SIFMA
Securities Industry and Financial Markets Association

April 7, 2008

By Telecopy and Overnight Mail

Ms. Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F St., NE
Washington, D.C. 20549

Re: **Release No. 34-57308: Notice of Solicitation of Public Views Regarding Practices Being Developed to Deal with the Increasing Number of Senior Investors**

Dear Ms. Morris:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is pleased to provide comment on the referenced Notice which seeks to solicit views from all interested parties regarding industry practices to deal with the increasing number of senior investors. Specifically, the Securities and Exchange Commission (SEC), the North American Securities Administrators Association (NASAA) and the Financial Industry Regulatory Authority (FINRA) seek to identify effective practices used by financial services firms in dealing with senior investors and to provide such information to the public.

SIFMA commends the SEC, FINRA and NASAA for their continued efforts to protect all investors. In particular, we applaud and welcome their recent initiative to identify and spotlight successful practices of financial services firms in serving the needs of senior investors. SIFMA's highest priority is to maintain the public's trust in the financial services industry. SIFMA therefore fully supports this joint regulatory effort as we too believe identifying existing sound practices within our industry can serve as a helpful guidepost for member firms as they assess and develop their own policies and procedures that address the needs of senior investors.

1 SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C. and London, and its associated firm, the Asian Securities Industry and Financial Markets Association, is based in Hong Kong.

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We also agree and echo the regulators' recognition that there is no "one-size-fits-all" approach. In that regard, while SIFMA would encourage our members to incorporate industry "best practices" within their firms, we believe firms should continue to develop their own policies, procedures, training and monitoring and make their own business judgments, taking into account their particular firm size, client profile, business model, and resources.

Finally, to the extent helpful, SIFMA would be pleased to conduct a formal survey of its membership and share those results with the SEC, NASAA and FINRA. In all events, SIFMA looks forward to partnering with the SEC, NASAA, and FINRA as they move forward with this important initiative.

Marketing and Advertising to Seniors

Firms currently have policies and procedures governing principal review and pre-approval of all sales materials, including those provided to senior investors. With increased regulatory scrutiny on firm's marketing and advertising practices to senior investors, many firms have begun to review and enhance, where necessary, their policies and procedures to address such concerns. SIFMA member firms have found the following practices to be effective:

Pre-Approved Templates **-** Some firms have developed and encourage the use of pre-approved, standardized marketing templates by their registered representatives. These templates, which contain the firm name and logo, include, for example, seminar outlines, invitations, handouts, prospecting letters or related marketing materials.

Timeframes for submissions - Depending on the firm's business model and supervisory structure, some firms have found it helpful to establish timeframes for submissions of sales materials in order to allow sufficient time to conduct their supervisory review and incorporate any recommended modifications to the materials.

Written Guidance to Sales Personnel - Firms have developed and make available to their registered representatives and supervisory personnel written guidance regarding the content of all sales materials, including that it be balanced, fair and made in good faith. In addition, such guidance highlights and prohibits use of potentially problematic language that could be construed as high-pressure sales tactics (e.g., "limited time offer" or "you must sign up today").

Supervisory Visits to Sales Seminars – In an effort to evaluate the delivery of sales seminars, some firms utilize firm employees (such as registered principals, Compliance personnel, managers/supervisors or their designee) to attend a certain number of sales seminars in order to confirm that the firm's policies and procedures are being followed. In certain instances, firms might choose to conduct some of these visits on an unannounced basis.

Senior Designations **–** Firms have developed a variety of means to prohibit the use of professional designations or certifications that are false or create a misleading impression that the person possesses expertise on a given topic when that is not accurate.[2] For example, some firms require that their registered representatives use only those professional designations that have been pre-approved by the firm; others will collect business cards from registered representatives during branch office inspections and review the designations that are displayed.

Account Opening

SIFMA members typically do not have specific disclosure requirements or account opening review procedures unique to senior investor clients. Moreover, firms request personal information, including date of birth, financial and tax identification information, from all their customers to comply with various laws and rules, including suitability rules required by regulatory authorities, record-keeping and other requirements under the federal securities laws, and anti-money laundering, anti-terrorist financing, and tax laws.

In addition to the foregoing information, some firms also obtain information about the client's employment status, including providing a "retired" option at account opening. As with other types of information, firms confirm and update information every three years pursuant to their books and records obligations.

Product and Account Review

Member firms already have in place procedures for developing and vetting new products prior to distribution, which include, among other things, determining whether the new product may be inappropriate for any clients or types of accounts. For example, a firm might determine that a certain product may be inappropriate for purchase in a tax-deferred account; or that variable annuity riders may be inappropriate for investors above a certain age. As part of their new product review process, some firms also incorporate liquidity risk among the factors considered.

Product Specific Transactions - In addition to general supervisory obligations, many firms have heightened supervisory review processes that address eligibility and suitability requirements, which, among other items, include client age. For example, many firms address age in their procedures regarding sales of deferred variable annuities.

Ongoing Review of the Relationship, Appropriateness of Products and Surveillance Reviews

As stated above, firms conduct surveillance and reviews of investment activity on an ongoing basis, regardless of the age of the client. For example, an account may generate alerts or exceptions based upon such criteria as excessive activity or over-concentration in a particular security. In conducting reviews of identified activity, firms consider relevant suitability information on file, including the age of the client, which can result in heightened scrutiny at

[2] SIFMA supports efforts by NASAA to create a Model Rule on professional designations as referenced in its December 7, 2007 Comment Letter. See SIFMA Comment Letter dated December 7, 2007, which can be found at http://www.sifma.org/regulatory/comment_letters/59534684.pdf

lower levels of activity or concentration for senior investors. Firms utilize various exception reports, both web-based and paper-based, as part of their ongoing supervisory responsibilities. In determining the risk parameters of certain accounts identified in those reports, some firms use client age as one factor. Again, client age can trigger an exception for review at lower levels of risk in the case of senior investors.

Because client age is a relevant supervisory consideration at all stages of life, firms do not typically employ stand-alone senior reviews (e.g., a monthly review of senior accounts). Rather, firms rely upon their supervisory systems, including multiple variables to create the types of reports described above. In addition, since firms utilize risk-based testing in connection with FINRA Rule 3012 to test these supervisory systems, some firms are considering factoring in a client's age with respect to their testing program.

Meeting the Customer's Changing Needs

Firms are extremely sensitive to the changing demographics and the number of senior investors who make up their client base. Accordingly, firms are striving to work with their clients as they encounter difficult physical and mental health issues while at the same time helping to maintain the dignity of their senior clients.

Firm Guidance and Training - In conducting their required annual compliance training, firms cover such topics as suitability, supervision, employee conduct, conflicts of interest, and fraud prevention. These topics are equally applicable to all investors, including seniors and the issues that they confront. In addition, many firms have developed, or are considering developing, guidance and/or training to increase awareness by client-facing employees of the changing needs of senior investors. Both the form of delivery and the content of the training vary among firms. Some firms incorporate senior issues within their Firm Element training and/or annual compliance meeting. Others incorporate senior-related issues within regional and branch management training.

The content of the training includes a wide range of topics, including perceived diminished mental capacity and suspected undue influence or possible abuse from a third party, suitability issues for seniors, particularly relating to liquidity needs (i.e. where expenses have changed in relation to income), product suitability, and senior designations and certifications. The training and guidance also may include reference to possible "red flags" or scenarios that might warrant escalation to supervisors or others, including compliance or legal staff. Examples of possible "red flags" may include notable changes in a client's behavior with regard to investment choices, requests for disbursements to new or unknown parties, or the granting of power of attorney or other form of control over an account that appears to be inconsistent with the client's history. Training may also address whether a client has a durable power of attorney, trust account or other client authorization that could allow others, such as children or caregivers, to make investment decisions on behalf of the client.

Escalation Process - Some firms have adopted or are developing escalation processes that include alerting the appropriate supervisor and/or legal and Compliance units.

Web-Based Investor Education –Among the services provided to their clients, some firms have developed web-based and/or paper-based investor education materials that address issues such as investor fraud or scams, including how a client can recognize and respond to potential scams. In addition, some firms have included on their public websites links to materials on regulators' websites, including those for the SEC, FINRA, and NASAA that address senior investors.

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SIFMA appreciates the opportunity to provide comments in response to the Notice soliciting input on industry best practices to address the needs of senior clients. We look forward to working with the SEC, NASAA and FINRA on this and other senior initiatives, including participating in the annual SEC "Senior Summit." If you have any questions or require further information, please contact the undersigned at (202) 962-7373, or Amal Aly, SIFMA Managing Director and Assistant General Counsel at (212) 313-1268.

Very truly yours,

Ira D. Hammerman

Ira D. Hammerman
Senior Managing Director and General Counsel

cc: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Kathleen L. Casey, Commissioner
Lori Richards, Director of the Office of Compliance
Mary Schapiro, CEO of FINRA
Karen Tyler, President of NASAA