

## Securities Industry and Financial Markets Association

### NPR on Incentive Compensation (Dodd-Frank Section 956) (Docket No. R-1410)

On May 6, 2015, Kenneth Bentsen and Peter Matheson from the Securities Industry and Financial Markets Association ("SIFMA"), James Rosenthal and Patty Gould from Morgan Stanley, Michael Paese and Esta Stecher from Goldman Sachs, and Julie Williams from Promontory Financial met with met with Michael Solomon, Meg Donovan, Teresa Scott and Joe Maldonado from the Division of Banking Supervision and Regulation and Steve Bowne from the Legal Division concerning developments in incentive compensation practices since the financial crisis and SIFMA's views on the interagency rulemaking or guidance required to be issued pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The attendees expressed concerns about certain potential negative consequences of an incentive compensation rule. High turnover and low retention are already problems faced by many banks, especially in audit, technology and control positions, and might be exacerbated by a section 956 rule. In particular, because the shadow banking system and other technology and industrial companies are not subject to the requirements of section 956, banks might lose employees to these firms as a result of a rule. In addition, many firms wish to avoid a rule that would impose variable accounting on a broad-based population because it can cause unpredictable changes in earnings from year to year and would be very difficult to implement; generally, for accounting purposes, to establish a fixed fair value the grantor and employee must have a clear and mutual understanding of the terms and conditions of the award on that date, including the circumstances under which forfeiture would be invoked. Furthermore, many firms and employees view the idea of compensation remaining at risk of forfeiture or claw back for an unlimited time period as problematic.

The attendees also noted results from a soon-to-be-released study of changes in incentive compensation since 2008 commissioned by a group of banks, including: increased identification and tracking of significant risk takers; increased use of risk as a factor in determining compensation; increased deferred compensation; increased inclusion of claw back provisions in incentive plans, typically using a malice standard to determine when claw back is appropriate; increased review and documentation of the relationship between risk and compensation; decrease or elimination of golden parachutes; increased use of LTIPs (long-term investment plans); and elimination of use of options. The attendees generally indicated that they believed these changes have sufficiently improved the provision of incentive compensation by financial institutions, and that significant changes beyond these were not necessary.