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asset management group

August 19, 2016

Chairman Timothy G. Massad
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Comptroller of the Currency Thomas J. Curry
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2–3
Washington, DC 20219

Chair Janet L. Yellen
Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, NW Washington, DC 20551

Chairman and CEO Kenneth A. Spearman
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102–5090

Director Melvin L. Watt
Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street, SW
Washington, DC 20024

Chairman Martin J. Gruenberg
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Final Margin Rules for Uncleared Swaps Transactions – Request for 30-Day Postponement of Phase I Implementation

Dear Sirs and Madams:

The Asset Management Group of the Securities Industry and Financial Markets Association ("AMG")[1] supports the 30-day postponement of the initial phased-in implementation ("Phase I") of the Prudential and CFTC Final Margin Rules for Uncleared Swap Transactions ("U.S. Final Margin Rules")[2] requested by the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association ("ISDA-SIFMA Request"). The problems documented by both the ISDA-SIFMA Request and the request for postponement by the Global Foreign Exchange Division ("GFXD") of the Global Financial Markets Association ("GFXD Request")[3]

[1] AMG's members represent U.S. asset management firms whose combined global assets under management exceed $34 trillion. The clients of AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[2] Department of the Treasury Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency, Margin and Capital Requirements for Covered Swap Entities; Final Rule, 80 Fed. Reg. 74840 (Nov. 30, 2015); Commodity Futures Trading Commission, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Final Rule, 81 Fed. Reg. 636 (January 6, 2016).

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combined with AMG members' own recent experiences raise significant concerns for all investors and investment vehicles that utilize uncleared derivatives as well as seeded investment funds (defined below) that are part of Phase I.[4]

For the reasons stated below, AMG requests that the Prudential Regulators and the CFTC postpone Phase I implementation by 30 days and consider a temporary or permanent exclusion of seeded investment funds from consolidated initial margin calculations.

I. Reduced Access to Uncleared Derivatives Markets

As Phase I approaches, asset managers have already been put on notice that their ability to access global markets for uncleared derivatives will be restricted. Prime brokers and executing dealers have informed asset managers that some executing dealers, including foreign exchange ("FX") executing dealers, will not be able to execute prime brokerage transactions as of September 1st.

Asset managers use prime brokerage accounts to settle a client's trades in one central location, both cleared and uncleared, so that transactions can be netted and margined together. With this type of account set up, asset managers are able to use multiple executing dealers to access market liquidity and obtain execution at the best price under the circumstances without having to establish trading documentation with each executing dealer and without splitting netting sets across those executing dealers. In order for a client to enter into a trade with an executing dealer that will be "given up" to a prime broker, the prime broker and executing dealer must have their own bilateral trading relationship established through a master agreement and credit support annex in order to enter into offsetting transactions.[5] If *either* the executing dealer or the prime broker is subject to the U.S. Final Margin Rules, documentation and account set up between the prime broker and executing dealer must comply with those rules.

Asset managers have been informed that prime brokerage trading lines will be suspended as of September 1st for a substantial number of executing dealers. For the executing dealers affected, the prime broker and executing dealers have not completed implementation steps required by the U.S. Final Margin Rules for Phase I and, as a result, will be unable to enter into requisite offsetting transactions until those steps have been completed. Therefore, the client's prime brokerage trade cannot be "given up" to the prime broker.

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[3] GFMA FX Division Submits Comments to US Prudential Regulators and CFTC on a Request for Postponement of Margin Requirements for Uncleared Swaps for Phase 1 Covered Swap Entities (August 12, 2016), *available at*: http://www.gfma.org/correspondence/item.aspx?id=836.

[4] In addition to this requested postponement, AMG previously submitted a request consistent with the GFXD Request for the U.S. to adjust its phased-in implementation to align with the announced delay in Europe. See SIFMA AMG Submits Comments to Multiple Agencies on Final Margin Rules for Uncleared Swaps Transactions (June 27, 2016), *available at*: http://www.sifma.org/issues/item.aspx?id=8589961020.

[5] The GFXD Request provides further details on the challenges faced by FX Prime Brokers and executing dealers. *See* GFXD Request at 5-6.

AMG believes that the consequences of these trading restrictions will negatively impact clients and derivatives markets, including consequences that are broader than prime brokerage transactions or in-scope transactions under the U.S. Final Margin Rules. AMG member firms will have reduced access to market liquidity, resulting in less favorable prices for clients, reduced hedging if costs rise prohibitively and negative consequences for liquidity in the global derivatives markets. In addition, because many asset managers' systems have binary approvals to trade or not trade with a dealer, such that the systems cannot restrict in-scope prime brokerage transactions with the dealer without also restricting transactions that are outside of the U.S. Final Margin Rules (*e.g.*, deliverable FX forwards) or bilateral trades outside of the prime brokerage relationship, the asset manager may be forced to restrict all uncleared derivatives trades with the dealer. Even for asset managers that are able to execute bilateral trades with the dealer (*i.e.*, as a direct counterparty pursuant to an ISDA master agreement and credit support annex), clients will lose the trading efficiencies obtained through the prime brokerage relationship.

II. Implementation Challenges of Seeded Investment Funds

In addition to the general market disruption described above, asset managers' Phase I clients need additional time to implement the U.S. Final Margin Rules in order to avoid being excluded from uncleared swap markets. Due to the difficulty these clients have encountered in trying to amend documentation and set up custodial accounts in the midst of the dealer-to-dealer phase-in, many have been unable to come into compliance.

The asset managers' Phase I clients largely, if not exclusively, consist of investment funds that have some amount of seed capital ("seeded investment funds") provided by an entity that itself or in combination with its affiliates exceeds US$3 trillion in material swaps exposure. For example, an asset manager that provided seed capital to a small investment fund for the purpose of establishing an investment track record will need to have the fund begin posting initial and variation margin on September 1 if the asset manager is affiliated with a Phase I firm due to accounting consolidation and relatedly consolidated initial margin calculations.[6] Understandably, the needs of these investment funds are prioritized below the dealers' needs to address dealer-to-dealer readiness. Even with this prioritization, the dealers have struggled to address certain key issues related their interdealer requirements despite significant effort, as described in the ISDA-SIFMA Request, leaving little to no bandwidth to address seeded investment funds.

To complicate matters, the documentation and account set up needs of investment funds are different than those of dealers. For example, eligible collateral for non-covered swap entities is broader. Also, non-covered swap entities require a different set of representations in light of the

[6] While AMG requested, both during the rule proposal phase and after the release of Final Margin Rules, that the Commodity Futures Trading Commission and the Prudential Regulators exclude seeded investment funds from consolidated initial margin calculations consistent with the Banking Supervision and the Board of the International Organization of Securities Commissions' ("BCBS/IOSCO") framework, those requests were not granted. *See* AMG Submits Comments to Multiple Regulators on Final Margin Rules for Uncleared Swaps Transactions, *available at*: http://www.sifma.org/issues/item.aspx?id=8589958403, AMG's letter dated January 19, 2016 re: Final Margin Rules for Uncleared Swaps Transactions, *available at*: http://www.sifma.org/issues/item.aspx?id=8589958403., AMG's letter dated March 24, 2016 re: Final Margin Rules for Uncleared Swaps Transactions, *available at*: http://www.sifma.org/issues/item.aspx?id=8589959496.

differing apportionment of responsibilities under the U.S. Final Margin Rules. Further, some investment funds need to segregate variation margin in addition to initial margin due requirements to protect against loss mutualization. As such, dealers and custodians are faced with having to manage these varying requirements while also working towards completion of dealer implementation.

In the absence of relief, some of these seeded investment funds may be excluded from the uncleared swaps market until the dealers and custodians can complete the necessary steps for compliance. Such a result would invariably hurt investors and create anomalous returns for the funds, given that a tool to both gain exposure and hedge existing exposures will be temporarily removed.

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AMG urges the Prudential Regulators and CFTC to address these issues by postponing the Phase I implementation date for the U.S. Final Margin Rules. AMG further renews its request that the Prudential Regulators and CFTC provide a temporary exclusion of seeded investment funds from consolidated margin calculations prior to the September 2016 implementation date followed by a permanent change to exclude seeded investment funds. AMG continues to believe that this change is a small but important adjustment to the final rules for the reasons set forth in our prior correspondence on this issue.

We stand ready to provide any additional information or assistance that the Prudential Regulators or the Commission might find useful. Should you have any questions, please do not hesitate to contact Tim Cameron at 202-962-7447 / tcameron@sifma.org or Laura Martin at 212-313-1176 / lmartin@sifma.org.

Respectfully submitted,

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Commodity Futures Trading Commission