<u>**Via E-mail (rule-comments@sec.gov)**</u>

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Comment Letter on the Proposed Rule re: Regulation SBSR—Reporting and
        Dissemination of Security-Based Swap Information; File No. S7-03-05**

Dear Mr. Fields:

The Asset Management Group[1] ("AMG") of the Securities Industry and Financial
Markets Association ("SIFMA") appreciates the opportunity to provide the Securities and
Exchange Commission (the "Commission") with comments on Regulation SBSR—Reporting
and Dissemination of Security-Based Swap Information ("Regulation SBSR").[2] AMG further
appreciates the Commission's continued consideration of clarifications and adjustments to
Regulation SBSR during the initial implementation of the mandatory reporting requirements.

As AMG's members have reviewed Regulation SBSR from the perspective of the non-
reporting side, issues have arisen that AMG would like the Commission to consider addressing.
Specifically, our members believe that Regulation SBSR does not require participants to report
certain unique identification codes ("UICs") when asset managers enter into security-based
swaps ("SBS") as execution agent on behalf of clients, and that the Commission should clarify
this aspect of the rule. Further, we believe that the Commission should cap notional amounts for
block trades being reported by SBS data repositories ("SB SDRs") to the public. Finally, we

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[1] AMG's members represent U.S. asset management firms whose combined assets under management
exceed $ 30 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.

[2] 80 Fed. Reg. 14740 (March 19, 2015) (proposal to amend 17 CFR Part 242).

believe that the Commission should not require reporting prior to SBS dealer registration becoming effective.

For the reasons discussed below, AMG requests clarification and relief on these aspects of Regulation SBSR.

I.   The Commission Should Clarify that Trading Desk and Trading ID UICs are Not Applicable for Security-Based Swaps Facilitated by Execution Agents

Regulation SBSR's Section 906(a) requires the SB SDR to "identify any security-based swap reported to it for which the registered security based swap data repository does not have the counterparty ID and (if applicable) the broker ID, branch ID, execution agent ID, trading desk ID, and trader ID *of each direct counterparty*."[3] The SB SDR is required to send a report once a day to participants with transactions that have missing fields (both the reporting side and non-reporting side), and the participants are required to provide the missing information.

AMG requests clarification that the trading desk ID and trader ID fields are not applicable (or "N/A") for trades entered into by an execution agent. An execution agent, defined as "any person other than a broker or trader that facilitates the execution of a security-based swap on behalf of a direct counterparty,"[4] includes asset managers that execute trades on behalf of client accounts. Notwithstanding the "if applicable" and "direct counterparty" language in Section 906(a), some market participants have expressed concern that these fields could be interpreted as required to be completed for trades facilitated by execution agents.[5] However, we believe that where an asset manager acts as the execution agent for a trade in a client account, by definition the trade would not have been executed by a trader or trading desk *of a direct* counterparty.

Identifying an asset manager as the execution agent for a trade conveys the information desired by the Commission and obviates the need to report a trader or trading desk ID, consistent with the rationale for the rule. Section 906(a) appropriately focuses on gathering information about direct counterparties. Requiring an asset manager acting as execution agent to report on

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[3] 17 CFR § 242.906(a) (emphasis added).

[4] 80 Fed. Reg. 14583.

[5] *See, e.g.,* Letter from Larry E. Thompson, Vice Chairman and General Counsel of DTCC to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 4, 2015, at p. 7, *available at*: http://www.sec.gov/comments/s7-03-15/s70315-5.pdf (stating that "DTCC anticipates . . . issues related to non-reporting sides will make it problematic for an SB SDR to effectively comply with Final Reg. SBSR rule 906(a), which requires a non-reporting side to report certain identification data elements to an SB SDR, *e.g.,* trader ID and trading desk ID").

the traders or trading desks at the asset manager that executed a trade on behalf of a third party direct counterparty would not serve this purpose. Section 906(a)'s trader ID and trading desk ID reporting requirements appear to be correctly focused on providing information to the Commission regarding the relevant decision makers for a direct counterparty, while providing a separate field for execution agent when the trade is executed outside of the direct counterparty. As such, the trader ID and trading desks are not applicable when a trade is executed by an execution agent, and not by a direct counterparty's trader.

AMG requests that the Commission provide clarification that, for trades for which an execution agent is reported, the trading desk ID and trader ID fields should be viewed as being correctly completed where the reporting side populates the fields with "N/A."

II.   The Commission Should Clarify that Parent and Affiliate UICs are Not Applicable for Security-Based Swaps Facilitated by Execution Agents

Regulation SBSR's Section 906(b) requires each participant of an SB SDR to report to the SB SDR its ultimate parent(s) and any affiliate(s) that are also participants of the SB SDR. In the case of trades facilitated by asset managers, the participant would be the asset manager's client, not the asset manager itself.

AMG requests clarification that the parent and affiliate fields are not applicable (or "N/A") for a trade if the trade report includes an execution agent's ID. We understand the Commission's desire to be able to aggregate SBS positions across affiliated corporate entities under a common parent. However, in the context of asset management, we are concerned that such information may prove more misleading than beneficial. For many clients and funds managed by our members, it may not be straightforward to determine who the affiliates and/or ultimate parent(s) for such clients and funds are, or whether it would be appropriate to aggregate swap positions across such ultimate parent(s) and affiliates from a regulatory oversight perspective. Further, even if gathering such information remained desirable, asset managers historically have not collected or stored such information.

Aggregating swap positions across affiliates or at the parent level for separate accounts managed by asset managers would provide a misleading impression. Aggregation across affiliated entities under a common parent makes the most sense from a regulatory or systemic risk perspective where there is coordinated trading activity and/or the risk of such swap positions is borne by the parent under an explicit or implicit guarantee. In the context of asset management, neither is typically present. For separate account clients, virtually all the asset management assignments undertaken by our members are on a discretionary basis (subject to investment and trading guidelines). Further, it is very common for an asset manager transacting for a client account to do so under swap and clearing agreements that limit the recourse of the swap counterparty or clearing member to just the client assets managed by that asset manager.

As a result, the separate account client (let alone its affiliates or parent) would not be responsible under its trading contracts for trading losses incurred by a manager acting on its behalf beyond the assets it has provided to that manager.

There is even less reason to require identification of the affiliates or parent of a collective investment vehicle. While funds in the same complex could be viewed as affiliated for certain purposes, aggregating swap positions across funds where recourse is legally and contractually limited would be misleading from a systemic risk and regulatory oversight perspective.

Additionally, for certain types of clients, identifying an ultimate parent or its affiliates could be complex and potentially misleading in practice. Multi-employer pension plans, for example, would likely need to be viewed as having multiple "ultimate parents" under Regulation SBSR even though each employer only represents a portion of the funds invested and exposure. Further, it is not clear that a plan sponsor should be treated as an ultimate parent of a pension plan for purposes of these rules, or that swap activities undertaken by subsidiaries of the plan sponsor – or by other pension plans established by that sponsor – should be viewed as trading done by "affiliates" of the plan. Identifying the parent and affiliates of state and local pension plans may be equally difficult and misleading.

As a practical matter, it is not realistic to expect separate account clients to provide parent and affiliate information directly to an SB SDR. Separate account clients typically look to the asset manager to handle transactional matters arising from investment activity. They are not set up or prepared to engage contractually or operationally with an SB SBR. Further, the identity of a separate account client's parent and affiliates is not information that asset managers have traditionally collected or maintained. Creating the infrastructure necessary for systematically obtaining parent and affiliate information from clients; updating the information as it changes; and providing and updating the information reported to the SB SDR would be a mammoth undertaking for the asset management industry.

In light of the foregoing, AMG requests that the Commission clarify that, where transactions are reported to an SB SDR as having been executed by an execution agent on behalf of a counterparty, the SB SDR would not be required to collect parent or affiliate information from such counterparty and should enter N/A in the applicable data fields.[6]

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[6] To the extent the Commission continues to want parent and affiliate information for trades executed by asset managers as execution agent for their clients, AMG believes that ultimate parent and affiliate relationships should be provided through the Global Legal Entity Identifier System ("GLEIS") and not piecemeal through asset managers and/or buy side clients. We understand that the Legal Entity Identifier Regulatory Oversight Committee ("LEI ROC") and Global Legal Entity Identifier Foundation ("GLEIF") are working on capturing parent relationships through the GLEIS, which would provide more reliable data on these corporate relationships. *See, e.g.*, LEI ROC, Consultation document on collecting data on

III. The Commission Should Cap Notional Amounts for Block Trades Being Reported by SB SDRs to the Public

Under Regulation SBSR's Section 902, an SB SDR must, immediately upon receiving a transaction report of a security-based swap, publicly disseminate the primary trade information of that transaction including the notional amount of the trade.[7] Although Section 13(m)(1)(E) of the Security Exchange Act of 1934 ("Exchange Act") requires the Commission rules to specify criteria and time delays for block trades, the Commission adopted final Rule SBSR without providing an exclusion for block trades during the interim period during which no block trading rules have been proposed or finalized.[8]

AMG has concerns that requiring this reporting by the SB SDR without capping notional amounts—with or without a reporting delay—will have negative consequences for asset managers' clients and the SBS market. Trades and related positions that should be anonymous may be easily identified by other market participants. For example, only a small number of single-name CDS market participants trade in larger size. With no masking of notional amounts, asset managers' positions and direction in trading may be revealed in a manner contrary to the intentions of the Exchange Act. Disclosing this information creates market risks, which may inhibit a dealer's ability to hedge or increase the dealer's costs, which in turn will increase prices for asset managers' clients.

In recognition of similar concerns, the Commodity Futures Trading Commission ("CFTC") promulgated a final block trade reporting rule with "measures to protect the identities of swap counterparties and to maintain the anonymity of their business transactions and market positions in connection with the public dissemination of publicly reportable swap transactions," including "cap sizes for notional and principal amounts that mask the total size of a swap transaction based upon a 75-percent notional amount calculation for a given swap category" and "limits on the public dissemination of certain publicly reportable swap transactions in the other commodity asset class, which have specific delivery or pricing points."[9] The CFTC took this

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direct and ultimate parents of legal entities in the Global LEI System (Sept. 7, 2015), *available at*: http://www.leiroc.org/publications/gls/lou_20150907-1.pdf.

[7] Participants have a day to report trades to the SB SDR, after which the SB SDR immediately disseminates the information; however, the reporting party, which usually is the dealer in the case of block trades, controls when trades are reported and may rely on systems that promptly report all trades to the SB SDR.

[8] 80 Fed. Reg. 14568.

[9] Commodity Futures Trading Commission, Fact Sheet: Final Rulemaking on Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades; Further

approach notwithstanding the absence of a notional cap on public dissemination of futures block trades.[10]

Given that anonymity concerns arise regardless of whether block transactions are reported to the public under CFTC rules for swaps of ten or more securities or Commission rules for swaps of fewer than ten securities, AMG requests that the Commission cap notional amounts for block trades that SB SDRs report to the public pursuant to Regulation SBSR. The capping of notional amounts on public reports should be applied consistently across the entirety of the SBS market, whether it falls under the Commission's jurisdiction or the CFTC's. AMG recommends that the Commission employ disclosure thresholds that are specific to each class or subclass of SBS, and are set at levels or ranges that do not threaten to reduce market liquidity. We support a "size-plus" approach, similar to TRACE reporting in the cash bond market–whereby transactions greater than $1 million notional on high yield issuers are reported as "1+" transactions and greater than $5 million on investment grade issuers are reported as "5+"–[11]effectively balances the need for post-trade price transparency with the need to protect liquidity.

For these reasons, AMG requests that the Commission consider interim relief until the Commission's block trading rules are proposed and become effective.

IV.   The Commission Should Avoid Use of Resources to Solve a Temporary Gap for Reporting Prior to SBS Dealer Registration

Under Regulation SBSR's reporting hierarchy, registered SBS dealers comprise the primary category designated as having reporting responsibility. Absent the involvement of a registered SBS dealer in a transaction, reporting often must be addressed by agreement between the parties.[12] If reporting requirements become effective prior to registration becoming effective,

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Measures to Protect the Identities of Parties to Swap Transactions, *available at:* http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/block_factsheet_final.pdf.

[10] *See, e.g.,* CME Group, Market Regulation Advisory Notice re: Block Trades (Oct. 26, 2015) at 9 ("Dissemination of Block Trade Information," stating that "The date, execution time, contract month, price and quantity of block trades are reported upon receipt of the block information"), *available at*: http://www.cmegroup.com/rulebook/files/RA1515-5.pdf.

[11] *See* TRACE[SM] Trade Reporting and Compliance Engine[SM] User Guide Version 2.0, The Financial Industry Regulatory Authority, (July 8, 2008), at 49, available at http://www.finra.org/web/groups/industry/@ip/@comp/@mt/documents/appsupportdocs/p014513.pdf.

[12] *See* 17 CFR § 242.901(a)(2)(ii)(E)("If neither side of the security-based swap includes a registered security-based swap dealer or registered major security-based swap participant: (*1*) If both sides include a U.S. person, the sides shall select the reporting side.").

market participants will need to address the temporary absence of registered SBS dealers through agreements to select a reporting side or other measures.

AMG understands that the International Swaps and Derivatives Association, Inc. ("ISDA") has requested a short delay in reporting, measured in months not years, so that reporting will start after registration in order to avoid expending dealer and buy side resources to address this temporary issue.[13] AMG agrees with ISDA's approach to conserve resources and request that the Commission require reporting of SBS transaction after dealer registration becomes effective.

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For the reasons stated above, AMG requests that the Commission: (a) clarify that the trading desk ID, trader ID, ultimate parent and affiliate fields are all not applicable for purposes of Regulation SBSR when asset managers facilitate trades on behalf of clients as execution agents; (b) temporarily cap notional information for block trades until the Commission's block trade rules are effective; and (c) make SBS transactional reporting requirements effective after SBS dealer registration is effective.

AMG thanks the Commission for the opportunity to comment on Regulation SBSR. Should you have any question, please do not hesitate to contact Tim Cameron at 202-962-7447 and tcameron@sifma.org or Laura Martin at 212-313-1176 and lmartin@sifma.org.

Respectfully submitted,

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

Laura Martin
Managing Director and Associate General
Counsel
Asset Management Group
Securities Industry and Financial Markets
Association

cc: The Honorable Mary Jo White, Chairman

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[13] ISDA's November 25, 2015 Letter on the sequential timing of compliance with the reporting and registration regulations, *available at*: https://www.sec.gov/comments/s7-03-15/s70315-36.pdf.

The Honorable Luis A. Aguilar, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner