing Director
Operations, Technology & BCP

cc: Kris Dailey, Vice President, ROOR, FINRA
Kosha Dalal, Associate Vice Pres. and Associate General Counsel, OGC, FINRA