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VIA ELECTRONIC MAIL

September 21, 2007

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Proposed Revisions to Rule 144 and Rule 145 to Shorten Restricted Security Holding Periods
Release No. 33-8813; File Number S7-11-07

Dear Ms. Morris:

The Securities Industry and Financial Markets Association ("SIFMA"),[1] the International Swaps and Derivatives Association ("ISDA")[2] and the Managed Funds Association ("MFA" and, together with SIFMA and ISDA, the "Associations")[3] welcome the opportunity to

[1] SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Market Association, is based in Hong Kong. More information about SIFMA is available on its website at *www.sifma.org*.

[2] ISDA, which represents participants in the privately negotiated derivatives industry, is the largest global financial trade association, by number of member firms. ISDA was chartered in 1985 and today has approximately 797 member institutions from 54 countries on six continents. These members include most of the world's major financial institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. More information about ISDA and its activities is available on its website at *www.isda.org*.

[3] MFA is the voice of the global alternative investment industry. Its members include professionals in hedge funds, funds of funds and managed futures funds. Established in 1991, MFA is the primary source of information for policymakers and the media and the leading advocate for sound business practices and industry growth. MFA members represent the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the over $1.67 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York. More information about MFA and its activities is available on its website at *www.managedfunds.org*.

comment on the captioned release (the "Release") issued by the Securities and Exchange Commission (the "Commission" or "SEC") regarding proposed amendments (the "Proposed Rules") to Rules 144 and 145 under the Securities Act of 1933 (the "Securities Act").[4]

I. Background and Introduction

Rule 144 provides a safe harbor from the definition of "underwriter" to assist security holders and broker-dealers in determining whether an exemption from the registration requirements of the Securities Act is available for the resale of restricted securities and securities held by affiliates of an issuer. A selling security holder that satisfies all of the applicable conditions of Rule 144 is deemed not to be an "underwriter" for Section 5 purposes. The Commission first adopted Rule 144 in 1972, and has amended the Rule several times, generally expanding the ability of investors who hold restricted securities and affiliate security holders to resell those securities in the public markets and, at the same time, maintaining appropriate investor protections. In 1997, the Commission requested comment on and proposed various changes to Rule 144, including a number of changes that are revisited in the Release.[5]

In the Release, the Commission has proposed a potentially significant incremental liberalization of the currently applicable restrictions under Rule 144. The principal change proposed by the Commission would be to shorten the restricted security holding periods under Rule 144. The Proposed Rules would permit public resales of restricted securities of qualifying reporting companies after a six-month holding period and would permit public resales of restricted securities of other issuers after a one-year holding period. In the case of restricted securities of reporting companies, the Commission has also proposed to toll the six-month holding period (up to a maximum total period of twelve months) to the extent that a holder has hedged the restricted securities.

The Proposed Rules would also amend the restrictions applicable to the public resale of restricted securities by holders that are not affiliates in order to facilitate the resale of such securities. Finally, the Commission has requested comment on, among other issues, its proposals to amend Rule 144's manner of sale restrictions, revise Forms 4 and 144, codify various staff interpretations of Rule 144, revise the Preliminary Note to Rule 144, eliminate in large part the presumptive underwriter provisions of Rule 145 and harmonize the remaining restrictions under Rule 145(d) with those of proposed Rule 144.

SIFMA, ISDA and MFA support the Commission's proposal to revise, streamline and simplify Rules 144 and 145. Rule 144 has played an important role in the U.S. capital markets by facilitating private capital-raising activities for both large and small companies. The Proposed Rules, particularly the Commission's proposal to shorten restricted security holding

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4 Securities Act Release No. 33-8813 (June 22, 2007), 72 Fed. Reg. 36822 (July 5, 2007).

5 Securities Act Release No. 33-7391 (Feb. 20, 1997), 62 Fed. Reg. 9246 (Feb. 28, 1997). The Commission also requested comment in 1995 on whether tolling should be reinstated. Securities Act Release No. 33-7187 (June 27, 1995), 60 Fed. Reg. 35645 (July 10, 1995) (the "1995 Proposing Release").

periods, will promote additional liquidity, reduce issuers' costs of capital and, at the same time, maintain important investor protections. However, as discussed in greater detail below, the Associations have significant policy and practical concerns regarding the Commission's proposal to reinstitute tolling and believe the reinstitution of tolling would result in significant unwarranted costs and burdens and effectively frustrate the Commission's own rulemaking objectives.

II. The Commission Should Not Reintroduce Tolling For Hedged Positions

The Proposed Rule would shorten the restricted security holding periods under Rule 144. As noted above, SIFMA, ISDA and MFA strongly endorse this proposal. The Commission has, however, also proposed to reintroduce tolling of the six-month holding period for restricted securities of reporting companies. Under this proposal, holders of such securities would be required to toll the restricted security holding period for any period during which they (or prior holders) have engaged in certain short sales or other hedging transactions (subject to a maximum total period of twelve months). The Associations strongly oppose this aspect of the Commission's proposal, and believe the reintroduction of tolling is not necessary to further the Commission's investor protection objectives and would effectively eliminate the market efficiency benefits the Commission seeks to achieve.

We note preliminarily that the Associations are not aware of empirical evidence of abusive practices in connection with offerings of restricted securities that would require, or be redressed by, the introduction of tolling. Nor are we aware of any empirical evidence suggesting that the introduction of a six-month holding period would be likely to cause issuers, investors or other market participants to develop or introduce any such practices.[6] Accordingly, there is no current reason to believe that shortening the minimum holding period for restricted securities of reporting companies from twelve months to six months, without a tolling provision, would give rise to abuse. The Associations note that the Commission does not analyze in the Release whether any abusive or problematic practices exist today or would be likely to develop as a result of shortening the current restricted security holding periods applicable to reporting companies.[7]

Even if such abuses currently occur or were to arise, however, they should be addressed directly. The Commission has other, more effective, tools at its disposal to redress such abuses were they to occur. The Associations note in this regard that the Commission has proposed amending the Preliminary Note to clarify that "[t]he Rule 144 safe harbor is not

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6 In other, analogous contexts, a specific determination or belief by the Commission that abusive practices exist has influenced its decision to adopt further restrictions on securities transactions. See, e.g., Securities Exchange Act Release No. 34-50103 (July 28, 2004), 69 Fed. Reg. 48008 (Aug. 6, 2004) (adopting Regulation SHO based in part on the belief that creating "strong and uniform requirements … will reduce short selling abuses"); Securities Act Release No. 33-7505 (Feb. 17, 1998), 63 Fed. Reg. 9632 (Feb. 25, 1998) (adopting amendments to Rule 903 of Regulation S to address abusive practices).

7 In contrast, the Release does suggest that the Commission has specific concerns regarding the potential for abusive practices with respect to the elimination of manner of sale restrictions for equity securities and offerings of securities by shell companies.

available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the [Securities] Act." As the Commission has noted in the Release, this language is similar to that found in other rules, including both Rule 144A and Regulation S, where the Commission has not implemented measures analogous to tolling to prevent abuses. The Associations believe this note clearly signals market participants that the Commission has retained the option to address any abuses directly using means such as Section 5 of the Securities Act.

In this regard, we also strongly disagree with the inference drawn by certain commenters that the proposed shortening of the restricted security holding periods and related tolling provision would modify existing law with respect to the application of Section 5 to activities, including hedging activities, undertaken in connection with an offering of restricted securities.[8]

It is not clear in any event how the Commission's proposal would ensure that holders are not engaged in purchases of restricted securities with a view to distribution to any significantly greater extent than a six-month holding period without tolling. The costs and risks of maintaining short or other hedge positions over any significant portion of a six-month holding period, although lower than those associated with a twelve-month holding period, are nonetheless sufficiently significant to rebut any reasonable inference that the relevant transaction was undertaken with a view to distribution of the relevant securities.

Prior to 1990, Rule 144 required that tolling run indefinitely so long as a holder of restricted securities maintained a hedging position. In 1990, however, after reexamining the Rule's tacking concept, the Commission eliminated tolling, stating that "a single holding period running from the date of the purchase from the issuer or an affiliate of the issuer is sufficient to prevent the distribution by the issuer of securities to the public," and that, under that new approach, "whether the initial or any subsequent holder sold short or otherwise held a contingent position in restricted securities is irrelevant," so long as the person acquiring the securities paid full consideration and the holding period had run.[9]

The Associations firmly believe this same reasoning applies equally to the Commission's current proposal, and that the reinstitution of tolling would effectively eliminate the efficiencies that would otherwise result from the Proposed Rule. In 1995 and 1997 the Commission requested comment on the need to reinstitute tolling; in both instances, a number of market participants and industry associations, including the Securities Industry Association (the

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8 See, e.g., submission of Jesse M. Brill, publisher of The Corporate Counsel and The Corporate Executive, dated Aug. 1, 2007.

9 Securities Act Release No. 33-6862 (Apr. 23, 1990), 55 Fed. Reg. 17933 (Apr. 30, 1990).

"SIA"), a predecessor of SIFMA, commented that the reinstitution of tolling would be problematic for a number of reasons.[10]

In the nearly twenty years since tolling was eliminated, the trading and investment activities of brokerage firms and institutional investors have become exponentially more extensive, diverse and complex. Today, these market participants are likely to have multiple, dynamic holdings, short and other derivative positions, in individual issues that they would need to monitor (and analyze) on a daily basis for this specific purpose if tolling were to be reintroduced.[11] The task of tracking and processing such positions will necessitate both the development of costly custom software and hardware systems and extensive operational processes to monitor restricted holdings, holding periods, net hedging positions, and the duration of each hedging position (to the extent the relevant data can be effectively monitored at all). Any such system will also need to be able to associate and track tacking periods with individual security holdings and take account of the six-month maximum limitation on tolling. No such systems exist today, and it may not prove cost-effective for many otherwise sophisticated market participants to implement such systems once developed.

To help illustrate the scenarios that a holder might face, assume that a firm holds a long position of 100 restricted shares of a particular company. If that holder purchases a put option on 100 shares of that company and separately sells a put option on 50 shares of that company, it would have a net hedge position on 50 shares at that time. Of course, the firm would need systems to track these positions and effect these calculations on a running, daily basis. Even this relatively simple example, however, illustrates the importance of addressing how long, long-equivalent, short and short-equivalent positions should be treated in determining whether and to what extent tolling might be required. In practice, however, the situation will be significantly more complex. A holder may well enter into multiple transactions covering different numbers of shares at different times and for different periods of time, thus creating net short or short-equivalent positions that will fluctuate from day to day. It could, for example, have net hedge positions on 50 shares for 10 days during the restricted period, 70 shares for 30 days during the restricted period, 10 shares for 80 days during the restricted period, and so on. To further complicate matters, large institutions will often hold the same restricted securities (and related short, short-equivalent and long-equivalent positions) at multiple brokers[12] and in

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10 See letters of the SIA filed with the Commission and dated September 19, 1995 and May 21, 1997 (suggesting that Commission concerns with hedging were misguided "because the use of such techniques: (i) does not permit holders of restricted securities to shift their entire risk; (ii) does not result in leakage of the restricted securities into the public markets; (iii) is consistent with the purposes underlying Rule 144 and its holding periods and those underlying Rule 144A; (iv) does not harm participants in short sales effected in connection with [h]edging [s]trategies; and (v) offers many important benefits to investors and capital markets generally.").

11 The complexity of such monitoring and analysis would be increased even further if, contrary to the Associations' recommendation described below, basket and index trades formed part of a tolling framework.

12 For a variety of commercial reasons, including for disaster recovery and business continuity purposes, many investment funds utilize the services of multiple prime brokers and clearing brokers. In these

multiple accounts and portfolios, and will trade and manage their exposures to those securities and positions using various trading and risk management strategies (which may include strategies dictated by client inquiries) that can differ from account to account and from portfolio to portfolio, and will likely involve separate account managers, trading desks and other personnel.[13]

As a result, market participants will be confronted with the alternatives of adopting economically disadvantageous measures to obtain the benefits of the proposed framework or forgoing these benefits entirely. Individual investors, single portfolio investment funds and similarly situated holders may not find the Commission's proposed tolling framework overly burdensome. However, many large institutional holders, brokerage firms and investment advisors will likely find it prohibitive or unattractive to develop and implement the necessary systems and operations. These holders will be compelled to make the conservative "worst-case" assumption that tolling is required until expiration of the twelve-month maximum restricted security holding period. As a result, the potential benefits to reporting issuers that might otherwise result from a shortened holding period will likely not be realized, thereby frustrating the Commission's fundamental objective of promoting liquidity and reducing issuers' cost of capital.

The transactional and operational costs and frictions associated with the tolling and tacking of holding periods would also likely have a potentially significant adverse impact on the efficiency and liquidity of the markets for Rule 144A securities. Great strides have been made in recent years in enhancing the liquidity of the markets for Rule 144A securities, with concomitant benefits to issuers in the form of reduced costs of capital formation. The Associations are concerned that the proposed tolling and tacking provisions will undermine these salutary developments.

To impose on investors the significant costs and burdens that would be required to monitor compliance with tolling, in the absence of any evidence that tolling is required in order to prevent abusive practices, would be flatly inconsistent with the Commission's mandate to ensure that the benefits of its rules outweigh the costs of compliance with them. Accordingly, SIFMA, ISDA and MFA believe that, rather than resurrecting tolling to address a problem that has not been identified (much less shown to exist), the Commission should instead implement, possibly on a pilot basis, a six-month restricted security holding period for securities of reporting

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situations none of the brokers has knowledge of a common client's overall holdings (and an executing broker may have no information regarding a client's portfolio positions). The resulting complexities significantly increase the challenges in administering a tolling framework.

13 If the Commission were to reinstitute tolling, it would also need to consider carefully differences in the risk shifting characteristics of different derivatives. The position of an investor simultaneously owning a restricted share with a market value of $100 and a short position in the security is quite different than that of a holder owning a restricted security with a value of $100 and a put option with a strike price of $25 (who, in this case, retains the majority of the downside risk of the investment). Any effort to address these differences would be immensely complex and would pose enormous, if not insuperable, monitoring challenges.

companies, without tolling. This approach would be similar to that adopted by the Commission when it first adopted Rule 144,[14] and is in keeping with the view expressed by commenters in 1997 who recommended that the Commission gain more experience with new holding periods before proposing further amendments. This approach would avoid the significant costs and burdens on both buy-side and sell-side security holders and would give the Commission a sound empirical basis to confirm that a tolling provision is not necessary as a means to avoid the circumvention of Section 5 or to identify any more tailored measures that may be appropriate.

III. Significant Clarifications to the Release Are Necessary If Tolling Were to be Reinstituted

A. The Commission Would Have to Clarify Numerous Issues if Tolling Were Reinstituted

SIFMA, ISDA and MFA believe strongly that tolling should not be reinstituted for the reasons discussed above. If the Commission were to reinstitute tolling despite these concerns, the approach outlined in the Release would need to be clarified, both to help market participants better understand what steps they will need to take in order to comply with the Proposed Rules and to permit them to comply with the Proposed Rules from the outset. In particular, the Associations believe that the Commission would need to address the following issues:

- Net Notional Amounts. As noted above, many larger holders of restricted securities will have multiple long and short positions (and long- and short-equivalent positions)[15] on both sides of the market; if the Commission determines to reinstate tolling it will need to clarify how those different positions should be aggregated or netted for purposes of determining the

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14 See Securities Act Release No. 33-5223, 37 Fed. Reg. 591 (Jan. 11, 1972) (the "1972 Adopting Release") ("It should be recognized that the rule is in the nature of an experiment and the Commission will observe its operation to determine whether it is consistent with the objectives of the [Securities] Act. If experience with the rule indicates that it is not operating for the protection of investors, it will be rescinded or appropriately amended."). See also 1995 Proposing Release ("Based on the Commission's experience with Rule 144 in the 20 years since adoption, the Commission believes that it is appropriate to enhance the utility of the safe harbor, and reduce the costs for private capital formation, by shortening the holding periods.").

15 In contrast, the Release uses the term "put equivalent position" in the context of determining whether a holder is maintaining a hedged position. Rule 16a-1(h) defines that term as "a derivative security position that increases in value as the value of the underlying ***equity*** decreases, including, but not limited to, a long put option and a short call option position." Accordingly, as defined, the term applies only to equity, and not debt, securities. In addition, the term "put equivalent position" has been the subject of significant Commission and staff guidance, particularly in regard to the need to deconstruct complex hedging transactions to determine whether any short-swing profit exists for purposes of Section 16. See, e.g., Securities Act Release No. 33-8107 (June 21, 2002), 67 Fed. Reg. 43234 (June 27, 2002). As a result, the Associations recommend that the Commission adopt a different definition, such as "short-equivalent position" or "short position", to describe the range of a holder's potential transactions on the short side of the market.

applicable tolled period with respect to each holding. The Associations respectfully suggest that the Commission clarify that the number of shares subject to tolling for each relevant unit (see the immediately following bullet) should be determined on a daily basis and that, on each day, tolling would apply to securities equal in number to the notional amount of that holder's net short-equivalent position.[16]

- Aggregation by Single Trading Strategy. For the reasons described above, many holders, particularly entities such as broker-dealers and large institutional investors, will also have multiple accounts, strategies, portfolios, portfolio managers, business units, trading desks and the like (both buy-side and sell-side), each of which will frequently hold positions in the same securities and related short, short-equivalent and long-equivalent positions. Even individual trading desks and accounts will frequently have multiple long and short positions (and long- and short-equivalent positions) with respect to the same securities. In many cases, these holdings may be subject to restrictions on information sharing, either to satisfy regulatory requirements, for conflict management purposes, or to manage obligations of client confidentiality. Accordingly, it may be difficult or impossible for these internal constituencies to coordinate or share information in a way that would permit the ultimate "holder" to monitor, record, track and verify long, short, short-equivalent and long-equivalent positions on an entity-wide basis. And, even when able to do so, the end result of that effort will not be particularly meaningful, to either the holder or the market. The failure of tolling provisions to distinguish between the different activities in which a single holder could potentially engage, for widely divergent (and in many cases client-driven) reasons, would lead to perverse results that are inconsistent with the fundamental objectives of Rule 144.[17] Accordingly, the Commission should clarify that a restricted security holding is tolled only to the extent that the restricted securities and any hedging positions form part of a single trading strategy. Under this approach, positions maintained by different desks or different investment managers would be viewed separately. The Associations believe this approach would be necessary if the proposed tolling provisions are to be consistent with the intent-oriented distinction that the Commission is endeavoring to implement. For this reason, the approach adopted by the Commission in this context would need to recognize disaggregation in a

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16 For example, a holder that owns 50 put options and has sold 25 put options would have a "net short-equivalent" position of 25 put options.

17 The situation might arise, for example, where a financial institution's proprietary trading desk would be required to toll the holding period of a restricted security that it had acquired simply because another part of the institution entered into an unrelated short swap transaction involving securities of the same class at the request of a client.

broader range of circumstances than other rules that condition disaggregation on more restrictive criteria.[18]

- The Effect of Partial Hedging. If tolling were to be reintroduced, the Commission would also need to clarify that, to the extent that a restricted security position is only partially hedged during the initial six-month restricted security holding period, the holder may freely sell, after the six-month period, a number of shares equal to the portion of any restricted security holding that had been unhedged for six months, regardless of whether those securities are subject to any subsequent hedging transaction.[19] The Associations believe the Commission would also need to clarify how a holder should determine the time at which shares that have been subject to tolling become freely resalable in the context of multiple transactions (and multiple short, short-equivalent and long-equivalent transactions). The Associations infer from the Commission's previous statements that the doctrine of fungibility would not apply to tolling, so that it should not be necessary for a holder to trace whether a particular security has been hedged during the holding period. That has the potential, however, of making it difficult for holders to determine when particular securities can be resold. The Associations accordingly recommend

[18] In particular, the Associations are concerned that the approaches taken in other contexts, including in particular Rule 105 of Regulation M and Regulation SHO, have created arrangements that would not provide sufficient flexibility in the tolling context. See Rule 105 of Regulation M (requiring that transactions for each account are made separately and there be no cooperation or coordination of trading among or between those accounts); Regulation SHO (requiring the existence of defined trading units as a precursor to aggregation of positions). If a broader approach is adopted, the Commission would also need to clarify the interactions of these various regulatory approaches.

[19] In question and response 29 of the Commission's 1979 interpretive release relating to pre-1990 Rule 144 (Securities Act Release No. 33-6099 (Aug. 2, 1979)), 44 Fed. Reg. 46752 (Aug. 8, 1979), the staff addressed this question in part:

> Question: Does the existence of a short option in, or a put or other option to sell, securities toll the holding period for all restricted securities of that class held by a person or only the number of restricted securities equal to those subject to the short option, put or other option to sell?
>
> Answer: The holder period is tolled only for the number of restricted securities equivalent to the number of securities subject to the short, put or other option to sell.
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> Illustration: FACTS: On April 15, 1978, X acquired 10,000 shares of restricted common stock of Y company. X is not an affiliate of Y. On February 1, 1979, X sold short 2,000 shares of common stock of Y. On May 1, 1979, X covered his short with the securities that he purchased in the open market. INTERPRETION: The three-month period during which X had a short position in 2,000 shares of Y's common stock would be excluded from the computation of the two-year holding period for 2,000 shares of restricted stock of Y company held by X. The holding period for the 8,000 other shares of Y restricted stock held by X, however, would not be affected by the short sale and would therefore continue to run during the three-month holding period the short existed.

The staff's illustration does not, however, make clear how a holder should determine which of its shares remain restricted and which can be resold, nor does it address the issue of multiple hedge positions.

> that the Commission confirm, either in Rule 144 itself or the adopting release, that a holder can freely sell a number of shares equal in amount to any portion of its holding that has remained unhedged for an aggregate six-month period.

B. Alternatives for Hedging Transactions Raised by the Commission

The Commission has also requested comment on whether hedging should be addressed in a different manner, for example, by precluding security holders who hedge securities during the holding period from relying on Rule 144, or by treating such hedging transactions as "sales" of the underlying securities. SIFMA, ISDA and MFA strongly oppose either of these approaches. Hedging transactions should not properly be equated with sales of the underlying security,[20] nor should the Commission simply preclude security holders who hedge during the holding period from relying on Rule 144.[21]

C. If Tolling Were to be Reinstated, the Commission Would Need to Clarify that Certain Transactions Do Not Require the Tolling of Holding Periods

If tolling were to be reinstated, SIFMA, ISDA and MFA urge the Commission to recognize the need for it to be vigilant in limiting the scope of tolling (and the related operations and compliance burdens) to the maximum extent possible. The Commission would also need to revise the Proposed Rules to ensure that tolling would not apply in circumstances that would create significant inefficiencies in the market. The following are a few examples of such situations:

- Credit Default Swaps. A holder's purchase of credit protection under a credit default swap should not toll the restricted security holding period of debt securities (convertible or otherwise) held by that holder. This is particularly true in the case of convertible debt for obvious reasons. However, it is also appropriate in the case of nonconvertible debt, including circumstances where the credit default swap may be settled by delivering debt securities of the same class as the restricted debt securities. These arrangements, which market participants use to manage credit exposures, do not fully hedge the market risk associated with the reference debt and are predominantly cash-settled (even when physical settlement is permitted). Even when the credit default swap agreement might permit physical settlement and is physically settled, the Associations believe the execution of such transactions should not

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20 This view is not intended to contradict in any way the precedents established by the staff in Goldman, Sachs & Co. (avail. Dec. 20, 1999) ("Goldman Sachs I") (indicating that variable share pre-paid forward contracts may be executed in accordance with Rule 144 in certain circumstances) or Goldman, Sachs & Co. (avail. Oct. 9, 2003) ("Goldman Sachs II") (permitting the use of forward and option contracts in connection with the distribution of securities registered under the Securities Act).

21 For additional information on this topic, the Associations encourage the Commission to review the comment letter filed by the SIA in 1997, which included a discussion as to why hedging transactions generally should not be treated as sales.

result in tolling because, at inception, the likelihood of a credit event resulting in physical settlement of a credit default swap is generally extremely low. As a result, one would not be justified in concluding that such a transaction had been effected with a view to distribution of any reference debt security.

- Transactions Involving Baskets of Securities or Indices. Similarly, neither short sales of, nor hedging activities involving, a basket or index of securities should toll a holding of any individual component security included in that basket or index. Transactions involving baskets and indices of securities and related derivatives have become even more prevalent than they were in 1990 when tolling was eliminated. The Commission and the staff have taken various approaches in determining when a transaction involving a basket or index should not be deemed to be a transaction in its component securities.[22] The staff has also permitted brokers to sell their or their affiliates' equity securities without requiring the registration of those transactions under the Securities Act when those securities form part of a basket or index.[23] While the approach taken by the Commission has varied from situation to situation, the Associations believe that the concern arising under Rule 144 is similar to the concern raised in other contexts and, accordingly, urge the Commission to limit any tolling applicable to component securities that may result from hedging or other transactions involving baskets or indices. The Associations recognize, however, that providing such relief in the case of all baskets or indices, regardless of composition, could potentially lead to abuse, and suggest that the Commission limit this relief to baskets and indices, for example, where the relevant security constitutes no more than 30% of the weighting of the basket or index.

- Treatment of Nonconvertible Debt Securities. The Proposed Rule would require a holder with a short or hedge position in an issuer's nonconvertible debt security to toll the holding period for all of that issuer's restricted nonconvertible debt securities it holds, whether or not fungible with, or even of the same class as, the security subject to the hedge position.[24] The

[22] See, e.g., Rule 101(b)(6) of Regulation M (excepting transactions in certain baskets from Regulation M); Fixed Income Exchange (avail. Apr. 9, 2007) (providing class relief for certain fixed income securities funds); PowerShares Exchange-Traded Fund Trust (avail. Oct. 24, 2006) (providing class relief for certain exchange traded index funds).

[23] See J.P. Morgan Securities, Inc. (avail. June 5, 2007) (permitting sale of affiliate's equity securities as part of an integrated transaction relating to a basket of S&P 500 securities without registration under the Securities Act); New York Stock Exchange, Inc. (avail. Oct. 26, 1989) (permitting NYSE members to sell their and their affiliates' securities in certain basket transactions without registration under the Securities Act); Chicago Board Options Exchange (avail. Oct. 26, 1989) (permitting CBOE members to sell certain market basket contracts including equity of such member without registration under the Securities Act).

[24] Tolling in the context of nonconvertible debt securities also raises the question of the manner in which a holder should determine which restricted debt securities are subject to tolling at any particular time if its

Associations believe, however, that a short or short-equivalent position in a nonconvertible debt security should not toll the holding period for restricted nonconvertible debt securities of a different class. Although the Commission's proposal reflects the rule in place before tolling was eliminated in 1990, we believe such a limitation is not necessary and could potentially have a significant chilling effect on the market for fixed-income securities, as the execution of any short or short-equivalent transaction involving nonconvertible debt securities would potentially affect all of that holder's restricted fixed-income positions in that issuer. As the markets have evolved, the Commission has increasingly recognized that securities that are not fungible should not be treated interchangeably for regulatory purposes.[25] The Associations encourage the Commission to continue this approach in the Rule 144 context as well.

D. The Commission Should Generally Harmonize the Holding Periods Applicable to Securities that Are Subject to Transfer Restrictions in Other Circumstances

SIFMA, ISDA and MFA strongly endorse the Commission's proposal to shorten the restricted security holding periods under Rule 144, and believe that the Commission should also take steps to harmonize the requirements of Rule 190 and Regulation S with those changes for the reasons and in the manner described below:

- Rule 190. The Associations do not believe that the way in which a holder ultimately resells its securities should affect the availability of the Rule 144 safe harbor. In the Release, the Commission has proposed a two-year holding period for purposes of Rule 190 before privately placed debt or other asset-backed securities can be securitized or resecuritized, respectively. The basis for the Commission's position is not clear, as the Commission does not identify any abusive practices it has observed in connection with resecuritizations that would be addressed by this treatment. In any event, the Associations believe the purpose for which a subsequent purchaser acquires a

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holdings are partially hedged. A holder might, for example, hold a position in three separate series of restricted nonconvertible debt issued by a single issuer, all with different terms. If that holder enters into a short sale of publicly traded nonconvertible debt securities of that issuer in a principal amount equal to 30% of its aggregate restricted debt securities position, it is unclear what effect that transaction should have on the tolling period for each other series of restricted debt. While the most problematic result would arise if a short sale were to require the tolling of the holding period for all of the holder's restricted debt securities, that approach would produce a perverse result and would be seemingly inconsistent with the Commission's interpretive guidance discussed in note 19 above. There is, however, no clear way for holders to determine how tolling should actually apply in this circumstance, and the Commission would need to provide guidance on this point as well.

25 See, e.g., Securities Act Release No. 33-7282 (Apr. 11, 1996), 61 Fed. Reg. 17108 (Apr. 18, 1996) (noting, in connection with the adoption of Regulation M, that "Rule 101 would not apply to bids for and purchases of nonconvertible debt or preferred securities of the same issuer that are not identical in their principal features to the securities being distributed").

security should not be relevant in determining whether the seller has engaged in a public or private distribution of the securities. Whether a security can be resold freely pursuant to Rule 144 should be a sufficient test for determining whether that same security can be repackaged and resold by means of a securitization vehicle that is exempt from registration and, accordingly, the Associations respectfully submit that the proposed two-year holding period for resecuritizations should be shortened to no more than six months (or twelve months were tolling to be reinstituted). Even if the Commission declines to adopt the foregoing recommendation, SIFMA, ISDA and MFA urge the Commission to permit the securitization of non-asset backed securities (*e.g.*, corporate debt) without registration during the revised Rule 144 period, as these securities face substantially fewer complications and do not appear to be the focus of the Commission's concerns.

- Regulation S. The Associations recommend that the Commission adopt Regulation S amendments that would conform the current one-year distribution compliance period for securities of domestic issuers to the proposed six-month holding period under Rule 144. While the Commission amended Regulation S in 1998 to eliminate abusive practices that it had identified stemming from disparities in the treatment of securities of domestic issuers sold inside and outside the United States, it would be illogical to make it more difficult to resell securities initially sold offshore than securities sold onshore in the United States. The Associations also respectfully urge the Commission, even if it decides to reinstitute tolling generally, not to implement tolling for purposes of the distribution compliance period under Regulation S. The complexities introduced by tolling generally are magnified considerably in the case of securities sold pursuant to Regulation S.

E. The Commission Should Clarify that a Purchaser May Establish a "Reasonable Belief" as to Activity by a Prior Holder by Reliance on Representations of that Prior Holder

In the event that tolling were to be reinstated, SIFMA, ISDA and MFA believe that the Commission would need to provide additional guidance regarding the proposed tacking provisions. In particular, the Commission would need to adopt a realistic approach to the means by which a purchaser can establish a reasonable belief regarding the hedging activities of prior holders, recognizing the limitations created by the character of contemporary capital markets.

Under the current rule proposal, a purchaser would be prohibited from tacking the holding period of a previous owner unless it reasonably believes that the previous owner did not hold any short or put equivalent positions that would have required tolling.[26] The instructions to

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[26] Proposed Rule 144(d)(3)(xi)(C) provides that "there shall be excluded [from the holding period] any period during which the previous owner had a short position or entered into a 'put equivalent position' … unless

the Rule do not, however, provide guidance on how such a reasonable belief can be established. Nor does the Release itself provide guidance on this subject, although it does make clear that "[i]f the security holder relying on Rule 144 is unable to determine that the previous owner did not engage in hedging activities with respect to the securities, then [it] should omit the period in which [it] is not able to determine whether the previous owner had a short position or a put equivalent position when calculating the holding period under Rule 144(d)."[27] Accordingly, the issue of whether tolling has (or should be deemed to have) taken place in the past is one that must be faced principally by subsequent holders, and by brokers who act on their behalf.[28] The consequences of a failure to establish the requisite reasonable belief are particularly draconian, making the Rule 144 safe harbor unavailable at a time when in fact it could be used and giving rise to potential violations of Section 5 of the Securities Act if restricted securities are sold at a time when (in hindsight) the purchaser can argue that the belief held by the seller as to prior hedging activity was not a reasonable one.

In addressing this issue, the Commission should recognize the difficulties faced by a broker or other purchaser in ascertaining what (if any) hedging activities have been conducted by a seller of restricted securities. The seller is most likely to have knowledge of the relevant facts regarding its own short, short-equivalent and long-equivalent positions and will have been able to track those positions over the period during which it held the restricted securities. No other party to the transaction will be able to access the same level of information regarding those activities. Not only do particular brokers have multiple desks and trading units – each of which may interact separately with the same customer and may be subject to internal information barriers – but many sellers, particularly more sophisticated institutional investors, will likely have accounts with more than one trading firm. As a result, any particular broker, even if the firm for whom he or she works has managed to implement complete transparency with respect to its monitoring and reporting functions, will nonetheless need to rely on information provided by the seller in order to establish the required reasonable belief. Purchasers who are not brokers will be even less likely to be able to establish a reasonable belief regarding past hedging activity absent such an approach, as they are unlikely to be able to conduct any independent diligence on a seller's past activities. And even when broker personnel have actual knowledge of a seller's hedging activity, it is unlikely they would be able to reasonably determine whether and to what extent tolling has occurred, as they cannot be expected to be aware of the full extent of a seller's short, short-equivalent and long-equivalent positions, the aggregate amount of prior holders' holdings, the holding period(s) applicable to prior holders' positions or the appropriate aggregation principles for prior holders.

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the person for whose account the securities are sold reasonably believes that no such position was held by a previous owner."

27 Release, at footnote 69.

28 While proposed Rule 144(g)(3) requires brokers, as part of the inquiry required by that rule, to inquire as to information regarding any short or put equivalent position of the seller or any prior holder, it is unclear whether a broker (or a purchaser to whom it is selling the security) can meet the reasonable belief standard of Rule 144(d)(3)(xi)(C) through that inquiry.

For these reasons, SIFMA, ISDA and MFA believe the only practical and equitable approach to establishing a reasonable belief regarding a seller's past hedging activities is by permitting that broker or purchaser to rely solely and without further inquiry on the immediate seller's representation as to the relevant facts, unless the specific personnel involved in the purchase/sale transaction have actual knowledge of facts or circumstances that would make reliance on the representations, without further inquiry, unreasonable.[29]

IV. Volume Limitations and Manner of Sale Limitations

SIFMA, ISDA and MFA support the elimination of both the volume and manner of sale requirements for non-affiliates and the manner of sale requirements for affiliates with respect to debt securities, preferred stock and asset-backed securities. The Associations believe manner of sale requirements are particularly unnecessary in the case of restricted securities that are held by non-affiliated holders, who do not have a significant stake in the issuer or access to material non-public information. While welcoming those changes, the Associations recommend that the Commission also take this opportunity to increase the volume limitations applicable to equity securities held by affiliates and, in light of the holding period and volume limitations that will continue to apply to affiliates under Rule 144, to expand the range of transactions that would satisfy the manner of sale requirements still applicable to affiliates.

A. The Commission Should Modify the Manner of Sale Requirements to Permit Additional Categories of Transactions

SIFMA, ISDA and MFA recommend that, to the extent that manner of sale requirements are retained for affiliates, the Commission expand the category of transactions that would satisfy the manner of sale requirements. The Associations believe this expansion is warranted both in light of the continued application of the Rule's volume limitations with respect to equity securities and the essentially non-distributive nature of the proposed transactions. In particular, the Associations suggest that the Commission permit the following transaction types:

- Trades Conducted on Alternative Trading Systems ("ATSs"). Transactions that result from posting a bid or ask quotation on an ATS, including ATSs that are not inter-dealer quotation systems. ATSs have become increasingly important sources of liquidity in recent years and are regulated by the Commission under Regulation ATS. The Associations believe that such postings can be readily analogized to other permitted activities under Rule 144(g)(2)(iii).

- VWAP Trades. Principal transactions that are priced based on volume-weighted average prices (or "VWAP") over some minimum period of time that is long enough to prevent the VWAP trade from taking place at a price

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29 The Associations believe an "actual" knowledge standard, rather than a "constructive" knowledge standard, is the only appropriate approach in these circumstances, given the difficulties identified above.

that does not reflect general market conditions for the relevant security. Because trades based on VWAP pricing would take place at prices set by the market as a whole, mitigating the risk of influencing market pricing, they are not distributive in nature.

- Limited Solicitation of Large Institutional Investors. Trades involving certain limited communications with a limited number of large institutional investors (for example, institutional accredited investors or qualified institutional buyers) in order to ascertain whether those investors have any interest in, or to otherwise solicit an offer for, the securities to be sold pursuant to Rule 144, so long as no special compensation is paid to the sales personnel that are involved in the transaction (i.e., the broker-dealer would receive no more than the "usual and customary" broker's commission in connection with the trade). The Associations believe that limited solicitation of large sophisticated investors under such circumstances would not adversely affect the protections afforded market participants generally by the manner of sale requirements and would enhance the quality of executions.[30]

- Principal Transactions by Broker-Dealers Not Acting as Market Makers. Transactions on a principal basis by a broker-dealer should be permitted even when not acting as a market maker (as defined in Section 3(a)(38) of the Securities Exchange Act of 1934), so long as that broker-dealer has not engaged in any pre-solicitation activities in connection with the transaction (other than those that would otherwise be permitted pursuant to Rule 144(g)(2) or as described in the preceding paragraph). This change would permit broker-dealers to sell securities for their own account without having to effect such transactions through another broker-dealer.

The Associations believe that these changes collectively would help the Commission to achieve its objective of improving the efficiency of the capital markets without adversely affecting investor protections, and while further fostering best execution.

B. The Commission Should Increase the Volume Limitations Applicable to Equity Securities

With regard to the volume limitations applicable to equity securities held by affiliates, SIFMA, ISDA and MFA request that the Commission also take this opportunity to consider increasing the volume of securities permitted to be sold pursuant to the Rule 144 safe

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30 The Associations note that the current manner of sale requirements may in some cases conflict with a broker's requirement to obtain "best execution" for its customer. See, e.g., FINRA/NASD Rule 2320 ("In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.").

harbor from time to time. In order to do so, the Associations recommend that the Commission consider shortening the period for measuring aggregate resales by a holder from three months to two months. This change would permit trading by affiliates to be aligned more closely with the broader trading environment, enable sales through Rule 10b5-1 plans to take place more regularly over a longer time frame and increase the willingness of holders to dribble securities out (rather than simply disposing of them quickly in order to avoid market risk). The Associations believe the proposed modest volume increase would not pose any significant incremental risk to investors.

V. Revisions to Form 144 and Form 4

SIFMA, ISDA and MFA generally support the Commission's proposals to eliminate the requirement for non-affiliated sellers to file a Form 144, to increase the Form 144 filing thresholds and to otherwise reduce the filing requirements that will continue to apply to affiliated security holders under the proposed Rule. The Associations believe, however, that the Commission's proposal to combine Forms 144 and 4 has the potential to create significant practical difficulties for brokers who execute sales on behalf of restricted security holders. As a result of these concerns, the Associations recommend that the Commission further revise the Proposed Rules in the manner set forth below.

Currently, Form 144 must be filed by persons who intend to sell securities in reliance on Rule 144 in certain circumstances. Rule 144(g)(3), however, provides that the broker executing a broker's transaction in reliance on the Rule will be "deemed to be aware of any facts or statements" contained in the relevant notice to be filed with the Commission. Rule 144(h) currently requires the seller to file that notice on Form 144 at the same time that it places with a broker an order to execute a sale in reliance on the Rule, or executes a trade directly with a market maker. The Commission has, however, proposed combining Form 144 with Form 4 (creating a combined "Form 4/144") and changing the filing deadline to that currently applicable to Form 4. The Commission noted in the Release that this will require a change to Rule 144(g)(3), but went on to state that, if this approach is adopted, "a broker should be deemed to be aware of any facts contained in a Form 4 that are relevant to Rule 144."

The Associations believe that result is problematic for two principal reasons. First, a broker cannot be sure that a seller will file a Form 4/144 (and cannot by law compel it to do so). Under current Rule 144, that filing is an element of the safe harbor, so a failure to file means that the sale did not comply with the requirements of the Rule and could potentially be a distribution of securities in violation of Section 5 of the Securities Act (and the resultant consequences are potentially severe for the affected broker). To address this concern, the Associations recommend that the filing requirement be set forth as a separate obligation of the seller, rather than as an element of the Rule 144 safe harbor.[31] The Associations believe that

[31] By way of analogy, in 1989 the Commission amended Regulation D to eliminate the Form D filing requirement as a condition to every Regulation D exemption. Securities Act Release No. 33-6825 (Mar. 15, 1989), 54 Fed. Reg. 11369 (Mar. 20, 1989). Alternatively, if it chooses not to take the approach recommended by the Associations, the Commission should consider adding a provision to Rule 144 to the

whether a form has been filed should not be determinative of whether a distribution has taken place.[32]

Second, although the Release suggests that brokers would continue to be responsible for the information contained in Forms 4/144 that are filed by their customers, under the timing proposed in the Release, those forms will not be filed until after a transaction has been completed. Accordingly, brokers will not have seen the relevant Form 4/144 at the time a transaction is executed, making diligence on the disclosure it contains difficult or impossible. Even when a seller provides the broker with a representation letter in connection with such a transaction, that seller could provide different disclosure in its Form 4/144 filing and, under the Proposed Rule, the broker would still be deemed to have been aware of those different facts at the time of sale, even if that change meant the sale did not comply with the requirements of Rule 144. To address this concern, the Associations recommend the Commission revise the proposed Rule to indicate that any broker who is involved in a Rule 144 transaction for the account of an unaffiliated seller should not be held responsible or be liable for the content of the Form 4/144 filed by that seller. This would maintain the existing requirement that the broker make due inquiry of the seller as to the various matters specified in Rule 144(g), while helping mitigate the risk that it will be subject to liability resulting from actions taken by an unaffiliated seller beyond its control.

In the alternative, the Associations recommend that the Commission make significant revisions to the filing requirement itself. Due to the other rule changes proposed by the Commission, the only sellers still required to file a Form 144 would be affiliates. Many of these holders are also required to file Forms 4 containing substantially all the information required in a Form 144. The Associations accordingly recommend that, when a seller would be required to file a Form 4 in connection with a transaction, that it no longer be required to file a Form 144. The Form 144 filing requirement would then apply only to those affiliates who are not Form 4 filers, including principally persons who hold securities of foreign private issuers and persons who are affiliates, but not a director, executive officer, or ten percent beneficial owner. No change to the time of the filing of Form 144 for those filers would be necessitated in these circumstances.

Whether or not the Commission integrates Forms 4 and 144 or eliminates the requirement for certain affiliates to file Form 144, the Associations believe that, if tolling were to be reinstituted, it would be inappropriate to amend Form 144 (or any successor form) to require the seller to disclose prior hedging transactions (whether by it or by prior holders) at the time a Rule 144 transaction takes place. That information, which may be based in large part on

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effect that the benefits of the safe harbor are not lost as a result of an unintentional failure to file or delay in filing, similar to the good faith standards set forth in Rule 508(a) of Regulation D and Rule 165 under the Securities Act.

32 As set forth in the current Preliminary Note, the purpose of the safe harbor is to provide a framework for determining that a particular transaction has not resulted in a distribution of the subject securities and, accordingly, the seller should not be regarded as an underwriter with respect to that transaction.

inquiries of prior sellers, is not likely to be material to investors, since in order to take advantage of the safe harbor a seller will need to have affirmed that the relevant restricted security holding period has expired regardless of any transitional tolling that may have taken place. Any such hedging transactions are also likely to involve sensitive, possibly confidential, information that neither the seller nor the counterparty would wish to be disclosed. In addition, since only affiliates would be required to provide this information, to the extent such information would be material to investors, the affiliate that entered into the hedging transaction would in many cases be separately required to provide that information in a Form 4 filing. Furthermore, in the case of a large institutional holder with multiple accounts, portfolios, portfolio managers, business units, trading desks, etc., it may not even be possible to provide the required disclosure in a meaningful way as a result of the complexities associated with that disclosure (for the reasons discussed above).

VI. The Commission Should Provide Guidance Regarding the Removal of Restrictive Legends from Securities Held by Non-Affiliates

SIFMA, ISDA and MFA request that the Commission make a further procedural improvement to the current Rule 144 framework by clarifying when an issuer can agree to remove the restrictive legends from restricted securities held by non-affiliate holders. While Rule 144 does not by its terms require that restrictive legends be placed on securities issued in private placements, most issuers do so in order to comply with the guidance provided by the Commission when it adopted Rule 144 in 1972.[33] Since that time, placing restrictive legends on privately placed securities has become a standard market practice. However, since the Commission is again revisiting Rule 144, the Associations urge it to take the additional step of clarifying when de-legending may be permitted in order to make the resale process flow more smoothly.

Specifically, the Associations recommend that the Commission confirm that securities held by a non-affiliate for the applicable restricted period may be de-legended, even in cases where those securities will not be sold or transferred promptly thereafter. While recognizing that the staff has in the past taken the view that whether or not securities can be de-legended is a "matter solely in the discretion of the issuer,"[34] the Associations believe that, absent some positive statement from the Commission, issuers will continue to take the position (as they have in the past) that such activity is either not permitted or might cause the Commission to view the original transaction as something other than a private placement. The Associations further believe that investor protections will not be compromised should the Commission provide guidance of this nature, and that there will be significant benefits to market participants, including a reduction in the number of failed trades and (in the case of trades where securities are delivered after the settlement date) a decrease in the amount of time required to

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33 See 1972 Adopting Release (indicating that the use of restrictive legends is "strongly suggested" by the Commission, and that whether such legends have been implemented will be a factor the Commission will use in determining whether a private placement has occurred).

34 See the Commission's website, at http://www.sec.gov/investor/pubs/rule144.htm.

effect those eventual deliveries. In addition, as a result of the recent elimination of the "short exempt" category under Regulation SHO, a broker must now mark as a short sale any broker's transaction where the seller fails to deliver securities under Rule 144 or delivers securities that still have restrictive legends (a complication that would become even more problematic if tolling were to be reinstituted).

VII. Other Areas of Comment

A. Codification of Existing Staff Interpretive Positions

SIFMA, ISDA and MFA generally support the Commission's proposals to codify the staff interpretive positions identified in the Release. The Associations generally believe that setting forth those positions within the Rule itself should help to resolve any lingering confusion regarding the calculation of holding periods in the circumstances addressed by the interpretations. As a result, market participants will more readily understand the Rule and its provisions, and thus make more efficient use of their own and the staff's time and resources. However, the Associations support two minor modifications to existing staff interpretations:

- Cashless Exercises. The Associations believe that the codification of the staff's position on the cashless exercise of warrants and options (which permits the tacking of such holdings to the resulting security positions) will help to clarify the instances in which tacking is permissible under the Rule, and will thereby assist market participants in applying the Rule's holding period requirement. The Associations also believe, however, that this interpretation should be expanded to include options and warrants that have *de minimis* exercise prices. This will permit the same treatment to be afforded to holders of options or warrants of issuers that either chose not to or were unable to issue such securities for no consideration upon exercise, but could issue options or warrants with nominal exercise prices (for example, pennies per share). The Associations believe that this additional change would be consistent with the staff's intention in adopting the cashless exercise interpretation and would not adversely impact investor protections.

- Resales of Securities of Former Shell Company. The Commission has also requested comment on whether it should permit reliance on Rule 144 for the resale of securities of former shell companies if the company is a reporting company, is no longer a shell company, and has filed Form 10 information reflecting its status as an entity that is not a shell company, and either 90 days have elapsed since the filing of the Form 10 information or the restricted securities holding period applicable to shell companies has been met. Although this represents a modification of the staff's existing position in certain minor respects, the Associations support the codification of this position in the circumstances outlined by the Commission.

B. Proposed Amendments to Rule 145

SIFMA, ISDA and MFA concur in the Commission's view that the presumptive underwriter provisions of Rule 145 should be eliminated in most cases, and believe that the provisions of proposed Rule 144 would provide an adequate safe harbor for resales of securities by affiliates of issuers. The Associations also generally support the other changes to Rule 145 proposed by the Commission.

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SIFMA, ISDA and MFA applaud the Commission's initiative to enhance the liquidity and efficiency of the U.S. capital markets and reduce costs of capital, and appreciate this opportunity to comment on the Proposed Rules. The Associations respectfully urge the Commission to consider our comments and requests for clarification articulated above. The Associations would be pleased to discuss any questions that the Commission or its staff may have regarding the foregoing or to provide further information. Should the Commission or its staff have any questions, please do not hesitate to contact Ira D. Hammerman of SIFMA at (202) 434-8440, Robert Pickel of ISDA at (212) 901-6000 or John G. Gaine of MFA at (202) 367-1140, or Edward J. Rosen (212-225-2820) or Michael D. Dayan (212-225-2382) of Cleary Gottlieb Steen & Hamilton LLP, counsel to the Associations.

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