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United States Senate

August 10, 2015

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The Honorable Mary Jo White
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair White,

I am writing to request information on compliance and enforcement concerns raised by the world's largest banks' and financial companies' use of new communications tools created by Symphony Communications LLC. A group of 14 of these banks, hedge funds, and financial firms have invested almost $70 million in developing this new messaging and communications system, which is expected to be ready for use within the next few weeks.[1]

Last month, the New York State Department of Financial Services wrote to Symphony regarding concerns that the new communication system could be used to "circumvent compliance controls and regulatory review."[2] I have similar concerns about how the biggest banks use of this new communications tool will impact compliance and enforcement by the Securities and Exchange Commission at the federal level.

My concerns are exacerbated by Symphony's publicly available descriptions of the new communications system, which appear to put companies on notice – with a wink and a nod – that they can use Symphony to reduce compliance and enforcement concerns. Symphony claims that "[i]n the past, communication tools designed for the financial services sector were limited in reach and effectiveness by strict regulatory compliance … We're changing the communication paradigm."[3] The company's website boasts that it has special tools to "prevent government spying," that "there are no backdoors,"[4] and that "Symphony has designed a specific set of procedures to guarantee that data deletion is permanent."[5]

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[1] The firms are Bank of America, Merrill Lynch, BNY Mellon, BlackRock, Citadel, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, Jeffries, JP Morgan, Maverick Capital, Morgan Stanley, Nomura, and Wells Fargo. *Financial Times, Banks Back Rival to Bloomberg Messaging System* (July 20, 2015) (http://www.ft.com/cms/s/0/6375fcae-2e61-11e5-8873-775ba7c2ea3d.html).

[2] Letter from Anthony J. Albanese, Acting Superintendent of Financial Services, New York State Department of Financial Services, to David Gurle, Chief Executive Officer, Symphony Communications Services, LLC (July 22, 2015).

[3] Symphony Communications LLC, Symphony for Financial Services (accessed July 2015) (http://symphony.com/financial-cryptography/)

[4] Symphony Communications LLC, FAQ about Symphony (accessed July 2015) (http://symphony.com/faq/

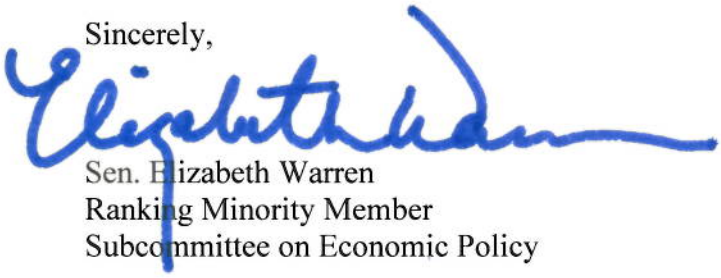
[5] Symphony Communications LLC, Symphony Data Security Features (accessed July 2015) (http://symphony.com/data-security/)

When banks fixed interest rates (LIBOR) in direct violation of the law, they used chat rooms and text messages to coordinate their activities, and it was the trail of such messages that permitted regulators both to discover and prosecute these financial crimes, resulting in this case in admissions of wrongdoing and a settlement of $6 billion in fines and penalties.[6] The communications that Symphony will allow companies to hide from "government spying" – such as text messages and chat room transcripts – have proven to be "key evidence" in previous regulatory and compliance cases that have uncovered criminal action by Wall Street.[7] If banks are now making this information more difficult for regulators to obtain and interpret, it could prevent regulators from identifying and preventing future illegal behavior.[8]

I am therefore asking you to provide my staff with a briefing on this new Wall Street communications system and how it may impact your ability to enforce the law. I would like this briefing to take place no later than September 6th, and I ask that it address:

1. Your agency's existing rules for communications retention and encryption and whether Symphony may make it easier for financial firms to evade these rules.
2. The impact of Symphony's "end to end encryption" with "no backdoors" on your agency's ability to obtain and interpret relevant compliance-related communications by financial firms.
3. The impact of Symphony's approach to permanent data deletion on your agency's ability to obtain and interpret relevant compliance-related communications by financial firms.
4. Any additional enforcement and compliance concerns raised by financial firms use of the Symphony platform.
5. Any internal reviews conducted by your agency regarding enforcement and compliance issues raised by Symphony or any enforcement and compliance-related briefings held for your agency by Symphony or the financial firms that will be using Symphony.

Sincerely,



Sen. Elizabeth Warren
Ranking Minority Member
Subcommittee on Economic Policy

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[6] See, e.g., Washington Post, *Stupid Things Traders Say: The Five Most Incriminating Statements in the New LIBOR Case* (Feb. 6, 2013) (http://www.washingtonpost.com/blogs/wonkblog/wp/2013/02/06/stupid-things-traders-say-the-four-most-incriminating-exchanges-in-the-new-libor-case/); New York Times, *A How-To-Guide for Banks Facing LIBOR Settlements* (Feb. 6, 2013) (http://dealbook.nytimes.com/2013/02/06/a-how-to-guide-for-banks-facing-libor-settlements/?_r=0); New York Times, *Understanding the Rate-Fixing Inquiry* (July 28, 2014) (http://www.nytimes.com/interactive/2012/07/16/business/dealbook/20120716-libor-interactive.html).

[7] Letter from Anthony J. Albanese, Acting Superintendent of Financial Services, New York State Department of Financial Services, to David Gurle, Chief Executive Officer, Symphony Communications Services, LLC (July 22, 2015).

[8] Letter from Anthony J. Albanese, Acting Superintendent of Financial Services, New York State Department of Financial Services, to David Gurle, Chief Executive Officer, Symphony Communications Services, LLC (July 22, 2015).