



January 18, 2011

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington DC 20581

Re: Comment Deadlines for MSP Regulation Proposals  
RIN: 3038-AC95; 3038-AC96 (SD-MSP Conflicts of Interest); 3038-AC96 (Duties of Swap Dealers and Major Swap Participants); RIN 3038-AC96 (CCO Designation); 3038-AC96 (Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants); 3038-AD25; 3038-AD06 (Definitions)

Dear Mr. Stawick:

I am writing on behalf of the Asset Management Group (the “**AMG**”)<sup>1</sup> of the Securities Industry and Financial Markets Association (“**SIFMA**”). The Commodity Futures Trading Commission (“**CFTC**”) has proposed a series of rules regarding the regulation of “major swap participants” (“**MSPs**”) under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”), including proposed rules on: registration of **MSPs**;<sup>2</sup> implementation of conflicts of interest policies and procedures by **MSPs**;<sup>3</sup> duties

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<sup>1</sup> 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, state and local government pension funds, universities, 401(k) or similar types of retirement 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, may engage in transactions, including transactions for hedging and risk management purposes, that will be classified as “swaps” or “security-based swaps” under the Dodd-Frank Act.

<sup>2</sup> Registration of Swap Dealers and Major Swap Participants, 75 Fed. Reg 71,379 (proposed November 23, 2010) (amending 17 CFR Pts. 3, 23 and 170).

<sup>3</sup> Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants, 75 Fed. Reg 71,391 (proposed November 23, 2010) (amending 17 CFR Pt. 23).

for MSPs;<sup>4</sup> designation of a chief compliance officer by MSPs;<sup>5</sup> reporting, recordkeeping and daily trading records requirements for MSPs;<sup>6</sup> and business conduct requirements for MSPs with counterparties<sup>7</sup> (collectively, the “**MSP Proposals**”). The CFTC and the Securities and Exchange Commission (“**SEC**”) published a joint rule (the “**Definitions Proposal**”) in the Federal Register on December 21, 2010, which would further define the term “major swap participant,” among others.<sup>8</sup> AMG members are currently collecting data, estimating future swap activity and calculating exposures under the MSP tests in order to determine whether certain of their clients are likely to be regulated as MSPs. These tasks are extremely complex and time-intensive. In addition, the Secretary of the Treasury has not yet determined whether to exclude foreign exchange swaps and forwards from the definition of “swap,”<sup>9</sup> which may have a significant effect on whether AMG clients will be regulated as MSPs.

If AMG members determine that their clients are likely to be or become MSPs, they will need to fully assess how the regulatory regime would apply to the unique circumstances of funds. In this regard, the AMG notes that under the MSP Proposals the duties and obligations of MSPs are nearly identical to those imposed on swap dealers. Yet, the Dodd-Frank Act itself does not require such identical regulation. Swap dealers and MSPs certainly will be different types of entities engaged in different types of activities—swap dealers make markets in

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<sup>4</sup> Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants, 75 Fed. Reg. 71,397 (proposed November 23, 2010) (amending 17 CFR Pt. 23).

<sup>5</sup> Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant, 75 Fed. Reg. 70,881 (proposed November 19, 2010) (amending 17 CFR Pt. 3).

<sup>6</sup> Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 75 Fed. Reg. 76,666 (proposed December 9, 2010) (amending 17 CFR Pt. 23).

<sup>7</sup> Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 75 Fed. Reg. 80,638 (proposed December 22, 2010) (amending 17 CFR Pts. 23 and 155).

<sup>8</sup> Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant”, 75 Fed. Reg. 80,174 (proposed December 21, 2010) (amending 17 CFR Pts. 1 and 240).

<sup>9</sup> Sections 721 and 722 of the Dodd-Frank Act include foreign exchange swaps and forwards in the definition of “swap” unless the Secretary of the Treasury determines otherwise. The Treasury Department requested public comment on the issue with a comment deadline of November 29, 2010, *see* Determination of Foreign Exchange Swaps and Forwards, 75 Fed. Reg. 66,426 (October 28, 2010), and a Financial Stability Oversight Council timeline indicates that the Treasury Department has targeted January 2011 for a determination. *See* Financial Stability Oversight Council, Dodd-Frank Wall Street Reform and Consumer Protection Act Integrated Implementation Roadmap, Oct. 1, 2010, available at [http://www.treasury.gov/initiatives/Documents/FSOC Integrated Roadmap - October 1.pdf](http://www.treasury.gov/initiatives/Documents/FSOC%20Integrated%20Roadmap%20-%20October%201.pdf).

swaps or sell swaps to others while MSPs are non-dealers that maintain swap positions with sufficient exposure to create systemically important default risk. The CFTC and SEC should consider different sets of regulations for swap dealers and MSPs, with MSP regulation focused primarily on default risk and swap dealer regulation focused on market-making, pricing and sales practices, as well as default risk.

Comments on the MSP Proposals are due starting on January 18, 2011 and are in all cases due either before or on the same date as comments for the Definitions Proposal. AMG members are concerned about their inability to meaningfully comment on the MSP Proposals prior to having fully analyzed the extent to which their clients may be deemed to be MSPs under the tests proposed by the SEC and CFTC and, if clients may be or become MSPs, the application of the MSP Proposals to them. In addition, developing detailed comments on a regulatory approach that takes account of the differences between the roles and risks of MSPs and swap dealers will take more time than currently provided by this public comment period. Accordingly, the AMG respectfully requests that the CFTC formally extend the comment periods for the MSP Proposals and not take any action to finalize them until sufficient time has passed after finalization of the Definitions Proposals for the appropriate analyses to be undertaken and completed.

The AMG thanks the Commissions for your consideration of this request. Should you have any questions, please do not hesitate to call the undersigned at 212-313-1389.

Sincerely,



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

cc: Chairman Gary Gensler, CFTC  
Commissioner Bart Chilton, CFTC  
Commissioner Michael Dunn, CFTC  
Commissioner Scott D. O'Malia, CFTC  
Commissioner Jill E. Sommers, CFTC  
Chairman Mary L. Schapiro, SEC  
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