Securities Industry Association
120 Broadway - 35 Fl. • New York, NY 10271-0080 • (212) 608-1500, Fax (212) 968-0703
1425 K Street, NW • Washington, DC 20005-3500 • (202) 216-2000, Fax (202) 216-2119
www.sia.com, info@sia.com

December 31, 2004

Ms. Anita Thomas
Office of Europe and the Mediterranean
Office of the U.S. Trade Representative
1724 F Street, N.W.
Washington, D.C. 20508
FR0439@ustr.eop.gov

Re: Enhancing the Transatlantic Economic Relationship

Dear Ms. Thomas:

The Securities Industry Association[1] ("SIA") appreciates the opportunity to respond to the United States Trade Representative's Federal Register notices of August 17 (Vol. 69, No. 158) and November 9 (Vol. 69, No. 216), soliciting comments about ways to further strengthen the transatlantic economic relationship. SIA is extremely supportive of the steps already taken by the U.S. government to establish a U.S.-EU Financial Markets Dialogue[2], and similarly applauds the recent announcement by the U.S. Securities and Exchange Commission and the EU's Committee of European Securities Regulators to open discussions intended to further regulatory convergence in the transatlantic capital markets[3].

[1] The Securities Industry Association brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. At its core: Commitment to Clarity, a commitment to openness and understanding as the guiding principles for all interactions between investors and the firms that serve them. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry employs 790,600 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated $213 billion in domestic revenue and an estimated $283 billion in global revenues. (More information about SIA is available at: www.sia.com.)

[2] "Financial Market Dialogue: United States financial officials, including representatives from the Treasury Department, Securities and Exchange Commission, and the Federal Reserve, are engaged with their EU counterparts to ensure that European capital market liberalization is achieved in a non-discriminatory manner and are market transparent, efficient, and protect against risk." White House Fact Sheet from the U.S.-EU Summit, May 2, 2002.

[3] SEC-CESR Set Out the Shape of Future Collaboration, SEC Press Release, "The enhanced relationship between the SEC and the members of CESR has two objectives. The first objective is improved oversight of US and EU capital markets through increased communication regarding regulatory risks to enable regulators to anticipate regulatory problems more effectively. The second objective is to promote through timely discussion regulatory convergence with regard to future securities regulation." June 4, 2004, http://www.sec.gov/news/press/2004-75.htm.

SIA's submission provides some background on the importance of the U.S.-EU economic relationship. In addition, the submission provides our views on developing a more pro-active strategy for a capital markets dialogue, as well as recommendations for U.S. and EU trade negotiators with responsibility for the WTO financial services negotiations. We have attached supporting materials that provide further details.

These pioneering efforts in the financial services give SIA confidence that regular, flexible dialogue at all levels among relevant U.S. and EU officials and regulators, with continuing input from the private sector, has the capacity to strengthen the transatlantic economic relationship in other sectors as well, and can help to overcome the inevitable disagreements that occur in a close relationship. For that reason, we write in further strong support of the U.S.-EU Financial Markets Dialogue, both in its own right, and as an example of what we believe is an extremely productive approach to strengthening the transatlantic relationship in particular sectors and overall.

The health of the U.S. and EU economies are inextricably bound together, with trade and cross-border investment flows linking them and their capital markets. The recent historic enlargement of the EU through the accession of 10 new Member States only magnifies the region's importance to the United States.

This relationship provides the global U.S. securities industry and its corporate, institutional and retail clients with tremendous opportunities. Indeed, SIA's largest members engaging in global business receive approximately 20 percent of their net revenues (excluding interest) from European markets. About 35,000 European employees support these operations. Moreover, their revenues from Europe are close to double what is earned from their Asian operations. This is clear evidence that the largest U.S. firms are, in the truest sense, global in nature. Another example of the close financial linkages: six of SIA's top-20 member firms (as measured by equity capital) have European parents.

Fundamentally, the U.S.–EU relationship relies on achieving common social and public policy goals. The increasing closeness of the relationship is underscored in the statistics and the large trade in financial ideas, talent, technology and capital across the Atlantic; the nascent EU securitization market, U.S.-EU discussions on fair-value accounting and market structure, and improved EU consultation practices, to name just a few examples. In light of these linkages, we commend the Administration, and particularly U.S. Treasury Under Secretary Taylor, Assistant Secretary Quarles, and their staffs for opening a dialogue with the EU dedicated specifically to financial services issues.

The two-way flow of trade, portfolio, and direct investment between our two regions exceeds $1 trillion annually – more solid evidence of the partnership cemented between the U.S. and the EU. Importantly, the EU offers U.S. companies an alternative pool of capital for raising debt and equity capital. For example, in 2003 U.S. companies raised more than $171.1 billion in the EU capital market, of which $164.3 billion was in corporate debt issues, and more than $6.8 billion in equity. EU investors have a healthy appetite for U.S. securities and are a major supplier of capital and liquidity to the U.S. market. In 2003, EU investors acquired $225 billion of U.S. stocks and bonds; $33.6 billion in corporate debt, $170 billion of U.S. treasuries and agencies, and $21.3 billion in equity. Impressively, EU-based investors have added $1 trillion of U.S. stocks and bonds to their holdings since 2000.

The EU markets also provide U.S. investors with alternative investment options for purposes of portfolio diversification. For example, U.S. investors own more than $1.3 trillion in foreign stocks, of which over $712 billion, or 53 percent, are EU shares.[4] U.S. ownership of foreign bonds shows a similar emphasis. U.S. holdings of EU bonds totals more than $227 billion, or 45 percent, of total foreign bond holdings. Clearly, the economic ties are substantial, and will continue to expand, particularly as the new EU accession countries prosper.

Without question, the U.S. and EU are one another's most important economic partner. U.S. companies, for example, get half their foreign profits from the European Union. U.S. direct investment in the European Union totaled $700 billion in 2002, and U.S. companies employed more than 3.3 million people in Europe (2001 data). EU investment in the U.S. is also significant. At the end of 2002, EU companies had direct investments in the U.S. totaling nearly $862 billion, or 64 percent of the $1.35 trillion total invested in the U.S. by all foreign nations. Moreover, EU companies based in the U.S. accounted for nearly 3.7 million U.S. jobs in 2001 (most recent data). Two-way trade in 2003 for goods and services totaled $589 billion, accounting for 23 percent of all U.S. trade volume.

U.S. Action Plan

The securities industry plays an important, and increasingly significant, role in the EU capital markets. As a result, the Directives adopted and other actions taken by the EU relating to financial services directly affect our ability to provide the products and services our customers worldwide demand, as well as our ability to maintain our international competitiveness. The implementation and enforcement phase of the key capital market directives at the core of the FSAP – as well as other topics under current discussion in Europe such as clearing and settlement, corporate governance, and the examination of rating agencies – will have a direct impact on the U.S. capital markets and U.S. financial services firms operating in Europe.

Consequently, SIA urges the Administration to support the U.S.-EU Financial Markets Dialogue with an even more pro-active strategy. Specifically, SIA recommends complementing the Dialogue with a coordinated U.S. inter-agency Action Plan (USAP) that can work with individual EU members states and Brussels to achieve an integrated, deep, transparent and liquid European capital market:

⇨Placement of a Treasury Attaché in Brussels;

⇨Increased inter-agency coordination – particularly utilizing State Department contacts in EU member states;

⇨Continued formalized regulatory dialogue between the SEC and the Committee of European Securities Regulators (CESR) on regulatory convergence; and

⇨Greater Congressional/Parliamentary interaction.

SIA looks forward to working with the Administration and Congress to further promoting efficient transatlantic capital markets that will boost economic growth and job creation.

[4] The International Investment Position of the Unites States at Yearend 2002, July 2003, Survey of Current Business, U.S. Department of Commerce, Bureau Of Economic Analysis.

U.S.-EU Partnership: Working Together to Reduce Barriers to Global Financial Markets

The 1997 WTO financial services agreement was an important step forward in achieving trade liberalization and market access in financial services. Importantly, this agreement established a good foundation upon which WTO Members can pursue further liberalization to reduce and eliminate remaining barriers. We urge U.S. and EU negotiators to provide joint leadership to achieve commercially meaningful WTO financial services commitments from developing countries in the WTO Doha Round negotiations. The successful conclusion of the 1997 WTO Financial Services Agreement was in large part a result of the co-operative efforts of the U.S. and EU negotiators.

U.S. and EU negotiators should seek a forward-looking WTO agreement that commits countries to enhanced levels of regulatory transparency in addition to addressing specific trade barriers. Regulatory practice in the financial services industry has developed unevenly and often at odds with the market access and national treatment commitments of WTO members. We believe that regulatory transparency commitments have a unique power to break down barriers to global trade in financial services and urge negotiators to focus particular attention on them.

* * * * * * * * * * * * * * * * *

The Securities Industry Association appreciates the opportunity to address some of the important securities industry issues related to the U.S.-EU Financial Markets Dialogue. We look forward to working with the Administration and Congress. If you have any questions concerning our comments, or would like to discuss our comments further, please feel free to contact me at 212/618-0513.

Sincerely,

David G. Strongin
Vice President, Director, International Finance

Attachments
-SIA Testimony on the U.S.-EU Financial Markets Dialogue
-SIA Regulatory Transparency Paper

TESTIMONY OF
RICHARD E. THORNBURGH, CHAIRMAN
SECURITIES INDUSTRY ASSOCIATION

THE U.S.-EU FINANCIAL MARKETS DIALOGUE: TRANSATLANTIC GOOD NEWS

BEFORE THE
HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON DOMESTIC AND INTERNATIONAL MONETARY POLICY
JUNE 17, 2004

Madam Chair and members of the Subcommittee:

I am Richard E. Thornburgh, the 2004 Chairman of the Securities Industry Association[1], as well as the Chief Risk Officer for Credit Suisse Group, a member of the Executive Board, and ex-officio member of the Credit Suisse First Boston Operating Committee.

Thank you for your continued interest in the U.S.-EU Financial Markets Dialogue, and the European Union's Financial Services Action Plan (the "Action Plan" or the "FSAP"). I also thank you for giving me, and the Securities Industry Association, the opportunity to be heard on these topics, which are of great interest to financial market participants in the United States and Europe.

[1] The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs 780,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated an estimated $209 billion in domestic revenue and $278 billion in global revenues. (More information about SIA is available on its home page: www.sia.com)

My testimony today will focus on the critical importance of U.S. involvement in the development of EU capital markets. In particular, I will make the following points:

- The U.S.-EU Financial Markets Regulatory Dialogue is working – we need to build on what is now in place;
- The EU capital markets are both a critical source of investment capital for U.S. companies, and vital to U.S. investors, asset managers, and pension and mutual funds seeking portfolio diversification;
- Proper implementation of the "Action Plan" or "FSAP" is essential for the creation of an integrated, transparent, and liquid capital market; and
- We recommend a U.S. Action Plan to complement the implementation of FSAP including:
    - Placement of a Treasury Attaché in Brussels;
    - Increased inter-agency coordination – particularly utilizing State Department contacts in EU member states;
    - Formalized regulatory dialogue between the SEC and the Committee of European Securities Regulators (CESR) on regulatory convergence, as has been started; and
    - Greater Congressional/Parliamentary interaction.

The Dialogue is Working

I am especially pleased to testify today about the U.S.-EU Financial Markets Regulatory Dialogue. The securities industry believes that this Dialogue can be a starting point as well as an integral tool in promoting the best interests of the U.S. and EU economies and capital markets, including the development of an equity culture.[2] With the Dialogue in place, we believe it should be complemented with a coordinated U.S. inter-agency Action Plan (USAP) that can work with individual EU members states and Brussels to achieve FSAP goals: an integrated, deep, transparent and liquid European capital market.

The securities industry – both here and in the EU – has been a strong supporter of the FSAP. We have worked closely with the European Commission, the European Parliament and

[2] This will be critical if Europe is to stimulate the development of risk capital. EU Risk Capital Action Plan, http://europa.eu.int/comm/internal_market/en/finances/mobil/risk-capital_en.htm

member-state regulators to help ensure that the Action Plan's objectives for a single, integrated, efficient EU capital market is realized. The FSAP is a considerable undertaking and we commend the continued commitment of member-state governments, the European Parliament, and the European Commission to this endeavor. I will discuss the FSAP's initial successes, which we believe are substantial, and certain aspects of the Action Plan, such as the Investment Services Directive (ISD), that we believe might have been accomplished differently if the Dialogue had been in place earlier.

Perhaps most importantly, I will address the future, and the desirability of building on existing capital-market linkages through a U.S.-EU regulatory-convergence dialogue. Not only are these issues important for the continued growth and integration of the EU's capital market and the broader transatlantic capital market, but also they are issues we believe will benefit greatly from the collective views to be offered by the participants to the U.S.-EU Financial Markets Dialogue. In this regard, we commend both the U.S. and EU for their consultation with SIA on capital-markets issues related to the Dialogue.

The FSAP (And The Dialogue) Are Important To U.S. Issuers and Investors

The U.S. relationship with the EU is extremely strong. Notwithstanding the inevitable disagreements that occur in a close relationship, the U.S. and EU have deep and ever-growing political and economic ties. The health of our respective economies is inextricably connected, with trade and cross-border investment flows linking the transatlantic economies and capital markets. The recent historic enlargement of the EU through the accession of 10 new Member States magnifies the region's importance to the United States.

This relationship provides the global U.S. securities industry and its corporate, institutional and retail clients with tremendous opportunities. Indeed, SIA's largest members engaging in global business receive about 20 percent of their net revenues (excluding interest) from European markets. About 35,000 European employees support these operations. Moreover, their revenues from Europe are close to double what is earned from their Asian operations. This is clear evidence that the largest U.S. firms are, in the truest sense, global in nature. Another example of the close financial linkages: six of SIA's top-20 member firms (as measured by equity capital) have European parents, including my own.

Fundamentally, the U.S.–EU relationship relies on building common social and public policy goals. The increasing closeness of the relationship is underscored in the statistics and the large trade in financial ideas, talent, technology and capital across the Atlantic; the nascent EU securitization market, U.S.-EU discussions on fair-value accounting and market structure, and improved EU consultation practices, to name just a few examples. In light of these linkages, we commend the Administration, and particularly U.S. Treasury Under Secretary Taylor, Assistant Secretary Quarles, and their staff for opening a specific dialogue with the EU on financial services issues.

The newly expanded EU – with 450-million potential investors and a Gross Domestic Product exceeding $8.6 trillion – is a key market for the U.S. securities industry and its clients.[3]

[3] The U.S. and EU equity markets combined account for 70 percent of global stock market capitalization. Not surprisingly then, our respective capital markets also benefit from the cross-border purchase and sale of securities. In 2003, EU-resident investors had transactions (purchases plus sales) in U.S. stocks and bonds of a record $12.8 trillion, resulting in their net acquisition of $225 billion of U.S. securities. Total U.S. transactions in EU securities amounted to about $4.3 trillion, a record, resulting in U.S. net divestitures of EU securities of about $7.6 billion.

The two-way flow of trade, portfolio, and direct investment between our two regions exceeds $1 trillion annually – more solid evidence of the partnership cemented between the U.S. and the EU. Importantly, the EU offers U.S. companies an alternative pool of capital for raising debt and equity capital. For example, in 2003 U.S. companies raised more than $171.1 billion in the EU capital market, of which $164.3 billion was in corporate debt issues, and more than $6.8 billion in equity. EU investors have a healthy appetite for U.S. securities and are a major supplier of capital and liquidity to the U.S. market. In 2003, EU investors acquired $225 billion of U.S. stocks and bonds; $33.6 billion in corporate debt, $170 billion of U.S. treasuries and agencies, and $21.3 billion in equity. Impressively, EU-based investors have added $1 trillion of U.S. stocks and bonds to their holdings since 2000.

The EU markets also provide U.S. investors with alternative investment options for purposes of portfolio diversification. For example, U.S. investors own more than $1.3 trillion in foreign stocks, of which over $712 billion, or 53 percent, are EU shares.[4] U.S. ownership of foreign bonds shows a similar emphasis. U.S. holdings of EU bonds totals more than $227 billion, or 45 percent, of total foreign bond holdings.

Without question, the U.S. and EU are each other's most important economic partner. U.S. companies, for example, get half their foreign profits from the European Union. U.S. direct investment in the European Union totaled $700 billion in 2002, and U.S. companies employed more than 3.3 million people in Europe (2001 data). EU investment in the U.S. is also significant. At the end of 2002, EU companies had direct investments in the U.S. totaling nearly $862 billion, or 64 percent of the $1.35 trillion total invested in the U.S. by all foreign nations. Moreover, EU companies based in the U.S. accounted for nearly 3.7 million U.S. jobs in 2001 (most recent data). Two-way trade in 2003 for goods and services totaled $589 billion, accounting for 23 percent of all U.S. trade volume. Clearly, the economic ties are substantial, and will continue to expand, particularly as the new EU accession countries prosper.

The rationale for the EU's Action Plan becomes clear when comparisons are made about market capitalization: the EU does not (yet) have a single financial market – it continues to be a

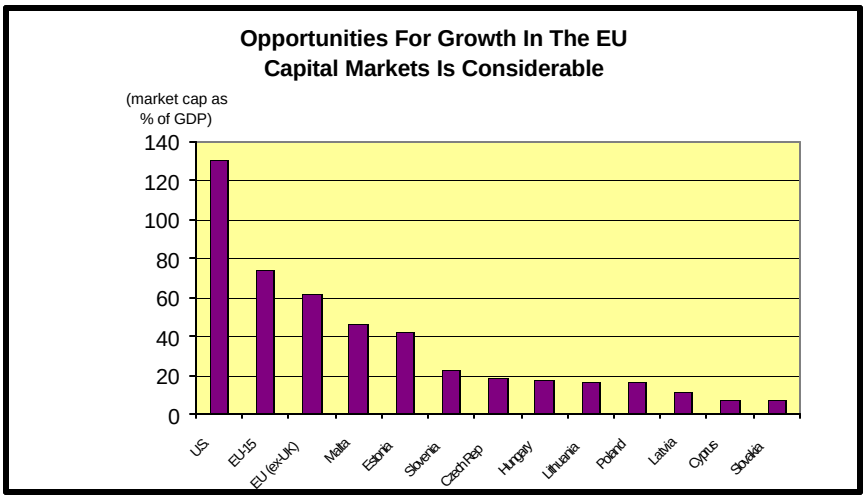
[4] The International Investment Position of the Unites States at Yearend 2002, July 2003, Survey of Current Business, U.S. Department of Commerce, Bureau Of Economic Analysis.

collection of national financial markets with an overlay of certain significant single-product markets, such as the Eurobond market. The result is that the EU's financial markets are still considerably smaller. By year-end 2003, the market capitalization of the U.S. equity markets totaled $14.3 trillion; almost double the EU total of $7.8 trillion. This tremendous potential for growth helped lead the European Union to conclude that integration of its financial markets should be a key political and economic priority. This, in turn, helped drive the development and pursuit of the FSAP.

U.S. securities firms have long participated in – and been committed to – the EU capital markets. They and their customers have participated directly in the gains that have been made to date, and expect to be among the primary instruments and beneficiaries of a more integrated, efficient EU capital market. The securities industry is extremely optimistic about the future of those markets and is committed to helping realize the full benefits intended by the FSAP.

Developing An Equity Culture

The FSAP, by integrating Europe's capital markets, will stimulate the demand and supply of funds to be intermediated by securities markets. This is critical because EU companies have, of course, traditionally been more dependent on banks for sources of financing through traditional loans. In fact, since the start of the EU single market in 1992, banking assets, as measured as a percent of Gross Domestic Product (GDP), have continued to increase, and ended 2002 at about 204 percent of GDP; the comparable number in the U.S. is 56 percent of GDP. By contrast, U.S. companies seek more capital for financing needs through the securities markets.



For example, the U.S. equity market is about 130 percent of GDP, while in Europe the comparable number is 74 percent.

Behind the FSAP lies the assumption that once the Action Plan is successfully implemented and enforced, EU capital markets will be more efficient, resulting in a broader pool of capital that can support economic growth and job creation. The FSAP will help to create an "infrastructure" for deeper and more liquid capital markets – but it alone cannot broaden the equity markets.

There are, in fact, promising signs of an emerging equity culture for investors in Europe. In the United Kingdom, one out of every three adults now invests in equities. In addition, institutional investors are also increasingly looking to build a greater equity presence by substantially increasing their equity holdings.[5] These trends and others bode well for EU investors and providers of financial products and services, as well as entrepreneurs seeking venture capital. As a result, the implementation of the FSAP – together with common internationally recognized accounting standards, the EU's corporate governance action plan, and improved efficiencies in clearing and settlement – will serve as a catalyst for the development of a Pan-European equity culture.

The recent U.S.-UK Enterprise Forum (May 24, 2004) was a great example of a bilateral attempt to share common experiences on developing a more dynamic "enterprise culture"[6] for which the development of equity investors is critical.[7] However, recent discussions by German

[5] An OECD study shows a similar trend. European holdings of stocks (as a percent of household financial assets) increased from 14.5 percent (1995) to 21.3 percent in 2000. During the same period, U.S. households increased their holdings form 32.0 percent to 33.1 percent. Household Wealth In The National Accounts Of Europe, The United States And Japan, March 4, 2003. http://www.olis.oecd.org/olis/2003doc.nsf/43bb6130e5e86e5fc12569fa005d004c/91e34dc3d290e515c1256cdf003fa444/$FILE/JT00140238.PDF

[6] U.S. Treasury Snow opening remarks to the Forum: http://www.treas.gov/press/releases/js1686.htm. Also, see: 1) Chancellor of the Exchequer Brown remarks at http://www.hm-treasury.gov.uk/newsroom_and_speeches/speeches/chancellorexchequer/speech_chex_240504.cfm; and 2) HM Treasury's website for "Enterprise and Productivity, http://www.hm-treasury.gov.uk/documents/enterprise_and_productivity/ent_index.cfm

[7] Also, note Results of the Competitiveness Council of Ministers, Brussels, 11th March 2004 Internal Market, Enterprise and Consumer Protection issues: "The Council adopted Conclusions welcoming the Commission's Action: The European Agenda for Entrepreneurship" as well as the progress achieved in implementing the European Charter for small enterprises. It identified a range of issues which now need to be taken forward, in particular helping to change attitudes to entrepreneurship through education and training, as well as ensuring that businesses can access the skills base they need to help them to grow; improving the flow of finance for small and medium sized businesses and seeing further progress in the

and French authorities to create "industrial champions"[8] illustrate the challenges that market forces face within the European Union, and contrast sharply with the market-oriented principles that underpin the FSAP, and could very well impede the ability to realize the full benefits of the FSAP.

Similar issues arose in the Investment Services Directive (ISD) debate on market structure. While the ISD eliminated the "concentration" rule, a number of EU countries supported pre-trade transparency provisions to protect local exchanges, which ran counter to goals of promoting greater competition, choice, and efficiency, and indeed might be a de facto concentration rule for certain transactions.[9] The U.S. must work together with its friends in Europe to bridge these differences within the EU and create the environment for private business to flourish, promote market reforms that empower investors and market participants, and allocate capital in a manner that maximizes growth, productivity, and job creation.

Overall, the success of the FSAP is important for the global economy. The U.S. and EU play leadership roles in the international marketplace, helping to set best practices, advocating open and non-discriminatory trade, and acting as engines for global economic growth and job creation. Ultimately, the success of the Action Plan will be determined by how it's implemented, interpreted and enforced by the European Commission and member states. Successful implementation of the FSAP – defined by its ability to create an integrated, deep, transparent, and liquid European capital market – is perhaps best viewed as a *perpetual annuity.*

---

overall regulatory environment.
http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/04/58&format=HTML&aged=0&language=EN&guiLanguage=en

[8] UK minister hits out at EU "industrial champions", Financial Times, James Mackintosh, May 24, 2004. Also see, Let the market choose Europe's champions, "The key to prosperity is ensuring the right conditions for business investment, particularly in innovative sectors. An essential condition is strong competition." Financial Times, June 13, 2004 by Frits Bolkestein, EU Commissioner for Internal Markets.

[9] SIA letter to David Wright, December 3, 2003. Also see Linklaters' Financial Markets Group Briefing - April 2004, EU Agrees Revised Investment Services Directive, "However, ISD2 does introduce a new market making obligation for off exchange dealing, which is a significant restriction for those who currently deal as principal in the UK and which may act as a back-door concentration requirement for some transactions."

A U.S. Action Plan Is Needed To Enhance Financial Markets Dialogue

Looking forward at the next phases of U.S. engagement and the U.S.-EU Dialogue we would suggest a coordinated inter-agency effort – a U.S. Action Plan – to fully and effectively engage EU governments and regulators at all levels about the need for open and competitive markets.[10] As stated before, our goals include: establishment of a Brussels Attaché; increased coordination with the State Department; further U.S. Congress/EU Parliament contacts; and a SEC/CESR coordinated focus on regulatory convergence.

The implementation and enforcement phase of the key capital market directives at the core of the FSAP – as well as other topics under current discussion in Europe such as clearing and settlement, corporate governance, and the examination of rating agencies – will have a direct impact on the U.S. capital markets and U.S. financial services firms operating in Europe. Moreover, the Directives will affect U.S. corporation access to an essential pool of capital for years to come. To ensure that U.S. interests in the European Union are adequately represented, we strongly believe that the U.S. Treasury Department should place a U.S. Treasury Financial Attaché in Brussels. Such a post would advocate U.S. industry interests and support the financial-sector dialogue in which the U.S. and EU are now actively engaged.

A Treasury Attaché in Brussels would make possible much-needed day-to-day dialogue with the Commission and other EU decision-makers as implementation of FSAP progresses; would coordinate with the U.S. regulatory community as appropriate; and would both monitor and study developments of significance to the U.S. financial community in partnership with the industry. The expected pace of change in the EU financial market over the next years, and the complexity of capital markets legislation now in formation, justifies this type of focused presence at the center of the newly expanded EU.

And while we strongly believe a Treasury Attaché in Brussels is needed, we also believe the U.S. State Department, through its Mission to the EU in Brussels, and its Embassies and Consulates in all 25 member states, can enhance and support the U.S. Treasury Department's efforts on behalf of the U.S. financial services throughout the European Union. We believe this

[10] In Appendix A to this testimony we have detailed our views on the development of the Financial Markets Dialogue, and its importance to the U.S. securities industry

effort is essential because individual EU member-states can – and often do – play a pivotal role in key EU legislative decisions. Our experience with the Investment Services Directive made this point plain when the European Parliament's amendments to the proposed ISD were reversed (unhelpfully) by a political vote of finance ministers of the member states acting in Council. This reality, and the fact that FSAP measures will be implemented at the member-state level, calls for a U.S. government strategy in Europe.

Treasury clearly has the leadership role in the financial markets Dialogue. However, the State Department has Foreign Service officers with access to, and daily contact with, key government officials in all 25 EU member states – including each of the 10 new member states. Consequently, the State Department is extraordinarily well positioned to be an integral resource for the Treasury Department in these efforts. Increased focus by the State Department, in coordination with the Treasury Department, should therefore be a key element in enhancing U.S. engagement in the Dialogue.

In addition, we firmly endorse the further development of greater understanding and closer relationships between key financial services legislators in the U.S. Congress and the members of the European Parliament (such as the European Parliament Economic & Monetary Affairs Committee, the House Financial Services Subcommittee and the Senate Banking Committee). We believe these efforts should:

1) encourage constructive discussion of existing extraterritorial issues, such as the implementation of the Sarbanes-Oxley Act, and the EU's Financial Conglomerates Directive;

2) facilitate and encourage mutual prior consultation (an "early-warning system") on legislation with potential extraterritorial effects, to help prevent future conflicts; and

3) identify common future legislative goals and common or compatible solutions wherever possible.

Looking Forward: We Need Dialogue At The Regulatory Level On Convergence

The U.S. securities industry strongly supported the pro-active action taken by U.S. and European regulators as part of the U.S.-EU Financial Markets Dialogue – a new regulators' dialogue on regulatory convergence. To date, the Dialogue has been largely reactive, with the

U.S. and EU addressing – and resolving – a substantial number of serious and vexing regulatory issues. The current dialogue has been problem driven.

However, we, and the U.S. Securities and Exchange Commission along with the EU's Committee of European Securities Regulators have felt that the Dialogue should be employed for more than just solving problems once they have arisen. We have collectively concluded that the enhanced cooperation and understanding achieved to date can be used pro-actively for the purpose of minimizing regulatory differences or divergences and helping to make the transatlantic capital markets more efficient and accessible.

As a result, we welcome the SEC and CESR terms of reference for the cooperation and collaboration regarding market risks and regulatory projects.[11] SIA's support of such a pro-active "regulatory dialogue" is consistent with the industry's goal to minimize regulatory differences and improve the efficiency of the transatlantic markets through regulatory convergence.

To this end, SIA has proposed a number of discrete issues that we believe CESR, the SEC, and the industry, working together, could actually resolve in the near-term to the mutual benefit of the transatlantic marketplace. Indeed, in light of the increasingly linked transatlantic capital markets, an uncoordinated approach on these issues could only lead to new regulatory hurdles and barriers that would raise costs for all market participants.

SIA does not seek convergence for its own sake, nor do we believe that all regulations warrant convergence. Differences in our respective regulatory systems often reflect the realities of our different legal systems, different market structures and sometimes even different political choices. As House Financial Services Committee Chairman Michael Oxley noted in his opening statement at last month's hearing, "The choices one country makes for how best to protect its investors and depositors may not always coincide with the choices other countries make.

[11] SEC-CESR Set Out the Shape of Future Collaboration, June 4, 2004, "The enhanced relationship between the SEC and the members of CESR has two objectives. The first objective is improved oversight of U.S. and EU capital markets through increased communication regarding regulatory risks to enable regulators to anticipate regulatory problems more effectively. The second objective is to promote through timely discussion regulatory convergence with regard to future securities regulation." http://www.sec.gov/news/press/2004-75.htm

Different policies can be driven by differences in market structure. Such differences are legitimate and do not easily lend themselves to calls for convergence."

However, we do believe that different or duplicative regulation in service of similar or identical policy rationales only complicates the ability of market intermediaries, investors, and those seeking to raise capital to conduct business efficiently. Those areas in which we have suggested that the SEC and CESR study convergence are:

- public offering documents in the U.S. and European markets – beginning with non-financial disclosure, e.g. Management Discussion and Analysis, reporting of beneficial ownership, real-time event disclosure;
- U.S. and EU broker-dealer registration requirements;
- rules relating to credit rating agencies;
- international anti-money laundering standards that promote uniformity, cooperation and efficacy – beginning with the ability to rely on financial intermediaries across borders to perform due diligence, such as customer identification requirements; and
- corporate governance standards.

This list illustrates the serious and significant topics that Dialogue should address. Each is complex but provides an opportunity to eliminate unnecessary and unintended inconsistencies in regulatory requirements and, by so doing, contribute to more efficient capital markets.

Lastly, we will briefly discuss an issue of significant concern to the U.S securities industry, the EU's Financial Conglomerates Directive (FCD). In April 2001, the European Commission presented a proposal – a priority measure under the FSAP – for a Directive that would introduce group-wide supervision of financial conglomerates. The proposal was prompted by the continuing consolidation in the financial services sector that has created cross-sectoral financial groups with activities in both the banking/investment services and insurance sectors. The FCD was adopted in December 2002.

The UK's Financial Services Authority, as the "lead" regulator for virtually all major U.S. firms operating in the EU, will make the equivalence determination. It will do so using

guidance to be set forth by the EU Banking Advisory Committee taking advice from the European Commission. Originally, the guidance was to be announced by the end of April 2004, with the FSA scheduled to make its first set of equivalence judgments by June 2004. These timetables have slipped, and we are concerned that U.S. firms could face serious compliance problems. The ability to begin implementation of the Consolidated Supervised Entity regime that the SEC is carefully working on would be jeopardized. We urge the committee to monitor this situation carefully.

****

The U.S. securities industry plays an important role in the EU capital markets and is fully committed to the integration of Europe's capital markets. Our competitiveness as a nation and an economy is supported by the ability of our financial services firms to compete openly and fairly. We look forward to working with the U.S. and EU on a positive economic agenda to ensure that European capital market liberalization is achieved in a non-discriminatory manner, and is transparent, efficient, and protects against risk. We very much appreciate the Committee's serious interest in the deepening relationship between the U.S. capital markets and those of our largest trading partner – the European Union. We look forward to working with Congress and the Administration as we work to help create the best possible foundation for the global capital markets.

Thank you very much.

Appendix A

The U.S.-EU Financial Markets Dialogue Is Only A First Step

The creation of a single EU financial services market – and the implementation of the Action Plan as a critical step in the realization of that objective – are significant undertakings. The issues raised are numerous and varied and, in many cases, reflect concerns shared on both sides of the Atlantic. While some of these transatlantic issues are a direct result of the Action Plan, others are not and have only been highlighted by the EU's major legislative program for financial services. Whatever their genesis, the Action Plan helped identify the critical need for a Dialogue between the U.S. and the EU focused specifically on financial services issues.

So, in December 2001, as the EU began to consider the specific details of key FSAP Directives, SIA's International Committee wrote to U.S. Treasury Under Secretary John Taylor supporting the creation of a new U.S-EU financial markets dialogue saying – and I quote:

> "The extensive capital markets linkages that have developed between the U.S. and EU make it all the more important that a more formal dialogue be established to supplement the ad hoc contacts that have existed and sufficed up till now."

The letter also said that the International Committee had recently met with John Mogg (Dr. Alex Schaub's predecessor as Director General of DG Internal Market) and had discussed with him the industry's concerns over the European Union's data protection, financial conglomerates, prospectus and market abuse directives.

It might be tempting to say that the familiarity of the items on that list, which looks not unlike a list one might make today, means that three intervening years of U.S.-EU Financial Markets Dialogue have not been very fruitful. But that would be a mistake. To the contrary, in common with the public sector witnesses from both sides of the Atlantic who testified before the full Committee on May 13, 2004, I am here to say that U.S. industry firmly believes that the U.S.-EU Financial Markets Dialogue is successful.

In the absence of the Dialogue, a substantial number of the items on that 2001 list might have easily degenerated into a disruptive – even ugly – "trade-style" dispute with potentially

disastrous consequences for both U.S. and EU financial services consumers. Instead, largely because of the Dialogue, each issue has been or is being resolved peacefully and sensibly by the relevant experts and professionals. And, success being the best of advertisements, new potential controversies have continued to be added to the list of issues the Dialogue is being asked to address.

And although the Dialogue was born of necessity – to provide a means of discussing and resolving issues caused by "overspill" – we believe that it should not be, and must not become, simply a means of "alternative dispute resolution". The industry has advocated the development of a dialogue that enables both partners to avoid to the greatest extent possible conflicts in the pursuit of solutions to what are, largely, shared concerns. I will revisit this point in greater detail in a moment.

The Financial Markets Dialogue Must Involve All Constituencies

SIA wrote its letter to Under Secretary Taylor in 2001 because FSAP-related measures, and other actions taken by the EU relating to the financial services, were directly affecting our ability to provide the products and services our customers worldwide demand, as well as our ability to maintain our international competitiveness.[12] And we were growing increasingly concerned that EU legislation, such as the Data Protection and the Financial Conglomerates Directives, could have a detrimental impact on the ability of our firms to compete.

As a result, SIA felt key government officials and regulators on both sides of the Atlantic should begin to discuss transatlantic capital markets issues on an ongoing basis, within an organized – but flexible, and informal – framework that would bring financial officials and regulators together to consult, to solve problems, and ideally to avoid problems before they arose. We were, in fact, concerned that without such a dialogue these complex regulatory issues

[12] For U.S. firms with a significant EU presence, FSAP Directives and other measure drafted and implemented could have a negative impact our ability to compete in Europe, and, even more worryingly, in other markets around the globe. In fact, we note that the EU Securities Expert Group Report (May 2004), recommends that European legislation and regulation better take into account the fact that investors and issuers frequently taken decisions on a global basis. The Group further notes that the prospectus and transparency directive, while helping integrate the pan-European market, may "…reduce the willingness of third country issuers and investors to raise funds and allocate capital in Europe." "Financial Services Action Plan: Progress and Prospects", Securities Expert Group, Final Report, May 2004.

could lead to tensions or even trade disputes that would impede the efficient flow of capital between the two regions.

For that reason SIA was extremely pleased that government officials at the 2002 U.S./E.U. Summit in Washington, D.C. announced a financial markets dialogue that would include all relevant financial markets participants – a group whose members would change as appropriate depending on the particular issue being addressed.

At A Glance:

I. U.S. – EU Transatlantic Financial II. Markets Dialogue

	EU Participants	*US Participants*
Financial Markets Dialogue	EC	Treasury/SEC/FRB
Securities Regulators	CESR	SEC
Congress/Parliament	EMAC	House Financial Services Committee

CESR = Committee of European Securities Regulators
EC = European Commission
EMAC = Economic and Monetary Affairs Committee

The Dialogue's recent efforts have been notable and successful with a broadening of participants. They include, of course:

- The work by the SEC and the European Commission to mitigate the extra-territorial impact of the Sarbanes-Oxley Act;

- The graceful resolution of concerns over PCAOB registration for which we congratulate Director General Schaub and PCAOB Chairman McDonough, and;

- The very practical solutions to the Transparency Obligations Directive's accounting standards requirements – grandfathering certain existing bond issues – that will avoid a threat to the liquidity of the European markets against the backdrop of coming accounting standard convergence.

One area where earlier conversations with U.S. market regulators and market participants might have been helpful is in connection with the EU's efforts to update its rules relating to market structure. In our view, the Commission's numerous attempts to balance the merits of pre- and post-trade transparency and on- and off-exchange trading during the revision of the EU's Investment Services Directive could have benefited from greater, deeper, and earlier familiarity with the full range of experiences (both good and bad) of the U.S. markets. Consequently, SIA member firms and U.S. regulators spent a great deal of time with the Commission, EU regulators and legislators helping to craft a compromise ISD revision that seeks to balance, even if imperfectly, the requirements of retail and institutional markets and participants.

Now, with 39 of the 42 FSAP directives and measures introduced and agreed to, the emphasis within the EU (both in Brussels and at the member-state level) will shift to the implementation and enforcement stages. We expect this shift to highlight transatlantic issues that will have to be dealt with imaginatively if the FSAP is to deliver the desired benefits to issuers, investors, and consumers of financial products. It is therefore increasingly important that Congress, the Administration, and U.S. financial services regulators continue and even enhance their engagement in European capital markets developments.[13]

[13] Financial Market Dialogue: United States financial officials, including representatives from the Treasury Department, Securities and Exchange Commission, and the Federal Reserve, are engaged with their E.U. counterparts to ensure that European capital market liberalization is achieved in a non-discriminatory manner and are market transparent, efficient, and protect against risk. http://www.useu.be/TransAtlantic/U.S.-E.U.%20Summits/May0202WashingtonSummit/May0202U.S.E.U.PositiveEconomicAgenda.html.

PROMOTING FAIR AND TRANSPARENT REGULATION

DISCUSSION PAPER

I. Setting The Foundation for Open and Fair Securities Markets

Deep and liquid capital markets are the essential building blocks of today's economy, supplying the funds for economic growth and job creation. The firms that participate in the markets price risk, allocate capital, provide investors with advice and investment opportunities, and supply the liquidity needed to make markets work efficiently.

Just as capital markets underpin economic growth and job creation, transparent and fair regulatory systems are essential to the development of deep and liquid capital markets. A system of regulation that is transparent to market participants instills the confidence needed to attract both the suppliers and users of capital to make the best use of the markets.

Governments, regulators and the international financial institutions have undertaken substantial projects designed to improve the quality of the financial systems world-wide. Attention is now focused on building fair and transparent regulatory systems – grounded in the principles of market integrity and investor protection – to oversee those markets. Consistent with those goals and the principles of prudential regulation, discriminatory practices and considerations, such as the nationality of individuals or the place of origin of firms, should not be permitted to influence regulatory policies or actions.

This paper is based on the assumption that a country’s relevant laws should promote fair and transparent regulation. The principles outlined in this paper are not intended to prevent a regulator from taking measures for prudential or legitimate public policy reasons recognized under the World Trade Organization, including protecting investors, ensuring that markets are fair, efficient and transparent, and reducing systemic risk.

A consensus view, supporting the development of active, sound and efficient markets based upon established principles for capital market regulation, is rapidly emerging. In September 1998, the International Organization of Securities Commissions (IOSCO) issued a paper entitled "The Objectives and Principles of Securities Regulation" that urged the adoption by all regulators of processes and regulations that are:

- consistently applied;
- comprehensible;
- transparent to the public; and
- fair and equitable.

The International Monetary Fund ("IMF") is developing a broad-based "Code on Good Practices and Transparency in Monetary and Financial Policies" that complements IOSCO's work.

The securities industry, which today operates on a global basis, supports the IMF and IOSCO efforts to establish principles of fair and transparent regulation. The securities industry strongly believes that by making regulation and the operation of regulators accessible and transparent and by treating foreign and domestic licensed market participants fairly and equitably, governments, regulators and international financial institutions will promote the best markets for investors throughout the world.

Building on the emerging regulatory consensus, this paper provides the views of the securities industry on fundamental regulatory principles and practices that will provide a fair and level playing field for market participants. It also sets the foundation for building strong and vibrant markets worldwide. Moreover, we strongly believe that the principles promoting fair and transparent markets are broadly applicable to all financial services firms participating in the global capital markets. In this regard, we are actively seeking the support of financial services firms worldwide in promoting these principles.

II. Guiding Principles of Fair and Transparent Regulation

A. *Rules, regulations and licensing requirements should be considered and imposed, and regulatory actions should be taken, only for the purpose of achieving legitimate public policy objectives that are expressly identified, including, for example, investor protection, maintaining fair, efficient, and transparent markets, and reducing systemic risk.*

B. *Regulation should be enforced in a fair and non-discriminatory manner*.

1. *Regulations and regulators*[1] *should not discriminate among licensed market participants on the basis of the nationality or jurisdiction of establishment of the shareholders of a market participant or the jurisdiction of establishment of any entity that owns or controls the equity or indebtedness of a market participant.*

2. *The relationship between a regulator and a licensed market participant should be governed by the standards set forth in relevant rules and regulations, and should not be subject to political or other extraneous or improper considerations*.

3. *The introduction of new securities products and services by firms should be governed by the standards set forth in relevant rules and regulations*

C. *Regulations should be clear and understandable.* Clear and understandable regulations and rulings provide market participants with the predictability and necessary knowledge to comply with regulations. Opaque or ambiguous regulations and rulings create uncertainty among investors and licensed market participants.

D. *All regulations should be publicly available at all times.* All regulations should be made, and at all times remain, publicly available, including requirements to obtain, renew or retain authorization to supply a service. Disciplinary actions should not be taken based on violations of regulatory standards that were not in effect at the time the relevant activity took place.

[1] The term "regulator" is intended to cover all bodies that are authorized pursuant to law to play a role in the licensing and supervision of the activities of financial services firms, as well as the bodies that formulate rules, regulations and policies relating to such firms. Where the legislature or authorized regulator delegates its authority to a non-governmental entity such as a self-regulatory organization or trade association, the term is intended to encompass such an entity.

E. *Regulators should issue and make available to the public final regulatory actions and the basis for those actions, in order to enhance public understanding thereof.*

III. Rulemaking and Implementation

A. *The rulemaking process*

1. *Regulators should utilize open and public processes for consultation with the public on proposals for new regulations and changes to existing regulations.* A reasonable period for public comment should be provided. Any hearings at which formal promulgation or adoption of new regulations or changes to existing regulations are considered, if open to a member of the public, should be open to all members of the public. Regulators should not take arbitrary regulatory action against those who participate in the consultation process.

2. *In considering whether rules, regulations, licensing requirements or actions are necessary or appropriate, regulators should also consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.*

B. *Communicating and implementing new rules*

1. *New rules and regulations that provide advice for market participants should be made available to them and the public in a timely and efficient manner.* Such changes should be made available, in writing, by electronic media or other means of distribution so that all market participants have reasonable access to such material.

2. *Market participants should be given a reasonable period of time to implement new regulations.* The effective date of a new regulation should provide a reasonable period for market participants to take the steps needed to implement the new regulation under the circumstances.

C. *Interpretations of rules*

1. *Regulators should establish a mechanism to respond to inquiries on rules and regulations from market participants.* The titles and official addresses of the relevant regulatory offices should be provided.

2. *Interpretations and the grants or denials of regulatory relief or exemptions should be made available to the public.* Such interpretations, relief or exemptions should generally apply or should be applied upon proper request, to substantially similar licensed market participants and new products. Under limited circumstances it may be appropriate to delay the publication of individual grants of relief for reasonable periods of time to address legitimate competitive concerns.

IV. Licensing and New Product Procedures

A. *Procedures for licenses and introduction of new securities products and services.*

1. *Criteria governing licensing of firms and the introduction of new securities products and services by firms should be in writing and accessible, and should be the basis on which decisions are made.* All regulations and related explanatory materials governing the consideration and issuance of licenses to firms and the introduction of new securities products and services by firms should be reduced to writing and made publicly available to potential applicants upon request. No licensee should be denied a license, and no new securities product or service should be prohibited, on the basis of any factor not identified in such written regulations or explanations.

2. *The introduction of new securities products and services by firms should be governed by the standards set forth in relevant rules and regulations.* Where particular requirements are established in connection with the introduction of a product or service, such requirements should govern the introduction of complying products and services. In order to promote flexibility and efficiency in the capital markets, such standards and requirements should

enable firms, to the maximum possible degree consistent with principles of prudence and investor protection, to introduce complying new products and services on the basis of sound internal procedures for compliance without additional regulatory review.

3. *Information supplied by applicants as part of an application process should be treated confidentially. Such information should be disclosed only in accordance with existing rules permitting public disclosures, such as those that may be triggered by the granting of a license or product approval.*

4. *Regulators should promptly review all applications by firms for licenses and required product or service approvals and should inform the applicant of any deficiencies.* No application for a license or approval that provides all information required pursuant to regulation and is made in good faith by an applicant that meets required criteria should be refused review and action by the relevant regulator. Action on all applications received should be taken within a reasonable period. Licenses should enter into force immediately upon being granted, in accordance with the terms and conditions specified therein.

5. *Where an examination is required for the licensing of an individual, regulators should schedule such examinations at reasonably frequent intervals.* Examinations should be open to all eligible applicants, including foreign and foreign-qualified applicants.

6. *Fees charged in connection with licenses and the introduction of new securities products and services should be fair and reasonable and not act to prohibit or otherwise unreasonably limit licensing requests or the introduction of new product and services.*

B. *Licensing of entities and their employees*

1. *An applicant's competence and ability to supply the service should be the criteria used for licensing entities and employees.* The terms and conditions for granting licenses should be made explicit, including education, experience, examinations and ethics. Procedures and criteria should not unfairly distinguish between domestic and foreign applicants. In addition, there should be no quantitative limits on the number of licenses to be granted to a particular class of market participants who are otherwise qualified.

2. *When imposing licensing requirements, regulators should endeavor to give consideration to comparable testing or other procedures confirming the qualifications of an applicant that already have been completed in another jurisdiction.* The ability of qualified and experienced market professionals to provide services in a foreign jurisdiction may be promoted where testing or other procedures used in the professional's home jurisdiction may satisfy all or part of the foreign jurisdication's licensing requirements.

C. *Denials of licenses and product and service approvals*

1. *When denying an application for a license or a required securities product or service approval, regulators should, upon request, provide an explanation for that action.* Any total or partial denial of any application for a license or a required new product or service approval should, upon request, be accompanied by a written statement of explanation from the relevant regulator detailing the reasons for the denial, including the particular requirements of the regulations governing the issuance of such license or required approval that were not satisfied. Applicants should be given the opportunity to resubmit applications or to file additional or supplementary materials in support of their applications.

2. *Applicants should be afforded meaningful access to administrative or judicial appeal of a denial of a license or a required product or service approval (or failure to act on an application).*

3. *An appeal of a denial of a license or a required product or service approval should be decided within a reasonable time period after the appeal is filed*. An applicant's decision to pursue an appeal (whether formal or informal) should not prejudice its existing licensed operations.

V. Implementation of Regulatory Standards

A. *Inspections, audits, investigations and regulatory enforcement proceedings*[2]

1. *All inspections, audits, investigations and regulatory enforcement proceedings should be conducted pursuant to established regulatory and judicial standards and should not arbitrarily discriminate based on improper or other extraneous criteria like nationality*.

2. *All inspections, audits, and investigations should be conducted in a manner that does not impinge on the rights of licensed market participants and their directors, officers and employees.*

3. *A regulatory authority*[3] *should not publicly disclose the fact that it is conducting an enforcement related inspection, audit or investigation of a particular entity until a determination has been made by the regulatory authority to take remedial or other enforcement-related action, unless otherwise subject to a legally enforceable demand unless made in connection with a generally applicable disclosure requirement imposed on the entity*. The inspection, audit or investigation should be conducted at all times with due attention to the privacy and confidentiality concerns of all affected parties, including licensed market participants, their directors, officers, employees, and clients.

---

[2] The term "regulatory enforcement proceedings" means administrative or judicial action authorized by the relevant regulatory authority and is intended to cover civil, administrative or criminal proceedings that involve a financial services firm and/or its employees based on their financial services activities.

[3] The term "regulatory authority" is intended to cover all regulatory bodies involved in the inspection, auditing, investigation or prosecution of the activities of financial services firms. Depending on the system, the term may encompass criminal and judicial authorities as well as non-governmental entities such as self-regulatory organizations.

B. *Regulatory proceedings to impose a sanction*

1. Notice and opportunity to be heard

a. *Notice of applicable law and regulation*. A regulatory proceeding to impose a sanction should only be instituted based on the violation of laws or regulations that were in effect at the time that the relevant activity occurred and where the subject of the proceeding had timely notice of them.

b. *Notice of determination to take action*. Licensed market participants should be notified in a timely manner both when: 1) a determination has been made to hold a regulatory proceeding concerning the conduct of that participant; and 2) a decision in, or on the status of, that proceeding has been made.

c. *Opportunity to be heard*. Except in situations where emergency temporary relief is necessary, in all regulatory proceedings, licensed market participants should be given a reasonable opportunity to be heard and to submit, on the record, position papers and other documentary evidence.

2. Representation by counsel and access to evidence

a. *Right to legal counsel*. The subjects of a regulatory proceeding should have the right to have legal counsel of their choice represent them in all meetings with, and interviews by, regulatory authorities. A regulatory authority should not suggest or imply that the attendance of counsel will in any manner alter the character of the proceedings being conducted, the level of supervisory review to be undertaken, or the manner in which the regulatory authority carries out its functions.

b. *Access to evidence*. The subjects of a regulatory proceeding should, upon request, be permitted reasonable access to all documents and records that are relevant to the subject matter involved in the pending regulatory action. Documents and records to which access is denied based on privileges

generally recognized in such proceedings should not be admissible in evidence in such regulatory proceeding.

c. *Burden of proof*. The burden of proof to demonstrate that a licensed market participant has not conducted its business in accordance with the relevant law and regulation should rest with the regulatory authorities.

3. Sanctions and Appeals

a. *Sanctions*. Sanctions by a regulatory authority should be imposed in a fair and nondiscriminatory manner based on the relevant facts and with an effort to treat similarly situated persons and entities in a similar manner. The basis for any decision to impose sanctions by a regulatory authority should be explained in a writing that is made available to the subjects of the proceeding.

b. *Appeals*. The subjects of a regulatory proceeding should have available to them a forum for appealing the decisions rendered and sanctions imposed. The body considering a particular level of appeal should be separate from that which made the decision or imposed the sanction that forms the basis of the appeal. Appeals to a regulatory authority should be decided in a timely manner and appeal determinations should be explained in a writing that is made available to the subjects of the proceeding.

For information and/or comments contact:

David Strongin, 212/618-0513 – dstrongin@sia.com