



April 27, 2012

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: Jumpstart our Business Startups Act (the "JOBS Act")

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association ("SIFMA") is writing to request that the Financial Industry Regulatory Authority ("FINRA") provide guidance regarding the impact of the JOBS Act on certain FINRA rules and recommending that certain changes be made to FINRA Rule 2711 to effectuate the intent of the JOBS Act. We continue to review the Act with our members and have provided our initial comments below.

Time of effectiveness of JOBS Act provisions

Sections 105(b) and (d) of the JOBS Act prohibit the Securities and Exchange Commission (the "Commission") or any national securities association from adopting or maintaining certain rules or regulations. FINRA should confirm that the portions of FINRA Rule 2711 prohibited to be maintained by FINRA under Sections 105(b) and (d) of the JOBS Act may be considered to have been superseded effective immediately upon passage of the JOBS Act. In addition, in light of the substantial uncertainty regarding which portions of FINRA Rule 2711 are impacted by the JOBS Act, we urge FINRA to amend Rule 2711 to give effect to the JOBS Act or otherwise provide specific guidance.

Research blackouts related to lock-up agreements

Section 105(d) of the JOBS Act prohibits the Commission or any national securities association from adopting or maintaining any rule or regulation that prohibits a broker, dealer or member of a national securities association from publishing or distributing any research report or making a public appearance, with respect to the securities of an EGC within any prescribed period of time *prior* to the *expiration* date of a "lock-up" agreement with an EGC or its shareholders. FINRA Rule 2711 restricts the issuance of research and public appearances not only prior to but also after the expiration of a lock-up agreement. It also restricts research and public appearances prior to and after the

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waiver or termination of a lock-up agreement in addition to the expiration thereof. We believe it was inadvertent that the JOBS Act only refers to “prior” and “expiration” as opposed to “prior to or after” and to “expiration, waiver or termination”. There is no reason to distinguish between research issued prior to versus after a waiver expiration or to distinguish between research issued prior to or after a lock-up expiration versus a termination or waiver.

In addition, the prohibition in Section 105(d) of the JOBS Act is limited to the issuance of research in connection with an EGC’s initial public offering as opposed to any offering by an EGC. We do not believe there is a policy reason justifying a research blackout in connection with a follow-on offering as opposed to in connection with an EGC’s initial public offering.

In 2008, FINRA proposed a new rule 2240 that would have eliminated such restrictions. We agree with the rationale provided by FINRA at the time that “research issued during such periods potentially offers valuable market information, and the other provisions of the research rules and SEC Regulation AC provide sufficient protection that such research will honestly reflect the analyst’s beliefs and be free from other conflicts that would undermine the value or integrity of research issued during these periods.” Accordingly, we urge FINRA to revise Rule 2711 to eliminate the prohibitions on research and public appearances prior to and after a lock-up expiration, waiver or termination whether in connection with an initial public offering or a follow-on offering.

Securities analyst communications

Section 105(b) of the JOBS Act prohibits the Commission or any national securities association from adopting or maintaining any rule or regulation ***in connection with an initial public offering*** of the common equity of an EGC that prohibits a broker, dealer or member of a national securities association from restricting, based on functional role, which associate person of a broker, dealer or member of a national securities association may arrange for communications between a securities analyst and a potential investor. We do not believe there is a policy reason for limiting this foregoing relief to initial public offerings as opposed to follow-on offerings and urge FINRA to revise Rule 2711 to eliminate such restrictions in connection with all offerings.

As noted above, there is substantial uncertainty regarding which portions of FINRA Rule 2711 are impacted by the JOBS Act. Accordingly, we urge FINRA to eliminate this uncertainty by amending Rule 2711 or otherwise providing specific guidance to give effect to the JOBS Act in a manner which allows issuers to realize the intended benefits.

If you have any questions with respect to the request contained in this letter, or require any further information, please feel free to contact the undersigned, or Richard D. Truesdell, Jr., Davis Polk & Wardwell LLP, at (212) 313-1118 and (212) 450-4674, respectively.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Sean Davy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sean Davy
Managing Director

cc: Stephen Luparello, Acting Chief Executive Officer, FINRA
Marc Menchel, Executive Vice President and General Counsel for Regulation,
FINRA
Thomas Gira, Executive Vice President, Market Regulation, FINRA
Richard Ketchum, Chief Executive Officer, NYSE Regulation, and Non-Executive
Chairman, FINRA
Ms. Meredith Cross, Director, Division of Corporation Finance