October 18, 2010

VIA ELECTRONIC SUBMISSION

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex Q)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Comments of the Capital Markets Committee of the Securities Industry and Financial Markets Association to Proposed Hart-Scott-Rodino Form Changes

Dear Sir or Madame:

The Capital Markets Committee (the "Committee") of the Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to respond to the request, dated September 17, 2010, of the Federal Trade Commission (the "FTC") for comments to the proposed amendments to the Hart-Scott-Rodino Premerger Notification Rules, the Premerger Notification and Report Form (the "Form") and the associated Instructions as reflected in the notice of proposed rulemaking issued by the FTC on August 13, 2010.

The Committee commends the FTC's efforts to streamline the Form to reduce the burden on reporting parties and heighten the quality, usefulness and relevance of the categories of information and documentary materials requested by the FTC and the Antitrust Division of the Department of Justice (the "Agencies") in connection with a preliminary review under Section 7 of the Clayton Act. Generally, the Committee believes that the FTC's proposed amendments are consistent with such objectives. However, the Committee believes that certain aspects of the FTC's proposed expansion of the reporting requirements actually conflict with rather than

[1] 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.

support the FTC's objectives because they will impose a significant burden on reporting parties as well as result in the Agencies' collection of information that is not relevant or useful to the Agencies' determination of whether a particular notified transaction merits further review.

As proposed, Item 4(d)(ii) would apply to materials produced up to two years before the filing, whether or not such materials relate to the actual notified transaction. In summary, this subsection would require the submission of all materials prepared by investment banking firms (as well as consultants and third-party advisors) for officers or directors for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, which materials also happen to reference the acquired entity(s) or assets. As proposed, Item 4(d)(iii) would require the submission of such materials without regard to when prepared, whether or not the investment banking firm had been formally engaged and whether or not such materials relate to the actual notified transaction. This proposed subsection would also require the submission of all reports and presentations prepared by investment banking firms for officers or directors evaluating or analyzing synergies for the purpose of evaluating or analyzing the acquisition.

The broad reach of proposed Items 4(d)(ii) and (iii), which would significantly expand current reporting requirements, would result in the Agencies' collection of materials that were prepared for a purpose that we believe is not relevant or useful to the nature of the Agencies' review. These new reporting requirements would arguably apply to preliminary materials from investment bankers, including "pitch books" developed by investment banking firms for the purpose of securing an engagement. Materials prepared by investment banking firms before they are retained, however, are generally prepared on a preliminary or illustrative basis, and are often prepared solely on public information, since investment bankers typically do not have access to non-public information from the entities involved or from other sources. As such, the information contained in such preliminary materials is generally not relied upon by reporting persons for the purpose of making decisions with respect to a potential transaction and should therefore not be elevated to the level or materiality of documents that have been produced in connection with an actual notified transaction and that are already subject to production under Item 4(c). Moreover, we believe that preliminary materials that were not prepared in connection with a notified transaction might contain incomplete information about the acquired entity(s) or assets or the potential synergies or efficiencies, or an incomplete view of the marketplace and competitive dynamics, thus rendering those materials of questionable value to the Agencies' analysis.

Furthermore, proposed Items 4(d)(ii) and (iii) would impose significant additional record keeping and reporting requirements on reporting persons and their officers and directors that regularly receive materials from investment banking firms advising or seeking to advise them on potential transactions. We do not believe that companies routinely retain, or are equipped to routinely retain, all of such materials for a minimum two-year time period following receipt, or a list of the investment banking firms that provided any materials referencing acquired entity(s), assets or synergies. To ensure compliance with the new requirements, companies would be required to expand their current record keeping functions to enable them to collect and retain copies of potentially responsive materials within the relevant time period (which time period is unlimited in the case of proposed Item 4(d)(iii)) and the identities of the investment banking

firms that provided such materials. The process of expanding record keeping functions, as well as searching electronic and paper files for copies of potentially responsive materials, would undoubtedly be an extremely time consuming and costly exercise for reporting persons and their officers and directors.

We believe that the document production requirements under Item 4(c) already result in the submission to the Agencies of the most relevant information pertaining to a notified transaction. The additional information that would be required to be produced by reporting persons by Items 4(d)(ii) and (iii) would impose significant burdens on reporting persons and would yield materials that are of limited or no relevance to the Agencies' review and analysis, thereby conflicting with the FTC's objectives of streamlining the Form to reduce the burden on reporting parties and to heighten the quality, usefulness and relevance of the categories of information and documentary materials requested by the Agencies in connection with a preliminary review. For these reasons, the Committee respectfully recommends that the proposed Items 4(d)(ii) and (iii) be eliminated.

We thank the FTC for the opportunity to present our views. If you have any questions or would like to discuss these issues further, please contact the undersigned at 212-313-1118 or sdavy@sifma.org, or our counsel for this letter, David Schwartzbaum and Michael Helsel of Greenberg Traurig, LLP at 212-801-6544 or schwartzbaumd@gtlaw.com, and 212-801-6962 or helselm@gtlaw.com, respectively.

Sincerely yours,

Sean C. Davy
Managing Director, Corporate Credit Markets Division