



| asset management group

February 21, 2013

Melissa Jurgens  
Secretary  
Commodity Futures Trading Commission  
1155 21st Street NW  
Washington, DC 20581

Re: Comment Letter on the Proposed Rulemaking – Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations (RIN 3038-AD88)

Dear Ms. Jurgens:

The Asset Management Group (the “**AMG**”)<sup>1</sup> of the Securities Industry and Financial Markets Association (“**SIFMA**”) appreciates the opportunity to provide the Commodity Futures Trading Commission (the “**Commission**”) with comments regarding its proposed rule (the “**Proposal**”) relating to enhanced protections afforded to customers and customer funds held by futures commission merchants (“**FCMs**”) and derivatives clearing organizations (“**DCOs**”).<sup>2</sup>

AMG members trade futures through FCMs on behalf of our clients and many of our members also have been, or are beginning to, use FCMs to clear swaps at DCOs on behalf of our clients. AMG strongly endorses the Commission’s Proposal to better protect our clients’ collateral and to improve transparency regarding the FCMs with which they trade.

*Enhanced Collateral Protection.* We strongly believe that the funds of our clients held by FCMs and DCOs should be subject to rigorous protections. These funds should not be subject to the risk of default of other customers of an FCM and, to the fullest

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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, ERISA plans and state and local government pension funds, many of whom invest in commodity futures, options, and swaps as part of their respective investment strategies.

<sup>2</sup> Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations 77 Fed. Reg. 67866-971 (Nov. 14, 2012) (to be codified at 17 C.F.R. Pts. 1, 3, 22 et al.).

extent possible, should be protected against misuse by FCMs and DCOs. An FCM should not be able to look to one customer's excess margin to cover another's shortfall. The sanctity of each customer's margin account should be preserved by maintaining segregation between customer margin accounts. For this reason, we support this Proposal as we believe it incorporates appropriate safeguards to protect customer funds, including requirements that FCMs maintain sufficient margin to cover all margin deficits and maintain segregation between customer accounts.<sup>3</sup> The Proposal, in effect, shifts the costs and burdens of a margin shortfall from customers with excess margin to customers with deficits, where it properly belongs.

*Enhanced Transparency.* We also believe that the Commission's proposed public disclosure requirements will help empower our members to choose safe and trustworthy FCMs to handle their customers' funds. We believe that these requirements will hold FCMs accountable to their customers, allowing customers to conduct due diligence efficiently, actively monitor FCMs' financial condition and regulatory compliance and make informed decisions when selecting and doing business with FCMs. Specifically, we support the Proposal's requirement that an FCM be required to make publicly available on its website the FCM's daily margin segregation calculation<sup>4</sup> together with "Disclosure Documents" that would include information on the FCM's business, operations, risk profile, and affiliates that would be material to a customer's decision to entrust funds or otherwise do business with the FCM.<sup>5</sup> We support the Proposal's requirement that FCMs update the Disclosure Documents as necessary, but at least annually, to keep such information accurate and complete and to inform customers of changes that would be material to a customer's decision to entrust funds or otherwise do business with the FCM.<sup>6</sup>

We also believe that some relatively small additional measures could be taken to make more information available to the public in a straightforward and easy manner. For example, we believe that the Commission should require that FCMs make public on their websites the Segregation Schedule, Secured Account Schedule, Cleared Swaps Segregation Schedule, balance sheet and income statement information that FCMs are required to provide the CFTC.<sup>7</sup> In addition, all events reportable under Proposed Regulation § 1.12 (*e.g.*, an FCM being out of compliance with the provisions of Regulation 1.25 or an FCM not having sufficient funds in segregated accounts for futures or swaps customers) should be made available to customers and our members by publication on a public website. We also recommend that each FCM disclose the percent of fund balances pertaining to each of its top ten customers in addition to the number of

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<sup>3</sup> See Proposal at 1.20(i)(iv).

<sup>4</sup> Proposal at § 1.55(o).

<sup>5</sup> Proposal at § 1.55(i).

<sup>6</sup> *Id.*

<sup>7</sup> Proposal at 67872-73.

customers that comprise fifty percent of the FCM's customer fund balances; this disclosure would provide a clearer view of the risks created by large concentrations of funds among a small number of customers.

The AMG appreciates the opportunity to provide the Commission with the foregoing comments and recommendations in support of the Proposal. In addition to the protections contained in the Proposal and the recommendations described above, we also support the Commission adopting additional measures to bolster its segregation models for cleared swaps and futures and to further protect customer collateral, as we have discussed with the Commission at recent meetings and roundtables. The AMG stands ready to provide any additional information or assistance concerning these topics that the Commission might find useful.

Should you have any questions, please do not hesitate to call Tim Cameron at 212-313-1389 or Matt Nevins at 212-313-1176.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim 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

A handwritten signature in blue ink, appearing to read 'Matt Nevins', with a long horizontal flourish extending to the right.

Matthew J. Nevins, Esq.  
Managing Director and Associate General Counsel, Asset Management Group  
Securities Industry and Financial Markets Association