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April 29, 2013

Gary Barnett
Director of Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for Relief from External Business Conduct Rules

Dear Mr. Barnett:

The Asset Management Group (the "**AMG**")[1] of the Securities Industry and Financial Markets Association ("**SIFMA**") is writing to request that the Commodities Futures Trading Commission (the "**Commission**") exercise its authority pursuant to Section 4s(h) and Section 8a(5) of the Commodity Exchange Act (the "**CEA**"), or take such other action as it deems appropriate, with regards to the compliance dates for, and relief from, external business conduct requirements and other information collection rules (the "**Rules**") as set forth herein.

I. Request for Extension of Compliance Date or Relief for Good Faith Efforts

Notwithstanding good faith and diligent efforts by swap dealers ("**SDs**"), asset managers[2] and other market participants to provide SDs with the information, representations and agreements necessary to establish safe harbors with respect to the Rules by the compliance deadline of May 1, 2013, there are numerous factors that are

[1] The AMG's members represent U.S. asset management firms whose combined assets under management exceed $20 trillion. The clients of AMG member firms include, among others, registered investment companies, endowments, state and local government pension funds, private sector Employee Retirement Income Security Act of 1974 pension funds and private funds such as hedge funds and private equity funds. In their role as asset managers, AMG member firms, on behalf of their clients, engage in transactions that will be classified as "security-based swaps" and "swaps" under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").

[2] For example, the AMG published streamlined template questionnaires and informational memoranda for use by asset managers to expedite information gathering from their clients. These documents can be accessed at the following publicly-available website: http://www.sifma.org/committees/asset-management-group/asset-management-group-(amg)/sifma-asset-management-group-dodd-frank-protocol-client-reference-guide/.

impeding the ability of all market participants to provide such information, representations and agreements by such time.. Issues range from technical reconciliation problems associated with matching legal names and CICIs, adherence problems related to the ISDA August 2012 Dodd-Frank Protocol (the "**ISDA Protocol**"), confusion around the scope of FX forward transactions, and the resistance shown by many non-U.S. persons to agreeing to provide such information ,representations and agreements for fear of subjecting themselves to U.S. swap jurisdiction. Many end user clients of asset managers are still coming to terms with the scope of the rules and have ongoing uncertainty regarding the cross-border application of the Rules. In addition, there has been confusion among some participants who trade predominantly in foreign exchange transactions as to the applicability of the Rules to foreign exchange swaps and forwards which have been excluded from the definition of swap for other purposes.

Because of the unwillingness of SDs to transact in swaps without the protections of the safe harbors under the Rules and the certainty provided by the ISDA Protocol documentation to otherwise be in compliance with the Rules, clients of asset managers (and many other market participants) are facing the real possibility that they will be unable to transact in swaps following the May 1 compliance deadline. Moreover, because of reconciliation and systems issues, market participants who believe they have successfully completed the ISDA Protocol process may find they cannot trade. Indeed, many of our members that have already adhered to the ISDA Protocol have not yet received confirmation from some of their SD counterparties that their accounts have been matched. They fear that if the matching and reconciliation with these SD counterparties does not occur until just prior to or after May 1, they may be unable to continue trading for some period of time. As a result of these uncertainties, liquidity on and after May 1 could be significantly disrupted.

Accordingly, we request that the Commission adopt an interim final rule to defer the compliance date for the Rules until November 1, 2013. This 6-month extension will enable SDs, major swap participants ("**MSPs**") and asset managers to complete their information gathering and reconciliation efforts, and will help avoid scenarios where SDs or MSPs refuse to transact in swaps with certain counterparties as a result of being unable to achieve full verified compliance with the Rules' safe harbors.

Alternatively, but subject to the considerations discussed below under "Importance of Interim Rules," if the Commission does not believe that a rulemaking to grant an extension would be appropriate in this instance, we request that the staff of the Commission issue interpretative guidance or no-action relief to the effect that it does not intend to bring an enforcement action against an SD or MSP for failing to fully comply with applicable external business conduct requirements through November 1, 2013, provided the SD or MSP and its counterparty are all working in good faith to provide the SD or MSP with the information, representations and agreements necessary for the SD or MSP to avail itself of the relevant safe harbors for all accounts. In such situations,

practical or technical impediments to compliance that results in an inability of an SD or MSP to verify that all the terms of a safe harbor have been met should not result in the counterparty being blocked from trading.

II. Relief for FX Transactions with Settlement Cycles of Not More than "T+7"

Notwithstanding the discussion in the Commission's Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping release[3] (the "**Products Definitions Release**") regarding the distinction between spot and forward FX transactions (including both the Commission's interpretation to look to the "customary timeline of the relevant spot market"[4] for the appropriate settlement cycle of a spot transaction and its interpretation concerning securities conversion transactions[5]), as a practical matter it appears that some SDs and many market participants are treating all FX transactions that settle on a greater than "T+2" basis, regardless of whether they would otherwise qualify as spot transactions, as FX forwards for administrative ease. The approach appears to be driven mainly by concerns around putting in place compliance procedures to verify that all the conditions that would permit a trade settling after "T+2" to be treated as a spot trade have been met, such as agreeing on the customary settlement cycle in certain jurisdictions and the criteria for "securities conversion transactions." In the last week alone, our members have reported a significant uptick in SDs requiring evidence of trades settling on longer than a "T+2" basis properly being categorized as FX spot transactions. Trying to monitor and prove that these trades should be treated as FX spot transactions is, in and of itself, a significant undertaking for asset managers, especially as they continue to try to get all of their clients that trade swaps or FX forwards or FX swaps to provide all necessary information, representations and agreements to permit SDs to be in full compliance with the Rules and within the Rules' safe harbors.

Irrespective of the Commission's actions in response to Section I above, because of the difficulties in demonstrating that certain FX transactions settling on longer than a "T+2" basis should be properly considered FX spot trades, AMG also requests that the Commission provide time limited relief until November 1, 2013 such that SDs and MSPs are exempted from compliance with the Rules with respect to foreign exchange transactions with a settlement cycle of no more than "T+7" local business days. We

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[3] *See*, Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208 (Aug. 13, 2012).

[4] *Id*. at 48257.

[5] *Id*.

believe that such temporary relief should be given without respect to jurisdiction or whether the foreign exchange trade is part of a securities conversion transaction.[6] We believe that relief with respect to a "T+7" settlement is appropriate in light of language in the Commission's interpretation of the scope of "foreign exchange spot transactions," where it was stated that "T+2" had initially been selected in acknowledgement of what was customary for various types of foreign exchange transactions. For at least some foreign jurisdictions that we are aware of, the settlement cycle for certain securities transactions, after giving effect to customary extensions, and therefore the settlement period for corresponding foreign currency transactions, can be significantly longer than "T+2;" we believe that "T+7" would give sufficient comfort to the market during the period in which the temporary relief is in effect. Granting this relief would allow the large number of counterparties that believe they are only engaging in spot FX transactions to continue their activities without the potential for disruption. It would also permit market participants to focus their efforts on compliance with the Rules for the trades that they were intended to cover, swaps and true FX forwards and swaps, rather than attempting to prove that FX transactions that are intended to be spot trades will actually be treated as spot trades for purposes of the Rules.

III. Cleared Block Trades

AMG also requests that the Commission provide permanent relief, or that its staff provide guidance, that the Rules are not applicable to cleared block swap transactions. When entering into block trades, clients in a block are not typically identified until post-execution. Given the timing requirements for submission and acceptance of swaps for clearing, it is expected that the allocation of a block swap transaction to individual clients may take place concurrently with or subsequent to submission and acceptance for clearing. Accordingly, in the context of block transactions, it is likely that SDs may execute trades without ever knowing the identity of the ultimate counterparties to the transaction. This anonymity makes compliance with the Rules, including the "know your counterparty" and suitability requirements, extremely difficult. We believe that bilaterally executed block trades that are to be submitted to a derivatives clearing organization for clearing are akin to transactions executed anonymously on a swap execution facility or designated contract market to which the Rules generally do not apply, and therefore, we request that the Commission provide an exemption from the Rules for such block transactions.

In the absence of clarity on this point, there recently have been negotiations between SDs and certain large asset managers to contractually allocate responsibilities and

[6] In granting this relief, the Commission should clarify that parties could still avail themselves of the application of FX spot status to securities conversion transactions and trades in jurisdictions where the standard settlement time is longer than "T+7" during this period.

liabilities with respect to the Rules in the case of block swap trades. These negotiations have not been completed and it is extremely unlikely that any industry-wide solution can be achieved by the May 1, 2013 compliance deadline. Accordingly, if the Commission does not feel that the permanent exemptive relief requested above is appropriate, we would request alternatively that the Commission provide a six-month extension of the deadline for compliance with the Rules for block swap transactions to provide sufficient additional time for the industry to achieve a workable long-term solution, irrespective of the Commission's actions in response to Section I above.

IV. Prime-brokerage Transactions

AMG wishes to express its support of the requests by the Financial Market Lawyers Group ("**FMLG**") that the Commission provide relief in respect of the application of the Rules to prime brokerage transactions, both in the context of FX forward and swap transactions and swaps. We agree that given the differing roles that prime brokers and executing brokers play, were the Commission to issue an exemptive or interpretative letter or an interim final rule providing for a division of responsibilities under the Rules between prime brokers and executing brokers, the Commission would prevent inefficient and duplicative documentation and disclosure efforts while still providing counterparties with the full benefits of the Rules. Similar to our request in Section III above, if the Commission does not feel that permanent exemptive relief requested for these prime brokerage transactions is appropriate, we would request alternatively that the Commission provide a six-month extension of the deadline for compliance with the Rules for prime brokerage transactions to provide sufficient additional time for the industry to achieve a workable long-term solution, irrespective of the Commission's actions in response to Section I above.

Importance of Interim Final Rules

In each of the above requests for relief, we believe it would be best to provide relief through an interim final rule or interpretive guidance, rather than no-action relief, to alleviate market concerns regarding the potential for private rights of action. Such concerns could adversely affect SD's and MSP's willingness to enter into transactions without having achieved full compliance with the relevant Rules and result in market disruptions after May 1, 2013 if relief is granted in the form of a no-action letter.

Based on the foregoing, we respectfully request that the Staff of the Commission grant the relief described in this letter. We appreciate the Commission's consideration of this request, and stand ready to provide any additional information or assistance that the Commission might find useful. Should you have any questions, please do not hesitate to call Tim Cameron at 212-313-1389 or Matt Nevins at 212-313-1176.

Sincerely,

Timothy W. Cameron, Esq.
Managing Director, Asset Management Group
Securities Industry and Financial Markets Association

Matthew J. Nevins, Esq.
Managing Director and Associate General Counsel, Asset Management Group
Securities Industry and Financial Markets Association

cc: Hon. Gary Gensler, Chairman, Commodity Futures Trading Commission
Hon. Jill E. Sommers, Commissioner, Commodity Futures Trading Commission
Hon. Bart Chilton, Commissioner, Commodity Futures Trading Commission
Hon. Scott O'Malia, Commissioner, Commodity Futures Trading Commission
Hon. Mark Wetjen, Commissioner, Commodity Futures Trading Commission
Frank Fisanich, Chief Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission
Eric Juzenas, Senior Counsel to Chairman, Commodity Futures Trading Commission

Certification Pursuant to CFTC Regulation 140.99(c)(3)

As required by CFTC Regulation 140.99(c)(3), we hereby (i) certify that the material facts set forth in the attached letter dated April 29, 2013 are true and complete to the best of our knowledge; and (ii) undertake to advise the CFTC, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,

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Securities Industry and Financial Markets Association

Matthew J. Nevins, Esq.
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