



G E L B E R

July 10, 2018

Via E-Mail

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
PerformancePlanning@sec.gov

Re: **SEC Draft Strategic Plan: Fiscal Years 2018-2022**

Ladies and Gentlemen,

Gelber Securities, LLC and Gelber Group, LLC (collectively, "Gelber") welcome the opportunity to comment on the Securities and Exchange Commission's draft Strategic Plan for fiscal years 2018-2022 (the "Plan"). Gelber supports the Commission's mission, vision and values set forth in the Plan. We hope our comments will assist the Commission in achieving its strategic goals.

Gelber is a privately funded proprietary trading firm headquartered in Chicago, Illinois. Gelber Securities, LLC ("Gelber Securities") is registered with the Commission as a broker-dealer and is a member of the Financial Industry Regulatory Authority ("FINRA"). Its parent company, Gelber Group, LLC ("Gelber Group"), was founded in 1982 and is a member of various futures exchanges in the U.S. and abroad. Gelber Group is also a self-clearing member of the Chicago Mercantile Exchange ("CME"). Gelber is one of the industry's most successful and enduring proprietary trading firms.

Gelber believes that each of the Commission's three strategic goals featured in the Plan is appropriate. We use this opportunity to suggest prioritizing a specific issue that relates to the following goal and supporting initiatives:

Goal 2: Recognize significant developments and trends in our evolving capital markets and adjust our efforts to ensure we are effectively allocating our resources.

- *Initiative 2.2 Identify and take steps to address existing SEC rules and approaches that are outdated.*
- *Initiative 2.3 Examine strategies to address cyber and other system and infrastructure risks faced by our capital markets and our market participants.*

We commend the Commission for acknowledging that some SEC rules are outdated and no longer function as intended. A poster child for this is Rule 17a-4(f) under the Securities and Exchange Act of 1934, which mandates the form in which broker-dealers must store their required records. In preparing this letter, we have had the benefit of reviewing the petition for rulemaking to amend Rule 17a-4(f) submitted on November 14, 2017 by the Securities Industry and Financial Markets Association, the Futures Industry Association, the Financial Services Roundtable, the International Swaps and Derivatives Association, and the Financial Services Institute (the “Petition”).¹ We agree with the position, analyses and information set forth in the Petition and the addendum thereto (the “Addendum”).²

Two aspects of Rule 17a-4(f), if left unaddressed, will undermine the Commission’s above-quoted strategic goal and initiatives:

1. The requirement adopted in 1997 that broker-dealers exclusively utilize a “non-rewriteable, non-erasable” or “write once, read many” (“WORM”) system to preserve electronic records;³ and
2. The requirement that a broker-dealer using electronic storage media have at least one third-party vendor with access to and the ability to download the broker-dealer’s records.

As the Petition and Addendum explain in detail, WORM storage is antiquated, costly, inefficient and used only to satisfy Rule 17a-4(f). No other SEC rule imposes WORM storage requirements on registrants. Furthermore, the U.S. Commodity Futures Trading Commission (“CFTC”) revised its recordkeeping rule (Regulation 1.31) in 2017 to eliminate the WORM standard and make “technology neutral the form and manner in which regulatory records must be kept.”⁴

Because Gelber Group is a member of designated contract markets and a clearing member of CME (a derivatives clearing organization), we must comply with the CFTC’s recordkeeping rule.⁵ The divergence between outdated SEC Rule 17a-4(f) and modernized CFTC Regulation 1.31 with respect to WORM storage results in significant costs and inefficiencies for Gelber where records cannot be separated by applicable regulatory requirement. The CFTC no longer requires WORM storage and neither should the Commission.

Rule 17a-4(f) imposes additional costs and risks by requiring broker-dealers to have a third-party consultant with access to and the ability to download their electronic records. Making firms provide “unfettered third-party access” to their systems and information “presents a serious

¹ The Petition is available at <https://www.sec.gov/rules/petitions/2017/petn4-713.pdf>.

² The Addendum, submitted to the Commission on May 18, 2018, is available at <https://www.sec.gov/rules/petitions/2018/ptn4-713-addendum.pdf>.

³ The alternative to electronic records offered in Rule 17a-4(f) is microfilm or microfiche, a format that is now featured in the Museum of Obsolete Media at <http://www.obsoletemedia.org/microfiche/>.

⁴ *Recordkeeping*, 82 Fed. Reg. 24479, 24480 (May 30, 2017).

⁵ See CFTC Regulation 1.35(a) and (g).

cybersecurity threat.” (Petition at 6.) This contravenes the Commission’s initiatives to reduce cyber and infrastructure risks in our capital markets. In updating Regulation 1.31, the CFTC found that “the information technology expertise within the derivatives industry obviates the need” to require firms “to engage a third party to ensure compliance with all applicable recordkeeping obligations.”⁶ On that basis, the CFTC removed the third-party consultant requirement from its recordkeeping rule. The Commission should take the same action.

Despite the costs and risks posed by outdated Rule 17a-4(f), it continues to be actively enforced. “Future success requires the SEC to be efficient and nimble in the allocation of our resources.” (Plan at 4.) The resources of the Commission (and FINRA) could be more wisely expended by enforcing rules that align with the mission, vision and values set forth in the Plan.

Gelber supports the proposed amendments to Rule 17a-4(f) provided to the Commission with the Petition. The positive impacts from amending Rule 17a-4(f) would be significant and would include the following benefits cited by the CFTC in revising its recordkeeping rule:

- “allow records entities to benefit from evolving technology while maintaining necessary safeguards to ensure the reliability of the recordkeeping process”;
- “allow records entities to adopt new technologies as such technologies evolve, allowing such persons to reduce future costs”;
- “remove or modify requirements the Commission believes are now obsolete”; and
- “benefit the Commission, the Department of Justice, and the [] industry generally, by making the universe of regulatory records more accessible and searchable.”⁷

Gelber urges the Commission to proceed with updating Rule 17a-4(f) in a way that appropriately reflects technological advances and changes to recordkeeping methods since 1997. Amending Rule 17a-4(f) would further the Commission’s strategic goals and initiatives. The need is obvious. The fix is simple and straightforward.

We thank you again for the opportunity to submit these comments in response to the draft Plan. If the Commission has any questions regarding this letter, please contact the undersigned at [REDACTED] or [REDACTED].

Sincerely,



Lisa A. Dunskey
General Counsel

⁶ *Recordkeeping*, 82 Fed. Reg. 6356, 6362 (Jan. 19, 2017).

⁷ 82 Fed. Reg. at 24485.