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Re: CFTC: Comment Letter on the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (RIN 3038-AC97)
OCC: Comment Letter on the Margin and Capital Requirements for Covered Swap Entities [Docket ID: OCC–2011–0008]
Board: Comment Letter on the Margin and Capital Requirements for Covered Swap Entities [Docket ID: R-1415] (RIN 7100 AD74)
FDIC: Comment Letter on the Margin and Capital Requirements for Covered Swap Entities [Docket ID: RIN 3064-AE21]
FCA: Comment Letter on the Margin and Capital Requirements for Covered Swap Entities
FHFA: Comment Letter on the Margin and Capital Requirements for Covered Swap Entities [Docket ID: RIN 2590-AA45]

Ladies and Gentlemen:

The Asset Management Group ("**AMG**") of the Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to provide the Commodity Futures Trading Commission (the "**CFTC**") and the U.S. prudential regulators (the "**Prudential Regulators,**" together with the CFTC, the "**U.S. Regulators**") with our views on the most recent proposed rules regarding uncleared swap margin requirements (respectively, the "**CFTC Proposal**"[2] and the "**Prudential Regulators' Proposal**"[3] and, collectively, the "**U.S. Proposals**"). The AMG also commented on the previously issued proposed rules relating to margin for uncleared swaps of the CFTC and the Prudential Regulators, in letters submitted on July 11, 2011 and September 28, 2012, respectively.[4]

While we are supportive of many of the provisions contained in the U.S. Proposals, we believe that coordination and harmonization among regulators, both within the United States and internationally, is of paramount importance to the successful global implementation of swaps regulatory regimes[5], particularly as they relate to margin requirements. We are concerned that, in a number of areas, the U.S. Proposals are more restrictive than the related recommendations in the guidance published in the international framework on margin rules released by the Basel Commission on Banking Supervision (the "**Basel Commission**") and the Board of the International Organization of Securities Commissions ("**IOSCO**") (together with the Basel Commission, "**BCBS/IOSCO**") in September 2013 (the "**BCBS/IOSCO Framework**").

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1 AMG's members represent U.S. asset management firms whose combined assets under management exceed $30 trillion. The clients of AMG member firms include, among others, registered investment companies, endowments, state and local government pension funds, private sector Employee Retirement Income Security Act of 1974 ("**ERISA**") pension funds, and private funds such as hedge funds and private equity funds.

2 Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 Fed. Reg. 59,898 (Oct. 3, 2014).

3 Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 57,348 (Sep. 24, 2014).

4 SIFMA AMG Letter to the CFTC on the Proposed Margin Requirements for Uncleared Swaps for Swap Dealers and Major Participants (September 28, 2012), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58857&SearchText=; SIFMA AMG Letter to the Prudential Regulators and the CFTC on the Proposed Margin Requirements for Uncleared Swaps for Covered Swap Entities (July 11, 2011), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=47795&SearchText=.

5 *See* SIFMA Letter to the CFTC on the Proposed Interpretive Guidance on the Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (Aug. 27, 2012), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58652&SearchText=; SIFMA Letter to the CFTC on the Proposed Exemptive Order Regarding Compliance with Certain Swap Regulations (Aug. 13, 2012), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58367&SearchText=. *See also Comment:* Giancarlo, Christopher, *Flawed US rules fragment swaps market*, FINANCIAL TIMES, Nov. 10, 2014 ("Instead of collaborating with foreign regulators, the [CFTC] developed swaps "transaction level" rules based on the wrong template of the structure of the US futures market . . . . despite the rules' tangential relationship to the ostensible purpose of insulating the US economy from systemic risk.")

We believe that the more stringent restrictions in the U.S. Proposals offer a few incremental benefits but would also create confusion in the market, lead to greater administrative and economic burdens on market participants and encourage the movement of swaps business to other jurisdictions. One example, as discussed further below, is the $3 billion material swaps exposure test in the U.S. Proposals as compared to the €8 billion requirement in the BCBS/IOSCO Framework. There are also certain provisions common to both the U.S. Proposals and the BCBS/IOSCO Framework that we believe should be modified and improved both in the U.S. and globally. We are especially concerned that some of the requirements are simply unworkable and would be impractical or impossible for market participants to follow. One example, as discussed further below, is the aggregation requirement across affiliates for purposes of the various threshold and compliance date tests, which we believe would lead to severe economic, operational and logistical issues and impossibilities across the global market.

For ease of reading, we have included, where appropriate, capsule summaries of the relevant provisions of the BCBS/IOSCO Framework and the U.S. Proposals. We also provide a summary of our recommendations in the form of a Table of Contents, below.

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I. Material Swaps Exposure ("MSE").

The AMG believes that the amount and method of calculating MSE and the method of calculating the $65 million initial margin threshold (the "**IM Threshold**") in the U.S. Proposals should be modified in several significant ways. First, the MSE test, the IM Threshold and the test for determination of compliance dates should not be aggregated across affiliates and it should be clarified that MSE may be calculated separately for "sleeves" of assets of a single investor where there is separate recourse. Second, the MSE test should be set at a dollar amount that is consistent with the BCBS/IOSCO Framework, or at least substantially higher than $3 billion. Also, we strongly believe that it is not appropriate to include physically-settled foreign exchange forwards and foreign exchange swaps in the calculation of MSE.

A. The requirement for aggregation across affiliates for purposes of the MSE test, the IM Threshold and the determination of compliance dates should be eliminated.

BCBS/IOSCO Framework:

- IM Threshold aggregated across an entity, its affiliates, its counterparties and the counterparties' affiliates.
- Phase-in compliance dates depend on the notional amount of uncleared derivatives entered into by an entity, its affiliates, its counterparties and the counterparties' affiliates.

U.S. Proposals:

- IM Threshold aggregated across an entity, its affiliates, its counterparties and the counterparties' affiliates.
- Phase-in compliance dates depend on the notional amount of uncleared derivatives entered into by an entity, its affiliates, its counterparties and the counterparties' affiliates.
- MSE test calculated by reference to the aggregate of average gross notional of uncleared swaps of an entity, its affiliates and all counterparties.

Both the U.S. Proposals and the BCBS/IOSCO Framework require aggregation across an entity, all of its affiliates, its counterparty and the counterparty's affiliates for the determination of compliance dates. Additionally, the U.S. Proposals and the BCBS/IOSCO Framework require aggregation across an entity, all of its affiliates and all of its counterparties for purposes of the IM Threshold. Lastly, the U.S. Proposals also require aggregation across an entity, all of its affiliates and all of its counterparties for purposes of the MSE test.[6] The AMG believes that these aggregation requirements would lead to significant operational problems for financial end users and the industry in general and should be eliminated.

[6] We note that the MSE concept is particular to the U.S. Proposals, but the BCBS/IOSCO Framework applies a similar test through its compliance date thresholds (though, as noted in Section I.C., the BCBS/IOSCO Framework compliance date threshold is significantly higher than the U.S. Proposal's MSE test of $3 billion.)

1. The requirement to aggregate across affiliates with respect to each of the MSE test and the IM Threshold is not in line with similar regulatory requirements and will be virtually impossible to implement.

Aggregation of swap exposure across all affiliates of a financial end user overstates the risk posed by the counterparty to the financial system and will be difficult, if not impossible, to implement from a practical perspective. Calculations of the MSE and IM Threshold amount should only include the swaps that the financial end user enters into or guarantees. This calculation should not include swaps of the financial end user's affiliates unless such swaps are guaranteed by the financial end user. With respect to the IM Threshold, the same concept should apply to the affiliates of the Covered Swap Entity. This approach would be the same as that taken by the CFTC and SEC in the calculation of major swap participant and major security-based swap participant ("**MSP**") status under the final rules defining Swap Entities (the "**Swap Entity Definitions**"), under which an entity is not required to include the swap exposure of its affiliates unless it has guaranteed or otherwise agreed to be responsible for those positions.[7] Further, were the rule to require aggregation of all affiliate positions, parties would need to put in place new reporting and tracking systems that would differ from the systems put in place to make MSP calculations, and which could be very expensive and time consuming to implement.[8] By using rules of aggregation for purposes of the MSE, IM Thresholds and compliance date calculations that are aligned with the aggregation rules for determining MSP status[9], market participants will be better able to utilize systems and infrastructure that they have already developed.

Additionally, in certain cases, the requirement to aggregate across affiliates will be practically impossible and nonsensical. For example, under the U.S. Proposals, if an investor (whether a corporation, fund, pension plan, etc.) owns in excess of 25% of the voting or equity securities of any investment fund, that investor would be deemed to "control", and therefore would be an "affiliate" of, such investment fund. As the term, "affiliate", also includes companies that are "under common control", it would appear that all investment funds in which that investor has a 25% or more ownership interest would be deemed affiliates. Therefore, under the U.S. Proposals the swap notional amounts of all such funds would need to be aggregated for purposes of the MSE test, the IM Threshold and the compliance phase-in requirements. To properly track this, each fund -- or its investment adviser -- would need to know the ownership percentages of its

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[7] An entity's swap or security-based swap positions in general would be attributed to a parent, other affiliate or guarantor for purposes of the major participant analysis to the extent that the counterparties to those positions would have recourse to that other entity in connection with the position. Positions would not be attributed in the absence of recourse. 77 Fed. Reg. 30,596, at 30,689.

[8] If a 25% control test is used, many affiliates may not be consolidated for accounting purposes and gathering the swap positions across all such entities would be enormously challenging. For example, if a financial end user (such as a financing vehicle) is a subsidiary of a corporate group, then the corporate group would need to determine the swap and FX activity of every affiliate, including non-U.S. affiliates. Such a determination will be particularly difficult because the calculation uses the U.S. definition of "swap", which differs significantly from the equivalent definition in other jurisdictions.

investors in all of such investors' other investments. Practically, it would be essentially impossible for the funds or adviser to obtain this information.[10]

As another example, in the case of pension plans, aggregation of the swap notional amounts of all plans sponsored by a corporate sponsor for purposes of the MSE test or the IM Threshold would require gathering and tabulating information across multiple entities and jurisdictions, many of which might not be subject to the U.S. margin regime at all, either because they are offshore or they are non-financial entities. Although they could technically be deemed to be affiliated under the proposed standards, these plans generally have separate beneficiaries, assets and investment strategies. In addition, the costs and administrative efforts required to put in place the necessary tracking systems could be prohibitive. U.S. pension plans are generally governed by ERISA, which contains particular restrictions on transactions with affiliates, which could raise further complications in the context of aggregation for these purposes.

Finally, the requirement to aggregate affiliates would create significant cross-border issues. A financial end user that is a subsidiary of a multinational company with global affiliates would need to include in its calculation of MSE the swaps of all such affiliates with all counterparties, regardless of whether those affiliates are themselves financial end users or whether those transactions are themselves subject to U.S. regulations. Because "control" includes companies that are under "common control," the counterparty would need to include direct and indirect international sister subsidiaries so long as they meet the 25% control test. This would require that market participants put in place new, expensive and burdensome global compliance systems, requiring affiliates to report their trades to them to enable global tabulation. The operational complexities and costs of such a global compliance system are potentially enormous and would require education and training of personnel in jurisdictions that are otherwise unaffected by U.S. margin regulations and in which local derivatives regulation may be quite different.[11]

2. If the aggregation requirement is not eliminated, investment funds and structured investment vehicle should be exempt from such general aggregation.

Although we strongly disagree with aggregating across affiliates of any entity for purposes of the MSE test and the IM Thresholds, if aggregation applies, at the very least, investment funds and structured investment vehicles should be exempt from such general aggregation. The MSE test

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[10] For example, in a typical pension plan structure, a sponsor corporation establishes a plan under a trust with one or more institutional trustees which are selected by the sponsor. Under the U.S. Proposals, "control of another company" includes "control in any manner of the election of a majority of the directors or trustees of the company." Under this definition, the plan may be seen as under the control of, and an affiliate of, the plan sponsor. In addition, many corporations sponsor multiple plans in multiple jurisdictions, and it is typical for such sponsors to select the trustees of all such plans. Each such plan, then, may be seen as under the control of, and an affiliate of, the sponsor. In addition, since the term, "affiliate," includes companies that are "under common control," it would appear that each plan could also be deemed to be an affiliate of the other.

[11] Moreover, we believe that the requirement that a U.S. counterparty aggregate transactions of non-U.S. affiliates transacting with non-U.S. CSEs is inconsistent with Congressional intent as expressed in Section 722(d) of the Dodd-Frank Act in that it gives weight to activities that do not necessarily "have a direct and significant connection with activities in, or effect on, commerce of the U.S." as required by Dodd-Frank.

and the IM Threshold should be calculated at the investment fund/vehicle level as long as another entity is not collateralizing or guaranteeing the investment fund/vehicle obligations.[12]

3. The MSE and IM Threshold should include only swaps executed for an account of a financial end user if recourse is limited to that account.

Institutional investors such as pension plans typically employ multiple investment managers to invest and manage separate pools of assets in separate managed accounts.[13] Such managed accounts are generally established by each investment manager under trading documentation that limits the recourse of any swap counterparty to the assets in the account. While a single beneficial owner may have multiple managed accounts, in certain cases with different investment managers, each account is a separate and distinct pool of assets and the liabilities of the account are limited to the assets in the account. Additionally, an institutional client may also hire an asset manager to manage more than one portfolio for such institutional client, with each portfolio being a distinct pool of assets, employing a different investment strategy, and maintaining separate investment results, despite the fact that they are controlled by the same asset manager and owned by the same beneficial owner. A requirement that the beneficial owner aggregate swap exposures across all such managed accounts would run counter to the contractual limitations on liability and to the approach taken by the CFTC and the SEC in the calculation of MSP status under the Swap Entity Definitions. In the Swap Entity Definitions, the CFTC and SEC recognized that in these situations, it is appropriate to focus on where the risk actually resides and, therefore, that swap positions in managed accounts should not be aggregated with the beneficial owner's other positions.[14] This approach should also be applied to a party's calculation of the MSE and IM Threshold.

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[12] *See* BCBS/IOSCO Framework at 9, note 10 ("Investment funds that are managed by an investment advisor are considered distinct entities that are treated separately when applying the threshold as long as the funds are distinct legal entities that are not collateralised by or are otherwise guaranteed or supported by other investment funds or the investment advisor in the event of fund insolvency or bankruptcy.") While the Prudential Regulators' Proposal states that it is the Prudential Regulators' intent "to follow the approach of the 2013 international framework for investment funds and securitization vehicles, including with respect to guarantees and other collateral support arrangements," Prudential Regulators' Proposal at 57364, the AMG believes clarification is needed by the Prudential Regulators and the CFTC to ensure that investment funds/vehicles are not included in the aggregation calculations if they meet one of the elements under the definition of "control."

[13] *See, e.g.*, SIFMA AMG Letter to the CFTC and SEC on the Joint Proposed Rules on Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping (Jul. 22, 2011), *available at* http://www.sifma.org/issues/item.aspx?id=8589934877; SIFMA AMG Letter to the CME Group in Response to Joint Audit Committee ("JAC") Alert 14-03 on Margining of Accounts Held by the Same Beneficial Owner (Jul. 7, 2014), *available at* http://www.sifma.org/comment-letters/2014/sifma-amg-submits-comments-to-the-cme-group-in-response-to-the-jac-alert-on-margining-of-accounts-held-by-the-same-beneficial-owner/; SIFMA AMG Letter to BCBS/IOSCO on the Second Consultative Document for the Margin Requirements for Non-Centrally-Cleared Derivatives (Mar. 15, 2013), *available at* http://www.sifma.org/comment-letters/2013/sifma-submits-comments-to-the-bcbs-and-iosco-in-response-to-the-second-consultative-document-on-margin-requirements-for-non-centrally-cleared-derivatives/.

[14] [We] conclude that the major participant analysis that applies to the beneficial owners of those positions should focus on where the risk associated with those positions ultimately resides, given how the statutory major participant definitions focus on the risks posed by large swap or security-based swap positions. Thus, for example, if the counterparties to a swap or security based swap position within a managed account have

The AMG strongly urges that the MSE test and $65 million IM Threshold be applied separately to separately managed accounts or "investment sleeves" managed by asset managers where there is separate recourse. Otherwise, asset managers would be required to aggregate swap exposures across multiple separately managed accounts, in some cases managed by other investment managers, despite not having any access to such information.

The use of separate asset managers and the separation of accounts are part of long-standing business practices in the asset management industry. These long-standing business practices are often memorialized in client and trading documentation. The institutional client and an asset manager enter into an investment management agreement ("**IMA**") under which the asset manager is given sole responsibility and authority for the management of the specified portfolio, including investments in uncleared swaps. Such IMAs often contain limited recourse provisions, which provide that the asset manager will limit any liability arising from its investments to the assets in that portfolio. The purpose of such provisions is to protect the beneficial owners and, ultimately, the investors as applicable (*e.g.*, investors in a fund or beneficiaries in a pension plan that owns an account), by allowing the asset manager to manage risk exposure through use of separate pools of assets for different strategies.

While those accounts have the same "beneficial owner," which is the fund or pension fund itself, the accounts are separate and distinct pools of assets with limited liability in these cases. As the assets and liabilities of these accounts are contractually and legally separate, the accounts are also separately margined without netting across accounts. Such contractual agreements should be recognized and respected in the calculation of the MSE for particular investment sleeves managed by asset managers where there is separate recourse. For example, where positions in different portfolios within the same series trust are subject to limited recourse and are managed separately, in accordance with well-established market practice,[15] there is generally no risk of evasion of margin requirements. As a result, the positions in these separate portfolios should not be aggregated together in determining whether they meet the MSE test.

Additionally, where a single client has a number of separate accounts with different asset managers, the multiple asset managers may not know of each other's existence and would not have the ability to act in concert or manage the derivatives positions of the client on a group basis. Any concerted effort or shared communications would likely violate the managers' contractual or fiduciary obligations.

B. If the aggregation requirement is not eliminated, then the definition of "control" should be modified to require majority ownership or control (a "51%

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recourse only to the assets of that account in the event of default—and lack recourse to other assets of the beneficial owners—we do not believe that it would be appropriate to attribute that position to its beneficial owner. 77 Fed. Reg. 30,596, at 30,690.

[15] Each portfolio in a series trust may be created as a separate pool of assets with its own discreet set of shareholders and liabilities under United States securities laws; under these structures, the assets of one portfolio may not be used to meet the liabilities of other portfolios.

test") and to exclude passive investors and investors of "seed capital" in financial end users.

BCBS/IOSCO Framework: No definition of "affiliate" or "consolidated group" is provided, but inter-affiliate margin requirements should be appropriate to each jurisdiction's market conditions.
U.S. Proposals: "Affiliate" is defined by reference to a 25% threshold (of ownership or control).

As noted above, we strongly believe that the aggregation requirement should be eliminated. However, if it is retained, then the 25% ownership or control threshold in the U.S. Proposals should be replaced, subject to the exemptions for passive and seed investors described below, with a test of majority ownership or control. Such a 51% test is customary for transactions involving financial end users, and has been used by the U.S. regulators in other contexts.[16] The U.S. Proposals define an "affiliate" as any company that controls, is controlled by, or is under common control with another company. Under the U.S. Proposals, initial margin requirements would not apply to transactions entered into by non-financial end users or in offshore transactions with counterparties that are outside the scope of the U.S. margin rules.[17] However, all such transactions would be included in the calculation of MSE for an affiliate of such counterparty that is a financial end user in the U.S.

Even if a 51% test were to be adopted, the AMG firmly believes that there should be an explicit exemption for passive investors that do not have trading control over the uncleared swaps in question. Passive investors simply do not have control over the trading decisions of the companies they own -- even where their ownership interest exceeds 51%. In fact, they usually have no or minimal knowledge of the owned entities' trading positions and decisions. Requiring passive investors to aggregate their portfolios with the entities in which they invest would require them to develop, often from scratch, costly monitoring systems and hire or train staff to ensure compliance with the applicable rules. Aggregation based on ownership, rather than control, would needlessly limit passive investors' market capabilities and would create operational and logistical complexities with no apparent benefit.

An additional problem with the aggregation requirement relates to the seeding of investment funds. During the seeding periods, sponsors or asset managers are likely to exceed the 25% ownership or control test. Under the current proposal, the swap notional amounts of a fund seeded by such manager or sponsor could be required to be aggregated with different collective

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[16] We believe that the 25% threshold is also inconsistent with the threshold for control implied by the BCBS/IOSCO Framework. *See* BCBS/IOSCO Framework at 10, 21. Although the BCBS/IOSCO Framework does not define "consolidated group" or "affiliate", our understanding is that the definitions under the BCBS/IOSCO Framework would be consistent with the current market standard of 51% ownership to constitute "control".

[17] The AMG believes that under the U.S. Proposals, centralized trading units and any other entity exempt from clearing by law, regulation or no-action or interpretative letter are not "financial end users," but the U.S. Regulators should clarify this to avoid confusion in the market.

investment vehicles with entirely unrelated strategies and risk profiles if they are seeded by the same asset manager or sponsor, as well as with the notional amounts of swaps utilized by the asset manager or sponsor and its affiliates. Therefore, the definition of control should be clarified to exclude investors of seed capital.

C. The MSE test should be made consistent with the BCBS/IOSCO Framework, or at least substantially higher than $3 billion.

BCBS/IOSCO Framework: Aggregate month-end average notional amount of non-centrally cleared OTC derivatives activity between a covered entity (and its affiliated group) and all of its counterparties of €8 billion in June, July and August of the previous year is necessary for covered swap entities to be subject to initial margin requirements.

U.S. Proposals: Average daily aggregate notional amount of non-centrally cleared OTC derivatives activity between a covered entity (and its affiliates) and all of its counterparties in June, July and August of the previous year must exceed $3 billion for covered swap entities to be subject to initial margin requirements.

The approximately $8 billion differential between the U.S. Proposals' MSE test and the BCBS/IOSCO Framework's requirement[18] is problematic in several ways. Most importantly, this differential would cause middle-tier financial end users in the U.S. to be subject to initial margin requirements to which similarly positioned offshore firms would not be subject.[19] In addition, depending on how cross-border issues are ultimately resolved, the different requirements could create burdensome and unnecessary operational and tracking issues for financial end users. For example, foreign branches of U.S. covered swap entities ("**CSEs**") operating in jurisdictions following the BCBS/IOSCO Framework may be at a competitive disadvantage if financial end users with whom they transact must post initial margin with them but not with offshore CSEs.[20] We believe that these types of scenarios are likely to have an adverse impact on liquidity in the U.S. swaps market and, ultimately, the broader U.S. economy.[21]

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[18] The BCBS/IOSCO Framework's threshold of €8 billion equated to approximately $11 billion at the exchange rates at the time the U.S. Proposals were published. This equated to a difference of approximately $8 billion from the U.S. Proposals' MSE test of $3 billion. Obviously, this difference will vary with exchange rates.

[19] *See also* "Statement of Commissioner J. Christopher Giancarlo - Threshold for Swaps Exposure." CFTC Proposal at 59,935.

[20] It is presently unclear under the CFTC Proposal whether foreign branches of certain non-prudentially regulated U.S. CSEs would be regulated by U.S. laws, those of other jurisdiction or possibly both.

[21] As further discussed in Section VII below, in addition to substantially increasing the $3 billion MSE test, we also believe that in order to minimize these cross border issues a single jurisdiction's margin requirements should apply to both counterparties to a swap. The counterparties should be able to agree which of their jurisdictions' margin requirements will apply, as long as both jurisdictions' requirements are consistent with international standards.

In addition, we believe that the requirements in the U.S. Proposals concerning the MSE test and IM Threshold do not adequately take into account their impact on the overall liquidity of collateral. The BCBS/IOSCO Framework states:

> "[t]he overall liquidity burden resulting from initial margin requirements...has been carefully assessed in designing the margin framework. The use of permitted initial margin thresholds,...the eligibility of a broad range of collateral ... the ability to rehypothecate ... as well as the triggers that provide for the gradual phase-in ... have been included as key elements of the margin framework to directly address the liquidity demands associated with the requirements."[22]

The Prudential Regulators, instead, focus primarily on the utility of the MSE test as a way of relieving small-scale financial end users of swaps from the "operational burden of measuring and tracking initial margin collection amounts that are expected to be below $65 million."[23] As discussed further below, the Prudential Regulators examined the potential impact of an MSE threshold of $11 billion together with a $65 million IM Threshold. We do not believe that comparing the MSE threshold with the initial margin threshold is the right way to calibrate the MSE test, as it fails to take into account the potential negative impact of the test on the overall liquidity of collateral.

Another troubling aspect of the U.S. Regulators' linking of the MSE test and IM Threshold is that the two tests are not comparable since they are based on different types of inputs and serve different functions. The MSE test is based on notional amounts of transactions, inclusive of transaction types (*e.g.*, foreign exchange swaps and deliverable forwards) and transaction counterparties (*e.g.*, offshore or non-financial end user affiliates with whom a financial end user must aggregate for the MSE calculation), that would not give rise to any initial margin requirements. By contrast, the IM Threshold is based solely on exposures that would give rise to initial margin requirements under the U.S. Proposals.

In developing their approach to the MSE test the U.S. Proposals rely on certain data including, among other things, 4,686 cleared interest rate swap portfolios, and contend that a large number of entities that would fall below an $11 billion test would exceed the $65 million *de minimis* threshold for initial margin. The AMG has several questions about the data relied upon by the U.S. Regulators that might bear on the conclusions they draw from such data.

(a) *Inclusion of non-financial entities*: Do the 4,686 portfolios include those of non-financial entities that would not be subject to margin requirements under the proposed rules? If so, such portfolios should be removed from the data set.

(b) *Inclusion of affiliates*: How many of the 4,686 portfolios are held by single entities and how many are aggregated with portfolios of affiliates? If positions of affiliates were taken into account, many of these entities -- on an aggregated basis -- might exceed an $11 billion test (especially when applying the 25% ownership or control test proposed in

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[22] BCBS/IOSCO Framework at 3.

[23] Prudential Regulators' Proposal at 57,367.

the U.S. Proposals, although we believe that this might also be true even when applying a more appropriate 51% control test).

(c) *Inclusion of deliverable FX forwards and FX swaps*: Do the 4,686 portfolios include transactions such as physically settled foreign exchange forwards and swaps that would be included if making the actual calculation under the proposed MSE definition? Inclusion of these transactions is likely to cause a significantly higher number of portfolios to exceed $11 billion.

(d) *Inclusion of transactions with several counterparties*: What portion of the 4,686 portfolios reflect transactions entered into under a single master agreement with a single counterparty? If, instead, the portfolios represent transactions with several counterparties, it is quite possible that the amount of initial margin to be posted with respect to the portfolios would fall below the $65 million threshold applicable with respect to each counterparty.

For all the reasons articulated above, the AMG believes that the MSE test should be made consistent with the BCBS/IOSCO Framework, or at least substantially higher than $3 billion.

D. Physically-settled foreign exchange forwards and foreign exchange swaps ("Excluded FX Products") should not be included in the calculation of MSE.

BCBS/IOSCO Framework and U.S. Proposals: Excluded FX Products are counted towards the threshold for the application of initial margin.

Under both the BCBS/IOSCO Framework and the U.S. Proposals, margin collection and posting requirements do not apply to Excluded FX Products.[24] However, following the BCBS/IOSCO Framework, the U.S. Proposals include such foreign exchange products in the calculation of MSE. The CFTC explains simply that:

> "Although these products would not themselves be subject to margin requirements, they are uncleared derivatives that pose risks. It was the judgment of BCBS/IOSCO that they should be included in identifying significant market participants in the uncleared space."[25]

The AMG believes that there is no benefit to including Excluded FX Products in the calculation of MSE, and instead that their inclusion would have adverse consequences to certain market

[24] We note that, as referred to in footnote 27 of the Prudential Regulator Proposal, the Board of Governors of the Federal Reserve System implemented supervisory guidance of the Basel Committee on Banking Supervision to the effect that "[a] bank should exchange (i.e. both receive and deliver) the full amount of *variation margin* necessary to fully collateralise the mark to market exposure on physically settled FX swaps and forwards with counterparties that are financial institutions and systemically important non-financial entities" (emphasis added). The AMG believes that such supervisory standards are extrinsic to, and should not be a factor in determining. threshold levels for *initial margin* requirements being implemented under the Dodd-Frank Act.

[25] CFTC Proposal at 59.904, fn. 36.

participants. For example, funds and other end users that are heavy users of such products but otherwise use few derivatives would face increased initial margin obligations for their non-Excluded FX Products transactions. As a result, such funds would incur additional costs with respect to their limited swaps activities with no corollary benefit in terms of reduction of systemic risk.

Although we generally support the notion of global consistency, we do not see the logic in including Excluded FX Products in the MSE calculation in any jurisdiction as initial margin will not be required for these transactions. If the U.S. Regulators determine not to exclude Excluded FX Products from the calculation of MSE, that creates all the more reason why we would support an MSE test that is substantially higher than $3 billion.

II. Variation Margin.

A. Eligible collateral for variation margin should be expanded to include all the types of eligible collateral allowed for initial margin.

BCBS/IOSCO Framework: Eligible collateral should be highly liquid and able to hold value in periods of stress. This should include cash, high-quality government and central bank securities, high-quality corporate bonds, high-quality covered bonds, equities in major stock indices and gold.

U.S. Proposals: The only permissible eligible collateral for variation margin would be cash in U.S. dollars or the currency in which payment obligations under the swaps are required to be settled.

The AMG believes that the types of property constituting eligible collateral for variation margin should be expanded from cash to include all the types of eligible collateral for initial margin. Cash-only variation margin is inconsistent with the BCBS/IOSCO Framework and would result in fragmentation of liquidity, regulatory arbitrage and global inconsistency. Disallowing use of highly liquid assets as eligible collateral in the U.S. while such assets are allowed in jurisdictions following the BCBS/IOSCO Framework would push market participants to trade in those non-U.S. jurisdictions in order to avoid being forced to liquidate assets that they could otherwise use as collateral for variation margin. This, in turn, will result in less liquidity in U.S. markets and will disadvantage U.S. market participants. In addition, as further discussed below, cash-only variation margin is contrary to long-standing market practice and would result in significant operational inefficiencies and financial risks for many of our members.

More fundamentally, we disagree with the premises for the cash-only variation margin requirement. We recognize that, as mentioned in the U.S. Proposals,[26] a cash-only variation margin requirement is reflective of certain industry efforts relating to standardized collateral documentation. However, we believe that those initiatives relate in large measure to the funding benefits of cash collateral, which is more easily rehypothecated than other forms of collateral.

[26] *See* Prudential Regulators' Proposal at 57,369; CFTC Proposal at 59,913.

While to some extent such benefits may be shared by dealers with buy-side market participants through improved trade pricing, they should be weighed against the sizeable costs and operational inefficiencies described in more detail below. By permitting a wider range of eligible assets for variation margin, market participants will have the flexibility to weigh the costs and benefits for themselves, as is consistent with current market practice and the BCBS/IOSCO Framework.

1. Cash-only eligible collateral for variation margin is contrary to prevailing market standards and increases risk for buy-side participants.

The long-standing and preferred market practice for collateral in the OTC derivatives market is reflected in the 1994 New York Law Credit Support Annex (the "**CSA**").[27] This permits a range of eligible collateral types, the valuation of which is subject to specified haircuts. This flexibility is generally valued by market participants but is particularly essential for asset managers and other buy-side entities, such as insurance companies, pension plans and mutual funds, which regularly post non-cash collateral. Because the success of such market participants' investment strategies often relies on full investment of the assets they manage, daily cash margin payments may require the liquidation of investment assets to generate the required cash. This in turn could decrease performance and increase transactional costs resulting in tracking error. In addition, the use solely of cash as variation margin involves certain risks for buy-side market participants. For example, allowing only cash in U.S. dollars or the settlement currency of the swap to be used as eligible collateral introduces FX risk for market participants with global accounts that are funded in different currencies because such parties might be forced to convert assets and cash denominated in other currencies to U.S. dollars or the relevant settlement currency. Operational inefficiencies and market risk could be mitigated by allowing buy-side market participants to pledge portfolio securities and/or cash in otherwise agreed upon denominations.

2. Variation margin should not be viewed as "settlement payments."

In the CFTC Proposal, the CFTC states its belief that cash-only variation margin "is appropriate because it better reflects that counterparties to swap transactions generally view variation margin payments as the daily settlement of their exposure(s) to one another."[28] This is certainly not the view of many buy-side market participants. Instead, as reflected in the CSA, transfers of variation margin to cover parties' bilateral exposures in respect of uncleared swaps have never been viewed as "settlement payments" because they merely create a security interest in favor of the receiving party and may not serve as payments for the settlement of such swaps until the relevant settlement or reset date. The CFTC refers to ISDA's 2013 Standard Credit Support Annex (the "**SCSA**") as an example of an industry effort to standardize collateral practice for

[27] According to the ISDA 2014 Margin Survey, nearly half of all active bilateral collateral agreements (globally) as of December 31, 2013 were governed by the 1994 CSA (New York Law).

[28] CFTC Proposal at 59.913.

derivatives, correctly observing that it contemplates cash-only variation margin. Notably, the SCSA has not been widely accepted among buy-side market participants.[29]

3. Expanded collateral for variation margin will not lead to disputes.

Another stated rationale for cash-only variation margin is that it "should sharply reduce the potential for disputes over the value of variation margin."[30] Notably, the U.S. Proposals do not cite any specific concerns regarding the valuation of the significantly broader types of collateral eligible to be posted as initial margin. The AMG believes that the types of instruments that are eligible collateral for initial margin can be readily valued by reference to liquid and reliable pricing sources and there will be no greater potential for valuation disputes with respect to variation margin if eligible collateral for variation margin were to include the same types of instruments as may be posted for initial margin.[31]

B. The permissible methods for calculation of variation margin should be consistent with current market practice, namely based on estimates at mid-market of the amounts that would be paid for replacement transactions.

BCBS/IOSCO Framework: Variation margin should be calculated as the amount necessary to fully collateralize mark-to-market exposure.

CFTC Proposal: To the maximum extent possible, variation margin should be based on recently-executed transactions, independent third party valuations or other objective criteria and alternative methods of valuation must be in place in the event of the unavailability or other failure of any input required to value a swap.

Prudential Regulators' Proposal: Variation margin must be calculated as the cumulative mark-to-market change in value to a covered swap entity.

The AMG supports consistent methodologies for calculating the amount of variation margin to be posted with respect to any uncleared swap. We believe that the U.S. Proposals should require that variation margin be calculated on the basis of change in the mark-to-market value of the swap, based on estimates at mid-market of the amounts that would be paid for replacement transactions. Having differing methodologies between the CFTC Proposal and Prudential Regulators' Proposal for valuation would lead to inconsistencies in the market and the possibility of increased valuation disputes among counterparties and possibly other undesirable outcomes.

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[29] Additionally, the Prudential Regulators assert that they do not intend to influence tax, accounting or legal treatment of variation margin. However, the U.S. Proposals' characterization of transfers of variation margin as "payments" or "settlements" is indeed at odds with the tax and accounting treatment of variation margin.

[30] CFTC Proposal at 59,913.

[31] More likely are disputes over the mark-to-market value of the derivative to be margined. Such mark-to-market values are often based on estimates of mid-market prices for replacement transactions, which frequently must be obtained by reference to dealer quotations. To address such potential disputes, the U.S. Proposals appropriately would require that swap documentation specify the procedures, rules and inputs for determining variation margin.

We recommend that both the CFTC and the Prudential Regulators use a mark-to-market valuation for variation margin to ensure that the valuation methodology is consistent and clear to market participants.

We also note that in defining the term, "variation margin amount", the Prudential Regulators' Proposal uses the phrase, "change in value *to a covered swap entity*".[32] The AMG is concerned that this is susceptible to an interpretation that the variation margin amount is to be calculated at the covered swap entity's side of the market. Such calculation methodology would be a significant departure from existing market practice, which calls for variation margin to be calculated at the relevant mid-market price for replacement transactions. If variation margin were determined on the basis of the change in value of the swap *to the covered swap entity*, end users would be materially disadvantaged. For example, if the end user is in-the-money, it would, upon a default by the covered swap entity, be under-collateralized; if the end user is out-of-the money, the covered swap entity would be over-collateralized. This would result in overall increase in risk to end users upon a covered swap entity default.

The AMG requests that the CFTC and Prudential Regulators clarify in their respective rules that the variation margin calculation should, consistent with current market practice, be based on estimates at mid-market of the amounts that would be paid for replacement transactions. In addition, all calculations and methodologies (along with the appropriate inputs) should be transparent and made available to counterparties so they can properly evaluate the impact of prospective trades.

III. Master Netting Agreements and Custodial Agreements.

A. The proposed requirements that master netting agreements and each custodial agreement be enforceable in an insolvency proceeding should be replaced with the type of disclosure obligation required under the BCBS/IOSCO Framework. Alternatively, the U.S. Regulators should clarify that legal opinions as to enforceability would not be required so long as market participants have a reasonable basis to conclude that such agreements are enforceable in an insolvency proceeding.

BCBS/IOSCO Framework:

- The BCBS/IOSCO Framework is silent as to the enforceability of a netting agreement in an insolvency proceeding, but refers to "legally enforceable netting agreements."
- The BCBS/IOSCO Framework is silent as to the enforceability of a custodial agreement in an insolvency proceeding, but in the case of rehypothecated collateral the custodian is required to disclose to the customer the risks associated with the nature of the customer's claim to the rehypothecated collateral in the event of the insolvency of the custodian or the third party one-time rehypothecation provider. The customer then would give express consent in writing to the rehypothecation of its collateral.

[32] Prudential Regulators' Proposal at 57,391, § __.2 (emphasis added). The amount of margin to be collected and posted by a CSE pursuant to §__.4(a) is the "variation margin amount".

U.S. Proposals: Master netting agreements and custodial agreements must be valid, legal, binding and enforceable in an insolvency proceeding.

The requirements in the U.S. Proposals that master netting agreements and custodial agreements be enforceable in an insolvency proceeding,[33] though slightly different, both introduce uncertainties into U.S.-based transactions that would not seem to be present in transactions done under the BCBS/IOSCO Framework. The crux of the problem under the U.S. Proposals is whether legal opinions as to enforceability would be required and, if so, what types of qualifications to those opinions would be acceptable. If opinions are seen to be required, the costs, time and burdens of determining the relevant jurisdictions and obtaining and negotiating legal opinions with respect to each relationship would be substantial, raising the costs of transactions to buy-side market participants. One reason for the difficulty in obtaining opinions is that the proposed rule requires that the custodial and master netting agreements be enforceable in each "relevant jurisdiction." Because of the complexity of the organizational structures through which swap dealers, financial end users and custodians operate, there may be a multiplicity of relevant jurisdictions.

More importantly, there are a number of circumstances where it is reasonable to believe that the agreements will be enforceable in an insolvency proceeding but it may not be possible to obtain an opinion without qualification. For example, since the creation of ERISA plans in the 1970s, in each case that a private company pension plan terminated without sufficient funds to pay all promised benefits, the Pension Benefit Guaranty Corporation (the "**PBGC**") has taken over the plan and, to our knowledge, has consistently honored netting agreements. However, because the PBGC has not publicly released a statement saying it is required to honor such contracts, we are concerned that it may not be possible to obtain an unqualified legal opinion as to the enforceability of such contracts. Similarly, if the U.S. Regulators require legal opinions as to the enforceability of netting agreements generally, even where such agreements would be enforceable, market participants may not be able to obtain the required legal opinions and therefore would be prevented from entering into valid netting agreements under the margin rules.

By way of another example, if the secured party to a custodial agreement is a broker-dealer or commodity broker and is in a U.S. insolvency proceeding, applicable U.S. insolvency laws may require that any excess collateral to which the pledgor is otherwise entitled may still become part of the secured party's insolvency estate, leaving the pledgor with a priority "customer property" claim against the secured party's insolvency estate for the value of the excess collateral.[34]

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[33] The U.S. Proposals require that eligible master netting agreements be "legal, valid, binding, and enforceable under the law of all relevant jurisdictions" in the event of a "legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding)." Prudential Regulators' Proposal § __.2; CFTC Proposal § 23.151. The U.S. Proposals require that custodial agreements be "legal, valid, binding, and enforceable under the laws of all relevant jurisdictions including in the event of bankruptcy, insolvency, or similar proceedings." Prudential Regulators' Proposal § __.7(c)(2); CFTC Proposal § 23.157(c)(3).

[34] *See* Securities Investor Protection Act, 15 U.S.C. Section 78lll(4); Bankruptcy Code stockbroker liquidation provisions, 11 U.S.C. Section 741(4); and Bankruptcy Code commodity broker liquidation provisions, 11 U.S.C. Section 761(10), all defining "customer property" as including property "held … for the account of the debtor." *See also* Securities Investor Protection Corporation v. Lehman Brothers, Inc., 433 B.R. 127 (Bankr. S.D.N.Y. 2010).

Again, we would be concerned that it may not be possible to obtain unqualified legal opinions as to the enforceability of master netting agreements and custodial agreements entered into with such counterparties.

Therefore, in lieu of a requirement that master netting agreements and custodial agreements be enforceable in an insolvency proceeding, the AMG suggests that CSEs be required to provide their counterparties with disclosure describing the relevant risks in insolvency.

Alternatively, we would request that the U.S. Regulators clarify that legal opinions would not be required so long as market participants have a "reasonable basis"[35] on which to conclude that master netting agreements and custodial agreements are enforceable or, in the particular case of pension plans, would be honored by the PGBC, in an insolvency proceeding . A "reasonable basis" would require a high level of confidence which could be based on the historical practice of regulators in the particular insolvency regimes, as well as standard practice and market participants' reasonable expectations with respect to the types of entities with whom they are entering such agreements.

B. Master netting agreements should permit grandfathering of pre-compliance date trades entered into under a single master agreement for initial margin.

BCBS/IOSCO Framework: Initial and variation margin requirements only apply to new contracts entered into after the compliance date. Genuine amendments to existing derivatives contracts do not qualify as a new derivatives contract. Any amendment that is intended to extend an existing derivatives contract for the purpose of avoiding margin requirements will be considered a new derivatives contract.

U.S. Proposals: Swaps subject to the same eligible master netting agreement must be included in the aggregate for purposes of calculating and complying with variation and initial margin requirements, even if they were entered into before the applicable compliance date.

The AMG believes that the U.S. Proposals should permit grandfathering of pre-compliance date trades entered into under a single master agreement for initial margin. The AMG believes that parties to swaps entered into prior to the effectiveness of the margin rules should not be required to include those swaps in post-compliance initial margin calculations, but should be permitted to only if both parties agree to do so. We believe that retroactively imposing an initial margin requirement on swaps entered into before the effectiveness of margin regulations unfairly alters the economic arrangement originally agreed to in the swap. For the same reason, we believe that neither counterparty should unilaterally be allowed to decide that pre-compliance swaps will be included in initial margin calculations.

In discussing this provision, the Prudential Regulators state,

[35] Note that we do not use the word, "well-founded" because we believe that this term may be used in other contexts to indicate the need for unqualified legal opinion level comfort.

> "A covered swap entity would need to enter into a separate master netting agreement for swaps entered into after the proposed rule's compliance date in order to exclude swaps entered into with a counterparty prior to the compliance date."[36]

The AMG believes that neither variation margin nor initial margin provisions in the final margin regulations should create an incentive to exclude pre-compliance date trades from master netting agreements.[37] Requiring counterparties to split their portfolios into separate master netting agreements (and therefore separate netting sets which may not be set off against each other) to preserve negotiated economics of pre-compliance transactions serves no apparent purpose. To the contrary, because set-off is an important means of mitigating credit risk, it will only serve to increase systemic risk. In addition, splitting out pre-compliance date trades from master netting agreements may raise questions about the ongoing validity of existing legal opinions as to enforceability of such master netting agreements.

C. The definition of Eligible master netting agreement should be clarified to confirm that it does not intend to override standard conditions precedent provisions.

BCBS/IOSCO Framework: No definition of "enforceable netting agreement" is provided.

CFTC Proposal: An "Eligible master netting agreement" may not contain a walkaway clause that permits making a lower payment or no payment to a defaulter.

Prudential Regulators' Proposal: An "Eligible master netting agreement" may not contain a walkaway clause that suspends or conditions payment to a defaulter.

We believe that the definition of "Eligible master netting agreement" should be clarified to confirm that it does not intend to override standard conditions precedent provisions in master netting agreements that permit a party to suspend ongoing performance in situations where an event of default or potential event of default has occurred and is continuing.[38] The AMG notes that Section 2(a)(iii) of the ISDA Master Agreement ("**Section 2(a)(iii)**") provides that a non-defaulting party may suspend payment to a counterparty if such counterparty is defaulting. Of course, Section 2(a)(iii) does not serve to lessen or eliminate the value of a transaction to a defaulting party, it merely suspends ongoing payments and deliveries until the defaulting party either remedies its default or the agreement is terminated. We believe that the Prudential Regulators and the CFTC should clarify that the definition of "Eligible master netting

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[36] Prudential Regulators' Proposal at 57,359.

[37] *See, e.g.*, Prudential Regulators' Proposal §_.4 ("If the agreement covers non-cleared swaps and non-cleared security-based swaps entered into before the applicable compliance date set forth in §_.1(d), those non-cleared swaps and non-cleared security-based swaps must be included in the aggregate for the purposes of calculating and complying with the variation margin requirements of this paragraph.")

[38] The definition of "Eligible master netting agreement" in the Prudential Regulators' Proposal prohibits any such agreement from containing "a walkaway clause that…suspends or conditions payment, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is or otherwise would be, a net creditor under the agreement". At §_.2 (clause (3) of the proviso to the definition of "Eligible master netting agreement"). *See also* CFTC Proposal § 23.151.

agreement" is not intended to capture conditions to ongoing payments and deliveries, such as Section 2(a)(iii).

IV. Initial Margin.

A. The requirement that third-party custodians be unaffiliated with the parties to the swap should be replaced with a right, but not an obligation, of the counterparty to select an unaffiliated custodian.

BCBS/IOSCO Framework: The customer and the third party may not be within the same group.

U.S. Proposals: Any initial margin posted and required initial margin collected by a covered swap entity must be held by one or more unaffiliated third-party custodians.

While the AMG understands that the requirement in the U.S. Proposals that custodians be unaffiliated with another party to a trade is meant to mitigate the concentration of credit risks associated with such an arrangement, in practice we believe that the costs and inefficiencies associated with this requirement will far outweigh the intended benefits. Financial end users frequently have bilateral relationships with numerous swap dealers. Therefore, it is likely that such an end user would have at least one custodial relationship where there is an affiliation with a dealer, thus rendering that custodian ineligible to act as the end user's custodian with respect to initial margin for swaps with that dealer under the U.S. Proposals. As a result, the end user would either be unable to trade with that dealer or would be required to change or add custodial relationships to accommodate trading with that dealer.

The scope of this problem is much greater for asset managers who enter into a global custodial arrangement with a single custodian on behalf of their clients. Such global custody agreements are fairly common. It would be operationally complex and burdensome to set up multiple, separate custodial arrangements for each customer based on the dealers with which it may be trading, particularly since, in today's market, there are only a limited number of large, low-risk swap dealers and custodians (many of which have affiliated swap dealers). Under the U.S. Proposals, asset managers would need to carefully monitor the permutations of client, custodian and swap dealer to determine whether any particular transaction would be permissible.[39]

This new requirement would involve a significant departure from market practice and have a disproportionately severe impact on asset managers as it will require entirely new documentation, policies and procedures. Different branches and departments of banks have historically served a variety of roles for buy-side market participants, ranging from custodians, trustees, lenders, deposit takers and swap dealers, with different duties and obligations based on

[39] This requirement would create significant operational issues and would have a particularly severe impact on market participants who engage in bunched order or block trade transactions. Because bunched orders are allocated to customers only after the transaction is executed, the requirement of selecting an independent custodian would introduce delays and could force changes to allocations. *See* Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades. 78 Fed. Reg. 32,866 (May 31, 2013).

their particular role. This market reality has been reflected in regulation. For example, Section 17(f) of the Investment Company Act of 1940 (the "**1940 Act**") requires a registered investment company to maintain its securities and other investments with qualified custodians under conditions designed to assure the safety of the fund's assets.[40] In the context of uncleared swaps, this results in collateral being segregated and held pursuant to tri-party collateral agreements; however, the 1940 Act does not impose a requirement that the custodian be unaffiliated with the parties to the trade.

Instead, the AMG supports a provision which would require the covered swap entity to identify one or more custodians, one of which must be a creditworthy non-affiliate as an acceptable depository for segregated initial margin. The counterparty would then be free to select from among such potential custodians or propose another custodian.

B. The AMG supports the prohibition on rehypothecation of initial margin, but believes that the types of eligible collateral for initial margin should be expanded.

BCBS/IOSCO Framework: Initial margin should be exchanged by both parties on a gross basis and held in a manner that ensures both that (1) margin is immediately available to the collecting party in the event of the posting party's default and (2) margin is protected in the event of the collecting party's bankruptcy. One-time rehypothecation of initial margin is permitted, even if individually segregated at the election of the customer, but only if it is re-used for the purpose of hedging the trade for which the collateral was collected.

U.S. Proposals: Any initial margin posted and required initial margin collected by a covered swap entity must be held by one or more unaffiliated third-party custodians. The custodian agreement must prevent rehypothecation or repledging and must be enforceable, including in bankruptcy, in all relevant jurisdictions.

The AMG supports the prohibition on rehypothecation of initial margin but believes that the types of eligible collateral for initial margin should be expanded. Rehypothecation of initial margin is antithetical to the primary purpose of initial margin: the mitigation of credit risk, as rehypothecated initial margin may not be available to be returned to the pledgor in the event of a default by, or insolvency of, the secured creditor.

Because the AMG believes rehypothecation of initial margin increases credit risk and should not be permitted, the AMG does not support the BCBS/IOSCO Framework's approach of shortening the chain of permissible rehypothecations to a single "one-time" rehypothecation for purposes of hedging the customer transaction. Moreover, we believe that the BCBS/IOSCO Framework's approach would have limited commercial value. If dealers were unable to freely re-use collateral for their own funding purposes, any pricing benefits of such rehypothecation to buy-side market participants would be limited. The AMG further believes that the costs of putting in place documentation and systems to monitor limited rehypothecation would greatly outweigh such limited benefits.

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[40] See 17 CFR § 270.17f-4.

Instead, the AMG believes that significant benefits to market participants can be achieved by expanding the types of eligible collateral for initial margin to include money market mutual funds and certificates of deposit. We discuss our proposed modifications to eligible collateral for initial margin in greater detail in Section IV.C. below. When combined with the substitution and reinvestment provisions in 23.157(c)(2) of the CFTC Proposal and __.7(d) of the Prudential Regulators' Proposal, buy-side market participants that are subject to initial margin requirements would benefit both from the protections of segregation of their collateral as well as the potential for investment returns on such collateral.

C. The types of eligible collateral for initial margin should be expanded to include interests in money market mutual funds and certificates of deposit.

BCBS/IOSCO Framework: Assets collected as collateral should be highly liquid and should, after accounting for an appropriate haircut, be able to hold their value in periods of financial stress. Further, national supervisors should develop their own list of eligible collateral assets, taking into account conditions of their own markets.

U.S. Proposals: Eligible collateral for initial margin is: (1) cash (must be a major currency or the currency in which payment obligations under the swaps are required to be settled); (2) U.S. treasuries or agencies; (3) publicly traded debt securities issued or guaranteed by U.S. government sponsored enterprises ("**GSEs**"); (4) security issued by or fully guaranteed by the European Central Bank or sovereign with a capital risk weighting of 20% or less; (5) securities of the BIS, IMF or multilateral development banks; (6) publicly traded debt for which the issuer has adequate capacity to meet financial commitments, as defined by the Prudential Regulators; (7) publicly traded equity listed in certain indexes; and (8) gold.[41] Eligible collateral does not include securities issued by the counterparty or its affiliates or a banking entity or an affiliate. Under certain circumstances, securities of GSEs are not eligible.

As mentioned above,[42] the AMG believes that eligible collateral for initial margin should be expanded from the list in the U.S. Proposals to include interests in money market mutual funds and certificates of deposit. In contrast to the U.S. Proposals, the BCBS/IOSCO Framework sets forth an illustrative (but non-exhaustive) list of eligible collateral which includes: cash, high-quality government and central bank securities, high-quality corporate bonds, high-quality covered bonds, equities in major stock indices and gold. We believe that this list should also include money market funds (including where the money market fund is affiliated with the custodian holding the collateral) and certificates of deposit.[43]

Investments in money market funds and certificates of deposit are a necessary form of eligible collateral as they allow buy-side market participants to (a) protect themselves from custodial

[41] *See* CFTC Proposal at 59,931, § 23.156(a); Prudential Regulators' Proposal at 57,392, § __.6(a).

[42] *See supra* Section IV.B.

[43] We note that the CFTC includes investments in money market funds as one of the eligible collateral options for investment of customer funds under CFTC Rule 1.25. While we agree with the inclusion of money market funds as eligible collateral, we believe that for purposes of these margin rules there should be no concentration limitations for investments in money market funds, as is included under certain conditions in CFTC Rule 1.25.

credit risk since, unlike cash, securities are held by custodians in off-balance sheet accounts that are separate from a bankruptcy estate and (b) generate higher yields than would be available on custodial deposits by reinvesting cash into other forms of eligible collateral.[44] Investments in money market mutual funds are preferable to market participants with segregated custodial accounts because cash in the money market fund is more readily available than in other investments such as corporate securities. Investments in certificates of deposit are also beneficial to market participants because the investor can calculate the expected earnings at the outset of the investment and generally earn higher yields than in other safe investments, such as Treasury bills.[45]

D. It should be clarified that the restriction on rehypothecation of initial margin by custodians does not restrict their ability to accept cash collateral.

BCBS/IOSCO Framework: One-time rehypothecation of initial margin is permitted, even if individually segregated at the election of the customer, but only if it is re-used for the purpose of hedging the trade for which the collateral was collected.

U.S. Proposals: The custodian agreement must prevent rehypothecation or repledging.

The U.S. Proposals' rehypothecation provisions with respect to initial margin should be clarified with respect to cash collateral. Unlike other types of collateral, cash is not held in custody; it is either reinvested by the bank accepting such cash in other eligible assets or is placed on deposit with the custody bank. Cash received on deposit by the custody bank, like other deposit funding, is invested by the custody bank in suitable assets for the custody bank's own account, under the bank's asset liability management plan, subject to numerous regulatory requirements, particularly prudential liquidity rules and supervision. The custody bank remains a debtor of the depositor for the amount of cash deposited. The AMG is concerned that the U.S. Proposals' restrictions on rehypothecation of initial margin could be read to prohibit such investments in that they may be considered a prohibited rehypothecation of initial margin.

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[44] The U.S. Proposals state that custodial agreements with respect to initial margin must prohibit substituting or reinvesting any funds or other property in any asset that would not qualify as eligible collateral under the U.S. Proposals. *See* Prudential Regulators' Proposal § __.7; CFTC Proposal at § 23.157. Our understanding of this language is that cash and other eligible collateral that is posted as initial margin can be directed by the customer to reinvest that cash or other eligible collateral into one of the other available listed forms of eligible collateral. This is crucial for parties to protect themselves from custodial credit risk and to generate higher yields than would be available on custodial deposits by reinvesting cash into other forms of eligible collateral.

[45] As noted in the BCBS/IOSCO Framework, the Basel Commission and IOSCO considered multiple approaches when formulating their recommendations, and in ultimately opting for a broader approach to eligible collateral, they listed the potential advantages thereof to include (a) a reduction of the potential liquidity impact of the margin requirements by permitting firms to use a broader array of assets to meet margin requirements and (b) better alignment with central clearing practices, in which central counterparties frequently accept a broader array of collateral, subject to collateral haircuts.

Accordingly, we strongly recommend that the Prudential Regulators and CFTC clarify that cash margin posted to a custody account may be placed on deposit with the custody bank in this customary manner.

E. Initial margin risk offsets in the margin models are too narrowly drawn and should allow for risk offsets across any instruments or asset classes subject to the same master netting agreement so long as there is a "sound theoretical basis and significant empirical support," as proposed by the CFTC in 2011 as part of its original margin proposal.

BCBS/IOSCO Framework: Portfolio margining may be applied to derivatives that are approved for model use and subject to a single, legally enforceable netting agreement. This margining may, subject to approval by the relevant supervisory authority, account for diversification, hedging and risk offset within but not across asset classes. These asset classes would include credit instruments, commodity instruments, equity instruments, foreign exchange / currency instruments, interest rate instruments and other instruments.

U.S. Proposals: An initial margin model may reflect offsetting exposures, diversification, and other hedging benefits for uncleared swaps that are governed by the same eligible master netting agreement by incorporating empirical correlations within but not across seven broad risk categories (asset classes), provided the covered swap entity validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits.

The AMG believes that models for calculating initial margin should allow for risk offsets across any instruments subject to the same legally enforceable master netting agreement. Applying offsets within, but not across, asset classes is an area where we believe the BCBS/IOSCO Framework goes too far in attempting to mitigate market risk and tightens the ability for market participants to effectively trade. Accordingly, we recommend that the Prudential Regulators and CFTC permit offsetting across asset classes and work with regulators in other jurisdictions to allow the same. Additionally, because the BCBS/IOSCO Framework lists only a few general examples as asset classes[46] to establish a baseline general framework that national supervisors can expand upon, these defined asset classes would not be consistent across jurisdictions, which would create operational difficulties, and in some cases an impossibility, in attempting to offset trades between U.S. and non-U.S. market participants.

The rationales offered for limiting risk offsets in initial margin models within asset categories are two-fold. First, the Prudential Regulators state that their preliminary view is that the correlations of exposures across unrelated risk categories "are not stable enough over time, and, importantly, during periods of financial stress, to be recognized in a regulatory margin model requirement."[47] We note that both the Prudential Regulators' Proposal and the CFTC Proposal require that initial margin requirements be recalculated pursuant to internal margin models each business day. As a result, covered swap entities will be able to recalibrate the extent to which assets across risk

[46] Credit, equity, interest rates and foreign exchange, and commodities. BCBS/IOSCO Framework at 12.

[47] Prudential Regulators' Proposal at 57,375.

categories are correlated, and adjust the amount of initial margin to be collected or posted, on a daily basis.

Second, the CFTC states that, by allowing only limited netting for uncleared swaps, the CFTC Proposal "promote[s] the use of more standardized cleared swaps at the expense of more customized and opaque swaps."[48] The AMG believes that it is inappropriate to include provisions with an arbitrarily punitive impact as a method of encouraging clearing outside of the clearing mandates. Netting only within asset classes would create significant financial, operational and documentation burdens for market participants by forcing the renegotiation of a large volume of documentation to account for the different asset classes without any clear determination that the benefits outweigh these costs. Bilateral trades will continue to exist and serve a purpose in the marketplace.[49] Arbitrarily limiting risk offsets as a means of encouraging clearing could instead lead market participants to pursue less appropriate strategies. We also note that the new regulatory regime for swaps already provides sufficient incentives to move towards further standardization and clearing and, indeed, the market is already making significant strides in this direction.[50]

In summary, master netting agreements have long been recognized as an effective means to reduce or eliminate credit risks. Margin requirements imposed on counterparties should fully reflect this mitigation of risk across asset classes. Failing to allow for these risk offsets would require both counterparties, in a bilateral margin context, to commit a greater amount of capital as margin rather than using it to make new investments, and reducing overall investment returns.

F. Liquidation horizons for uncleared swaps should be set at less than 10 days.

BCBS/IOSCO Framework: Liquidation time horizons for uncleared swaps should be set at a 99% confidence interval over a 10-day horizon (or, if variation margin is exchanged less frequently than daily, the horizon should be increased by the number of days between variation margin exchanges).

U.S. Proposals: Liquidation time horizons for uncleared swaps should be set at a 99% confidence interval over a 10-business-day horizon (or a horizon equal to the maturity of the swap, if shorter).

The AMG believes that the liquidation time horizons for initial margin models are unnecessarily long and should be shortened. The BCBS/IOSCO Framework and the U.S. Proposals each generally require that initial margin model calculations cover at least 99% of price changes over a ten-day liquidation horizon.[51] As we have previously stated, the AMG believes that the

[48] CFTC Proposal at 59,925.

[49] *See* Remarks of Chairman Timothy G. Massad before the Futures Industry Association Expo 2014 (Nov. 5, 2014) *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-3.

[50] For example, market agreed coupon ("MAC") interest rate swaps were recently developed by the AMG and ISDA, see http://www.sifma.org/services/standard-forms-and-documentation/swaps/.

[51] *See* BCBS/IOSCO Framework at 11; CFTC Proposal at 59,929, § 23.154(b)(3)(i); Prudential Regulators' Proposal at 57,393, § __.8(d)(1).

liquidation time period should instead be closer to five days than ten days. We believe that such a shorter period is clearly sufficient to allow close-out, offset or other risk mitigation for uncleared swaps. We understand that the ten-day liquidation horizon is meant to provide sufficient time for the non-defaulting party to replace its swap. However, the AMG believes that whether or not a swap is replaced (as opposed to substitution of other risk-mitigation or hedging transactions) is a business decision that should not be incorporated into rulemaking.[52] We are concerned that the imposition of a 10-day period is arbitrary and punitive and once again an attempt to encourage clearing outside of the clearing mandates, which may not be appropriate for some swaps.[53] The implications for buy-side market participants such as clients of our members of arbitrarily inflated initial margin requirements may include increased risk, reduced investment returns, and increased tracking error. The AMG strongly urges the CFTC and Prudential Regulators to reduce the 10-day liquidation horizon to a period closer to five days and to coordinate with global regulators to do the same.[54]

V. Margin transfer timing is too short. Each party to a swap should be provided a sufficient period of time after execution of the swap to collect margin from its counterparty, allowing for the possibility of disputes.

BCBS/IOSCO Framework: Variation margin should be transferred on a regular basis (*e.g.*, daily). Initial margin should be collected "at the outset of a transaction, and collected thereafter on a routine and consistent basis."

CFTC Proposal: Variation margin should be collected no less than once per business day, from T+1. Initial margin should be collected daily, from T+1 through termination/expiration of the trade.

Prudential Regulators' Proposal: Variation margin should be collected no less than once per business day, from T+0. Initial margin should be collected daily, from T+1 through termination/expiration of the trade.

The AMG believes that parties to a swap should have sufficient time after execution of the swap to collect margin from their counterparty. We believe that the U.S. Proposals' transfer timing provisions, which would require pre-funding of margin or nearly simultaneous trade execution and posting of margin, does not reflect the operational realities of the trading, payment and

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[52] Similarly, we believe that the historical period used to calibrate initial margin models should be agreed upon by the counterparties to the swap. Currently, the Prudential Regulators' Proposal and the CFTC Proposal require internal initial margin models to be calibrated using at least one year of historic price data and to incorporate a period of "significant financial stress" that is appropriate for the swaps to which the models are applied. CFTC Proposal at 59,929, § 23.154(b)(3)(ii); Prudential Regulators' Proposal at 57,393, § __.8(d)(2). Volatility over a one-year period may not be reflective of current dynamics and, as a result, may not be a good indicator of the volatility that should be expected for the remaining life of the swap.

[53] In the CFTC Proposal, the CFTC states that it "is requiring ten day initial margins for uncleared swaps and only five day margin for cleared swaps. . . Consequently, these rules promote the use of more standardized cleared swaps at the expense of more customized and opaque swaps." At 59,925.

[54] *See also* "Statement of Commissioner J. Christopher Giancarlo," CFTC Proposal at 59,934-35.

collateral transfer processes.[55] The transfer timing requirements in the U.S. Proposals seem to be modeled on those used for futures contracts, but transfers of margin for swaps are distinguishable and should be allotted additional time. For example, in the futures context, a clearing agent covers intraday margin calls made by a clearing house and asks end users for margin the next day. This is not so in the swaps context, where the parties themselves would have to cover such calls. The AMG believes that the U.S. Regulators should appropriately account for these operational differences.

Specifically, the AMG believes that margin calls for a swap executed on date T should not be required until T + 1, with the margin not required to be posted until T + 2.[56] Often, a swap trade executed on T is recorded in systems on T. The trade executed on T is typically not reflected in the portfolio for margin purposes until T + 1. The mark-to-market for the trade, used to calculate variation margin payments on T + 1, is struck as of the close of business on T through an overnight batch process. Margin calls are then generally made in the morning on T + 1, and delivery is required by T + 2. There must be at least one day between when a margin call is made and when the margin is posted because custodian banks that generally hold assets of our members' clients have cutoffs for same-day delivery, some as early as 10:00 a.m. Our suggested timing is consistent with these operational realities, and is even shorter in some cases than the existing ISDA framework for margining uncleared swaps.

The need for additional time is heightened when parties enter into swaps with counterparties in countries whose business days have very little overlap with theirs or their custodians' because of time-zone differences, such as when financial end users in the United States enter into swaps with counterparties in Japan and Australia. Many of the ISDA credit support annexes commonly agreed upon by financial end users and their swap counterparties already take these operational requirements and timing concerns into account.

Additionally, as is market standard today, the timing requirements should not apply when the counterparties to a swap have a bona fide dispute over margin calls. ISDA Master Agreements typically provide for dispute rights, under which swap counterparties verify that margin calls are for an expected amount and will contest any margin call with which they disagree while paying the agreed-to sum.[57] Resolving these disputes takes time, and counterparties should not be considered in violation of rules for not posting the full amount of margin during the pendency of the dispute. Instead, we believe that the U.S. Regulators should follow the example of the BCBS/IOSCO Framework and specifically account for the time needed to resolve any disputes.

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[55] We also note an apparent inconsistency between the CFTC Proposal and Prudential Regulators' Proposal regarding the timing of variation margin payment and believe that the final rules should be consistent. The Prudential Regulators' Proposal requires the first variation margin payment on T + 0. Prudential Regulators' Proposal at 57,392. The CFTC Proposal, however, requires the first variation margin payment on T + 1. CFTC Proposal at 59,928.

[56] If a margin call is not made until the afternoon of T + 1, the posting party should be permitted an additional day (*i.e.*, until T + 3) to post the margin. Of course, parties should be allowed to exchange margin payments prior to these deadlines if they agree to do so.

[57] For example, if a dealer calls for $30 in margin from a mutual fund, and the mutual fund believes the margin call should be for $20, the mutual fund will usually post $20 in margin while disputing the remaining $10.

We note that this approach would be consistent with the CFTC final rule regarding swap documentation, which requires (1) that swap documentation include any agreed-upon terms for dispute resolution and (2) each swap dealer or major swap participant establish, maintain and follow policies and procedures reasonably designed to resolve discrepancies in portfolio valuation within five business days when facing another swap dealer or major swap participant or "in a timely fashion" when facing a non-swap dealer or non-major swap participant.[58] These rules do not establish immutable deadlines for dispute resolution. Rather, they recognize that dispute resolution takes time and require only that swap entities plan ahead in order to address any disputes that arise as quickly as reasonably possible.[59]

VI. Proposed compliance dates should be extended.

BCBS/IOSCO Framework and U.S. Proposals: Variation margin requirement would take effect on December 1, 2015 and initial margin requirement would be phased in between December 1, 2015 and December 1, 2019.

Moving to an uncleared swap margin regime will raise significant operational issues and requirements throughout the market. Market participants will have to develop and implement margin posting and collection systems, develop and test calculation models and develop and test new account systems. Unexpected issues are sure to arise. In order to prevent confusion and chaos, regulators must provide market participants with sufficient time to work through these operational issues to avoid heightening, rather than reducing, risk through the introduction of margin requirements for uncleared swaps.

Once finalized, significant and substantial documentation work will also be required to implement the margin rules. For example, many firms newly subject to initial margin requirements, such as most registered investment companies that use uncleared swaps, will need to set up tri-party accounts and agreements and firms currently operating under such agreements will need to amend them to be in compliance with the new rules. At present, many clients of AMG members do not post initial margin to their swap counterparties. To the extent that these parties are newly required to post initial margin, they will need time to make appropriate arrangements with tri-party custodians to protect this collateral from counterparty risk.

Given the number of changes from current market practice that would be necessary to implement the new margin requirements once final rules are published and go into effect and the need for both end users and swap dealers to develop and agree upon the documentation to implement the changes, the compliance date of December 1, 2015 for variation margin and phase one of initial margin should be delayed. In addition, the U.S. Proposals contain several issues where there remains uncertainty as to the affected parties and outcomes that still need to be clarified. As the CFTC and the Prudential Regulators need to assess comments received on the U.S. Proposals

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[58] Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 Fed. Reg. 55,904, 55,962–64 (Sep. 11, 2012) (codified at 17 C.F.R. §§ 23.504(b)(1), 23.502(a)(5) and 23.502(b)(4), respectively).

[59] *Id.* at 55,931 ("Thus [swap entities] will not violate the rule if they fail to resolve a particular dispute within five business days, so long as they have followed their reasonably designed procedures.").

and promulgate final rules, and the industry will need sufficient time to interpret and implement the final rules, we no longer believe that December 1, 2015 is a realistic timeframe to begin implementing the rules. The AMG believes these rules should become effective at least 18 months after the final rules are published in order to allow end users and swap dealers to develop the necessary operations, business and logistical issues to be in compliance with the rules.

Some of the substantial changes to documentation that may be required include, among other things:

- negotiation of agreements for separation of initial margin and variation margin collateral flows;
- negotiation of third party custodial agreements and their inclusion as credit support documents;
- rethinking of netting sets covered by master agreements and existing cross product master netting agreements (including handling non-swap transactions);
- aggregating thresholds across affiliates and disclosure about methodologies;
- amendments to ISDA Master Agreements, Credit Support Annexes and similar agreements to include specific types of collateral allowed under the final rules, new minimum transfer amounts as allowed under the final rules, time zone issues associated with posting and collecting collateral and similar changes; and
- amending or adopting policies, procedures and systems and implementing training and education relating to the above operational issues.

VII. Cross-Border Issues: A single jurisdiction's margin requirements should apply to both counterparties to a swap. The counterparties should be able to agree which of their jurisdictions' margin requirements will apply, as long as both jurisdictions' requirements are consistent with international standards.

BCBS/IOSCO Framework: Home-country requirements should apply to initial margin and variation margin. Home-country supervisors should permit host-country compliance as long as the host country's regime is consistent with the BCBS/IOSCO Framework. A branch is treated as established in the home-country jurisdiction.

CFTC Proposal: Three proposals: (a) guidance approach; (b) Prudential Regulators' Proposal (see below); or (c) entity-level approach.

Prudential Regulators' Proposal: There is a narrow exception from compliance with the Prudential Regulators' rules for foreign covered swap transactions with a foreign covered swap entity for foreign non-cleared swaps. A covered swap entity may rely on substituted compliance with the margin rules of another jurisdiction if: (a) the Prudential Regulators determine that the foreign regime satisfies the margin rule requirements; (b) the covered swap entity's swaps are not guaranteed by a U.S. entity; and (c) the covered swap entity is a foreign covered swap entity,

a foreign bank (or U.S. branch of a foreign bank) or a foreign subsidiary of a U.S. bank (or of an Edge or Agreement corporation).

The AMG continues to believe that a single jurisdiction's margin requirements should apply to both counterparties to a swap. The counterparties should be able to agree which of their jurisdictions' margin requirements will apply, as long as both jurisdictions' requirements are consistent with international standards. We believe that it is critical that market participants have complete legal certainty as to which margin requirements they will face with a particular counterparty. This guidance and clarity as to the cross border application of the margin requirements is imperative so market participants can build the necessary system enhancements and establish new policies and procedures to support the new margin regimes within the requisite timeframes.

We note that the CFTC Proposal contains three potential cross-border applications: the guidance approach,[60] the Prudential Regulators' approach (discussed above) or an entity-level approach.[61] Based on the AMG's concerns with the Prudential Regulators' Proposal and the limited descriptions of the three cross-border approaches in the CFTC Proposal, the AMG believes the entity-level approach is the most appropriate of these three choices because it provides market participants with a more definitive way to determine which jurisdiction's margin requirements they must be in compliance with, as opposed to a transaction-level approach which would be operationally complex and costly. The entity-level approach also would be consistent with how collateral is currently handled under a single master agreement and mitigate any legal uncertainty and operational errors that could arise if trades with certain branches or certain transactions are subject to different margin requirements under the same master agreement. While one of the stated goals of the margin requirements for uncleared swaps is to reduce systemic risk, the AMG believes that the legal uncertainties and operational complexities that the cross border issues present will significantly increase systemic risk. As long as both counterparties' jurisdictions' margin requirements are consistent with international standards and each recognizes the other as sufficiently comparable,[62] the best way to eliminate these uncertainties and complexities is for the two counterparties to have the ability to jointly choose at the outset of the transaction which of their jurisdictions' law applies for margin purposes.

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[60] The guidance approach would apply margin requirements consistent with the cross-border guidance issued by the CFTC from July 26, 2013.

[61] CFTC Proposal at 59,917. Under the entity-level approach, the CFTC would apply its cross-border rules on margin on a firm-wide level, irrespective of whether the counterparty is a U.S. person, with substituted compliance available under certain circumstances.

[62] We note that this is consistent with the Consultative Paper's suggestion that host-country margin requirements should be permitted to apply so long as "home-country supervisors consider[] the host-country margin regime to be consistent with the proposed margin requirements described in this framework." BCBS/IOSCO Framework at 22.

The AMG thanks the CFTC and Prudential Regulators for the opportunity to comment on the U.S. Proposals and for their consideration of our views. The AMG would welcome the chance to discuss these comments further. Should the CFTC or Prudential Regulators have any questions about this letter, please do not hesitate to call Matt Nevins of the AMG at 212-313-1176. You may also contact the AMG's outside counsel in this matter, Daniel N. Budofsky at 212-705-7546 or Akshay Belani at 212-705-7860 of Morgan, Lewis & Bockius LLP.

Sincerely,

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