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Invested in America

June 22, 2012

The Honorable Nora Campos
California State Assembly
State Capitol, Room 2175
Sacramento, Ca 95814

RE: AB 1844 as amended on June 20 – Oppose unless amended

Dear Assembly Member Campos:

The Securities Industry and Financial Markets Association[1] must regretfully express its opposition to AB 1844, as currently drafted. This legislation would, among other things, prohibit employers from requiring current employees to provide access to their personal social media accounts.

While AB 1844 is well-intended, it conflicts with the duty of securities firms to supervise, record, and maintain business-related communications as required by the Financial Industry Regulatory Authority ("FINRA"). If this bill passes in its current form, firms will be in the untenable position of having to violate either state law or their FINRA obligations.

We want to be clear that the securities industry has no interest in accessing employee accounts that are used exclusively for personal use. The problem, however, is that many people use the same account for both personal and business activity. According to a 2012 American Century Investments study, nearly nine out of ten financial services professionals have a social media profile or account. Fifty-eight percent of these professionals use social media for business at least several times per week; twenty-seven percent use it for business on a daily basis.[2] A "personal" account that is used for business purposes must be treated as a business account.

FINRA is the largest independent regulator for all securities firms doing business in the United States and is considered a self-regulatory organization under federal securities laws. To protect investors, FINRA requires, among other things, that securities firms supervise, record and maintain their employees' business communications – including those disseminated on social media sites. This is spelled out in several different FINRA rules and regulatory notices, including:

- Securities firms must establish procedures for the review of registered representatives' written and electronic business correspondence. (NASD Rule 3010(d))

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[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 has offices in New York and in Washington, D.C. For more information, visit **http://www.sifma.org**.

[2] https://www.americancentury.comm/pdf/Financial_Professionals_Social_Media_Adoption_Study.2012/pdf

- "Firms must adopt policies and procedures reasonably designed to ensure that their associated persons who participate in social media sites for business purposes are appropriately supervised …." (FINRA Regulatory Notice 10-6)

- "The content provisions of FINRA's communications rules apply to interactive electronic communications that the firm or its personnel send through a social media site." (FINRA Regulatory Notice 10-6)

- A firm's procedures "must be reasonably designed to ensure that interactive electronic communications do not violate FINRA or SEC rules, including the content requirements of NASD Rule 2210, such as the prohibition on misleading statements or claims and the requirement that communications be fair and balanced." (Regulatory Notice 11-39)

Denying securities firms access to social media accounts where business is being conducted directly conflicts with FINRA regulations. It also puts customers at risk, as it will be much harder for firms to detect serious problems, including: (1) misleading claims by an employee, such as the promise of an unrealistically high rate of return on investment; (2) insider trading, Ponzi schemes and other fraudulent activity; and (3) inappropriate conduct such as the selling of investment products that are not approved by the firm.

Amendment language added on June 20 does acknowledge an employer's right to investigate alleged workplace misconduct. While this is marginally helpful, it does not go far enough for two reasons. First, it does not recognize that improper communications may be being sent from outside the workplace. Second, it does not address the increasingly common scenario where a financial services employee seeks and obtains firm approval to use his or her personal site for business use. In these instances, firms must have the ability to monitor, record, and retain these employee communications.

SIFMA therefore requests that the following amendment language be added to AB 1844:

"This act shall not apply to the personal social media accounts or devices of a financial services employee who uses such accounts or devices to carry out the business of the employer that is subject to the content, supervision, and retention requirements imposed by federal securities laws and regulations or a self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, as amended."

This narrow exemption would allow securities firms to comply with both AB 1844 and FINRA regulations.

Please feel free to contact me at 212-313-1311 should you have any questions.

Sincerely,

Kim Chamberlain

Kim Chamberlain
Managing Director and Associate General Counsel
State Government Affairs

Cc: Members, Senate Labor and Industrial Relations Committee