Fact Sheet: SIFMA Comments on the Dodd-Frank Act Section 956 Reproposed Rule on Incentive-Based Compensation Arrangements

SIFMA agrees with the regulatory objective to ensure that incentive-based compensation arrangements do not undermine the safety and soundness of financial institutions by encouraging inappropriate risk-taking. We are deeply concerned, however, that the Reproposed Rule exceeds its statutory mandate and will have serious and wide-reaching consequences.

Specifically, we believe that the regulations implementing Section 956 of the Dodd-Frank Act will undercut the U.S. financial services industry's ability to recruit and retain talent in order to responsibly manage risk and operate the industry's businesses. This could increase rather than mitigate risk at financial institutions.

- Financial institutions are highly diverse and differentiated. By contrast, the Reproposed Rule includes a comprehensive framework of often inflexible requirements.
  - The policy objectives of Section 956 will better be served by an approach that balances specific principles and appropriately focused prescriptive rules, thereby allowing the Agencies and each financial institution to prudently tailor the application of the Final Rule to particular business circumstances.

  Beginning in 2010, financial institutions began working with federal regulators on a principles-based approach to incentive-based compensation that takes into account the size, complexity, risk profile and business model of each institution.

  The Final Rule should build on the progress in incentive-based compensation governance, design and processes that has been made since the financial crisis.

- The Reproposed Rule goes well beyond the statutory mandate by covering <u>all</u> incentive-based compensation rather than covering <u>only</u> incentive-based compensation that could encourage inappropriate risk-taking.
  - The Reproposed Rule could cover, for example, securities brokerage commissions, broad-based profit-sharing plans and even employer contributions to tax-qualified retirement plans.
  - The Final Rule should cover only incentive-based compensation plans that could encourage inappropriate risk-taking.

- The Reproposed Rule is overbroad and applies to <u>all</u> employees who receive incentive-based compensation, including employees who have no relationship to risk-taking, such as bank tellers, administrative assistants and technical support workers.
  - The Final Rule should only apply to risk-takers and senior executive officers and should not include, for example, employees whose responsibilities are limited in all

material respects to dealing with client funds rather than firm capital, including financial advisors, stock brokers, portfolio managers and analysts.

- The Reproposed Rule should be sufficiently flexible to accommodate the highly diverse businesses and structures in the financial services industry and should avoid overlapping and potentially conflicting regulation.

- SIFMA's letter highlights other specific suggested changes that should be made to the Reproposed Rule, including:
    - Consistent with the statutory mandate of Section 956, balance the mix of principles-based guidance and prescriptive rules so that incentive-based compensation plans can be designed in a manner that advances the principles of Section 956 while accounting for the diverse array of financial institutions, business models and employee situations.
    - Unless the scope of employees covered by the Final Rule is limited, decrease the required deferral percentages and shorten the required deferral periods
    - Unless the scope of employees covered by the Final Rule is limited, reduce the required clawback period.
    - Start the clawback period on the date of grant of an award rather than at the end of the deferral period (under the Reproposed Rule, compensation could be at risk for up to 12 years).
    - Permit acceleration of vesting in certain cases consistent with common practice, including, for example, on a change in control.
    - Allow covered financial institutions to determine the appropriate form and mix of the types of deferred compensation.
    - Eliminate the requirement that all incentive-based compensation at all covered institutions have both financial and non-financial metrics.

- The Agencies should conduct an analysis of relevant costs and benefits and quantitative impact assessments of the Reproposed Rule and provide that analysis to the public before issuing the Final Rule.

- Given the radical change from the 2011 Proposed Rule and the significant consequences and concerns arising from the Reproposed Rule, it is critical that the Agencies repropose – and provide to the public an opportunity to review and comment – a revised version of the Reproposed Rule.