



December 12, 2012

**BY EMAIL**

Brian Bussey, Associate Director  
Josephine Tao, Assistant Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Request for Relief from the Closeout Requirement Under Regulation SHO Related to the Current Lack of Access to the Physical Securities Located at the Vault of the Depository Trust & Clearing Corporation (“DTCC”)

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> submits this letter to set forth a request for relief from the closeout requirement under Regulation SHO in respect of failures to deliver arising from the inability of customers and broker-dealers to access securities represented by physical certificates that were located in DTCC’s vault at 55 Water Street (the “vault”) at the time Hurricane Sandy made landfall on October 29, 2012. We also seek clarification with respect to the order marking and short-sale related circuit breaker requirements under Rules 200 and 203, respectively. Until Hurricane Sandy struck the week of October 29, 2012, DTCC operated the vault and custody service at this location designed to hold such certificates (hereafter “physical certificates” and “Custody Service”). The U.S. securities industry is highly reliant on this Custody Service to effect transactions and conduct securities operations. As a result of the hurricane and flooding of the vault, the physical certificates located in the vault are inaccessible and may remain so for some period of time, possibly months. We are informed by DTCC that it maintains electronic records and images of all of the physical certificates in its vault and has commenced efforts to facilitate the issuance of replacement certificates.<sup>2</sup> However, there may be settlement delays for sales of owned securities, represented by physical certificates that were located in the vault at the time Hurricane Sandy made landfall, since settlement is dependent on the delivery of such physical certificates (or documentation with equivalent effect) (sales of “Vault Securities”).

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<sup>1</sup> 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 (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> On November 20th DTCC announced that it had come to an agreement with representatives of the Securities Transfer Association (“STA”) on a protocol for the presentment of evidence of ownership in lieu of physical certificates which are inaccessible due to the impact of the storm on the Vault. See “DTCC and STA Agree on Protocol for Presentment of Physical Securities,” DTCC Press Release (Nov. 20, 2012) at [http://www.dtcc.com/news/press/releases/2012/sta\\_statement.php](http://www.dtcc.com/news/press/releases/2012/sta_statement.php). For a description of DTCC’s Custody Service see generally: <http://www.dtcc.com/products/asset/services/custody.php>.

### ***Regulation SHO Close-out Requirements (Rule 204)***

We request that fail to deliver positions resulting from the sale of a Vault Security be exempt from the close-out requirements of Rule 204 of Regulation SHO. In this regard, we note and greatly appreciate the SEC's prior immediate relief that it granted in respect of the hurricane permitting the industry to treat October 29 and 30, 2012 as non-settlement days for purposes of Rule 204(a)(1) and (3). We similarly request that the SEC advise that Rule 204(a)(1), (2) and (3) close-out requirements will toll for fail to deliver positions arising from Vault Security sales until the beginning of regular trading hours on the fourth settlement day following the date on which the participant of a registered clearing agency determines that the Vault Security is available for settlement. DTCC systems (including the Participant Browser System and the Participant Terminal System) enable participants of a registered clearing agency to verify their positions in Vault Securities and issue withdrawal instructions. These systems permit participants, in conjunction with the participant's own books and records, to track when Vault Securities have been debited (withdrawn) and sent to the transfer agent and when the Vault Securities are available for settlement after they have been returned to DTCC and are available for participant pickup, are mailed directly to the customer, or are set up as a Direct Registration System account. Participants check these systems for completed status of physical certificate processing on a daily basis.

### ***Regulation SHO Order Marking and Short Sale-Related Circuit Breaker Requirements (Rules 200 and 203)***

When the sale of a security requires processing of a physical certificate for settlement of the sale, ordinarily, the physical certificate is physically removed from DTCC's Custody Service, processed as necessary by a transfer agent, re-deposited to the sell-side clearing broker's Custody Service account at DTCC and delivery is made electronically. Because the physical certificates in the vault cannot be accessed at this time following flooding from Hurricane Sandy, broker-dealers accepting sale orders for a Vault Security may not have a reasonable expectation that the Vault Security will be in the physical possession or control of the broker-dealer by settlement date, such that sales of Vault Securities must be marked "short" or "short exempt" and may be subject to the short sale-related order marking provisions under the circuit breaker rule of Regulation SHO (Rule 201)<sup>3</sup>. We seek confirmation that such Vault Security sale orders are exempt from Rule 200(g)(2) of Regulation SHO, and thus may be marked "short exempt" for purposes of the short sale price test of Rule 201 without meeting the requirements of Rule 201(c) or (d).

The relief sought herein is with respect to sales of Vault Securities that a person is "deemed to own" pursuant to Rule 200 of Regulation SHO. Each firm that takes advantage of this relief will keep books and records sufficient to identify any exemptions applied and to evidence compliance with the conditions of such relief.

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<sup>3</sup> We note that in the event a circuit breaker is triggered, a short sale order with respect to a Vault Security that a person is deemed to own would be marked "short exempt" under Rule 201(d)(1) and thereby would not be subject to the requirements of Rule 201(b)(1). In addition, the locate requirement of Regulation SHO under 203(b)(1) similarly would not apply to a short sale order with respect to a Vault Security that a person is deemed to own pursuant to the exception to the locate requirement under Rule 203(b)(2)(ii).

SIFMA greatly appreciates the Commission's consideration of this request for relief. If you have questions or need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ira D. Hammerman". The signature is written in a cursive style with a large initial "I" and a distinct "D".

Ira Hammerman  
General Counsel