

Mr Jonathan Faulk  
Director General  
Internal Market and Services  
European Commission  
1049 Brussels  
Belgium  
19 December, 2013

Dear Mr Faulk

**Re: Postponement of Reporting Obligation Application to Buy-Side**

The Asset Management Group (the "**AMG**") of the Securities Industry and Financial Markets Association<sup>1</sup> hereby requests that the Commission consider allowing a deferred start date for the application to buy-side market participants of the reporting obligation (the "**Reporting Obligation**") set out in Article 9 of Regulation (EU) No. 648/2012 for a period of at least one year from the date at which the Reporting Obligation applies to the sell-side.<sup>2</sup> The AMG's members represent global asset management firms whose combined assets under management exceed \$20 trillion. Most of AMG's members are headquartered in the United States, but have global operations and investment mandates, including in Europe. The clients of AMG member firms include, among others, registered investment companies, pension plans, UCITS funds, Master-KAGs, sovereign wealth funds and pension schemes, many of whom invest in derivatives as part of their respective investment strategies.

Our membership has substantial reservations about the operational feasibility for buy-side market participants of complying with the Reporting Obligation's current timeframe<sup>3</sup>. We are concerned that applying the Reporting Obligations to buy-side participants before they have had sufficient time to prepare may result in inaccurate reporting, which would militate against the policy goal of regulators achieving a clear overview of the derivatives market. We believe that there are a

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<sup>1</sup> The Securities Industry and Financial Markets Association (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 (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.07.2012

<sup>3</sup> Although some of our members are subject to limited reporting under Directive 2004/39/EC ("**MiFID**"), we note that the scope of reporting pursuant to EMIR is significantly broader than the scope of reporting pursuant to MiFID.

number of reasons that support a postponement of application of the Reporting Obligation to the buy-side.

### ***Solutions for Reporting Obligation compliance and related infrastructure are not ready***

There have been, and continue to be, a large number of key unknown elements relating to the practicalities of reporting, including questions around the required information and reporting fields. This significant uncertainty has prevented buy-side market participants, in particular, from making substantial progress on implementation. We understand that concerns were expressed by other buy-side groups earlier this year and with a couple of months to go, these concerns continue to raise significant obstacles to completion before the start date of the Reporting Obligation. Our U.S. headquartered members have direct experience of the scale of the implementation challenge as a consequence of complying with new requirements relating to derivatives under the Dodd Frank Wall Street Reform and Consumer Protection Act and, given that experience, we believe that buy-side participants will not be able to comply with implementation of the Reporting Obligations within the current timeframe.

In particular, our members need to put in place the operational infrastructure to collate data in respect of each client. There is limited reporting infrastructure in place currently and it is not likely to be fully developed prior to the current Reporting Obligation deadline. For example, uniform transaction identifiers (“UTIs”) are not yet readily available. Even with the use of third-party service providers, specifications are not yet complete with little time remaining before the Reporting Obligation deadline. The rush to implement the Reporting Obligation will be further compounded by limited capacity at trade repositories, particularly if *all* market participants need to finalise arrangements at the same time, including across the end-of-year period.

Furthermore, as asset managers, our members may need to engage with their own clients in order to make arrangements for reporting. As a consequence of the issues described above, members have been unable to effectively fulfil these requirements.

As a separate, but related, consideration, many of our members desire to enter into delegated reporting arrangements with the sell-side dealers that they trade with. The concept of delegated reporting is just starting to take shape. Other industry groups have been working on a draft template agreement, which has not yet been finalised or published, and may require negotiation and customization before being executed.

### ***The EMIR 'two-sided' Reporting Obligation is not consistent with US regulation in this area***

In the US, when a buy-side market participant trades a swap with a sell-side market participant, the reporting obligation falls only on the sell-side market participant. As our members are asset

managers that are mostly headquartered in the United States, they have not built infrastructure for OTC derivatives reporting, let alone reporting of listed derivatives. Accordingly, our members will not be able to rely upon reporting experience in the U.S. and instead will need to completely build new capabilities and systems to address the Reporting Obligation.

***The U.S. substituted compliance/third-country equivalence regime is not yet clear***

The precise regulatory environment for asset managers that operate in both the United States and European Union has not yet been finalised. U.S. market participants are awaiting a substitute compliance determination from the Commodity Futures Trading Commission (“**CFTC**”) with respect to compliance with the European Market Infrastructure Regulation (“**EMIR**”). We and our members note the news reports circulating this week relating to speculation that the CFTC may not make such a determination, contrary to what had initially been anticipated by many, which adds further uncertainty as to likely final outcomes. The costs of reporting are in any event significant, and to the extent there are operational and cost efficiencies to be gained through substituted compliance our members will wish to take advantage of such efficiencies. We do not believe it is cost-effective or appropriate for our members to comply with both EMIR and U.S. regulations requiring reporting of the same transaction if that result can be eliminated through substituted compliance or a third-country equivalence regime. Absent certainty as to whether our members may rely on substituted compliance, having to report transactions to multiple regulators and trade repositories based on duplicative and/or conflicting requirements will result in undue costs and infrastructure builds and could lead to skew in trade volumes being reported globally, giving a misleading impression of the global market.

***Policy goals of Reporting Obligation will still be met if reporting is deferred for the buy-side***

We note that the main objective of the Reporting Obligation is to 'allow for a comprehensive overview of the derivatives market and to enable the identification, monitoring and assessment of systemic risk'<sup>4</sup>. We believe that collation of transaction reports submitted by the sell-side institutions with whom AMG members (and buy-side market participants more generally) transact will meet that policy goal. For each transaction with a buy-side participant, there will also be a sell-side participant, so sell-side transaction reports on their own will already provide a comprehensive overview of the market. In addition, the identification of systemic risk is achieved through the requirement for sell-side reporting parties to identify their counterparty in respect of each transaction, allowing regulators to monitor the positions and portfolios of buy-side users of derivative transactions as effectively as if those buy-side users submitted transaction reports independently. For the purposes of the stated policy goal of the Reporting Obligation, and in view

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<sup>4</sup> p.3, Letter to Steven Maijoor dated 07.11.2013

of the nature of sell-side transaction reports as set out above, we consider that the further requirement for buy-side market participants to submit transaction reports is, in practical terms, not strictly necessary and actually merely replicates the information available from sell-side reports<sup>5</sup>, particularly in view of the existing portfolio reconciliation requirements under EMIR. Therefore, we believe that a postponement of the application of the Reporting Obligation to buy-side market participants would not affect the stated policy goal of the Reporting Obligation.

These factors all lead to a compressed and inappropriate timetable for buy-side market participants, at significant cost as a result of the need for accelerated implementation against a changing regulatory (and commercial) landscape, without commensurate benefit. We, therefore, request deferral of application of the Reporting Obligation for a period of at least one year from the date at which the Reporting Obligation applies to the sell-side. Should a legislative deferral not be achievable in the timeframe, a significantly less desirable alternative would be confirmation of guidance from the Commission to ESMA and National Competent Authorities that enforcement of the Reporting Obligation for buy-side market participants be conducted on a relaxed basis for a one-year period subsequent to the start date of the Reporting Obligation, assuming market participants take reasonable steps to move toward full compliance.

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<sup>5</sup> We believe that this dual reporting would be duplicative in terms of scope even if not operationally 'duplicative' in the sense used in Article 9 of Regulation (EU) No. 648/2012.

We appreciate your consideration of our comments and requests in this letter. We 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 +1 212 313 1389 or Matt Nevins of AMG at +1 212 313 1176 or Allan Yip of Simmons & Simmons at +44 (0)20 7825 3626.

Sincerely,



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