

## **SIFMA Optimistic About Capital Markets, Expects Collaboration, Regulatory Relief from Trump Administration**

**By Fanni Koszeg, for Reg-Room LLC**

On Dec. 12, 2017 the Securities Industry and Financial Markets Association (SIFMA), one of the largest interest and lobbying groups for the securities industry, held a press briefing in New York to share its hopes and expectations for 2018. President Kenneth Bentsen and Chair Lisa Kidd Hunt spoke on current trends and the organization's views on risks and regulatory developments for capital markets. Ms. Kidd Hunt, who is an Executive Vice President for International Services and Special Business Development at Charles Schwab, said this was a "wonderful time to be an investor" and there was "a lot of optimism from CEOs in financial services." SIFMA sees the imminent passage of tax reform in the US as a huge potential benefit to markets and expects the Trump administration to keep reviewing and reducing financial regulations for the largest banks and broker-dealers alike. The organization is also excited about the potential benefits of technological innovations, but remains aware of risks associated with those and sees a global slowdown as a "potential downside risk."

### **Tax Reform on Right Track**

SIFMA is confident that Congress will pass tax legislation before the end of the year and Mr. Bentsen said that the corporate side of the package will be "very beneficial for capital markets." SIFMA likes the potential change to territorial taxation (common in other industrialized countries) and the significant reduction in the corporate tax rate. However, SIFMA has concerns on provisions in the tax bill that would cause investors to lose their ability to choose which shares they can sell to reduce a position. As currently drafted, investors selling partial stakes in a company would have to unload their oldest shares first, a process known as selling on a "first-in, first-out" basis. Mutual funds and ETFs have been exempted from this provision, but individual investors have not. "It is the first time in history of [the] US tax structure that [we would] forcibly tell investors what to sell first," said Bentsen.

Other concerns include, interest income deductibility and the elimination of tax-exempt nonprofit private activity bonds. Additional taxes proposed with a view to containing companies' ability to erode their tax base and shift income offshore would have unintended consequences on the repo market. Net profits on repo trades are already taxed, the proposal would add an 11% tax on inter-affiliate repo transactions. Bentsen said this could disrupt the repo market and is based on a misunderstanding of the role of such transaction for large financial institutions.

In response to a reporter question on whether SIFMA had any concerns for how new tax rules may negatively impact individuals working in the financial industry in New York, New Jersey or Connecticut, Mr. Bentsen said SIFMA did not assess those consequences.

### **Time to Review Regulatory Policy**

In response to a question on the recently proposed bi-partisan bill to ease regulations on regional banks (for details see: [Reg-Track. #36202](#)), SIFMA said it had a good chance to pass. Bentsen was not particularly enthusiastic about the proposal saying it had "some good things"

for smaller banks, but not so much for the trade body's constituents, which tend to be larger banks and broker-dealers.

In SIFMA's opinion, the regional banking proposal as well as the recent deregulatory reports published by Treasury as instructed by the President (see details on the Treasury capital markets report at: [Reg-Track #35425](#)) are encouraging. "We have reached an inflection point in US," said Bentsen, "policy makers are saying we have done a lot, but it probably makes sense to look at all the rules in light of the marketplace to see if we can recalibrate."

SIFMA is "eager to see" where this Administration goes to free some of the capital and liquidity they see as trapped in bank balance sheets. In response to a reporter question on what one or two major changes in the regulatory area SIFMA was hoping for, Mr. Bentsen chuckled as he said "only one or two?"

In his serious answer, Bentsen said they would expect a recalibration of the *supplemental leverage ratio* for bank capital and liquidity requirements and are focusing on how to fix the Volcker rule, which is "onerous and burdensome in its structure." In addition, SIFMA is very excited about CFTC Head Giancarlo's KISS project to "clean up and simplify" derivatives regulations (see for more details: [Reg-Track #32109](#)) and the OCC's efforts to reform the Volcker rule.

### Hoping for Resolution on Fiduciary Rule

The Department of Labor's (DoL) Fiduciary Rule has been a thorn in the industry's side since it was first proposed in 2010. The rule requires financial advisors to act in the best interests of clients when it comes to overseeing their retirement account. SIFMA has criticized the rule as unnecessary, complicated and unduly burdensome, as well as suing the DoL over it. The Trump Administration responded to the industry and instructed the DoL to delay its effectiveness (for details see [Reg-Track 30909](#).) Eventually, the rule went into effect, but the DoL extended the application of exemptions by 18 months in November, 2017 (see [Reg-Track #36447](#)).

SIFMA is lobbying for a uniform *best interest standard* for all investors and for the SEC to take a larger role in developing it. "We hope DoL and SEC will work together and get it right to fix it for our clients," said Ms. Kidd. SIFMA has maintained that the standard needs to be a broad, principles-based one, so it doesn't prevent advisors from offering certain products to some types of accounts. When asked if some of these products wouldn't also be eliminated if a more broad-based standard were to be adopted, Ms. Kidd clarified that they are not opining on specific products. As advisors are attempting to comply with the rule, they have been eliminating choices for their clients, for fear of running afoul of the DoL's confusing requirements, she continued. Most of SIFMA's members are already dual registrants with the SEC, and layering the DoL rule on top of their existing obligations as broker-dealers and investment advisers causes a "compliance conundrum."

Unlike the previous administration, which spoke a lot about the need for the DoL rule to protect retirement savers from excessive fees and bad advice, SIFMA sees this administration and the current SEC leadership as more committed to listening to their criticisms. Mr. Bentsen expressed confidence that with an 18-month delay there is a good chance the agencies will come to a resolution favorable to the industry. SEC Chair Clayton has said that settling the matter was a priority and "SIFMA takes him at his word," Bentsen said. Parallel to this review

process, SIFMA is hoping for a speedy resolution of the ongoing legal challenge to the rule in circuit court. If courts “settle their views, regulators will know where to go on this.”

### **More Sympathy for Industry Resistance to CAT**

SIFMA has long criticized the current plan for the SEC’s Consolidated Audit Trail system (CAT), the expansive new market-surveillance system to detect market manipulation which has been under development for years. After the SEC rejected exchange’s requests to delay the rule in November 2017, brokers began feeding data into the system and are still on track to begin submitting their client trading data in November 2018. (For details see: [Reg-Track #36148](#).) The organization has said that it is supportive of the effort, but repeatedly criticized the collection of large amounts of personal identifying information (PII) on investors. The CAT database, run by one vendor working for 23 different organizations, would create an unnecessary target for hackers and endanger client information.

While the SEC rejected the delay request, Chairman Clayton seems open to revisiting the issue and contemplating the use of some other form of data to replace PII. The House recently held a hearing to determine whether there is need for legislative intervention: For details see [Reg-Track # 36604](#). According to Bentsen, “Clayton thinks [CAT] is very important, but understands the concerns around PII.”

SIFMA is working what form of alternative data would be best and advocates for an ex-post approach where regulators can come back and demand more extensive data if they catch wind of suspicious activities and market manipulation. Defenders of the specific personalized data collection argue that, without it, the CAT database cannot properly fulfill its purpose.