



October 26, 2010

Robert W. Cook
Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Rule 201 of Regulation SHO Issues for Broker-Dealers

Dear Mr. Cook:

As you may be aware from our various discussions with staff from the Securities and Exchange Commission's ("SEC's") Division of Trading and Markets (the "Staff"), the Securities Industry and Financial Market Association ("SIFMA"),¹ primarily through the Short Sale Price Test Regulatory Working Group and the Short Sale Price Test Ops/Tech Working Group, has been working diligently over the course of approximately the last seven months with the Staff, the Financial Industry Regulatory Authority, Inc. ("FINRA"), exchanges and other market participants to determine the steps that are necessary for successful implementation of Rule 201 of Regulation SHO ("Rule 201"). Through this collaborative process, a number of operational and interpretive issues have been identified and resolved; however, as of the present date, there still remain a few unanswered questions that will affect programming. Additionally, as the SEC can hopefully appreciate, despite firms' proactive and diligent efforts to confirm their understanding of the operation of this new price test and to program and test their systems accordingly in order to meet the November 10 deadline, unexpected issues and problems may arise that firms simply could not have anticipated, especially in the first few months after November 10. For example, among other things and as part of their Rule 201 compliance efforts, firms need to rely on data and information from various third parties, including exchanges and data vendors; hopefully, these data streams will operate smoothly from November 10 on, but there is always a concern that inadvertent disruptions could occur in such data streams when dealing with the implementation of a new rule.

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association ("GFMA").

As the SEC is aware, the short sale price test of Rule 201 was adopted with a policies and procedures approach, rather than with a straight prohibition approach. Specifically, in the SEC's release announcing the adoption of Rule 201,² the SEC explicitly stated:

“We recognize some commenters’ preference that a short sale price test restriction be adopted with a straight prohibition approach or in combination with a straight prohibition approach because it is the approach taken under former Rule 10a-1 and, therefore, is familiar to market participants. Further, some commenters noted there can be variations in policies and procedures. As discussed in more detail below, however, *we have determined to adopt in Rule 201(b)(1) a policies and procedures approach rather than a straight prohibition approach (or a combination thereof)* because this alternative is similar to the policies and procedures approach under Regulation NMS and, therefore, market participants are familiar with a policies and procedures approach and can build on such policies and procedures in implementing Rule 201.” (emphasis added).

SIFMA therefore requests that, when reviewing and examining firms for compliance with Rule 201 after November 10, the SEC and FINRA Staff take into consideration the fact that initial glitches may occur, particularly in the first few months, and that, to the extent that firms take action to address those initial glitches and adjust their policies and procedures accordingly to comply with Rule 201's requirements, firms should be deemed to be in compliance with Rule 201. We note that these glitches and possible adjustments to firms' policies and procedures could be the result of information provided by third parties, including exchanges and data vendors.

As previously discussed with the Staff, in order to comply with the requirements of Rule 201, firms have undertaken significant systems changes that were more extensive than originally anticipated. Because many firms have large, installed production footprints, implementing a change across the entire installed base often takes considerable time in the software development cycle and then several months in the deployment effort. It is important to note that, throughout the programming process, firms have been dependent on various third parties, including exchanges and data vendors, to provide the information necessary to effectively program to comply with the requirements of Rule 201. In this regard, SIFMA notes that market participants and regulators have most likely been delayed in their short sale price test implementation efforts because of other intervening events, most notably the “flash crash” of May 6th and the critical need for all market participants to address that market event through the rapid development and institution of single stock circuit breakers.³ The efforts to address the flash crash may be the

² See Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010).

³ Indeed, efforts continue among regulators and market participants to analyze the efficacy of the single stock circuit breaker pilot, and to fine-tune this tool to best prevent inadvertent consequences to, and the orderly functioning of, our markets. In addition, many of the same staff members from the regulators and member firms are also involved in implementing the new Dodd-Frank Wall Street Reform and Consumer Protection Act, and in implementing certain other, already scheduled rule-making initiatives (including

reason behind the delay in receiving some of the answers firms needed from the regulators and why the exchanges and their securities information processors (“SIPs”) published their Rule 201 specifications much later than expected (well after late June 2010). Additionally, the New York Stock Exchange’s clarification on order capacity marking was not provided until September 15, which delayed firms’ ability to program in connection with order marking. Moreover, FINRA published their Order Audit Trail System (“OATS”) specifications later than expected – on August 30. Because this critical information was published much later than anticipated, development has been inevitably rushed by firms and will continue to be so (depending on what other new information is issued). Thus, even though our discussions with the regulators have been ongoing and very helpful, the delay in receiving these specifications and written guidance significantly delayed firms’ software development and deployment and other planning efforts.

Additionally, firms have just recently engaged in testing with the exchanges of their newly programmed systems. The initial results of such testing have generally been positive; however, it would have been helpful to have had testing opportunities not so close to the November 10 deadline. In this regard, the Nasdaq Stock Market’s SIP, the UTP SIP Plan, did not make their market data available until the evening of September 13, which was quite late in the programming process and caused a delay in integration testing across firms’ systems. Firms had hoped that the issuance of specifications, programming and testing cycle could have taken place this past summer if not early fall, as that would have given adequate time for firms to remediate any issues that might be discovered during the testing process. As a result of the amount of programming and testing taking place so close to the November 10 deadline, there exists a greater technical and market risk for the exchanges, broker-dealers and vendors when the rule goes live on November 10.

Again, we greatly appreciate the opportunity we have had to work with you and other members of the SEC Staff and with other regulators during the Rule 201 implementation process. We recognize that all regulators have been working hard to understand the impact of the new rule, to issue the necessary interpretations and specifications, and to schedule testing events for the industry. However, as mentioned above, we also appreciate that other intervening events, such as the May 6th flash crash and the subsequent action taken to quickly institute the single stock circuit breakers, may have delayed regulators in giving firms the information and testing events they needed in a timely manner to ensure they are ready for the new price test by November 10. Despite such intervening events, SIFMA member firms will continue to work diligently to contribute to, and very much hope for, a smooth implementation of the new price test on November 10. We therefore hope that you will be cognizant of firms’ efforts, the intervening market events that caused delays in the implementation process, and the policies and procedures approach proscribed in Rule 201 when you surveil member firms for compliance with the rule, particularly in the first few months after November 10.

FINRA’s implementation of a new identifier and 30 second trade reporting on November 1, and rule change to apply certain Regulation NMS protections to the over-the-counter (“OTC”) market).

Thank you for your consideration of these concerns. If you have any questions, please do not hesitate to contact Ann Vlcek, Managing Director and Associate General Counsel, or me at 202-962-7300.

Very truly yours,

/s/ Ira D. Hammerman

Ira D. Hammerman
Senior Managing Director & General
Counsel

cc: Jamie Brigagliano, Deputy Director, Division of Trading and Markets
Josephine Tao, Assistant Director, Division of Trading and Markets