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**From:** Varley, Elizabeth [mailto:evarley@sifma.org]  
**Sent:** Wednesday, March 19, 2008 11:35 AM  
**To:** EBSA, E-ORI - EBSA  
**Subject:** SIFMA Request to Testify

Ladies and Gentlemen:

On behalf of the Securities Industry and Financial Markets Association (SIFMA), I am writing to request the opportunity to testify at the public hearing on proposed regulations under Section 408(b)(2) of ERISA. A copy of SIFMA's outline is attached. The witness for SIFMA will be William Ryan, Executive Director, Legal and Compliance Division, Morgan Stanley. Please do not hesitate to contact me if you have any questions.

Sincerely,

Liz Varley

**SIFMA**  
**Outline of Testimony**  
**Hearing Before EBSA: March 31, 2008**

- I. Disclosure requirements should be issued under section 404 of ERISA. The Department's chief concern is the receipt of payments from third parties (such as mutual funds, advisors, transfer agents or the like) that pension consultants, brokers, advisors or recordkeepers may receive and we are fully prepared to work with the Department to ensure that these payments are fully disclosed.
- II. The Department should not mandate what disclosure is required of every service provider, changing at least 30 years of practice in the hiring and retention of plan service providers. Written agreements with brokers who buy and sell securities for, to and from plans are not typical in the securities industry. SIFMA will urge the Department to allow a plan fiduciary to hire service providers who are paid from plan assets without these cumbersome rules.
- III. Brokerage commissions or advisory fees paid from the assets of a nonplan asset vehicle are not covered by the prohibited transaction provisions. The final regulation should distinguish between compensation paid by funds and their advisors for distribution, recordkeeping, and similar services in connection with the plan that purchased the mutual fund shares, on the one hand, and commissions paid for the purchase of the underlying portfolio securities within the nonplan asset vehicle, on the other.

IV. The effective date of the final rule needs to coordinate with the effective date of Form 5500 reporting (July 2010). Only by that date will service providers have appropriately digested the rules, determined what will need to be changed about their disclosure, and communicated the necessary information to plan fiduciaries.