

**MEMORANDUM**

**TO:** File No. S7-27-11

**FROM:** Jason J. Burt

**RE:** Meeting with representatives of the Securities Industry and Financial Markets Association (“SIFMA”), Davis Polk & Wardwell LLP, Barclays, and Goldman Sachs

**DATE:** February 15, 2012

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On February 7 and 8, 2012, David Blass, David Bloom, Leigh Bothe, Nancy Burke-Sanow, Jason Burt, Jerry Carpenter, Jeffrey Cohan, Joan Collopy, Robert Cook, Victoria Crane, Katherine England, Tom Etter, Tim Fox, Joseph Furey, Michael Gaw, Alicia Goldin, Lourdes Gonzales, Bradley Gude, Anthony Kelly, Kathleen Kim, Sharon Lawson, David Liu, Mike Macchiaroli, Thomas McGowan, Leah Mesfin, Jeffrey Minton, Angela Moudy, Barry O’Connell, Cindy Oh, Andrea Orr, John Ramsay, John Roeser, Emily Westerberg Russell, Christian Sabella, David Sanchez, Elizabeth Sandoe, Ignacio Sandoval, Andrew Schoeffler, Heather Seidel, Mary Simpkins, Lisa Skrzycki, Amy Starr, Sheila Swartz, JoAnne Swindler, Josephine Tao, Katrina Wilson, and Haimera Workie of the Securities and Exchange Commission held a meeting with Robert Colby, Annette Nazareth, and E. Ashley Harris of Davis Polk & Wardwell LLP, Marcelo Riffaud of Barclays, Michael Holloway, Beesham A. Secharan, and John Vitha of Goldman Sachs, and Kyle Brandon of SIFMA.

The participants discussed SIFMA’s December 5, 2011 request for exemptive relief from the application of certain securities laws with respect to security-based swaps, as noted in Release No. 34-64795. Specifically, the participants discussed the items on the attached agenda.

## **AGENDA**

**Tuesday, February 7**

**10:00 – 11:00**

Rules identified as Category 2<sup>1</sup>:

- Rule 10b-9 (Prohibited representations in connection with certain offerings)
- Rule 10b-17 (Untimely announcements of record dates)
- Rule 10b-18 (Purchases of certain equity securities by the issuer and others)
- Rule 10b-21 (Deception in connection with a seller's ability or intent to deliver securities on the date delivery is due)
- Rule 15c2-4 (Transmission or maintenance of payments received in connection with underwritings)
- Rule 15c2-7 (Identification of quotes)
- Rule 15c2-8 (Delivery of prospectus)
- Rule 15c2-11 (Initiation or resumption of quotations without specific information)
- Rule 15g-8 (Sales of escrowed securities of blank check companies)
- Rule 17a-2 (Recordkeeping requirements relating to stabilizing activities)
- Regulation M
- Regulation SHO (Regulation of short sales)
- Section 15D (Securities analysts and research reports)
- Rule 14e-4 (Prohibited Transactions in Connection with Partial Tender Offers)
- Rule 14e-5 (Purchases outside a tender offer)

**11:00 – 12:30**

Rules identified as Category 2:

- Section 13 (Periodical and other reports – Sections other than 13(d) and 13(g) (and all rules thereunder))
- Section 14 (Proxies (and all rules thereunder))
- Section 15G (Credit risk retention (and Rule 15Ga-1))
- Section 21E (Application of safe harbor for forward looking statements)
- Section 30A (Prohibited by foreign trade practices by issuers)

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<sup>1</sup> Categories are as identified in SIFMA's outline of a request for exemptive relief dated December 5, 2011 (available at: <http://www.sec.gov/comments/s7-27-11/s72711-10.pdf>).

**Category 1** includes pre-Dodd-Frank provisions that SIFMA has indicated generally should apply to security-based swap ("SBS").

**Category 2** includes pre-Dodd-Frank provisions from which SIFMA has requested exemptions for SBS on the basis that provisions are inapplicable or unworkable for SBS.

**Category 3** includes pre-Dodd-Frank provisions from which SIFMA has requested exemptions for registered broker-dealers' SBS dealing and brokering activities on the basis that such provisions are unnecessary in light of the new SBS regulatory regime.

- Rule 15d-1 (Requirement of annual reports)
- Rule 15d-2 (Special financial report)
- Rule 15d-3 (Reports for depositary shares registered on Form F-6)
- Rule 15d-4 (Reporting by Form 40-F registrants)
- Rule 15d-5 (Reporting by successor issuers)
- Rule 15d-6 (Suspension of duty to file reports)
- Rule 15d-10 (Transition reports)
- Rule 15d-11 (Current reports on Form 8-K (§249.308 of this chapter))
- Rule 15d-13 (Quarterly reports on Form 10-Q and Form 10-QSB (§249.308a and §249.308b of this chapter))
- Rule 15d-14 (Certification of disclosure in annual and quarterly reports)
- Rule 15d-15 (Controls and procedures)
- Rule 15d-16 (Reports of foreign private issuers on Form 6-K [§249.306])
- Rule 15d-17 (Reports of asset-backed issuers on Form 10-D (§249.312 of this chapter))
- Rule 15d-18 (Compliance with servicing criteria for asset-backed securities)
- Rule 15d-19 (Reports by shell companies on Form 20-F)
- Rule 15d-20 (Plain English presentation of specified information)
- Rule 15d-21 (Reports for employee stock purchase, savings and similar plans)
- Rule 15d-22 (Reporting regarding asset backed securities under section 15(d) of the Act)
- Rule 15d-23 (Reporting regarding certain securities underlying asset-backed securities under section 15(d) of the Act)
- Section 12 (Registration requirements for securities)
- 15 U.S.C. 78l-1 (Applications for unlisted trading privileges deemed filed under section 78l of this title)

## **2:00 – 3:00**

### Rules identified as Category 2:

- Section 11 (Trading by members of exchanges, brokers, and dealers (and all rules thereunder))
- Section 11A (National market system for securities; securities information processors (and Regulation NMS))
- Section 15B (Municipal securities (and all rules thereunder))
- Rule 15b9-1 (Exemption for certain exchange members)
- Rule 15c2-12 (Municipal securities disclosure)

### Rules identified as Category 3:

- Rule 15c3-5 (Risk management controls for brokers or dealers with market access)
- Regulation ATS (Alternative Trading Systems)

## **3:00 – 5:00**

Rules identified as Category 2:

- Rule 15c1-5 (Disclosure of control)
- Rule 15c1-8 (Sales at the market)
- Rule 15c1-9 (Use of pro forma balance sheets)
- Section 15C (Government securities brokers and dealers (and all rules thereunder))
- Section 17B (Automated quotation systems for penny stocks)
- Rule 15a-1 (Securities activities of OTC derivatives dealers)
- Rule 15a-2 (Exemption of certain securities of cooperative apartment houses from Section 15(a))
- Rule 15b7-1 (Compliance with qualification requirements of self- regulatory organizations)
- Rule 15b11-1 (Registration by notice of security futures product broker-dealers)
- Rule 15g-1 (Exemptions for certain transactions)
- Rule 15g-2 (Penny stock disclosure document relating to the penny stock market)
- Rule 15g-3 (Broker or dealer disclosure of quotations and other information relating to the penny stock market)
- Rule 15g-4 (Disclosure of compensation to brokers or dealers)
- Rule 15g-5 (Disclosure of compensation of associated persons in connection with penny stock transactions)
- Rule 15g-6 (Account statements for penny stock customers)
- Rule 15g-9 (Sales practice requirements for certain low-priced securities)
- Rule 15g-100 (Schedule 15G-Information to be included in the document distributed pursuant to §240.15g-2)

Rules identified as Category 3:

- Rule 10b-10 (Confirmation of transactions)
- Rule 10b-16 (Disclosure of credit terms in margin transactions)

Rules identified as Category 1:

- Rule 15a-6 (Exemption of certain foreign brokers or dealers)
- Rule 15c3-1 (BD Lite aspects of rule)

**Wednesday, February 8**

**10:00 – 11:00**

Rules identified as Category 1:

- Section 17 (Records and reports (and rules thereunder))
- Rule 15c3-1 (Net Capital Requirements for brokers or dealers (and all appendices thereto)) (with OCC)

Rules identified as Category 2:

- Rule 15a-1 (Securities activities of OTC derivatives dealers)

- Rule 15b9-2 (Exemption from SRO membership for OTC derivatives dealers) (with OCC)
- Rule 17i-4 (Internal risk management control system requirements for supervised investment bank holding companies)
- Rule 17i-5 (Record creation, maintenance, and access requirements for supervised investment bank holding companies)
- Rule 17i-6 (Reporting requirements for supervised investment bank holding companies)
- Rule 17i-7 (Calculations of allowable capital and risk allowances or alternative capital assessment)
- Rule 17i-8 (Notification provisions for supervised investment bank holding companies)

Rules identified as Category 3:

- Section 7 (Margin requirements)
- Section 8 (Restrictions on borrowing and lending by members, brokers, and dealers)
- Rule 8c-1 (Hypothecation of customers' securities)
- Rule 15c2-1 (Hypothecation of customers' securities)
- Rule 15c3-2 (Customers' free credit balances)
- Rule 15c3-3 (Customer protection-reserves and custody of securities)
- Rule 15c3-3a (Exhibit A – formula for determination reserve requirement of brokers and dealers under §15c3-3)
- Rule 15c3-4 (Internal risk management control systems for OTC derivatives dealers)
- Regulation T

**11:00 – 11:30**

Rules identified as Category 2:

- Rule 15c6-1 (Settlement cycle)
- Rule 17f-1 (Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities)

**Afternoon**

Follow-up, to the extent necessary