



December 20, 2012

Chairman Elisse B. Walter
Commissioner Luis A. Aguilar
Commissioner Troy A. Paredes
Commissioner Daniel M. Gallagher

Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim Final Rules

Dear Chairman Walter and Commissioners Aguilar, Paredes and Gallagher:

The Securities Industry and Financial Markets Association¹ appreciates the Securities and Exchange Commission's (the "**Commission**") ongoing consideration of the implications of Sections 761 and 768 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**"), which provisions included security-based swaps (or "**SBS**") in the definition of "security" for purposes of the Securities Exchange Act of 1934 (the "**Exchange Act**") and the Securities Act of 1933 (the "**Securities Act**"). Before Sections 761 and 768 took effect on July 16, 2011, the Commission took action to largely preserve the status quo with respect to those provisions of the Securities Act, the Exchange Act, and the Trust Indenture Act of 1939 that otherwise would have applied to security-based swaps solely as a result of the revised definition of "security."² While

¹ The Securities Industry and Financial Markets Association ("**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 SEC Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of "Security" To Encompass Security-Based Swaps, and Request for Comment 76 FR 39,927 (Jul. 7, 2011) ("**Exchange Act Exemptive Order**"), available at <http://69.175.53.6/register/2011/Jul/07/2011-17040.pdf>; SEC Interim Final Rule on Exemptions for Security-Based Swaps, 76 FR 40,605 (Jul. 11, 2011) ("**SBS Interim Final Rules**," and together with the Exchange Act Exemptive Order, the "**July SBS Relief**"), available at <http://www.sec.gov/rules/interim/2011/33-9231fr.pdf>.

this relief was scheduled to expire upon the compliance date for final rules that the Commission adopted further defining the terms security-based swap and eligible contract participant, the Commission recently extended the expiration date of the July SBS Relief to February 11, 2013.³

SIFMA, together with ISDA, has submitted requests for certain permanent exemptive and other relief upon the expiration of the July SBS Relief.⁴ SIFMA has also participated in meetings with members of the staffs of the Division of Trading and Markets and the Division of Corporation Finance to further discuss the issues associated with security-based swaps as securities and our requests for permanent exemptive and other relief.

We are concerned that key issues and questions regarding the application of the federal securities laws to security-based swaps remain unresolved. As a result, we believe that the February 11, 2013 expiration date of the July SBS Relief would be premature. We therefore respectfully request that the Commission extend the expiration date of such relief until July 17, 2013.⁵ This extension of the expiration date is necessary in order to avoid the potential for significant disruption to the SBS market.

We reiterate that we believe that it is necessary and appropriate for the Commission to provide permanent exemptive and other relief to SBS market participants from the federal securities laws that apply to security-based swaps due to their inclusion in the definition of “security” in order to avoid disrupting the SBS market and limiting the availability of security-based swaps for eligible investors. We stand ready to provide whatever technical assistance the Commission would find useful as it continues its significant efforts to implement this aspect of Dodd-Frank and would welcome the opportunity to further discuss areas where significant interpretive guidance or specific exemptive relief may be needed.

³ See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208, *available at* <http://www.gpo.gov/fdsys/pkg/FR-2012-08-13/pdf/2012-18003.pdf>.

⁴ See SIFMA SBS Exemptive Relief Request (Dec. 5, 2011), *available at* <http://www.sec.gov/comments/s7-27-11/s72711-10.pdf>. The SEC also has received comments regarding the exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act of 1939. See Letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, and Robert Pickel, Chief Executive Officer, ISDA, dated Apr. 20, 2012, *available at* <http://www.sec.gov/comments/s7-26-11/s72611-5.pdf>.

⁵ We note that the Financial Industry Regulatory Authority recently filed a proposed rule with the Commission to extend the expiration date of FINRA Rule 0180 to July 17, 2013. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps. See Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Dec. 12, 2012), *available at* <http://www.finra.org/Industry/Regulation/RuleFilings/2012/P197479>.

Please do not hesitate to contact the undersigned for any further information the Commission or its staff may require in connection with this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Bentsen", with a long horizontal flourish extending to the right.

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