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Invested in America

August 13, 2012

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (the "**Commission's**") Statement of General Policy (the "**Policy Statement**") on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps ("**SBS**") Under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Title VII**" of the "**Dodd-Frank Act**").[2]

SIFMA believes that the Policy Statement reflects sound judgments regarding the order in which Title VII should be implemented. As we stated in a comment letter to the Commodity Futures Trading Commission ("**CFTC**") on November 4, 2011 (the "**November 4th Letter**"),[3] we believe that Title VII must be phased in as part of a comprehensive plan that recognizes and accounts for the significant serial dependencies and interdependencies that lie at the core of the transition process. In the November 4th Letter, we suggested an appropriate sequencing of Title VII requirements to meet these

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[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. For more information, visit www.sifma.org.

[2] Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, 77 Fed. Reg. 35,625 (June 14, 2012).

[3] Letter submitted by SIFMA to the Commodity Futures Trading Commission on the subject of the proposed compliance and implementation schedules for clearing, trading execution, documentation and margin (Nov. 4, 2011) (*available at* http://www.sifma.org/issues/item.aspx?id=8589936345).

goals. We are pleased to see that the Policy Statement is largely in line with the sequencing we suggested.

We believe that the amount of time that the Commission provides market participants between stages of compliance is as critical to the success of Title VII implementation as is sequencing the stages in the correct order. As such, we agree with the Commission that each phase of the implementation and compliance process must allow for "adequate" or "an appropriate amount of" time for regulated entities to come into compliance before the next cycle of proposed rules, final rules and implementation begins.[4] Many of the new compliance requirements will create significant technological and logistical burdens for the regulated entities, and a relatively smooth transition to the new requirements will be necessary to ensure that Title VII comes into full effect with minimal market disruptions. Further, in several instances, information collected at one stage of the phase-in process must be aggregated and interpreted before the next set of rules can be properly drafted. Allowing insufficient time to incorporate this information would negate the benefit of collecting it and would likely lead to rules less well suited to the Commission's overall aims. Finally, failing to provide sufficient time between stages could lead to unintended consequences; for example, phasing in uncleared SBS margin requirements too close in time to clearing determinations could lead to such margin requirements becoming effective for a certain class of SBS before that class of SBS is required to be cleared, effectively forcing clearing before the class is ready.

We understand that it is very difficult for the Commission to provide concrete implementation time frames at this point in the implementation process. In this letter we offer our views of what an "adequate" or "appropriate amount" of time is for each stage in the Commission's proposed implementation process. We also suggest minor variations to the Commission's proposed sequencing where those variations would ease the implementation process.

In addition to the general implementation sequencing described in the Policy Statement, we believe that compliance with Title VII requirements should be phased in by type of market participant and by product type. Different SBS products have different attributes, including differing levels of standardization, liquidity and existing market infrastructure. As a result, some products are more ready for Title VII implementation than others. For example, certain single-name credit default swaps are somewhat standardized and are currently being cleared on clearinghouses. On the other hand, total return swaps on equity securities and loans are generally transacted bilaterally. Thus, we believe that the Commission should require clearing, reporting and electronic execution for the "better-prepared" asset classes first and should provide ample time for the maturation of the asset classes and products that are not yet at that stage. Sequencing that reflects these differences would allow the Commission and market participants to understand and solve the problems that arise in relatively less complex, more liquid products before moving on to more complex, less liquid products.

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[4] General Policy Statement at 35,630.

Much like phased implementation by product, phased implementation by type of market participant will allow the Commission and market participants to use lessons learned from more active SBS market participants when developing rules applicable to market participants with fewer SBS-trading activities and to end users. Entities that will register as security-based swap dealers ("**SBSDs**") and major security-based swap participants ("**MSBSPs**"), in general, have greater resources, access to technology and clearing infrastructure than their end user counterparties. Consequently, a number of Title VII requirements should be phased in for the interdealer market before the dealer-to-end-user market. For example, the interdealer market may be able to adjust more quickly to a cleared SBS regime. The lessons learned from the interdealer experience can be applied to customers before the additional complications that customer clearing brings, such as the protection of customer collateral, are fully tackled. This is not to say that the customer clearing systems should not be built in parallel; the Commission should encourage a move to Title VII-compliant activity across all market participants and products, and market participants should be permitted to clear prior to the required dates if they are ready and willing to do so. However, the Commission, for example, should not require clearing by any end users until the interdealer experience within each asset class is well established and understood.

In the remainder of this letter, we describe our views of each stage in the Commission's proposed implementation process.

Commission-Proposed Stage 1: Definitional Rules and Cross-Border Rules

SIFMA agrees with the Commission that definitional and cross-border rules are foundational to the Title VII regime and, as a result, must be finalized before Title VII is implemented. Since final definitional rules have been adopted, SIFMA believes that the Commission's next step should be proposal of, and then adoption of, cross-border rules. The SBS market is truly global: a single SBS may be negotiated and executed between counterparties located in two different countries, booked in a third country and risk-managed in a fourth country, potentially triggering SBS regulation in multiple jurisdictions simultaneously. Many participants use a central booking entity to efficiently manage risks arising from SBS that they execute around the world through their subsidiaries, affiliates and branches.

An effective approach to U.S. SBS regulation must accommodate the global risk management and efficient operational structures currently in place. The Commission should carefully draft the Title VII rules to avoid disrupting these international arrangements except where necessary to achieve an explicit legislative purpose. The Commission should also give effect to the principles of international comity by refraining from unnecessarily regulating conduct outside national borders while appropriately allocating supervision of cross-border SBS activities in a way that protects U.S. markets and counterparties and avoids duplicative and inconsistent regulations.

SIFMA will comment separately on the full range of problems and issues raised by the CFTC's recently issued proposed interpretive guidance[5] and proposed exemptive order[6] related to the cross-border application of Title VII. We note here, however, that we believe the CFTC's approach does not accord with the principles above and reaches beyond the scope of the CFTC's jurisdictional mandate. In addition, like the definition of "swap" and "swap dealer" that similarly define the scope of Title VII, we believe that the Commission and the CFTC should adopt any approach to the cross-border application of Title VII as a joint rule.

Commission-Proposed Stage 2: Security-Based Swap Data Repositories and Security-Based Swap Transaction Reporting

SIFMA agrees with the Commission that the first substantive Title VII requirements should relate to reporting of SBS transactions. Functioning SBS data repositories ("**SB-SDRs**") and effective regulatory reporting of SBS transactions are prerequisites to an orderly transition to the rest of the Title VII regime. Once it begins to compile data across markets, entities and transactions, the Commission will be well positioned to determine which types or classes of transactions should become subject to mandatory clearing, and in what order, how to determine block trade sizes and how to implement and monitor compliance with business conduct and other SBSD rules.

We believe that the first step in implementing SBS reporting should be the establishment of uniform data identifiers, which should be the same data identifiers used by the CFTC. It would be more efficient and effective to finalize industry identification standards before reporting begins. Otherwise, matching trades between counterparties will be more difficult, increasing the risk of duplicative data within an SB-SDR and making data aggregation across SB-SDRs impossible. Reversing this order would also lead to inefficiencies and delays, requiring market participants to modify systems built before the data standards are finalized. While these industry standards are being developed, SB-SDRs can begin developing systems and processes for data collection and, when required by the Commission, register.

Once SDRs are registered and SBSDs and MSBSPs have connected to them, data reporting can begin. SBSDs and MSBSPs will not be able to provide, and SB-SDRs will not be able to accept, all data on Dodd-Frank Act-compliant timelines on the first day of operation. Instead, there should be a phased process to develop the procedures and connections needed to ultimately report all Dodd-Frank Act-required data in the appropriate time frame. In the November 4th Letter, we suggest a model five-step approach to data reporting that begins with regulatory reporting of basic trade information such as trade and product type, counterparties and key economic trade terms on a position basis. That framework is included in this letter as Appendix A. Subsequent

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[5] Cross-Border Application of Certain Swap Provisions of the Commodity Exchange Act, 77 Fed. Reg. 41,214 (July 12, 2012).

[6] Exemptive Order Regarding Compliance with Certain Swap Regulations, 77 Fed. Reg. 41,110 (July 12, 2012).

phases should include reporting of valuation data (other than collateral valuation), SBS confirmation reporting and modifications or changes in economic terms. The final phases should incorporate the remaining requirements for reporting under the Dodd-Frank Act. In particular, SIFMA believes that reporting for amendments, novations or terminations of SBS would require significant development to implement and should be implemented only after other SBS reporting requirements are implemented.

Reporting should also be phased in by asset class, based on whether reporting infrastructure and data exist. In the case of single-name credit default swaps that will be SBS, a great deal of information is already reported to the Depository Trust and Clearing Corporation's Trade Information Warehouse ("**TIW**"). By leveraging this existing facility and cache of information, the Commission can provide time for SB-SDRs to develop for other asset classes, learning from the experiences of TIW. In the case of equity and loan total return swaps, more time should be given.

SIFMA understands that the Commission currently intends to capture and implement all public reporting requirements in its proposed Stage 2. SIFMA suggests, however, that public dissemination of data, and the related determination of block size thresholds, should be postponed until the final stage of compliance. Until the new Title VII regime is fully formed, the dissemination of partial information could have a destabilizing effect on the market, particularly as some firms will likely be better equipped to release information than others, leading to significant informational asymmetries. If the goal of the public dissemination is transparency, that goal is best accomplished with a well-timed release of information by all regulated entities. Anything less may in fact exacerbate rather than ameliorate the problem, in effect negating some of the intent of Title VII. In addition, appropriate block threshold sizes should not be set until the Commission collects sufficient information about the liquidity characteristics of SBS traded on SBS execution facilities ("**SB-SEFs**") and exchanges. We discuss this further as part of Stage 5.

Commission-Proposed Stage 3: Mandatory Clearing

We agree with the Commission that mandatory clearing should be implemented only after the SBS reporting regime is established. We believe that SBS data will help the Commission assess whether a particular SBS or category of SBS should be required to be cleared. As stated by the Financial Stability Board's OTC Derivatives Working Group in a recent report, "authorities need better data on liquidity to facilitate the evaluation of suitability of products for central clearing."[7] As a result, we think that Stage 3 should not begin until sufficient time has passed to allow the Commission to collect and analyze sufficient SBS data to make an informed decision about which SBS are most suitable to be cleared first. In addition, during Stages 1 and 2, clearinghouses will have had sufficient time to finalize their SBS offerings, clearing members will have had time

[7] Financial Stability Board, "OTC Derivatives Market Reforms Progress Report on Implementation" (Oct. 11, 2011), *available at* http://www.financialstabilityboard.org/publications/r_111011b.pdf.

to develop and test connectivity to clearinghouses and financial entities are more likely to have had sufficient time to negotiate necessary and appropriate documentation.

As discussed above, clearing should be phased in by type of market participant and by product category, most likely beginning with credit default SBS that are currently cleared. Clearing of equity and loan total return swaps should be required later, as they are generally transacted bilaterally in markets that have not been characterized by central clearing. Additionally, as discussed above, interdealer clearing should be required before customer clearing, so that the lessons learned from the interdealer experience can be applied to customers before the additional complications that customer clearing brings, such as the protection of customer collateral, are fully tackled.

Commission-Proposed Stage 4: Security-Based Swap Dealers and Major Security-Based Swap Participants Registration and Regulation

We agree with the Commission that the next logical step in Title VII implementation is registration of SBSDs and MSBSPs and regulation of those entities. It is critical that the Commission provide sufficient time between the finalization of cross-border rules for market participants to understand which entities they would be required to register as SBSDs or MSBSPs and, if necessary, to move businesses to allow such activities to be centralized. Similarly, it is critical that the Commission finalize SBSD regulatory requirements, particularly capital, margin and segregation requirements, before registration is required, to allow firms to make intelligent entity selection decisions. The Commission has indicated that it may "propose amendments to its rules regarding net capital and customer protection specifically with regard to SB swap clearing activity in a broker-dealer and whether margin for SB swaps that are required to be cleared can be calculated on a portfolio margining basis."[8] Market participants will not understand how utilizing a registered broker-dealer as an SBSD will impact capital, margin and segregation requirements for that broker-dealer until such amendments are put into place. We think that the SBSD capital, margin and segregation rules should apply in such a way as to allow the same entity to act as a broker-dealer and as an SBSD.

Once market participants have determined which entities will register and the Commission better understands the range of SBSDs and MSBSPs, the Commission can start finalizing SBSD regulation rules tailored to that group of entities. In this stage, the time between finalization of rules and compliance requirements is critical. In particular, we believe that SBSDs and MSBSPs will require a significant amount of time between finalization of recordkeeping and documentation rules and the date on which SBSDs and MSBSPs are required to comply with those rules. With respect to recordkeeping, the complexity of the systems involved and interdependencies between parts of the system require that changes be sequenced, regardless of the resources devoted to the task. SIFMA believes that overly short time frames would be particularly problematic with respect to changes in documentation that will be required not only by documentation-

[8] Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps, 77 Fed. Reg. 35,630 (June 14, 2012).

specific rules, but also by the clearing, exchange trading and margin mandates. The number of documentation changes that need to be negotiated is overwhelming. Dodd-Frank Act-compliant industry standard documents are still being developed and current agreements do not address a number of key business issues related to clearing and exchange trading of SBS. Even when industry-wide templates are finalized, customers will need to be educated and informed about their contents. Importantly, even standard documentation will need to be individually negotiated to account for counterparty-specific issues.

Allowing insufficient time to complete documentation processes will force asset managers to choose a small number of dealers with which to enter into arrangements in the short term. These are likely to be the largest dealers with standard documentation whose advantages over smaller dealers will be exacerbated. This will negatively affect the competitive positions of small SBSDs, at least for a transitional period. Furthermore, market disruptions are likely to occur as these large dealers will be unable to negotiate with all parties at the same time, which could leave substantial number of market participants without access to the SBS markets.

As with recordkeeping requirements, SIFMA believes that the external business conduct standards should be implemented in different steps. Registered SBSDs and MSBSPs should first be required to comply with know-your-counterparty requirements, standardized risk and conflicts disclosure, clearing disclosure, requirements applicable to political contributions and antifraud and anti-manipulation requirements other than those connected to exchange or SB-SEF trading. Business conduct requirements related to special entities, bespoke risk and conflicts disclosure, the requirement to provide daily marks to counterparties and disclosure of daily mid-market values should come next, as these business conduct requirements will require significant legal, compliance, operational and technological work by the SBSDs and MSBSPs required to implement them. Finally, requirements related to trade execution should be implemented after the SB-SEF and exchange-trading requirements to which they relate, as discussed further in Stage 5 below.

After mandatory clearing has been implemented in Stage 3, capital and margin for uncleared SBS can be phased in. If these requirements, particularly uncleared SBS margin, are implemented before clearing, compliance would become mandatory for certain market participants as a practical matter prior to becoming mandatory for them as a regulatory matter. Accordingly, rules relating to uncleared SBS margin should not apply to a market participant for SBS that are required to be cleared until that market participant is required to clear the particular SBS. For example, consider a third-party subaccount that wishes to enter into a specific SBS that is required to be cleared if two SBSDs enter into a trade but is not yet required to be cleared by the third-party subaccount. If the third-party subaccount is subject to uncleared margin posting requirements for that SBS, and uncleared margin requirements are higher than those a clearinghouse would require, the third-party subaccount will be forced to either clear the swap, which it may not be prepared for, or to pay high margin amounts.

Commission-Proposed Stage 5: Security-Based Swap Execution Facility Registration and Regulation and the Mandatory Trade Execution Requirement

We agree that SB-SEF registration and regulation and the mandatory trade execution requirements should be phased in only after SBSDs and MSBSPs are registered with the Commission. Title VII is clear that the execution requirement will automatically apply to transactions that are subject to mandatory clearing so long as an exchange or SB-SEF has made it available for trading. By defining "made available for trading" appropriately, beginning with the liquid products most conducive to robust SB-SEF trading, the Commission has the authority to sequence this step in a way that ensures an orderly transition to such trading. As this is accomplished, the Commission could implement the business conduct requirements related to trading on SB-SEFs and exchanges. The introduction of trade execution requirements, including execution standards and protections against front-running and trading ahead, make most sense in an environment where trading on SB-SEFs or exchanges is required.

As discussed above, we believe that real-time reporting requirements should follow mandatory trade execution. It is critical that the definition of a "block trade" and real-time reporting delays for blocks be carefully set to avoid front-running in the cash markets where block trades are hedged, which would likely lead SBSDs and MSBSPs to increase the price of block trades for end users. Until a liquid SBS trading market develops on SB-SEFs and exchanges, the Commission will not be able to make informed decisions on the definition of a block or an appropriate public reporting time frame. For the same reason, real-time reporting should be implemented gradually. Block trade thresholds should be set at a low level at first, such that many trades are treated as blocks, and raised slowly by the Commission when doing so is supported by market data. In addition, market participants should be provided 24 hours before block trade information is publicly disseminated for any block trade, with the time to public dissemination decreasing as the Commission learns more about the costs and benefits of various reporting time frames.

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We appreciate the opportunity to comment on the Policy Statement. Please feel free to contact us should you wish to discuss this letter.

Sincerely,

Kenneth E. Bentsen, Jr.
Executive Vice President, Public Policy and Advocacy
SIFMA

Appendix A: Five Model Phases of SB-SDR Reporting

Phase 1:

- SBS Continuation Data: End of day snapshot for all asset classes. \

Phase 2:

- SBS Continuation Data: Valuation data other than collateral will be reported on valuation date + 1. Collateral is not managed at trade level and cannot be incorporated per trade.

Phase 3:

- SBS Creation Data; Primary economic terms ("PET") and confirmation data will be reported for electronically processed trades.
- SBS Continuation Data: Lifecycle and contract intrinsic data will be reported for electronically processed trades.

Phase 4:

- SBS Creation Data; PET and confirmation data will be reported for paper processed trades.
- SBS Continuation Data: Lifecycle and contract intrinsic data will be reported for paper processed trades.

Phase 5:

- All reporting will be compliant with SEC rules.