January 13, 2015

Mr. Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: *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. 35625)*

Dear Mr. Fields:

The Securities Industry and Financial Markets Association ("**SIFMA**")[1] is submitting this letter to provide the U.S. Securities and Exchange Commission (the "**SEC**" or "**Commission**") with further comments in response to its previously proposed policy statement on rule sequencing and implementation ("**Sequencing Proposal**"),[2] on which SIFMA previously submitted comments on August 13, 2012.[3] SIFMA and its members strongly support regulatory efforts aimed at increasing transparency and reducing risk in the security-based swap ("**SBS**") market through appropriate and well-sequenced Title VII implementation. Through the experiences and perspectives of our members, SIFMA is well positioned to assist the Commission in determining the most effective sequencing for meeting its regulatory objectives while avoiding unnecessary disruptions or fragmentation to the SBS market. As new and significant regulatory and market developments have occurred since the submission of our previous comments, we take this opportunity to revisit and provide additional comments for your

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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. 35625 (June 14, 2012).

[3] See letter, available at: http://www.sifma.org/issues/item.aspx?id=8589939893. Given the significant regulatory and market developments which have occurred since the submission of this previous letter, SIFMA wishes to clarify that the observations and comments made herein supersede those of our previous letter. Further, as reporting for CFTC-regulated and other products has already begun, we no longer believe the phased approach to security-based swap data repository reporting suggested in Appendix A of the previous letter is appropriate.

consideration on some key issues regarding the sequencing of the Commission's Title VII regime.[4]

Given the many serial dependencies and interdependencies which exist between its rulemakings, it is imperative that the Commission carefully consider the appropriate sequencing of its regime, in terms of both the order it proposes and finalizes rules, as well as the order in which compliance dates for the various requirements are phased in. A well-sequenced approach will allow the Commission to utilize information and data collected early on in the implementation process to create more intuitive and informed rulemakings in subsequent phases, and to make any necessary adjustments along the way. It is equally important that the Commission provide an adequate amount of time for regulated entities to come into compliance with requirements in each phase of rulemaking, given the significant client education and documentation exercises and technological and operational builds that will be required.

In the following comments, we provide thoughts on the interaction of the SEC's SBS regulatory regime with the regulations of the U.S. Commodity Futures Trading Commission ("**CFTC**") and non-U.S. regulatory regimes, and the levels of coordination that we believe should be taken between each. In addition, we provide our additional thoughts on the SEC's Title VII rulemaking and compliance sequencing. We remain generally supportive of the Commission's Sequencing Proposal, subject to some clarifications, as noted below.

Regulatory Coordination: Cross-Product Application

It is important to note as a prefatory matter that the CFTC has finalized and implemented the majority of its Title VII rules. SIFMA's members and their clients have thus allocated significant time and resources towards developing new infrastructures, adopting market conventions and engaging in large-scale documentation exercises in order to comply with these CFTC requirements. We urge the SEC to align its rules with existing CFTC requirements wherever possible and practicable, so that market participants may leverage the significant investment in time and resources and the infrastructures, conventions and documentation already in place for compliance with CFTC rules. This is especially true where the unique characteristics of SBS do not require different rules, such as those related to client disclosure and documentation. For example, where a client has already provided a representation to a regulated entity that it is a "special entity" under the CFTC's external business conduct rules, the SEC should allow for reliance on that representation. Duplicative requirements to procure, submit and track this additional documentation would be impractical, unduly burdensome and confusing, particularly to clients, without providing any additional regulatory benefit. SIFMA and its members would be pleased to discuss further where such coordination would be most beneficial and effective.

[4] SIFMA would welcome the opportunity to discuss the implementation of Title VII requirements to date.

Product-Specific Considerations

It should also be noted, however, that the SBS market does have certain unique characteristics that the Commission should take into account as it implements its Title VII regime. In some instances, the application of rules and compliance procedures developed for CFTC-regulated swaps products would not be appropriate. For example, the liquidity characteristics of SEC-regulated single name credit default swaps ("**CDS**") are different from those of CFTC-regulated index products. As such, we urge the SEC to consider the impact of applying requirements similar to those imposed by the CFTC on index CDS products to SEC-regulated single name CDS, and in particular, whether those relating to reporting, clearing, trading and block transaction treatment should differ. In the event SEC-regulated products would be negatively impacted by the application of similar CFTC requirements, the Commission should consider alternative approaches that account for the unique characteristics of SBS and avoid any unnecessary market disruptions. SIFMA and its members would be pleased to discuss ways in which the Commission can ensure an appropriate transition which addresses the unique characteristics of SBS products in the rulemaking and implementation process.

International Coordination

It should also be noted that regulators in other jurisdictions are in the process of implementing their own derivatives-related regulatory regimes. Given the global nature of these markets, we urge the SEC to allow market participants to use substituted compliance wherever practical, deferring to comparable foreign regimes in order to minimize the risk of imposing duplicative, inconsistent or conflicting requirements on market participants. Further, the Commission should be cognizant of international implementation timelines, and seek to phase in requirements in a coordinated manner to avoid instances of regulatory arbitrage and market fragmentation.

Without consideration of derivatives regulatory regimes outside of the United States, an overreaching extraterritorial application of U.S. rules could have a negative impact on U.S. jobs. For example, due to the overwhelming complexity and potential conflicts that arise when attempting to comply with both Title VII swap and SBS rules and similar rules adopted by other G-20 countries, non-U.S. counterparties have placed increasing emphasis on ensuring that their trades are not subject to Title VII requirements. As a result, many non-U.S. swap dealers and non-U.S. entities that will be security-based swap dealers ("**SBSDs**"), as well as U.S.-based firms with foreign branches or affiliated non-U.S. swap dealers (and non-U.S. entities that will be SBSDs), may face increasing pressure from their counterparties to relocate or move U.S. jobs to non-U.S. locations – making it even more imperative that U.S. regulators allow for substituted compliance with the rules of comparable foreign jurisdictions.

SBS Title VII Rulemaking Sequencing

As an overarching matter, SIFMA strongly believes SBSD registration rules must be finalized and made effective before compliance with any substantive Title VII requirements by counterparties to SBSD transactions can occur. Additionally, following a firm's registration as an SBSD, an appropriate amount of time must be provided to allow for compliance procedures

and systems to be implemented.[5] However, prior to the effective date for SBSD registration, SIFMA believes market participants should be provided with a clear picture of the substantive requirements of several foundational rulemakings – including those relating to cross-border, capital and margin requirements[6] – in order to allow for informed decisions to be made regarding which entities will be registered as SBSDs.

As noted above, we are generally supportive of the Commission's proposed sequencing, subject to some clarifications. At a high level, we believe the following sequencing of several key areas, which accounts for both rulemaking and implementation, would allow for a clear and orderly transition for the SBS markets as the Commission moves forward with the implementation of its Title VII regime:

- Phase 1: Definitional and Cross-Border Rulemakings
- Phase 2: Security-Based Swap Data Repositories and SBS Transaction Reporting
    - Reporting rules may be finalized, but should not be made effective until after SBSD registration.
- Phase 3: Mandatory Clearing
    - Clearing rules may be finalized, but should not be made effective until after SBSD registration.
- Phase 4: SBSD Registration and Regulation
    - The Commission should seek to finalize a number of its foundational rulemakings *prior to the effective date for registration*, including:
        - Cross-Border Rules
        - Capital, Margin and Segregation Requirements
    - The Commission should *not* require compliance with any substantive Title VII requirements until an adequate amount of time following registration.
    - Following registration, we believe the Commission can phase in compliance for the below requirements in the following order (with an appropriate amount of time allowed between the implementation of each):
        - Internal Business Conduct/Recordkeeping
        - SBS Transaction Reporting
        - Mandatory Clearing Requirements

[5] The SEC should further provide an adequate amount of time following the finalization of its registration rules before requiring market participants to count any SBS activity towards any registration thresholds. Market participants will still be in the process of moving SBS activity into the entities they will ultimately register as SBSDs.

[6] The SEC proposed its capital, margin and segregation requirements on November 23, 2012. SIFMA believes the SEC should re-propose and then finalize this rulemaking prior to the effective date for SBSD registration, as the rulemaking will play a significant role for market participants in determining which entities will house SBS activities.

- Capital and Margin Requirements

- Phase 5: Security-Based Swap Execution Facility Registration and the Mandatory Trade Execution Requirement
  - The Commission should then use the information from the mandatory trading requirements to implement business conduct, real-time reporting and block transaction rules, for the reasons described below.

In the remainder of our comments, we discuss these different phases of the Commission's proposed sequencing in greater detail.

Phase 1 - Definitional & Cross-Border Rulemakings

The SEC finalized rules regarding certain cross-border definitions earlier this year.[7] Market participants are currently reviewing these rules, and are considering how they will apply as compared to analogous CFTC definitions. We also understand the Commission is considering whether to issue a proposal regarding the types of conduct by U.S.-based personnel that may warrant cross-border application of certain Title VII requirements. We believe an effective approach to U.S. SBS regulation must accommodate the global risk management and operational structures currently in place, and we urge the SEC not to impose such a test. SIFMA further urges the Commission to coordinate with the CFTC on its cross-border rulemakings. Should the SEC and CFTC seek to apply rules based on the location of certain U.S.-based personnel, it would be extremely difficult, if not impossible, for market participants to develop systems to track if requirements differ.

Phase 2 – Security-Based Swap Data Repositories and SBS Transaction Reporting

SIFMA wishes to express support for comments submitted on November 14, 2014 by the International Swaps and Derivatives Association ("**ISDA**") on proposed rules regarding Regulation SBSR[8] (the "**ISDA Reporting Letter**").[9] We urge the Commission to consider the recommendations contained in the ISDA Reporting Letter as it proceeds with its rulemaking. In particular, we agree that the Commission should seek to align its SBS reporting rules with corresponding requirements in effect for other regulators, including the CFTC. Aligning requirements will allow for high-quality and consistent data to be easily shared and analyzed by regulators, while also allowing market participants to leverage existing reporting infrastructures, thus avoiding unnecessary additional builds that require further resource and cost expenditures and do not further the transparency goals of Title VII.

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[7] Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities, 79 Fed. Reg. 39068 (July 9, 2014).

[8] Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, 78 Fed. Reg. 30967 (May 23, 2013).

[9] Letter available at: http://www2.isda.org/search?headerSearch=1&keyword=ISDA+Comment+Letter+to+the+SEC+on+the+Proposed+Rules+re%3A+Regulation+SBSR

However, we also agree with ISDA that certain aspects of the CFTC's reporting rules have presented some challenges which the SEC should seek to avoid by simplifying and clarifying its own rules in order to improve the quality of reported SBS data. Additionally, the Commission should take into account the unique product characteristics of SBS when engaging in rulemaking and implementation, to ensure the ability of market participants to utilize these important products without disruption. For example, single name CDS markets do not have the same market characteristics as those of CFTC-regulated products. As noted in the ISDA Reporting Letter, the SBS market is illiquid, thus requiring a different approach to post-trade price transparency than the approach applied to other markets with higher trade counts and broader participation.[10] Due to the relative ease in which market participants may be able to reconstruct the identity of parties to a particular transaction in the single name CDS market, dealers may be less willing to "disseminate pre-trade price information in the form of runs, thereby reducing pre-trade price transparency for recently traded as well as not traded reference entities."[11] We thus encourage the Commission to carefully consider and address the significant issues discussed in ISDA's comments.

In regards to appropriate sequencing, SIFMA believes that *should* the SEC choose to finalize SBS reporting rules prior to other substantive rules, compliance should be required only after firms have registered with the Commission as SBSDs, with sufficient time thereafter to allow for an orderly phase-in of reporting requirements. Should compliance with the Commission's reporting rules precede registration, parties entering into SBS may be expected to report prior to the point at which their obligations to do so are known – especially considering that many of the foundational SBS rulemakings that will dictate structuring decisions, and therefore dictate which entities will be registered as SBSDs, are not yet final.[12] Further, time must be allowed for the development and registration of, and connectivity to, fully functioning security-based swap data repositories ("**SBSDRs**") to ensure reporting is operationally possible.

Following the effectiveness of SBSD registration requirements, functioning SBSDRs and effective regulatory reporting of SBS transactions are prerequisites to an orderly transition to the rest of the Title VII regime. Once able 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.

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[10] See Page 14 of ISDA Reporting Letter.

[11] *Id* at 14.

[12] As an example of the problems that may arise should reporting compliance be required before registration, in Canada, derivatives trade reporting requirements in Ontario, Manitoba and Quebec (collectively "**91-507**") commenced on October 31, 2014, despite the fact that dealer registration rules in Canada are not anticipated to be completed until sometime in late 2015. The trade reporting requirements created widespread confusion as there is no publicly available source regarding which parties are subject to 91-507 dealer reporting obligations, thus requiring market participants to determine amongst each other (through representation letters, or otherwise) which entity planned to report as a "dealer." At the same time, market participants made these decisions based on varying definitions of "derivatives dealer," some of which will undoubtedly not ultimately align with final registration rules.

Phase 3 - Mandatory Clearing

SIFMA believes that clearing of SBS should not be mandated until sufficient time has passed to allow the Commission to collect and analyze SBS reporting data, which would allow for informed decisions to be made regarding which products are most suitable for clearing.[13] This would also provide sufficient time for clearinghouses to finalize their SBS offerings, for clearing members to develop and test connectivity to those clearinghouses, and for financial entities to have sufficient time to negotiate necessary and appropriate documentation.

The Commission should also ensure that mandatory clearing determinations regarding SBS are *not* made effective prior to the effectiveness of SBSD registration, should the SEC seek to phase in clearing requirements similar to the phase-in utilized by the CFTC. Under the CFTC's construct, compliance with mandatory clearing requirements was phased in depending upon the status of an entity (i.e., whether an entity was a swap dealer, SBSD, end user, etc.). While the mandatory clearing rules themselves may be finalized beforehand, firms will not be able to determine whether they are required to comply with the actual mandatory clearing requirements unless they are already able to determine the "category" applicable to them and their counterparties – which cannot occur until after the registration rules are effective.

It should also be noted that failing to provide sufficient time between the imposition of capital and margin requirements and the mandatory clearing of SBS could create negative 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, as the cost of engaging in uncleared SBS transactions would be greater. Only after mandatory clearing has been implemented can capital and margin requirements for uncleared SBS be efficiently phased in. We urge the Commission to consider this example, and other possible unintended consequences of failing to provide sufficient time between the imposition of capital and margin requirements and mandatory SBS clearing.

Phase 4 - SBSD Registration and Regulation[14]

Market participants are still in the process of considering which entities will be best suited to house their SBS businesses. Such key structuring decisions are dependent on a number of factors, many of which are still unknown. This is especially true in regards to the application of final cross-border and capital, margin and segregation requirements for uncleared SBS. If the Commission requires firms to register their SBSDs before there is a clear understanding of the full scope of final Title VII requirements, firms will be forced to engage in costly, resource-intensive structuring decisions that they may ultimately have to abandon.

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[13] It is our understanding that the Commission is currently considering several SBS data sources as options for informing its mandatory clearing determinations. SIFMA and its members are currently considering possible sources, and would be pleased to discuss appropriate options with the Commission.

[14] The comments in this letter are also applicable to entities that will register as major security-based swap participants (or "**MSBSPs**").

As indicated above, SIFMA believes SBSD registration should become effective only after market participants have a clear understanding of the full scope of Title VII requirements. It is only when firms have a holistic view of their compliance obligations that they will be able to make informed structuring decisions regarding which entities to register as SBSDs and, if necessary, which businesses to move, in order to centralize and maximize their risk management and compliance procedures. Once market participants are able to make such determinations, the Commission will be able to develop a better understanding of the range of entity and structure types that will be registered as SBSDs, taking into account the nuances of each. As noted above, the Commission should not require compliance with any substantive Title VII requirements until an adequate amount of time following registration.

Phase 5 – Security-Based Swap Execution Facility Registration and the Mandatory Trade Execution Requirement

SIFMA believes security-based swap execution facility ("**SBSEF**") registration and regulation and mandatory trade execution requirements should be phased in only after SBSDs have 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 SBSEF has made it available for trading. By defining "made available for trading" appropriately, beginning with the liquid products most conducive to robust SBSEF 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 SBSEFs and exchanges.

We further 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 to increase the price of block trades for end users. Until a liquid SBS trading market develops on SBSEFs 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.

As the CFTC continues to implement mandatory trading requirements under its regime, a number of issues persist, in many instances due to improper sequencing.[15] These issues include the fragmentation of liquidity pools between U.S. and non-U.S. market participants, operational issues impacting the facilitation of block transactions and the treatment of package transactions. SIFMA continues to engage in dialogue with the CFTC to address the ongoing issues stemming from the migration of trading to swap execution facilities. Our members would be pleased to discuss these issues with the Commission, in order to prevent parallel disruptions to the SBS market as trading migrates to SBSEFs.

[15] See ISDA Research Notes: "Footnote 88 and Market Fragmentation: An ISDA Survey" (December 2013); Cross-Border Fragmentation of Global OTC Derivatives: An Empirical Analysis" (January 2014); "Made-Available-to-Trade: Evidence of Further Market Fragmentation" (April 2014); and "Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-year 2014 Update (July 2014).

Other Considerations – Business Conduct Standards

SIFMA believes SEC internal and external business conduct requirements should allow for the use of the market conventions which have already been developed to comply with analogous CFTC requirements. For example, in order to comply with requirements imposed by CFTC external business conduct standards, market participants engaged in a large scale, resource-intensive documentation exercise. Instead of requiring market participants to undertake a similar, duplicative exercise, the Commission should seek to utilize the documentation that market participants already have place in accordance with CFTC requirements. This would reduce the need for market participants to unnecessarily expend further time and resources, and would reduce the possibility for confusion which may stem from the existence of duplicative, conflicting or inconsistent documentation.

Similarly, we encourage the Commission to align its internal business conduct standards with analogous CFTC requirements, to the extent practicable. Allowing market participants to use existing systems and avoid duplicative and unnecessary time and resource expenditures should be the preferred policy option. We urge the Commission to review SIFMA's September 2014 comment letter in response to its proposal regarding recordkeeping and reporting requirements for SBSDs.[16]

Conclusion

SIFMA and its members appreciate the Commission's efforts towards implementing SBS Title VII regulation in a thoughtful, workable and efficient manner. Given the perspectives and experiences of our members, we believe we can provide valuable input into the SEC's rulemaking and sequencing process and look forward to continuing our dialogue going forward. We thank you for consideration of our comments, and welcome further discussion with respect to our recommendations.

Should you have any questions or additional feedback, please do not hesitate to reach out to Kyle Brandon at [redacted] (or [redacted]).

Sincerely,

Kyle Brandon
Managing Director, Director of Research
SIFMA

[16] See SIFMA comments on Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, 79 Fed. Reg. 25194 (May 2, 2014), available at: http://www.sifma.org/issues/item.aspx?id=8589950793.

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