



August 8, 2011

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

Re: Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions (RIN 3038-AC99); CFTC Staff Roundtable to Discuss Protection of Cleared Swaps Customer Collateral (June 3, 2011).

Dear Mr. Stawick:

The Asset Management Group (the “**AMG**”) of the Securities Industry and Financial Markets Association (“**SIFMA**”) is writing in response to the Notice of Proposed Rulemaking (the “**Proposal**”), issued by the Commodity Futures Trading Commission (the “**CFTC**” or the “**Commission**”), requesting comments regarding the appropriate model for protecting collateral posted by customers as margin for cleared swaps transactions. 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, investment companies registered with the Securities and Exchange Commission (“**RICs**”); state and local government pension funds, universities, ERISA funds, 401(k) and similar types of retirement funds (collectively “**Retirement Funds**”), and private funds such as hedge funds and private equity funds (collectively “**Hedge Funds**”).

In their role as asset managers, AMG member firms, on behalf of their clients, engage in transactions, including transactions for hedging and risk management purposes, that are classified as “swaps” under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”) and may be subject to mandatory clearing under new Commodity Exchange Act (“**CEA**”) Section 2(h) and the CFTC’s regulations thereunder. The AMG believes that the clearing of appropriate swaps, and the protection of collateral pledged with respect thereto, is essential to achieving the purposes of Dodd-Frank and we appreciate the opportunity to provide the CFTC with our comments and recommendations.

1. An Analysis of the Over-the-Counter (“OTC”) Swaps Market is the Appropriate Starting Point for Assessing the Optimal Approach for Cleared Swaps Customer Collateral

The AMG agrees with the CFTC that the strong individualized protections that have long been available to participants in the OTC swaps market should represent the appropriate standard for assessing the alternative models for the protection of cleared swaps customer collateral.

As a part of such assessment, it is important to consider the many differences between the OTC swaps and futures markets. While the futures market is noted for its volume and liquidity within a relatively small range of short-dated products, the OTC swaps market is significantly larger and has a much more diverse scope of products, with many such products marked by relatively low volumes, high volatility and long maturities.¹ Particularly with respect to the long duration, low liquidity, and high volatility products, the risk profile can be significantly greater than that presented by the futures products. Although the cleared swaps market will necessarily focus on the most standardized products, fluctuations in liquidity and volatility will still raise significant levels of risk for management by the derivatives clearing organizations (“**DCOs**”) and futures commission merchants (“**FCMs**”).

AMG members trade OTC swaps on a fully collateralized basis with both parties posting the mark-to-market value of such swaps to the other as security for their performance (“**Variation Margin**”). Although not typical, some AMG members may also be required by their bank and dealer counterparties to post additional collateral in excess of the Variation Margin in order address the potential future price movements of such swaps (“**Initial Margin**”).² AMG members that are RICs or Retirement Funds are subject to mandates requiring Variation Margin and Initial Margin posted to a bank or dealer counterparty to be held in physically segregated, third-party custody accounts.³ In addition, AMG members that are Hedge Funds typically insist that Initial Margin is likewise held in a physically segregated, third party custody account. Such arrangements provide strong protections should the pledgor or secured party become insolvent during the life of the trading relationship, with the other party able to quickly access such collateral to mitigate losses. While such arrangements may be complicated to institute and expensive to maintain, their risk-mitigating effects have been consistently demonstrated over time.⁴ AMG members strongly believe that maintaining such protections with respect to Initial and Variation Margin for cleared swaps is of paramount importance in light of the real-life experiences gained during the Lehman crisis and the prospect of being an unsecured creditor with respect to any excess collateral that has not

¹ Recent statistical studies have estimated the notional size of the exchange-traded futures market at \$22.7 trillion as compared to the derivatives market size of \$635 trillion. *See* Annex Table 23A: Derivative financial instruments traded on organised exchanges, BIS Quarterly Review A126 (2010) (“**BIS Study**”) (calculating the notional principal for all futures in all markets as \$22.751 trillion as of June 2010 and calculating the notional principal for all options in all markets as \$52.708 trillion as of June 2010); and Annex Table 19: Amounts outstanding of over-the-counter (OTC) derivatives, BIS Study A121 (calculating the notional amounts outstanding for all OTC derivatives in all markets as \$582.655 trillion as of June 2010).

² This requirement by a bank or dealer counterparty is typically based on the creditworthiness of a client or volatility and risk of a particular transaction.

³ In the case of a RIC, Variation Margin and Initial Margin must be held by an authorized third-party custodian. *See* Section 17 of the Investment Company Act of 1940.

⁴ It is important to note that the many complex and expensive relationships used to protect collateral in the OTC swaps market have been developed over time to target counterparty risk as the concept of fellow-customer risk has never been a part of that market.

been segregated and protected from the bank or dealer counterparty's proprietary assets. Moreover, since many AMG members do not currently post Initial Margin with respect to their uncleared swaps, there is a heightened need for full protection of such collateral in the cleared swaps market.

Given the inherent differences between the swaps and the futures markets, the AMG does not believe that treatment of customer collateral for cleared futures contracts is an appropriate benchmark for evaluating models for the protection of cleared swaps customer collateral.⁵ Especially in light of the heightened risk profile of cleared swaps, it is important that the risk presented by each customer's swaps is fully supported by that customer's collateral. While customers have some discretion in selecting an FCM, the Commission has correctly noted that customers have no insight into the risks presented by their fellow customers and their trading portfolios.⁶ On that basis, there is no way to assess whether a particular FCM's customer base would present unacceptable levels of risk to its fellow customers.

Consequently, the AMG believes that minimizing fellow-customer risk is the most important objective in any collateral protection framework.

2. AMG Members Support the Complete Legal Segregation Model as the Most Efficient Means of Replicating the Tools for Collateral Protection Used in the Uncleared Swaps Market

AMG members believe that eliminating fellow-customer risk – the risk of losses due to margin defaults by other customers of the same FCM – should be a paramount goal in assuring that clearing of swaps does not diminish the safety of customer funds used to margin those transactions and thereby disadvantage users of cleared swaps. We believe that Title VII of Dodd-Frank recognizes the significant risk-mitigating benefits of collateral in the OTC swaps market and expressly authorizes the CFTC to extend this individualized protection to cleared swaps customer collateral.⁷

In evaluating the costs and benefits of the alternative collateral protection models discussed by the CFTC, AMG members believe that the Complete Legal Segregation Model (the “**LS Model**”)⁸ provides the optimal balance between maximizing protection of cleared swaps customer collateral and minimizing implementation and other costs. While the majority of AMG members support the LS Model, given the prevalence of third-party custody accounts currently used to hold OTC swaps collateral, some AMG

⁵ See CFTC, Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 76 Fed. Reg. 33,818, 33,823 (Jun. 9, 2011) (Observing that “the market for cleared swaps has developed and may continue to develop in a different manner than the market for futures contracts.”).

⁶ 76 Fed. Reg. at 33,848.

⁷ The AMG agrees with the Commission that the term “separate account or accounts” and the use of “customer” in the singular in Section 4d(f)(6) of the CEA contrasts with Section 4d(b) of the CEA governing futures customer contracts and related collateral and authorizes the Commission to implement an approach that commingles the collateral posted by an FCM's cleared swaps customers in a “separate account” while also providing individualized protection to each “customer.”

⁸ 76 Fed. Reg. at 33,820 (Discussing the LS Model).

members would support the Full Physical Segregation Model to the extent that the Commission would consider such an alternative. No AMG member supports the Futures Model or the Legal Segregation with Recourse Model.⁹ We discuss below the essential components of the LS Model, its costs and benefits and suggest certain clarifications of the CFTC's Proposal to reinforce the protections provided by the LS Model.

3. Core Components of the LS Model

Under the LS Model, as under the Futures Model,¹⁰ each FCM and DCO would be required to segregate, in its books and records, the cleared swaps of each individual customer and that customer's collateral. Operationally, however, both the FCM and the DCO would be permitted to commingle cleared swaps collateral posted by customers in a single account – the cleared swaps customer account.¹¹

Under the Proposal, each FCM would be required to provide, on a daily basis, information to the DCO sufficient to identify for each cleared swaps customer its “portfolio of rights and obligations” arising from its cleared swaps. In the event of a cleared swaps customer's failure to satisfy a Variation Margin call, the Proposal would require the FCM to transmit to the DCO an amount equal to the lesser of the amount of the margin call or the collateral on deposit at the FCM that is attributable to the defaulting customer. The DCO would be able to apply the value of the collateral posted by the defaulting cleared swaps customer to cure the default, but would not be able to access the value of the collateral posted by any non-defaulting cleared swaps customer.¹² Accordingly, the CLS model protects non-defaulting cleared swaps customers from the unpredictable and largely unmanageable risks associated with a fellow customer default.

⁹ Some AMG members that support the Full Physical Segregation Model believe that the CFTC should consider permitting a DCO or FCM to offer cleared swaps customers a choice between the LS Model and the Full Physical Segregation Model, with customers that select the Full Physical Segregation Model bearing the additional costs associated with such accounts as well as the investment and operational risks related thereto. However, those AMG members that have concluded the LS Model is the most compelling based on the cost-benefit analysis have reservations about the availability of such a choice and are concerned that *all* participants would have to bear the significant costs of fully segregated accounts notwithstanding that only those who elect the Full Physical Segregation Model would enjoy its perceived additional benefits.

¹⁰ Under the Futures Model, each DCO would recognize in its books and records the cleared swaps that an FCM intermediates on an omnibus basis and would hold cleared swaps collateral in one account. After default, the DCO would be permitted to access non-defaulting customers' collateral before applying its own capital or the guaranty fund contributions of member FCMs. *See* 76 Fed. Reg. at 33,820-21.

¹¹ This account must be separate from any account holding FCM or DCO property or property belonging to the FCM's non-cleared swaps customers.

¹² Proposed Rule 22.15.

4. The LS Model Provides the Optimal Balance of Benefits and Costs¹³

a. Minimizing Fellow-Customer Risk

AMG members support Dodd-Frank's aim to reduce systemic risk as well as its intent to not sacrifice the existing protections critical to swaps participants in the OTC swaps market. It is altogether consistent with this aim for cleared swaps customer collateral to be segregated and for individual customer property to be treated separately by the FCM and the DCO.

The AMG believes that avoiding the fellow-customer risk presented by the Futures Model is the most important objective in establishing the collateral protection framework for cleared swaps.

In contrast to the LS Model, both the Legal Segregation with Recourse Model¹⁴ and the Futures Model expose each cleared swaps customer to fellow-customer risk. Under both models, in the event that an FCM defaults simultaneously with one or more cleared swaps customers, a DCO could access the FCM's non-defaulting customers' collateral in order to cure the default. While such risk mutualization has long existed in the futures market, such an approach is completely inconsistent with the significant collateral protections that are currently provided to OTC swaps customers and is especially undesirable given the inherent differences between swaps and futures markets.

b. Facilitating Portability of Cleared Swaps Positions of Non-defaulting Customers

Portability refers to the ability to transfer the cleared swaps (and related collateral) of a non-defaulting customer from an insolvent FCM to a solvent FCM, without liquidating and re-establishing such cleared swaps. Given the breadth of the swaps market, the relative illiquidity of many swaps that are likely to be cleared and the costs and burdens of unwinding and re-establishing such positions, it is important that cleared swaps customers be able to "port" their positions and related collateral. In addition, the porting of cleared swaps allows a DCO to maintain its net position in those transactions at zero, thereby minimizing its risk exposure. Facilitating portability also provides systemic benefits by reducing the likelihood that the cleared swaps market would be impacted by a mass liquidation.

AMG members agree with CFTC that the LS Model contains important safeguards that will serve to enhance the portability of positions upon an FCM's default.

¹³ Although elimination of fellow-customer risk can be achieved through both the LS Model and the Full Physical Segregation Model, a cost-benefit analysis favors the LS Model due to the significant implementation and on-going costs associate with the Full Physical Segregation Model. The majority of AMG members are not prepared to bear such associated costs.

¹⁴ The difference between the LS Model and the Complete Legal Segregation with Recourse Model is that under the latter, a DCO may access the collateral of non-defaulting cleared swaps customers to cure a default, but only after the DCO applies its own capital as well as the guaranty fund contributions of its member FCMs. 76 Fed. Reg. at 33,820. Nonetheless, the Legal Segregation with Recourse Model would not adequately protect against fellow-customer risk because non-defaulting customer collateral is protected only to the extent that the capital of the DCO and guaranty fund contributions are sufficient to cure the default.

By mandating that FCMs provide their DCOs with detailed information relating to the identity of customers and their related cleared swaps portfolios, DCOs will have access to significantly more information than under the Futures Model. This additional information will enable DCOs to quickly identify a defaulting customer and its collateral and to *simultaneously* port non-defaulting customers' positions and associated collateral to another FCM, thereby avoiding the need for customers to re-margin their positions.¹⁵

By contrast, the Legal Segregation with Recourse Model and the Futures Model would not facilitate portability to the same extent because a DCO may be unable to release the collateral of non-defaulting customers until it has completed the process of liquidating the portfolio of the defaulting customer, applied the capital of the defaulting FCM, and considered whether margin from the non-defaulting customers is needed to satisfy any remaining margin shortfall. The AMG notes that under the LS Model, the speed with which swaps and related collateral can be transferred would also depend on the completeness, accuracy and freshness of the FCM's records. This underscores the paramount importance of robust recordkeeping standards.

c. Minimizing Systemic Risk

A central goal of Title VII and Dodd-Frank is the reduction of systemic risk. The AMG believes that the LS Model reduces systemic risk because it facilitates portability, which reduces the likelihood of mass liquidation in the swaps market and minimizes the risk exposure of clearinghouses as a result of closing out many customer positions. In addition, as the Commission observes,¹⁶ the greater the protections afforded to cleared swaps collateral, the more likely that customers will leave excess collateral at an FCM.

The AMG also agrees with the Commission that by removing DCOs' access to non-defaulting customer collateral as a default resource, the LS Model provides DCOs with greater incentives to assess the financial conditions of their member FCMs and such FCMs' largest customers.¹⁷ DCOs are well-positioned to scrutinize the financial conditions of member FCMs because they, unlike cleared swaps customers, will have access to both the financial records of member FCMs as well as the FCMs' customer trade books. By contrast, it is more difficult for customers to gain access to information about the financial condition of the FCM and impossible for them to assess the financial condition of their fellow customers. Moreover, it is much more efficient for a handful of DCOs to perform this due diligence function than to have thousands of customers performing their own due diligence without the benefit of complete information or expertise in FCM oversight. DCOs can also impose greater market discipline on FCMs than can customers because DCOs can directly regulate member FCMs.

¹⁵ If a non-defaulting customer's collateral cannot be transferred to a solvent FCM at the same time as the customer's positions, the solvent FCM would require the customer to re-margin such positions. In effect, the customer would have to post double the amount of assets to margin its positions.

¹⁶ 76 Fed. Reg. at 33,827.

¹⁷ It has been suggested that because the LS Model provides greater protection to non-defaulting customers collateral, the financial condition of the FCM and fellow customers could be less relevant in the event of a simultaneous FCM and fellow customer default. AMG members do not believe that enhanced collateral protections would result in cleared swaps customers having fewer incentives to perform due diligence on FCMs.

It has also been argued that the LS Model would increase systemic risk by disincentivizing FCMs from maintaining substantial excess net capital. The AMG believes that FCMs will continue to maintain significant excess net capital as a prime differentiator in attracting and maintaining a strong customer base. Moreover, the CFTC and DCOs could appropriately address any concerns over the inadequacy of FCM or clearing member capital through direct rulemaking.

d. Costs Associated with the LS Model

i. Implementation and Operational Costs

Most objections to the LS Model center around its anticipated implementation and operational costs and increased Initial Margin levels. The AMG acknowledges that the LS Model would be more costly to implement and operate than the Futures Model or the Legal Segregation with Recourse Model and that for customers presenting relatively greater credit or portfolio risk, Initial Margin levels may rise. However, as the ultimate bearers of these costs, AMG members believe these costs to be no greater than those currently borne in the OTC swaps market¹⁸ whereas the risk of losing some or all of one's margin to satisfy a fellow customer's default is impossible to assess and unacceptable to bear.¹⁹

A number of DCOs and FCMs have argued that any departure from the current Futures Model (where a DCO can access non-defaulting customer collateral) will result in significantly higher costs. DCOs and FCMs generally assert that such higher costs translate into increased customer collateral and/or increased FCM capital contributions to the DCO guaranty fund (in each case to compensate for the inability of the DCO to access collateral posted by non-defaulting customers) and that such costs would ultimately be borne by all customers. The AMG believes that the Commission has rightly questioned the assumption that, under the Futures Model, collateral from non-defaulting cleared swaps customers would be fully available to DCOs to cover the cost of their member FCM's default. In the case of a FCM's gradual deterioration, the size of its customer account is likely to decline substantially in the days and weeks prior to its actual default. In practice, therefore, the aggregate amount of collateral of the non-defaulting customers remaining at the time of the default may be significantly less than the amount available to the DCO when the FCM and its customers are financially robust.²⁰

The AMG also does not find persuasive the claim that it would be operationally difficult for FCMs and DCOs to maintain separate models for futures customer collateral and cleared swaps customer collateral.²¹ In particular, DCOs that already have the

¹⁸ CFTC Staff, Roundtable to Discuss Protection of Cleared Swaps Customer Collateral, Tr. 86-87 (Jun. 3, 2011).

¹⁹ See 76 Fed. Reg. at 33,828 (“[C]ustomers would bear the costs of implementing any model. Therefore, the Commission believes that it is appropriate to give weight to the preference of customers.”).

²⁰ The AMG recognizes that cleared swaps customers may not always be able to anticipate FCM defaults that occur suddenly due to a large customer default.

²¹ As the Commission notes, many FCMs currently maintain separate models for futures and uncleared swaps and some DCOs currently maintain different guaranty funds for and apply materially different margin models to cleared swaps and futures contracts. See 76 Fed. Reg. at 33,826 n.65.

information necessary to implement the LS Model will incur relatively few incremental operational costs. Furthermore, regardless of which swaps customer collateral protection model is adopted, a DCO must be able to effectively assess its risk exposure, which requires gathering information on the risks and positions of member FCMs as well as their major customers.

ii. Shared Losses Due to Investment and Operational Risk

Investment risk refers to the risk that each customer whose collateral is held in an omnibus account with collateral posted by other customers would share *pro rata* in any decline in the value of FCM or DCO investments of such collateral.²² The LS Model would not eliminate investment risk because the FCM and DCO would hold the collateral of all cleared swaps customers in one account, and therefore would not be able to attribute investments (and losses thereon) to any particular customer. The Proposal expressly provides for the *pro rata* sharing of market losses on deposited collateral. However, AMG members believe that investment risk can be more appropriately addressed through other means, such as proposals to further limit the types of investments FCMs are permitted to make with customer collateral.²³

Similarly, AMG members are comfortable with *pro rata* sharing of losses to the comingled cleared swaps customer account arising from mistake or fraud by an FCM.

5. Recommendations regarding the LS Model

a. Assuring Current, Accurate and Complete Account Records

AMG members strongly support measures to protect non-defaulting customers' interests in maintaining open positions in the event of an FCM default by facilitating prompt transfers of such positions to a solvent FCM. Under the LS Model, the ability of the DCO to accurately and efficiently disaggregate the cleared swaps customer account into amounts attributable to each customer depends, to a significant extent, on the accuracy and completeness of the FCM's records. In other words, cleared swaps customers are exposed to the risk that FCM recordkeeping may not be sufficiently accurate or up-to-date to enable an orderly and rapid transfer or distribution of customer collateral. Historically, failing firms have been subject to strains that resulted in erratic recordkeeping or compliance practices in the periods preceding their bankruptcies and, after bankruptcy, have not had the human resources or access to systems required to locate and reconcile customer and account records. In light of the above, AMG members encourage the CFTC to consider stringent and enforceable recordkeeping standards for ensuring the maintenance of accurate and up-to-date records regarding individual cleared swaps customer positions and their collateral. Specifically, the AMG would like to make the following recommendations:

²² Section 4d(f) of the CEA permits an FCM to invest cleared swaps customer collateral in certain enumerated instruments. The value of such investments may decline to less than the value of the collateral originally deposited.

²³ See CFTC, Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 75 Fed. Reg. 67,642 (Nov. 3, 2010); Proposed Rule 22.2(e)(1) (Permitting an FCM to invest cleared swaps customer collateral in accordance with regulation 1.25, as such regulation may be amended from time to time); Proposed Rule 22.3(e) (Permitting a DCO to do the same).

- Proposed Rule 22.11(e) makes the DCO responsible for taking “appropriate steps” to confirm that the information it receives from FCMs is accurate and complete and to ensure that such information is being produced on a timely basis. While the phrase “appropriate steps” may have been chosen to provide DCOs flexibility in determining how to monitor the recordkeeping responsibilities of their member FCMs, AMG members nevertheless encourage the CFTC to provide specific and concrete examples of steps that a DCO must take to discharge this important monitoring duty. Potential steps to confirm accuracy and timeliness of a FCM’s records include performing regular or random independent audits of such records. Moreover, to underscore the paramount importance of the DCO’s responsibilities under 22.11(e), the phrase “appropriate steps” should be replaced with “all steps necessary.”
- Proposed Rule 22.11 generally requires FCMs to provide to the DCO, *at least once each business day*, information sufficient to identify each cleared swaps customer’s “portfolio of rights and obligations” arising from its cleared swaps. Similarly, Proposed Rule 22.12 requires DCOs and FCMs to use the information provided pursuant to Proposed Rule 22.11 to calculate, *at least once each business day*, the amount of collateral required for each cleared swaps customer. These Proposed Rules expose non-defaulting cleared swaps customers to the risk that collateral allocations following a fellow customer or FCM default would fail to reflect movements in their cleared swaps portfolio on the day of default. AMG members note that under distressed market conditions, there could be significant intra-day market movements. Accordingly, the AMG encourages the CFTC to consider requiring DCOs and FCMs to update their records, perform the calculations required under Proposed Rule 22.12, and transmit information to relevant parties much more frequently than on a daily basis. In light of significant technological advances in automation and information systems infrastructure, a standard that approximates “as frequently as technologically possible” would not be unduly burdensome for DCOs and FCMs, and would significantly enhance the protections provided under the LS Model.

b. Clear Statement of Disposition of Customer and FCM Property and of DCO Obligations

The LS Model, like the Futures Model, depends upon swift action by the DCO and other relevant parties to transfer non-defaulting customer positions from a failing FCM to a solvent FCM. To maximize the ability to transfer cleared swaps positions and otherwise assure the protection of non-defaulting cleared swaps customers in emergency situations, all reasonable efforts should be made to assure clarity and precision in defining the safeguards of cleared swaps customer funds and the procedures for transfer of their positions. The AMG believes the following aspects of the Proposal would benefit from additional clarity:

- Proposed Rule 22.2(f)(4) provides that the FCM “must maintain in segregation . . . an amount equal to the sum of any credit balances that the Cleared Swaps Customers of the futures commission merchant have

in their accounts. . . .” The Commission should clarify the extent to which Proposed Rule 22.4(f)(4) requires that the FCM deposit its own capital in the segregated account for cleared swaps customers in order to avoid a segregation violation in the ordinary course of business and in a distress situation in which FCM excess capital may be insufficient to comply with the rule. In the event of a cleared swaps customer default, for example, to what extent may the DCO apply FCM proprietary property to cure the customer default?

- Proposed Rule 22.14. In setting forth the sequence of events following a FCM default, the Commission should clarify how simultaneous defaults in the futures and cleared swaps customer accounts would be handled by the DCO and the allocation of FCM and DCO resources between the two accounts in the event of an insufficiency.
- Proposed Rule 22.15. In stating the FCM’s duty to segregate cleared swaps customer funds, the rule largely replicates the Section 4d(a)(2) obligation with respect to futures. It would be beneficial to make explicit that Rule 22.15 precludes any depletion of any non-defaulting cleared swaps customer property to margin the transactions of one or more defaulting customers. AMG members believe that this should be a strict principle throughout the proposed rules. We note that the discussion section of the Proposal indicates that intra-day price movements on the day of a default may create residual fellow-customer risk.²⁴ We understand the principle in Proposed Rule 22.15, however, to require that any temporary misallocation of non-defaulting customer property due to such intra-day events would be rectified as promptly as possible so that the property of non-defaulting customers would be fully restored.

6. Conclusion

The AMG believes that eliminating fellow-customer risk should be the paramount goal as the Commission implements requirements in Title VII governing the protection of cleared swaps customer collateral. The majority of AMG members support the LS Model because it provides the optimal balance between maximizing protection of cleared swaps customer collateral and minimizing implementation and other costs.

The AMG further believes that the protection of cleared swaps customer collateral is so critical that mandatory clearing should not be phased in until the CFTC is confident that the model it adopts fully protects cleared swaps customers from fellow-customer risk and provides operational and legal certainty to market participants in distressed market conditions.

²⁴ See 76 Fed. Reg. at 33826 n. 72; 33,848 n.185.

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The AMG thanks the CFTC for the opportunity to provide the CFTC with the foregoing comments and recommendations regarding the protection of cleared swaps customer collateral. The AMG's members would appreciate the opportunity to further comment on these topics, as well as other rulemakings the CFTC will undertake under Title VII of the Dodd-Frank Act. If you have any questions, please do not hesitate to call the undersigned at 212-313-1389.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'T. 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

cc: Chairman Gary Gensler, CFTC
Commissioner Bart Chilton, CFTC
Commissioner Michael Dunn, CFTC
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Commissioner Jill E. Sommers, CFTC
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