February 7, 2011

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

Re: Comments on CFTC Proposed Rule on Real-Time Public Reporting of Swap Transaction Data (RIN 3038-AD08); CFTC Proposed Rule on Swap Data Recordkeeping and Reporting (RIN 3038-AD19); and CFTC Proposed Rule on Swap Data Repositories (RIN 3038-AD20)

Dear Mr. Stawick:

The Asset Management Group (the "**AMG**") of the Securities Industry and Financial Markets Association ("**SIFMA**") appreciates the opportunity to provide the Commodity Futures Trading Commission (the "**Commission**") with comments on its proposed rules for reporting of swap data. In particular, this letter provides comments on the Commission's proposed Part 43 rules for real-time public reporting of swap transaction data ("**Proposed Part 43**"),[1] Part 45 rules on swap data recordkeeping and reporting ("**Proposed Part 45**"),[2] and Part 49 rules on swap data repositories ("**Proposed Part 49**") [3] (collectively, the "**Proposals**").

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 under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**").

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[1] Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76,140 (proposed December 7, 2010) (amending 17 CFR Part 43) ("**Part 43 Proposal Release**").

[2] Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76,574 (proposed December 8, 2010) (amending 17 CFR Part 45) ("**Part 45 Proposal Release**").

[3] Swap Data Repositories, 75 Fed. Reg. 80,898 (proposed December 23, 2010) (amending 17 CFR Part 49) ("**Part 49 Proposal Release**").

As a preliminary matter, we emphasize that the AMG's primary motivation in submitting this comment letter is to address issues in the Proposals that we believe will have a significant adverse effect on end users, including the pensioners, mutual fund shareholders and endowments that are advised by and invest money in funds advised by AMG members. While the AMG has heard from several large dealers that Proposed Parts 43 and 45 would increase transactional costs, the AMG has conducted a careful and independent analysis of the likely effects on our clients of the Proposals and has concluded that – as a matter of market structure – they contain features that would unnecessarily increase costs to our clients of hedging their risks through swaps.

In particular, and as discussed in more detail below, the AMG believes that: (a) the Commission should sequence implementation of the Part 43 real-time reporting rules after the Part 45 and Part 49 rules in order to collect sufficient information to set block thresholds and time delays appropriately; (b) the Commission's proposed 15-minute delay for public dissemination of block trade information is insufficient and will increase costs for end-users of swaps; (c) the Commission's proposed tests for determining block size thresholds would exclude many swap transactions that should be treated as block trades; (d) the Commission should assign swap reporting obligations to either swap dealers or major swap participants ("**MSPs**"), rather than end users, regardless of which counterparty is a U.S. person; (e) in respect of fund- and account-related counterparties, the Commission should assign unique counterparty identifiers at the fund or account level as opposed to the trust level; (f) the Commission should require reporting of "corporate affiliations" only in situations of majority ownership; (g) the regulatory community should adopt a single, industry-wide legal-entity ID ("**LEI**") convention; and (h) the Commission should clarify that the terms of a swap should never be changed as a result of confirming or reporting the swap.

The Commission should sequence implementation of the Part 43 real-time reporting rules after the Part 45 and Part 49 rules in order to collect sufficient information to set block thresholds and time delays appropriately.

As stated in our letter to the Commission dated November 24, 2010,[4] the AMG believes that robust and flexible block trading is an essential component of liquid swap markets and that correctly determining block size thresholds and dissemination delays is necessary to assure the viability of block trading in the swap market.[5] However, there is currently insufficient trading data available on which to base such determinations. Such data will be collected only once the trade reporting to swap data repositories ("**SDRs**") required by Parts 45 and 49 commences. As a result, the AMG suggests that the Commission sequence the implementation of reporting rules, first by implementing Part 45 and 49 and then, when sufficient information has been collected to allow the Commission and market participants to carefully study the effects of different block rules, by implementing real-time reporting requirements. The AMG preliminarily believes that roughly one year of data should be collected before block trading rules can be

[4] The comment letter is available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission13_112410-sifma.pdf.

[5] The concerns raised in this letter also apply to "large notional contracts" as defined by the Commission.

appropriately calibrated. We refer to this initial one-year period as the "data collection period."

The delay in public dissemination of block trade information should provide sufficient time for counterparties to hedge the risk associated with such block trades. The Commission's proposed 15-minute delay is insufficient.

Without adequate delays in the dissemination of block trade information, swap dealer counterparties with "natural long" customers suffer a "winner's curse" because their hedging transactions can be front-run by opportunistic traders, thereby driving up transaction costs for the dealers and widening bid-ask spreads for their customers. The AMG strongly believes that the 15-minute delay in dissemination of block trade information proposed by the Commission is insufficient to permit most block transactions to be fully hedged. The AMG preliminarily believes that a 24-hour delay would better enable block liquidity providers to offset their risk, but suggests that information collected by the Commission and SDRs through the Part 45 and 49 rules be carefully studied during the data collection period before a final dissemination delay is set.

In selecting a delay period, the Commission has looked to block trading delays in the futures market.[6] We respectfully submit that this comparison is not appropriate. The short 5 to 15-minute delays in the futures markets have resulted in relatively few futures block transactions. To avoid a "winner's curse," market participants with large positions have turned to the over-the-counter swap markets – rather than the futures markets. Imposing a short 15-minute delay on the swap markets will shut off this "safety valve" and make it more – rather than less – costly for end users to transact in large trades.

If the Commission is unable to implement a standard 24-hour delay in the dissemination of block trade information for all swaps, it should at a minimum consider adopting a scaled approach for different categories of swap transactions (defined with sufficient granularity to distinguish among swap tenors), asset classes or markets, providing for different delays based upon their relative liquidities. Swaps that are relatively illiquid, and which therefore would be most impacted by a rapid release of block trade information, should be permitted longer public dissemination delays than more liquid transactions. Information collected during the data collection period could be used to determine how categories of swap transactions should be categorized and how the time delay for each category should be scaled.

The AMG also believes that the Commission and the Securities and Exchange Commission (the "**SEC**") should harmonize their real-time reporting regimes. Similarly, due to the global nature of swaps markets, the AMG encourages the Commission and the SEC to seek to harmonize their reporting rules with those of comparable international regulators.

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[6] *See* Part 43 Proposal Release at 76,159.

The Commission's proposed tests for determining block trade threshold sizes would exclude many trades that should be treated as blocks.

The Commission has proposed a two-part quantitative test for the minimum threshold size of swap trades that qualify as blocks. In particular, an "appropriate minimum block size" would be calculated as the greater of (a) the size of trade that is at the 95th percentile of trades executed in a relevant 12-month period (the "**distribution test**") and (b) 5 times the highest of the mean, median and mode of trades executed during such 12-month period (the "**multiple test**"). Designated contract markets and swap execution facilities would be required to set minimum block trade threshold for their markets at the appropriate minimum block size or above.

AMG members believe that only a very few swap trades will qualify as block trades under these tests.[7] High block trade thresholds will fail to capture many transactions that *functionally* are block trades. End users enter into block trades with dealers to execute a large order at a single negotiated price appropriate for the size of the block, which may be different than the current trading price for smaller trades, without signaling to the whole market important information about the market participant's position or trading strategy. Block trading thresholds should be calibrated, to the extent possible, to incorporate all trades that meet such a functional definition. On the other hand, the AMG acknowledges the need for the certainty provided by objective quantitative criteria. Therefore, the AMG respectfully proposes that the Commission consider the following further modifications to Proposed Part 43.

First, the AMG believes that the multiple test should be eliminated as part of the test. The multiple test decreases the number of swaps eligible for the block trade delay without any connection to whether the trade is functionally a block. It is possible that, given certain distributions of swap trade sizes, the multiple test will prevent the block threshold from ever being triggered, even if the transaction has a significant market impact and requires significant dealer hedging. For example, in Proposed Part 43, the Commission provides as an example of the operation of the multiple test a swap instrument with an historical trade concentration of between $50 and $60 million.[8] With such a distribution, the multiple test would yield a block trade threshold of $275 million, which we think is far too large a threshold for swaps with that historical trade concentration. Even with a hypothetical multiplier of only 2, the multiple test would yield a minimum block threshold of $110 million, a result which would lead to few if any trades for that swap instrument being considered block trades. As a result, costs for end users of that swap would suffer from increased bid-ask spreads as dealers face a "winner's curse" scenario for all trades.

Second, the AMG believes that the threshold for the distribution test should be set only after additional data concerning liquidity and "social sizes" for various swap

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[7] The AMG assumes, but would appreciate clarification, that in cases where asset managers execute swaps and allocate the swaps to various clients or funds, the determination of whether the trade is a block trade is done on the size of the executed, rather than allocated, level. Asset managers entering into block trades face the same "winner's curse" whether they are entering into the trade on behalf of one client or allocating it among many clients.

[8] *See* Part 43 Proposal Release at 76,162 fn.89.

types is collected and analyzed during the data collection period. Nonetheless, the AMG strongly believes that the threshold is too high – far more trades than those that would have been in the top 5% of notional size in the previous year are functionally blocks. In the judgment of our members, the initial threshold should be lowered from the 95th percentile to somewhere in the range of the 66th to 80th percentiles. The exact percentile that would apply to any given swap should be largely driven by the overall liquidity of the swap and, as a result, should be established only after sufficient information is collected during the data collection period.

Third, the AMG believes that when swap data is aggregated to calculate the distribution test, swap categories should be defined with more granularity, *i.e.*, not only by asset class but by tenor, overall liquidity, trading frequency and other relevant criteria. Swaps with similar terms but different tenors, for example, trade in significantly different sizes and with different levels of liquidity; a trade that is a block in one tenor may not be a block in another. For example, the appropriate threshold for a 30-year interest rate swap may not be the same as that for a 2-year interest rate swap. With respect to the level of liquidity, in certain highly illiquid markets any advance notice of a trade may be enough to significantly shift the trading price and thereby merit treatment of the trade as a block.

Fourth, the AMG believes that the rounding convention proposed by the Commission should be modified. The AMG generally supports the concept of the rounding convention, as we believe it will serve to protect the anonymity of market participants and help to mitigate increased costs to end-users. However, we believe that the Commission should implement a more granular approach that takes into consideration the liquidity, type and tenor of swaps. For instance, for a low duration, plain vanilla, highly liquid swap, $250 million as the highest rounding threshold might be appropriate. For a higher duration, less standardized and more illiquid swap, a large trade is typically significantly less than $250 million in notional amount, and a much lower rounding threshold would be appropriate. By not taking into consideration liquidity, type or tenor of swaps, we are concerned that the current rounding proposal unfairly disadvantages those participants who trade in higher duration, less standard and more illiquid swaps, who tend to be the natural hedgers in the marketplace with specific portfolio needs. The appropriate thresholds could be more fruitfully determined following the data collection period.

Finally, the 12-month look-back for the distribution test should be shortened. The distribution of trade sizes can change rapidly in the dynamic swap market and, as a result, an appropriate threshold based on one year's data may not lead to appropriate block threshold sizes in the next year. At the same time, the AMG agrees with the Commission's concern that too short of a look-back period would be burdensome for registered SDRs and may create instability for market participants who engage in long-term investment strategies. Accordingly, the AMG proposes that the Commission calculate the distribution test of trade liquidity at quarterly intervals, and retain the flexibility to recalculate the distribution on an ad hoc basis in response to significant market events.

In addition, the AMG shares the Commission's concerns regarding the method for determining "appropriate minimum block size" where more than one SDR collects information about a category or type of swap. Proposed Part 43 requires SDRs to calculate the appropriate minimum block size for those swaps reported to them. The proposed rule does not indicate what happens where multiple SDRs receive information

about the same swap, though a footnote in the release states that the Commission is "considering alternative methods" on how to handle this scenario, including through a Commission determination after self-certification by SDRs.[9] To increase certainty and prevent regulatory arbitrage, whatever method is ultimately adopted by the Commission must involve close coordination between all SDRs.

The "reporting counterparty" should always be the swap dealer or MSP, whether or not it is a U.S. person.

Proposed Parts 43 and 45 provide that, with respect to each swap, the "reporting counterparty" must report certain information about the swap to a registered SDR or, if no SDR will accept the information, to the Commission. In the case of uncleared swaps, Section 4r of the Commodity Exchange Act allocates this reporting obligation first to the counterparty, if any, that is a swap dealer, then to any MSP counterparty and, finally, if both counterparties are end users (*i.e.*, neither counterparty is a swap dealer or MSP), between the end users as they determine.[10] This statutory allocation does not depend on whether a counterparty is a U.S. person.

Proposed Part 43 allocates the "reporting counterparty" obligation in the same manner as Section 4r of the Commodity Exchange Act.[11] Proposed Part 45, however, provides that where one counterparty is a U.S. person and the other is not, the U.S. person must act as the "reporting counterparty." The rationale articulated by the Commission is that this is necessary "to ensure compliance with reporting requirements in such situations."[12]

The AMG believes that the same counterparty should be designated the "reporting counterparty" for both the real-time reporting required by Proposed Part 43 and the ongoing reporting required by Proposed Part 45. The provision should be clarified to indicate that, when the non-U.S. person is a swap dealer or MSP, it must be the reporting party. We believe that the commercial benefits of a consistent approach outweigh any risk of noncompliance. Indeed, due to their commercial interests, technological know-how and business relationships, swap dealers and MSPs are more appropriate reporting counterparties than U.S. end-users and are just as, if not more, capable of complying with reporting obligations. When a foreign swap dealer or MSP elects to enter the U.S. market in order to trade with a U.S. counterparty, or where a U.S. swap dealer or MSP trades swaps in the United States through a foreign branch or affiliate, the foreign swap dealer or MSP should be required to bear the same regulatory reporting responsibilities that are incumbent upon U.S. swap dealers and MSPs. In addition, swap dealers and MSPs will be best positioned to develop at the lowest cost the

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[9] *See* Part 43 Proposal Release at 76,161 fn.77.

[10] Dodd-Frank does not otherwise specify which counterparty should be the reporting party for swaps.

[11] Proposed Part 43 provides that the reporting obligation is satisfied by execution on a designated contract market or swap execution facility.

[12] *See* Part 45 Proposal Release at 76,593.

technological infrastructure or relationships with third-party service providers necessary to meet the reporting obligation.

A requirement that only a U.S. person may act as reporting party will unnecessarily prejudice those end users who, for valid business purposes, prefer to transact with non-U.S. swap dealers or MSPs and will create competitive inequalities among U.S. and foreign swap dealers and MSPs. While a non-U.S. swap dealer or MSP might contractually agree to fulfill the U.S. end user's reporting requirement, under the proposed rule the end user nonetheless would retain the regulatory obligation to report. The AMG believes that an end user should not incur higher transaction costs or potential legal liabilities depending on the geographical location of its counterparty. Accordingly, the AMG believes that the reporting party should always be the counterparty that is a swap dealer or MSP, whether or not it is a U.S. person. The AMG also believes the Commission should consider whether this shift in reporting obligations should extend to a foreign entity which would be a swap dealer or MSP based upon all of its swaps worldwide, but due to limited transactions with U.S. persons has not had to register as a swap dealer or MSP. At the very least, for purposes of complying with the reporting requirements, the Commission should consider giving parties the ability to delegate their legal obligations to their counterparties or other third parties (*e.g.*, a party's futures commission merchant).

"Unique Counterparty Identifiers" should be assigned at the fund or account level as opposed to the trust level.

Proposed Part 45 would require counterparties to swaps to be identified in all recordkeeping and reporting by a "unique counterparty identifier" ("**UCI**"). With respect to swaps to which funds are counterparties, the AMG believes that these UCIs should be assigned at the individual fund or account level rather than at the broader "legal entity" level. This would permit a legal entity with multiple sub-components[13] to have separate UCIs for each sub-component. Each sub-component is a separate counterparty, and the dealer only has recourse to the assets of the sub-component as opposed to those of the entire legal entity. For example, a particular mutual fund series trust, "Trust A," might have two separate sub-component mutual funds, "Series Fund I" and "Series Fund II." This should give rise to two separate UCIs: "Trust A on behalf of Series Fund I" and "Trust A on behalf of Series Fund II." Similarly, a particular "Pension Group Trust," might have two separate pools, "Pool 1" and "Pool 2." This should give rise to two separate UCIs: "Pension Group Trust on behalf of Pool 1" and "Pension Group Trust on behalf of Pool 2."

A policy which would require a single UCI to be applied on the legal entity level could result in trade confirmations having to be only in the name of the legal entity as opposed to the sub-component. This could create both legal and operational confusion and, in certain instances, could result in a violation of ERISA laws. Further, to the extent

[13] Examples of such sub-components would include, among others, a series trust with sub-component series mutual funds, a pension group trust with sub-component pools or investment accounts, a bank trust with sub-component collective investment funds, and farm cooperatives which enter into trades in the name of the farm cooperative for the benefit of a particular farm.

that UCIs are used to determine compliance with other new swap regulation, having a UCI applied at the legal entity level could result in outcomes inconsistent with the intent of provisions of Dodd-Frank that govern such determinations or the regulations themselves. Where the parties to swap trades recognize the separate status of, and recourse to, sub-components, the standard used for reporting data should be consistent with that practice.

The regulatory community should seek to adopt a single, cohesive LEI system that would apply to all regulators.

As the Commission is aware, there are several regulatory initiatives underway in addition to the Commission's efforts with the creation of the UCI that would collect similar data identifying counterparties of U.S. financial institutions. The SEC has already proposed a Large-Trader Reporting System,[14] as well as a Consolidated Audit Trail System.[15] Similarly, the Office of Financial Research ("**OFR**") within the Treasury Department is working to establish an LEI convention.

The wider SIFMA organization has addressed the importance of regulatory coordination around LEI standards in a comment letter filed in response to the OFR's "Statement on Legal Entity Identification for Financial Contracts."[16] Filed together with 7 other trade associations on January 31, 2011, the letter calls for this coordination between regulators to create a single, coherent approach to entity ID, and highlights the importance of international coordination.

AMG's member firms hope that the regulatory community does not miss this opportunity to achieve a single, industry-wide LEI standard for all regulators. It would be wasteful to incur the cost and manpower burdens of establishing multiple LEIs for the same entities. Moreover, any process that requires the "mapping" of one set of LEIs to another will require a tremendous amount of time and effort and will introduce a substantial risk of errors which can be entirely avoided with a single, authoritative repository of LEIs.

Reporting of "corporate affiliations" should only be required in situations of majority ownership.

In connection with the creation of the UCI, proposed rule 45.4(b)(2) would require swap counterparties to report confidentially all of their "corporate affiliations." Specifically, a counterparty must report "the identity of all legal entities that own the counterparty, that are under common ownership with the counterparty, or that are owned by the counterparty."[17] While Proposed Part 45 does not specify a level of ownership

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[14] Large Trader Reporting System, 75 Fed. Reg. 21,456 (proposed April 23, 2010) (amending 17 CFR Parts 240 and 249).

[15] Consolidated Audit Trail System, 75 Fed. Reg. 32,556 (proposed June 8, 2010) (amending 17 CFR Part 242).

[16] The comment letter is available at: http://www.regulations.gov/#!documentDetail;D=TREAS-DO-2010-0008-0026.1.

[17] Part 45 Proposal Release at 76,602.

that would trigger this reporting obligation, the Commission states that "a counterparty's affiliations must be available in conjunction with UCIs in order to enable regulators to aggregate data across entities and markets for the purpose[s] of effective monitoring of systemic risk [and] identify[ing] all swap positions within the same ownership group."[18]

The AMG respectfully suggests that the definition of "control" for these purposes require at least majority ownership. A majority ownership threshold for "corporate affiliations" would better serve the Commission's goals of aggregating data across entities since entities with less than a majority-ownership relationship do not unilaterally control the management of the lower-level entity and generally are viewed as separate entities for the purpose of credit analysis. Moreover, obtaining the required information for companies with respect to which a swap market participant has less than majority ownership may be burdensome, and in many cases, impracticable.

The AMG believes that terms of a swap should never be changed as a result of confirming or reporting the swap, and we support Proposed Rule 49.10(c).

In the Part 49 release, the Commission asks: "Are there any circumstances under which a validly executed swap should be modified or altered other than by the express agreement of the counterparties?"[19]

The AMG believes that there are no circumstances under which a validly executed swap should be modified or altered other than by the express agreement of the counterparties at the time of such modification or alteration. Accordingly, the AMG supports Proposed Rule 49.10(c) which requires a registered swap data repository to "establish policies and procedures reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the confirmation or recording process of the swap data repository."

The AMG respectfully requests that the Commission clarify that such rule would appropriately preclude any confirmation or reporting platform from changing swap terms agreed upon by the counterparties through such platforms' user agreements which either (i) require that users only have certain terms in their confirmed or reported swaps or (ii) require users to agree that changes to their swap terms by the confirmation or reporting platform will be "deemed to have been accepted" by users if users utilize such platforms after notice of such term change. Given that market participants will be required by the Commission to confirm and report their trades, we believe that the Commission has the authority to adopt Proposed Rule 49.10(c) to prevent market participants from the aforementioned abuse of discretion.

[18] Part 45 Proposal Release at 76,591.

[19] Part 49 Proposed Release at 80,905.

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The AMG is grateful to the Commission for the opportunity to comment on Proposed Part 43, Proposed Part 45 and Proposed Part 49. We would be happy to further discuss our thoughts on these proposals with you in greater detail. Should you have any question, please do not hesitate to call the undersigned at 212-313-1389.

Sincerely,

Timothy W. Cameron, Esq.
Managing Director, Asset Management Group
SIFMA

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