



| asset management group

August 22, 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 Standards Rules for Certain Foreign Exchange Transactions

Dear Mr. Barnett:

The Asset Management Group (the “**AMG**”)¹ of the Securities Industry and Financial Markets Association (“**SIFMA**”) requests that the Commodity Futures Trading Commission (the “**Commission**”) extend the date for compliance by swap dealers (“**SDs**”) and major swap participants (“**MSPs**”) with external business conduct requirements and other information collection rules found in subpart H of part 23 of the Commission’s regulations (the “**External Business Conduct Standards Rules**”)² when entering into deliverable foreign exchange transactions with a settlement cycle of no more than seven local business days after execution (i.e., T+7) (“**Exempt FX Spot Transactions**”) with clients who do not otherwise trade swaps or foreign exchange forwards until at least December 31, 2013.³

The Commission has generally provided that a FX transaction is a spot transaction and not a forward if it settles via actual delivery of the relevant currencies within two local business days of its execution (“**T+2**”).⁴ However, the Commission has also acknowledged that a FX spot transaction can also include FX transactions with settlement cycles longer than two local

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, ERISA plans and state and local government pension funds, many of whom invest in commodity futures, options, and swaps as part of their respective investment strategies.

² 17 CFR §§ 23.400-23.451; Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 FR 9734 (Feb. 17, 2012) (hereinafter, the “**External Business Conduct Standards**”).

³ See SIFMA AMG Letter to the Commission Request for Relief from External Business Conduct Standards (April 29, 2013), available at <http://www.sifma.org/issues/item.aspx?id=8589943530> (the “**April 29 AMG Letter**”).

⁴ See “Further Definition of Swap, Security-Based Swap, and Security-Based Swap Agreement; Mixed Swaps; Security-Based Swap Agreement Recordkeeping” 77 Fed. Reg. 48207, 48257 (Aug. 13, 2012) (the “**Swap Definition Rule**”).

business days when such longer settlement is customary in the relevant market.⁵ In addition, certain FX transactions, if entered into in connection with the purchase and sale of a foreign security, are deemed “Securities Conversion Transactions” which the Commission also considers to be FX spot transactions even though the settlement cycle for these transactions is longer than two local business days.⁶ As was discussed in the April 29 AMG Letter, notwithstanding that Securities Conversion Transactions are bona fide FX spot transactions, many SDs had been prepared to treat all (or most) FX transactions that settle on a greater than T+2 basis as FX forwards because the market lacked an appropriate technological mechanism and uniform standards for identifying transactions settling on longer than a T+2 basis as FX spot transactions and because of interpretive issues arising from the definition of Securities Conversion Transactions.

In response to our request in the April 29 AMG Letter, the Commission granted time limited relief with respect to compliance with the External Business Conduct Standards for Exempt FX Spot Transactions through September 1, 2013. However, as we noted in a subsequent letter to the Commission on June 4, 2013 requesting relief from the Commission’s Swap Trading Relationship Documentation rules for foreign exchange forwards, the AMG continued to believe that relief for Exempt FX Spot Transactions through September 1, 2013 would not be sufficient as the industry works on solutions for demonstrating that certain FX transactions should be treated as FX spot transactions.⁷ While the market has continued to work in good faith to address these requirements, a technological solution which would allow market participants to designate their foreign exchange transactions as “spot” transactions when executing on an electronic trading platform is not yet available. Based on our discussions with two leading platforms, GUI⁸ releases are being developed which will allow users to download and update their interface for trading to designate their foreign exchange transactions as either spot or forward transactions. However, these technological solutions will not be available before

⁵ See CFTC No-Action Letter 13-13 (May 2, 2013). As the Commission noted in this letter, some foreign jurisdictions have settlement cycles for certain securities transactions, and therefore for corresponding foreign currency transactions, which are significantly longer than T+2.

⁶The Commission will consider the following to be a “Securities Conversion Transaction” (and therefore a spot FX transaction): “An agreement, contract or transaction for the purchase or sale of an amount of foreign currency equal to the price of a foreign security with respect to which (i) the security and related foreign currency transactions are executed contemporaneously in order to effect delivery by the relevant securities settlement deadline and (ii) actual delivery of the foreign security and foreign currency occurs by such deadline.” Swap Definition Rule, 77 FR at 48257.

⁷ See SIFMA AMG and Investment Company Institute Letter to the Commission Requesting Relief Relating to Certain Foreign Exchange Transactions (June 4, 2013), *available at* <http://www.sifma.org/issues/item.aspx?id=8589944459> (the “**June 4 Letter**”).

⁸ A GUI (pronounced “gooey”) is a “graphical user interface” that allows users to interact with electronic devices through graphical icons and visual indicators using a mouse, as opposed to text-based interfaces, typed command labels or text navigation. In this particular context, the GUI would add a check-box or fillable field into the standard trade entry page allowing the user to elect whether the FX transaction was either a spot or forward transaction.

September 1. While we currently expect that these solutions will be made available in the next two to four months, it will take additional time for all customers to download and implement these GUIs.⁹ Therefore, in order to give customers sufficient time to adopt these solutions and adjust their workflows accordingly for trade execution, the Commission should provide no-action relief from compliance with the External Business Conduct Standards Rules for swap dealers and major swap participants whose clients trade only Exempt FX Spot Transactions but do not otherwise trade swaps or foreign exchange forwards until no earlier than December 31, 2013.

Furthermore, as mentioned in the June 4 Letter, our members have continued to experience interpretive issues in applying the Securities Conversion Transaction language (see footnote 6 of this letter) to FX transactions that they believe are bona fide FX spot transactions. In addition to providing for the development of a technological solution for identifying FX spot transactions, the requested extension will also allow for additional time to appropriately address these interpretive issues.

We believe that the requested extension of the relief from the External Business Conduct Standards Rules for Exempt FX Spot Transactions would allow the large number of counterparties that believe they are only engaging in FX spot transactions to continue their activities with minimal disruption and would permit market participants to focus their efforts on complying with Commission rules that will become effective over the next several months, such as the mandatory exchange trading requirements, central clearing for category 3 clients and the final cross-border guidance.

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⁹ One leading FX trading platform noted in our conversations that, based on their experience with the roll-out of a GUI which allowed the parties to provide mid-market price as required by the External Business Conduct Standards, it will take several months for their clients to download a new GUI and begin using it actively.

Based on the foregoing, we respectfully request that the staff of the Commission grant the relief described in this letter. We appreciate your consideration of this request, and stand ready to provide any additional information or assistance that you might find useful. Should you have any questions, please do not hesitate to contact 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. 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

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

As required by Commission Regulation 140.99(c)(3), we hereby (i) certify that the material facts set forth in the attached letter dated August 22, 2013 are true and complete to the best of our knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy W. Cameron', with a long horizontal flourish extending to the right.

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

A handwritten signature in blue ink, appearing to read 'Matthew J. Nevins', with a long horizontal flourish extending to the right.

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