

Statement of
Securities Industry and Financial Markets Association
Senate Committee on Finance Regarding
SB 11, the Maryland Online Consumer Protection and Safety Act
January 26, 2022

RE: SB 11 – The Maryland Online Consumer Protection and Child Safety Act– Unfavorable

Dear Chair Kelley and Members of the Senate Finance Committee:

On behalf of the Securities Industry and Financial Market Association (SIFMA)¹, we are writing to suggest amendments to SB 11, which would create the Maryland Online Consumer Protection and Child Safety Act. SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers located throughout Maryland and across the country. In fact, more than 94,000 people work in the finance and insurance industries, more than 16,800 of them work at securities firms, and 41 broker-dealer main offices call Maryland home.

SIFMA commends you for your commitment to protecting the privacy of Marylanders. The business community has been and remains committed to adhering to effective and reasonable privacy laws. However, SIFMA, along with many business groups and financial services firms, does not believe SB 11 offers the best solution to protecting data, and would not harmonize with federal privacy laws.

There are many provisions in this privacy proposal that are important to get right; today we will highlight just two that are important to our broker-dealers and financial services members. We are very interested in working with you on language that would better protect consumers without negatively impacting our members.

1. Gramm-Leach-Bliley Act Exemption: The Gramm-Leach-Bliley Act (GLBA) is an established and comprehensive federal privacy law that already provides protections for consumers and significant regulation on privacy and data security, including disclosure of privacy practices to customers, cybersecurity controls, and restrictions on the unauthorized sharing of non-public consumer financial information with significant oversight and enforcement by financial regulators. Financial institutions regulated by GLBA already have comprehensive privacy protections in place, and should be explicitly exempt from SB 11. The bill as currently written, would create several issues that have arisen from earlier state privacy law enactments. These issues include:

- **Consumer Protection:** Consumers likely do not know which data is collected under GLBA and which is not, but they do know when they are dealing with their financial institution (bank,

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation, and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

brokerage firm, investment adviser, etc.). The differences will not matter to consumers, but they may still be told that some of their information may be subject to regulation under state law if this bill is enacted (and therefore able to be disclosed, corrected, or deleted), and other information may not be, depending on the reasons why it was collected.

- **Data treatment:** Financial institutions do not treat data differently based on how or why they collect it. Once they have data, they generally treat it in the same way as information collected under the GLBA for cybersecurity and data protection purposes as described above. Requiring the information to be dissected would impose a significant burden on financial institutions.
- **Issues with Data Level Exemption:** The exemption should attach to the entity and not to the data. Exempting only data collected under GLBA may leave open a door for fintech and other unregulated companies to use and share non-public personal financial information outside of the law. Such entities are not subject to GLBA or Regulation S-P² and therefore are not legally required to have the same levels of protections, disclosures, and cybersecurity practices.

As such, a financial institution entity-level exemption is the best, most comprehensive way to protect consumer's data, as the entities are subject to GLBA and therefore have the policies and procedures in place to protect such information as required by federal law.

In order to prevent consumer confusion and disruption in the business community, SIFMA requests that you consider amending the current GLBA exemption to mirror the most recent privacy law enactment in the country, the Virginia Consumer Data Protection Act of 2021.³ The GLBA exemption in VA reads:

“this chapter shall not apply to any... (ii) financial institution or data subject to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.)”.

This exemption language would allow for the financial services industry to provide consumers with meaningful privacy control in an efficient and effective manner.

2. Independent Contractor Exemption: In order to encompass the full labor pool of the securities industry, we ask that you broaden the exemption language to the definition of consumer to include independent contractors. Please see the below suggested changes which would sufficiently broaden the exemption for independent contractors.

5. “Consumer” an individual who reside in the state.

“Consumer” shall not include any of the following:

(A) a natural person known to be acting in a commercial or employment context;

(B) a natural person in the course of acting as a job applicant to, an employee of, or former employee of, owner of, director of, officer of, medical staff member of, or contractor of a business to the extent that the natural person’s personal information is collected and used by the business solely within the context of the natural person’s role or former role as a job applicant to, an employee of, owner of, director of, officer of, medical staff member of, or a contractor of that business.

In short, while we applaud your work to protect Marylander’s data privacy, we would like to work with you to better align your proposal with federal law and the existing, robust financial services data protection

² [Regulation S-P](#)

³ [Chapter 35](#)

policies and practices before advancing SB 11. We appreciate your willingness to consider our concerns. If you have any questions, please contact SIFMA's Maryland council, Chris DiPietro, of CDI Consulting at 410-243-5782 or Nancy Lancia, of SIFMA at (212) 313-1233 or nlancia@sifma.org.