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February 22, 2013

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comment Letter on the Proposed Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants (RIN 3235-AL12)

Dear Ms. Murphy:

The Asset Management Group (the "**AMG**")[1] of the Securities Industry and Financial Markets Association ("**SIFMA**") appreciates the opportunity to provide the Securities and Exchange Commission (the "**Commission**") with comments regarding its proposed rule[2] (the "**Proposal**") relating to non-cleared security-based swap capital, margin and segregation requirements for nonbank security-based swap dealers ("**SBS Dealers**") and nonbank major security-based swap participants ("**MSBSPs**") (together "**SBS Entities**"), proposed pursuant to Section 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**"). This letter will focus on the collateral and segregation requirements of the Proposal.

With respect to the collateral and segregation elements of the Proposal, the AMG believes that:

- The Commission should align SBS collateralization requirements with those of the CFTC, the Prudential Regulators and other G-20 regulators, as informed by our comments to those proposals.

- SBS collateral requirements should be bilateral at the election of the non-SBS Entity counterparty. To the extent that the Commission requires SBS Dealers to

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[1] The AMG's members represent U.S. asset management firms whose combined assets under management exceed $20 trillion. The clients of AMG member firms include, among others, registered investment companies, ERISA plans and state and local government pension funds, many of whom invest in commodity futures, options, and swaps as part of their respective investment strategies.

[2] Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, 77 Fed. Reg. 70214 (November 23, 2012) (to be codified at 17 C.F.R. pt. 240).

collect collateral, the Commission should also require SBS Dealers to post collateral to a counterparty upon the election of such counterparty.

- The Commission should provide additional interpretive guidance regarding the concept of an SBS "account" and the treatment of SBS and SBS margin in the insolvency of an SBS Dealer, whether a broker-dealer or standalone.

- The amount of collateral that an SBS Dealer is required to collect from financial end user counterparties to protect against potential future exposure should vary based on the potential future exposure risk posed by the financial end user and the type of end user.

  - The Commission should divide financial end users into four categories, to which different thresholds apply (in decreasing order): (i) "regulated low-systemic risk entities," (ii) prudentially regulated entities that do not qualify as "regulated low-systemic risk entities," (iii) "low-risk financial entities" that are not prudentially regulated and do not qualify as "regulated low-systemic risk entities" and (iv) other entities.

- The margin amount calculation methodology in the Proposal should be substantially revised.

  - The Commission should permit the use of margin models to the greatest extent possible, including allowing all SBS counterparties to use models and permitting the use of models for both debt and equity SBS.

  - Models used to calculate margin requirements should be required to include liquidation time horizons for non-cleared SBS at a 99% confidence interval over a horizon of less than ten days.

  - If a margin amount is posted only by the financial end-user counterparty to an SBS, that counterparty should be able to choose whether a model or standardized haircut is used to calculate the margin amount for that counterparty's account. If both parties post margin amounts, they should jointly agree on whether a model or grid is used.

  - The Commission should require that financial end users be able to independently verify the calculation of margin amounts.

- Each party to an SBS should be provided a sufficient period of time after each account equity calculation to collect collateral from its counterparty.

- The Commission should clarify that the Proposal's requirement for an SBS Entity to perform equity calculations more frequently in certain circumstances does not give rise to a regulatory requirement for that SBS Entity's counterparties to post margin more frequently.

- The Commission should raise the allowable minimum transfer amount to $500,000.

- SBS Dealers should not be required to collect margin for legacy SBS or take a capital charge in lieu of margin collateral, but should be allowed to include legacy SBS in margin calculations if both counterparties agree.

- Uncleared SBS collateral collection rules should become effective only after operational requirements for non-cleared margin requirements can be met and submitted models have been reviewed.

- If the Commission phases in SBS clearing requirements by category of SBS, an SBS in a category not yet subject to mandatory clearing should, like cleared SBS, be included in the equity calculation but not subject to margin requirements.

- A counterparty's decision to exercise its right to third-party segregation should not result in an increased capital charge to the SBS Dealer.

- The Commission should ensure that all counterparty collateral held by an SBS dealer through the proposed "omnibus segregation" model be protected from the risk of default of other counterparties of the SBS dealer.

## 1. The Commission should align SBS collateralization requirements with those of the CFTC, the Prudential Regulators and other G-20 regulators, as informed by our comments to those proposals.

Dodd-Frank requires the Commission to adopt uncleared SBS margin rules for nonbank SBS Entities, the CFTC to adopt uncleared swap margin rules for nonbank swap dealers and major swap participants ("**Swap Entities**") and the Prudential Regulators[3] to adopt uncleared swap margin rules for bank Swap Entities and SBS Entities. This division of regulatory authority among U.S. regulators, and the potential for divergent regulation, is incompatible with the seamless SBS market in which transactions and market participants are not divided along the same lines. As a result, it is imperative that the Commission, the CFTC and the Prudential Regulators closely coordinate the substance and timing of their swap and SBS collateralization rules. We are deeply concerned that the SEC's fundamentally different approach to collateralization requirements is incongruous with that taken by the CFTC, the Prudential Regulators and international regulators.

Most troubling, a particular end user seeking to enter into an SBS transaction will face a different set of rules depending on whether its counterparty is a bank or a nonbank

[3] The Prudential Regulators are the Board of Governors of the Federal Reserve System, the Farm Credit Administration, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency and the Office of the Comptroller of the Currency.

entity.[4] Similarly, the Commission's SBS collateralization rules and the CFTC's swap collateralization rules[5] will apply to different but economically related transactions entered into by the same entities with the same counterparties in the same markets. As a result, differences between these rules could have a perverse competitive effect on the market by skewing end users' incentives to transact with an SBS Entity, swap dealer or major swap participant, based solely on its regulatory structure or to prefer one product over another purely because of collateralization requirements. This effect could, in turn, lead to increased costs for end users. Differences between the treatment of economically related transactions could discourage end users from using a better hedge if the collateralization requirements on the instrument providing the better hedge are more costly.

In addition, given the international nature of the SBS markets, we encourage the Commission to coordinate with other G-20 regulators in developing collateralization requirements for uncleared SBS. In particular, we think it makes sense to align the Commission's collateralization efforts with the Consultative Document on Margin Requirements for Non-Centrally Cleared Derivatives[6] and the Second Consultative Document on Margin Requirements for Non-Centrally Cleared Derivatives[7] both recently released by the Basel Commission on Banking Supervision and the Board of International

[4] Margin and Capital Requirements for Covered Swap Entities, 76 Fed. Reg. 27564 (proposed May 11, 2011) (to be codified at 12 C.F.R. pts. 45, 237, 324, 624, 1221), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-05-11/pdf/2011-10432.pdf ("**Prudential Regulator Proposed Rules**"); see also SIFMA AMG Letter to the Prudential Regulators on the Proposed Margin and Capital Requirements for Covered Swap Entities (July 11, 2011), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=47795&SearchText; Letter to the Prudential Regulators on the Proposed Margin and Capital Requirements for Covered Swap Entities (September 28, 2012), *available at* http://www.sifma.org/issues/item.aspx?id=8589940536.

[5] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 23732 (Apr. 28, 2011) (to be codified at 17 C.F.R. pt. 23), *available at* http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011- 9598a.pdf ("**CFTC Proposed Rules**"); *see also* SIFMA AMG Letter to the Commodity Futures Trading Commission on the Proposed Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (July 11, 2011), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=47795&SearchText; SIFMA AMG Letter to the Commodity Futures Trading Commission on the Proposed Margin Requirements for Uncleared Swaps for Swap Dealers and Major Participants (September 28, 2012) ("**AMG September 2012 Letter**"), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58857&SearchText=.

[6] Consultative Document issued by the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions on Margin Requirements for Non-Centrally-Cleared Derivatives, *available at* http://www.iosco.org/library/pubdocs/pdf/IOSCOPD387.pdf; *see also* SIFMA AMG Comment Letter on the Consultative Document for the Margin Requirements for Non-Centrally-Cleared Derivatives, *available at* http://www.sifma.org/issues/item.aspx?id=8589940536 ("**BCBS/IOSCO First Consultative Document**").

[7] Second Consultative Document issued by the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions on Margin Requirements for Non-Centrally-Cleared Derivatives, *available at* http://www.bis.org/publ/bcbs242.pdf ("**BCBS/IOSCO Second Consultative Document**").

Organization of Securities Commissions, as informed by our comments.[8] We appreciate the Commission's indication that "it does not expect to require compliance by participants in the U.S. [SBS] market with the final rules arising under the Exchange Act before addressing the cross-border aspects of such rules."[9]

## 2. SBS collateral requirements should be bilateral at the election of the non-SBS Entity counterparty. To the extent that the Commission requires SBS Dealers to collect collateral, the Commission should also require SBS Dealers to post collateral to a counterparty upon the election of such counterparty.

An SBS Dealer should, at the election of its non-SBS Entity counterparty, be required to post collateral for uncleared SBS positions to its counterparty. The Proposal requires that SBS Entities calculate, each business day, the "equity" in an account held for a counterparty that holds non-cleared SBS. "Equity" is defined as the current fair market value of securities in the account (including SBS),[10] plus credits owed from the SBS Entity to its counterparty, minus debits owed from the counterparty to the SBS Entity. If the equity is negative, the SBS Entity has current exposure to the counterparty, and if the equity is positive, the counterparty has current exposure to the SBS Entity. SBS Dealers are also required to calculate a "margin" amount, which represents the SBS Dealer's potential future exposure in the account to its counterparty. If the calculated equity is below the margin amount, the SBS Dealer must collect sufficient collateral from its counterparty to make the equity level at least as large as the margin amount. This mitigates both the SBS Dealer's current exposure to the counterparty (by requiring that equity not be negative) and potential future exposure to the counterparty (by requiring that equity be at least as large as the margin amount).

The Proposal, however, does not seek to mitigate the current exposure or the potential future exposure that the counterparty has to the SBS Dealer. We believe that mitigation of credit risk is as important to counterparties (specifically, in the case of AMG members, financial end users) as it is to their SBS Dealer counterparties. To the extent that collateral is collected to protect the financial system from cascading cross-defaults, it is important that the obligations of both sides be secured. If SBS Dealers are not required to post collateral for SBS to financial end users of swaps, such as AMG members, the failure of even one SBS Dealer could cause ripple effects throughout the financial system. Further, providing for bilateral posting of margin would further the

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[8] AMG September 2012 Letter.

[9] Statement of General Policy on the Sequencing of Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, 77 Fed. Reg. 35625, 35631 (June 14, 2012).

[10] We note that the equity calculation explicitly excludes the time value of an over-the-counter option from this calculation, Proposal at 70348 (to be codified at 17 C.F.R. § 240.18a–3(b)(4)), and seeks comment as to whether this exclusion is appropriate, *id.* at 70262, Question 2. The time value of an option is fully recognized by the market as a component of the value of an option prior to exercise or expiry and, as a result, should be included in equity calculations.

investor protection goals embodied in Dodd-Frank, as it would protect an end user counterparty upon the failure of its SBS Dealer counterparty even in the absence of insolvency of the SBS Dealer. As described in greater detail below, we believe that additional or more stringent capital requirements on SBS Dealers are not sufficient to achieve the two goals of systemic risk mitigation and investor protection.

Bilateral collateralization requirements, however, are consistent with Dodd-Frank goals. Dodd-Frank requires that, in order "to offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared," the rules adopted by regulators must "be appropriate for the risk associated with the non-cleared security-based swaps held by a security-based swap dealer or major security-based swap participant."[11] In the cleared context, both financial end users and SBS Entities post collateral to clearinghouses. It seems illogical, and contrary to the intent of Dodd-Frank, that collateral would be required from an SBS Entity for cleared SBS but not for non-cleared SBS, given that the language of Dodd-Frank itself refers to non-cleared SBS as posing "greater risk" to the financial system.[12]

The Commission has recognized the importance of bilateral collateralization in the context of MSBSPs, by proposing that MSBSPs be required to post collateral to SBS counterparties if the equity in the account held by the MSBSP is positive, which corresponds to the counterparty having current exposure to the MSBSP. Essentially, this is equivalent to a requirement for bilateral posting of variation margin, as MSBSPs are not required to collect positive margin amounts corresponding to initial margin. The Commission justifies requiring MSBSPs, but not SBS Dealers, to post collateral to counterparties to the extent of positive equity by stating that a counterparty to an SBS Dealer is protected from the failure of an SBS Dealer by the net liquid assets capital test applicable to nonbank SBS Dealers, which is significantly more conservative than the tangible net worth capital standard proposed for nonbank MSBSPs. Stricter capital requirements do, *ex ante*, decrease the probability that an SBS Entity will fail and, as a result, be unable to pay amounts due to counterparties on SBS transactions. They do not, however, protect a financial end user *ex post*, given an SBS Entity's failure in the way margin requirements do, by providing collateral for the counterparty to close out in case of an SBS Entity's default and inability to pay amounts due on SBS. Furthermore, stricter capital requirements do not protect investors from the risk that an SBS Dealer counterparty will default even in the absence of insolvency. Thus, failure to allow for the bilateral posting of margin may put investors at a disadvantage in the event of a failed or broken trade, contrary to the investor-protection goals of Dodd-Frank.

[11] 1934 Securities Exchange Act § 15F(e)(3)(A)(ii) (as amended by Section 764 of Dodd-Frank).

[12] In addition, a unilateral SBS margin collateralization requirement could undermine the objective of incentivizing market participants to use cleared swaps, as it would then be in the SBS Entity's financial interest to enter into non-cleared SBS for which, in contrast to cleared SBS, they would not be required to post margin collateral.

We also note that the recently released BCBS/IOSCO Second Consultative Document also distinguishes the functions of margin and capital:

> Both capital and margin perform important risk mitigation functions but are distinct in a number of ways. First, margin is "defaulter-pay." In the event of a counterparty default, margin protects the surviving party by absorbing losses using the collateral provided by the defaulting entity. In contrast, capital adds loss absorbency to the system[;] because it is "survivor-pay," using capital to meet such losses consumes the surviving entity's own financial resources. . . [C]apital is shared collectively by all [an] entity's activities and may thus be more easily depleted at a time of stress, and is difficult to rapidly adjust to reflect changing risk exposures. Capital requirements against each exposure are not designed to be sufficient to cover the loss on the default of the counterparty but rather the probability weighted loss given such default.[13]

We believe that a non-SBS Entity should be able to elect to calculate its current exposure and potential future exposure to an SBS Entity and require the SBS Entity to post collateral to mitigate that exposure. Specifically, a non-SBS Entity should be permitted to choose, on a counterparty-by-counterparty basis, to make an "equity" calculation[14] for any or all of its SBS Entity counterparties and require such SBS Entities to post collateral as if the counterparty were an SBS Entity. We believe that financial end users should be able to elect to calculate the equity of their SBS Entity counterparties and require collateralization, rather than being required to do so, because in some cases either the calculation or collateral collection might be operationally difficult or make SBS unnecessarily costly for the particular end user.

**3. The Commission should provide additional interpretive guidance regarding the concept of an SBS "account" and the treatment of SBS and SBS margin in the insolvency of an SBS Dealer, whether a broker-dealer or standalone.**

There are a number of fundamental open questions regarding the treatment of SBS positions and collateral, particularly in the case of insolvency of an SBS Dealer. Knowing how these accounts will be treated will better inform the comments that we are able to provide to the Commission on the Proposal.

First, we believe that the Commission should clarify the relationship between an SBS account and other accounts held at a broker-dealer that is also an SBS Dealer. It is unclear which instruments can be held, or will deemed to be held, in an SBS "account" at an SBS Dealer and, as a result, would be included in equity calculations. For example, it is unclear whether or to what extent an end user's credits or debits relating to repurchase

[13] BCBS/IOSCO Second Consultative Document at 3.

[14] For this purpose, what constitutes an "account" of the SBS Entity with the non-SBS Entity counterparty will depend on the clarifications provided by the Commission with respect the concept of an account more generally, as described in greater detail below.

agreements or securities lending transactions with a broker-dealer counterparty that is also an SBS Dealer will be considered part of the SBS account and included in equity calculations. Relatedly, the Proposal is not entirely clear as to when credits and debits in an SBS account, when tallied to calculate equity, would be permitted to naturally offset one another, and when a qualifying netting agreement would be required to allow such offsets.

Further, the Commission should provide guidance, where possible, on the relationship between SBS and swap margin and how SBS margin will be treated in an insolvency of an SBS Dealer. It is not clear to what extent margin collected for SBS and swaps, which are often traded under the same ISDA agreement, can be netted, nor how counterparties to entities that are both SBS Dealers subject to the Commission's rules and broker-dealer Swap Dealers subject to the CFTC's rules will be treated in an insolvency of the joint SBS Dealer/Swap Dealer. In addition, it is unclear how claims of an SBS counterparty to an SBS Dealer that is also a broker-dealer will be treated relative to claims of customers of the broker-dealer, including whether SBS instruments or SBS counterparties would be subject to the protections of the Securities Investor Protection Act.

We ask the Commission to provide clarity on these points so that our members can better understand the effect that the Proposal would have on the margin that their clients post to SBS Dealers.

**4. The amount of collateral that an SBS Dealer is required to collect from financial end user counterparties to protect against potential future exposure should vary based on the potential future exposure risk posed by the financial end user and the type of end user.**

Under the Proposal, SBS Entities would not be required to collect collateral to protect against current exposure or potential future exposure for SBS accounts where the counterparty is a commercial end user or the account only holds SBS entered into before the effective date of the Commission's SBS capital and margin rule. The Commission does not, however, differentiate among different types of financial end users in determining to what extent account equity requirements should apply to an SBS Entity.[15] In footnote 555 of the Proposal, while agreeing that "not all financial end users present the same degree of counterparty risk," the Commission states that it has chosen not to propose an exception from account equity requirements based on the risk profile of a financial end user. In the view of the Commission, "margin collateral is an important means of managing credit risk" and that "there does not appear to be a compelling reason to establish a two-tiered approach for financial end users" because:

[15] The Commission does, however, seek comment on whether further distinction for financial end users should be added, Proposal at 70269, Question 7, and whether there should be a multi-tiered approach for account equity requirements for financial end users, *id*., Question 10.

- financial end users generally pose more risk than commercial end users;
- the different credit risk profiles of financial end users may not always be clear, which may make it difficult to differentiate between high and low risk financial end users [and];
- market participants have told the Commission staff that financial end users[, as opposed to commercial end users,] entering into security-based swap transactions generally already deliver collateral to dealers to cover current and potential future exposure.

We agree that current exposure, regardless of the credit quality of the source, should be collateralized. However, we believe that the amount of collateral that an SBS Dealer must collect to protect against its potential future exposure to a counterparty should depend on the degree of risk that the counterparty poses. The positive equity margin requirement is meant to protect an SBS Dealer from the potential future exposure it would face upon default of its counterparty as a result of movements in the value of SBS positions with that counterparty during the time before the SBS Dealer can liquidate the positions. Entities subject to regulation that, for example, restricts the use of leverage or requires prudent diversification pose less risk of default to SBS Dealer counterparties, as do financial end users that are not so regulated but limit the riskiness of their activities.

We do not agree with the Commission's rationale for not differentiating between types of financial end users. First, we do not agree that "financial end users generally pose more risk than commercial end users," as a class. In fact, many financial end users are subject to comprehensive regulation that makes them significantly less risky counterparties than some commercial end users. Second, we do not agree that "the different credit risk profiles of financial end users may not always be clear, which may make it difficult to differentiate between high and low risk financial end users." As discussed in greater detail below, financial end users may be divided into broad categories based on regulatory status, SBS positions and leverage that correspond to the levels of risk they pose as SBS counterparties. Finally, we disagree with the proposition that "financial end users, as opposed to commercial end users entering into security-based swap transactions generally already deliver collateral to dealers to cover current and potential future exposure." Many clients of AMG members do not deliver collateral to counterparties with respect to the potential future exposure posed by their SBS positions. As a result, a potential future exposure margin requirement could be disruptive to financial end users.

The Commission should recognize the difference in potential future exposure risk posed by different financial end user counterparties by establishing thresholds that differ based on the financial end user's classification.[16] An SBS Dealer should be required to

[16] We believe that a counterparty should be subject to threshold limits based on its own status, regardless of the thresholds applicable to the other party. Margin is intended to protect each counterparty from the risk of default posed by the other counterparty. Consequently, it is appropriate that the thresholds governing posting of margin should be differentiated by counterparty classification, reflecting that different (….continued)

collect only an amount of margin from a financial end user counterparty determined after subtracting the relevant threshold from the calculated margin amount, and should not have to collect collateral to the extent the threshold is larger than the calculated margin amount.

***A. The Commission should divide financial end users into four categories, to which different thresholds apply (in decreasing order): (i) "regulated low-systemic risk entities," (ii) prudentially regulated entities that do not qualify as "regulated low-systemic risk entities," (iii) "low-risk financial entities" that are not prudentially regulated and do not qualify as "regulated low-systemic risk entities" and (iv) other entities.***

**i. "Regulated low-systemic risk entities," defined as entities that are subject to regulation that establishes capital or funding requirements or restricts the use of leverage, should not be required to post margin, or in the alternative, should have very high thresholds.**

Certain highly regulated entities should be exempt from margin requirements and, as a result, should have a threshold equal to the amount of margin calculated. These entities pose so little credit risk to their counterparties, and so little systemic risk to the financial system, that the Commission should not require them to post collateral. We believe that "regulated low-risk systemic entities" should include the following types of entities:

- **RICs and Retail UCITS**. Registered investment companies ("**RICs**"), like their counterparts in Europe, retail Undertakings for Collective Investment in Transferable Securities ("**UCITS**"), are subject to a number of regulatory requirements that minimize their risk profile as SBS counterparties. Under longstanding interpretations of the Commission and the staff of the Commission's Division of Investment Management, instruments that create explicit or implicit leverage are deemed prohibited as the issuance of a senior security, unless the RIC (i) segregates or earmarks cash, liquid securities or other liquid assets on its books at its custodian in an amount that, together with amounts deposited as margin, is at least equal to the fund's obligation under such instrument, and marks to market daily, or (ii) holds an offsetting position.[17] This requirement limits the leverage that a

(continued….)

classes of market participants pose different levels of risk. For example, a particular prudentially regulated entity poses the same risk to its counterparty regardless of whether that counterparty is itself prudentially regulated or, instead, is a more risky counterparty. Further, we believe that requiring a party to post margin with a threshold that depends on its counterparty's creditworthiness will distort the choice of counterparties, increasing systemic risk by encouraging market participants to trade with those counterparties with thresholds that are the same or higher than theirs. *See* BCBS/IOSCO First Consultative Document at 10.

[17] *See* Investment Company Act of 1940 § 18(f); *see also* Securities Trading Practices of Registered Investment Companies, Investment Company Act Release No. 10666 (Apr. 18, 1979), 44 Fed.
(….continued)

RIC can undertake via SBS or generally. RICs are also subject to significant requirements and restrictions relating to their investments, capital structure and governance, including board oversight; counterparty liquidity and diversification requirements; compliance oversight; and disclosure, valuation and reporting requirements. Moreover, RICs are required to calculate and publish their net asset value and must disclose substantial information regarding their investment strategies to the Commission. Finally, RICs' boards of trustees must adopt substantial compliance programs. These regulatory requirements make RICs very low-risk counterparties to SBS transactions. UCITs are governed by similar restrictions on leverage and other regulatory requirements.

- **ERISA Funds and Government Plans.** ERISA funds face a similarly comprehensive regulatory regime that makes them minimally risky SBS counterparties. ERISA funds must be prudently diversified. Plan fiduciaries must act solely in the interest of the plan's participants and beneficiaries with the care, skill, prudence and diligence that a prudent person familiar with such matters would use.[18] ERISA plans must be minimally leveraged, must have their assets held in trust,[19] must disclose their holdings annually to the Department of Labor ("**DOL**")[20] and must meet stringent funding requirements under the Pension Protection Act of 2006. Investment managers of ERISA funds are subject to stringent regulations governing fiduciary duties and standards of care.[21] There is no provision under any law for ERISA plans to file for bankruptcy or reorganization to avoid their financial obligations to counterparties, and the filing of bankruptcy by an ERISA plan sponsor or the involuntary termination of the plan does not relieve a plan of its financial obligations to counterparties. The historical stability of ERISA funds is demonstrated by the fact that these funds have met their SBS obligations to dealers despite every significant financial event since the adoption of ERISA in 1974. With this comprehensive regime in mind, the Commission has relied on the pervasive regulation of ERISA plans and plan fiduciaries as a reason that it does not need to regulate these plans, and Congress exempted pension trusts

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Reg. 25,128 (Apr. 27, 1979); Merrill Lynch Asset Management, L.P., SEC No-Action Letter, 1996 WL 429027 (July 2, 1996); Dreyfus Strategic Investing and Dreyfus Strategic Income, SEC No-Action Letter, [1987 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 48,525 (June 22, 1987).

[18] ERISA § 404(a)(1)(B).

[19] *Id*. at § 403(a).

[20] *See* Department of Labor Form 5500.

[21] *See* ERISA § 3(38) (describing general requirements for investment managers); *id*. at § 404(a) (detailing investment managers' fiduciary standards); *id*. at § 405 (establishing cofiduciary liability); *id*. at § 409 (establishing fiduciary liability).

from Commission registration and regulation of "investment companies."[22] As a result, ERISA plans are minimally risky SBS counterparties. While government benefit plans sponsored by U.S. federal, state and local governments are not subject to ERISA, they are subject to many of the same requirements and constraints under other applicable rules and, as a result, should be treated the same as ERISA plans.

- **Other Foreign Pension Plans.** Foreign pension plans are, in many cases, subject to comparable oversight as the above examples and should, therefore, also be exempt from positive equity margin requirements. For example, European Union ("**EU**") pension funds are subject to extensive regulatory oversight pursuant to Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement (the "**IORP Directive**"),[23] as well as the pension acts and associated regulations of each EU Member State. For example, under Article 18 of the IORP Directive, EU pension plan managers have fiduciary obligations to plan beneficiaries[24] and generally must invest according to the "prudent investor rule."[25] More specifically, the IORP Directive prescribes that investments should be properly diversified[26] and predominantly invested on regulated markets.[27] Moreover, pension plans are prohibited from borrowing or acting as guarantor on behalf of third parties.[28] With respect to derivatives, Article 18(1)(d) of the IORP Directive restricts EU pension funds from using OTC derivatives for any purpose other than to manage risks associated with their long-term liabilities.[29] In addition, Article 18(1)(d) only permits derivative transactions "insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management," and it further requires EU pension plan managers to "avoid excessive risk exposure to a single counterparty and to other derivative operations."[30] In addition to the requirements of the IORP Directive, EU pension funds are further subject to Directive 2004/39/EC on markets in financial instruments.[31]

[22] Investment Company Act of 1940 § 3(c)(11).

[23] Council Directive 2003/41/EC, 2003 O.J. (L 235) 10.

[24] *Id*., art. 18(1)(a), at 18.

[25] *Id*., art. 18(1), at 18.

[26] *Id*., art. 18(1)(e)–(f), at 19.

[27] *Id*., art. 18(1)(c), at 19.

[28] *Id*., art. 18(2), at 19.

[29] *Id*., art. 18(1)(d), at 19.

[30] *Id*.

[31] Council Directive 2004/39/EC, 2004 O.J. (L 145) 1.

We believe that these entities should be designated as "regulated low-systemic risk entities" and not be subject to margin requirements to protect against potential future exposure. In the alternative, if the Commission deems it prudent to require SBS Dealers to collect margin from these "regulated low-systemic risk entities," we believe that they should be subject to very high thresholds.

**ii. The second category should be "prudentially regulated entities" that do not meet the criteria to be considered "regulated low-systemic risk entities."**

Prudentially regulated entities are subject to requirements and oversight that limit the risk they pose as SBS counterparties, even if they do not technically fall within a category of entity that the Commission deems to be "regulated low-systemic risk entities." As a result, we believe that prudentially regulated entities that do not meet the specific criteria to be considered "regulated low-systemic risk entities" should be subject to greater margin thresholds than certain other types of entities. If the Commission chooses not to create a category of "regulated low-systemic risk entities" that are not required to post initial margin, we believe that the entities listed above, including RICs and UCITS, ERISA funds and government plans and other foreign pension plans, should be subject to the same margin thresholds as prudentially regulated entities. This would be appropriate because such entities are subject to a level of regulation at least as stringent as that of prudentially regulated entities.

**iii. The third category should be "low-risk financial end users" (that are not "regulated low-systemic risk entities" and are not prudentially regulated), defined as entities that do not have "significant security-based swaps exposure" and are minimally leveraged relative to net assets.**

We believe a third category, with a lower margin threshold than the previous two but higher than remaining SBS market participants, should exist for those financial end users that, by virtue of their chosen activities in the SBS and other markets, do not pose significant risk to their counterparties, yet are not regulated in a way that would allow them to be treated as belonging in one of the categories described above. We believe that this category should consist of entities that do not have "significant SBS exposure" and are minimally leveraged relative to net assets.[32] For this test, "significant SBS exposure" would be defined as half of the threshold that would make a person a "major security-based swap participant" under the second prong of the joint CFTC and Commission-proposed definition. Entities that are below this threshold and have very little leverage relative to net assets are less likely to default if the market moves against their position.

As stated in our prior letters on the CFTC's and Prudential Regulators' proposals, we believe that the threshold for these low-risk financial end users should be set at $100 million. We believe that this would be an appropriate threshold for the "low-risk

[32] We believe that this "low-risk" definition should not depend on whether the financial end user enters into SBS for hedging purposes. We believe that the entity's creditworthiness, rather than the way in which it uses SBS, is the key determinant of the risk it poses to its counterparty.

financial entities" and can serve as an appropriate calibration point for the other three categories.

**iv. The fourth category should be all other market participants that are not Swap and SBS Entities.**

We believe that all other market participants should be subject to a margin threshold that is smaller than the three preceding categories.

**5. The margin amount calculation methodology in the Proposal should be substantially revised.**

**i. The Commission should permit the use of margin models to the greatest extent possible, including allowing all SBS counterparties to use models and permitting the use of models for both debt and equity SBS.**

We believe that the calculation of margin should reflect the assessment of risk across all products within a trading portfolio. The ability to enter into transactions with risk offsets has long been recognized as an effective means to reduce or eliminate risks posed by any particular transaction. As a result, the calculation of margin amounts should give full recognition to the risk-mitigating benefits arising from related trades across derivatives risk categories as well as across related derivatives and cash positions. Failing to allow for risk offsets will require financial end users to pledge a greater quantity of margin rather than use it to make new investments, thus reducing those financial end users' overall returns. We believe that the calculation of risk posed is best accomplished through the use of models, which can take risk offsets into account. As a result, we appreciate the Commission's Proposal to allow the use of margin models in certain circumstances, but believe the permitted use of models should be expanded.

Under the Proposal, only SBS Dealers that are authorized by the Commission to calculate capital requirements using models would be permitted to calculate margin requirements using models. The ability to use models for capital calculations is available only to the subset of SBS dealers that are "Alternative Net Capital" broker-dealers or standalone SBS dealers with $100 million in tentative net capital. Consequently, only these entities would be eligible to use models in calculating margin requirements, and only counterparties to these entities would benefit from model-based margining. While we understand limiting the use of models in the capital context, we believe that similarly stringent limitations on the use of models for margin calculations are not necessary and will ultimately work to the detriment of end-user counterparties. Subjecting end users to different margin methodologies based on the status of their SBS Dealer counterparties will create arbitrary distinctions among essentially identical transactions and could have perverse competitive effects. Consequently, we believe that Commission should allow the use of margin model for all counterparties and should approve margin models, including both proprietary models and third-party models, separate from approving capital models.

To the extent the Commission does not wish to expend additional resources reviewing and approving a number of additional models, we believe that it would be appropriate for the Commission to allow SBS Dealers to use models that are approved for use by clearinghouses and models (whether proprietary or third-party) that the CFTC or Prudential Regulators have approved for use by swap dealers, major swap participants and SBS Entities under their jurisdiction. Allowing entities subject to multiple collateralization regimes to use a common method of calculating margin across multiple jurisdictions would alleviate the substantial regulatory burdens otherwise presented by applying several different sets of requirements to fundamentally similar transactions. Furthermore, allowing entities to use models that have already been approved by regulators whose interests align with those of the Commission will serve to further the Commission's desired goals of market stability and transparency without impinging on the Commission's resources.

Additionally, we believe that margin models should be permitted for both debt and equity SBS. The Proposal allows an SBS Dealer that is approved to compute its net capital requirements using models to use its internal market risk model to calculate margin requirements for debt SBS, but not for equity SBS. The Commission states that the inability to use models for equity SBS is meant to establish a margin requirement consistent with portfolio margin rules for equity securities. As a result, the Commission states, broker-dealer SBS Dealers would be able to include equity SBS in portfolios of equity securities for which they calculate margin requirements using the portfolio margin rules. For the reasons stated above, we believe that all SBS Dealers and end users calculating margin requirements should be able to use margin models for all SBS, including equity-based SBS. Risk offsets between equity- and debt-based SBS in a counterparty's account may have partially offsetting risk such that an SBS Dealer faces less potential future exposure than the instruments would pose independently. Such risk offsets should be recognized, which requires that the equity-based SBS be included in model calculations. If the Commission chooses not to allow the use of models to calculate margin across debt SBS and equity SBS, it should allow for margin reductions based on correlations between and among equity SBS and other instruments, rather than just for instruments based on the same underlying.

**ii. Models used to calculate margin requirements should be required to include liquidation time horizons for non-cleared SBS at a 99% confidence interval over a horizon of less than ten days.**

The Proposal would require that VaR margin models cover at least 99% of price changes over a ten-day liquidation time horizon.[33] We believe that this time horizon is unnecessarily long and should be shortened to be closer to five days than ten days. We

[33] *Id*. at 70338 (to be codified at 17 C.F.R. § 240.18a-1(d)(9)(ii)(A)).

believe that such a shorter period is sufficient to allow close-out, offset or other risk mitigation for uncleared SBS.[34]

**iii. If a margin amount is posted only by the financial end-user counterparty to an SBS, that counterparty should be able to choose whether a model or standardized haircut is used to calculate the margin amount for that counterparty's account. If both parties post margin amounts, they should jointly agree on whether a model or grid is used.**

The AMG believes that, to the extent that only the financial end-user counterparty[35] to an SBS posts a margin amount for SBS in an account, that financial end user should be able to choose whether the margin amount is calculated using a model or the standardized haircut/grid approach. As currently written, the Proposal appears to allow an SBS Dealer eligible to use models to choose whether the margin amount is calculated according to approved internal models or according to standardized haircuts. The AMG believes that this option should be at the election of the SBSD's counterparty, who is the one required to post the calculated amount. Otherwise, the AMG believes that a unilateral SBS Dealer election may be used to maximize the amount of margin collected from financial end users in all cases, regardless of the risk posed. If a margin amount is posted by both counterparties, the AMG believes that this option should be made by both counterparties together and should apply to both counterparties.

**iv. The Commission should require that financial end users be able to independently verify the calculation of margin amounts.**

The AMG believes that financial end users must be able to independently verify the calculation of any initial margin amounts calculated through models. Otherwise, financial end users will face a "black box" that will not allow them to predict their margin requirements. As a result, we believe that the Commission should require an SBS Entity to share with a counterparty the model it uses to calculate that counterparty's margin amount. Doing so would increase transparency and promote accountability from the entities whose models are being used, who are in many instances best situated to hold dealers accountable. This suggestion is consistent with the CFTC's requirement for independently verifiable models for swap valuation in its proposed rule on swap counterparty documentation. At the very least, if the Commission determines not to require the sharing of models, we ask that the Commission align with the CFTC's proposal to require that models be independently verifiable. This requirement would provide much-needed transparency for SBS counterparties and would minimize the

[34] If this ten-day liquidation time horizon is meant to provide sufficient time for the non-defaulting party to replace any SBS position, the AMG believes that whether or not an SBS is replaced (as opposed to substitution of other risk-mitigation or hedging transactions) is a business decision that should not be incorporated into rulemaking.

[35] Although AMG is primarily concerned with the treatment of financial end users, our recommendation also applies to other end users to the extent those end users would be required to post margin.

negative effects of inaccurate collateral calls. The AMG also requests that the Commission clarify in its rule that the use of a model will not in any respect impair the parties' recourse under any contractual dispute resolution provision in the relevant transaction documentation or master netting agreement and will not affect the setoff or netting rights under such agreements.

**6. Each party to an SBS should be provided a sufficient period of time after each account equity calculation to collect collateral from its counterparty.**

The AMG believes that each party to an SBS should be provided a sufficient period of time after each account equity calculation to collect collateral from its counterparty. The Proposal requires SBS Entities to collect collateral to meet account equity requirements by noon of the business day following each calculation that results in an account equity requirement.[36] We believe that this timing does not reflect the operational realities of SBS trading, payment and collateral transfer processes.

Specifically, the AMG believes that, subject to any disputed amounts as described in the following paragraph, for an account equity calculation done at the end of business day *T*, any collateral necessary to satisfy equity and margin requirements should be called for on *T + 1* and not required to be posted until *T + 2*.[37] Parties should, however, be allowed to exchange payments prior to these deadlines if they agree to do so. A trade executed on *T* is typically not reflected in the portfolio until *T + 1*. The mark-to-market for the trade, used to calculate equity payments on *T + 1*, is struck as of the close of business on *T* through an overnight batch process. Calls for equity and margin payments 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 payment call is made and when the funds are posted because custodian banks have cutoffs for same-day delivery, some as early as 10:00 a.m. Our suggested timing is consistent with these operational realities and with the existing ISDA framework for collateralizing non-cleared SBS. The need for additional time is especially critical when financial end users in the United States enter into SBS with counterparties in countries, such as Japan and Australia, whose business days have very little overlap with theirs or their custodians' because of time-zone differences.

These timing requirements should not apply to disputed amounts when the counterparties to an SBS have a bona fide dispute over collateral calls. ISDA Master Agreements typically provide for dispute rights, under which SBS counterparties can contest any collateral call with which they disagree while paying the agreed-to sum.[38]

[36] Proposal at 70348 (to be codified at 17 C.F.R. §§ 240.18a-3(c)(1)(ii), 240.18a-3(c)(2)(ii))

[37] If a payment 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 funds.

[38] For example, if a dealer calls for $3 in margin from a mutual fund, and the mutual fund believes the margin call should be for $2, the mutual fund will usually post $2 in margin while disputing the remaining $1.

Counterparties should not be considered in violation of the Commission's rules for not posting the disputed amount of collateral during the pendency of the dispute.

**7. The Commission should clarify that the Proposal's requirement for an SBS Entity to perform equity calculations more frequently in certain circumstances does not give rise to a regulatory requirement for that SBS Entity's counterparties to post margin more frequently.**

Under the Proposal, SBS Entities may be required to calculate equity "more frequently than the close of each business day during periods of extreme volatility and for accounts with concentrated positions."[39] The Commission indicates that these more frequent calculations would be "designed to monitor the [SBS Entity's] counterparty risk exposure in situations where a default by a counterparty or multiple counterparties would have a more significant adverse impact on the financial condition of the [SBS Entity] than under more normal circumstances."[40] Although the Proposal does not impose additional collateral posting obligations in this scenario, it does suggest that one consequence "could be that the [SBS Entity] requests that a counterparty deliver collateral during the day pursuant to a 'house' margin requirement to account for changes in the value of the securities and money market instruments held in the account."[41]While we understand the need for more frequent analysis of an SBS Entity's risk during periods of extreme volatility and when accounts have concentrated positions, we do not believe that intraday collateral calls are feasible or appropriate.

Requiring SBS counterparties to post margin more frequently than daily would be extremely operationally difficult, if not impossible, for many of our members and would be contrary to the predominant current market practice. Although futures agreements and swap clearing agreements may provide for intraday posting of collateral if called for by the clearinghouse, practically speaking such intraday calls would be highly unusual and create significant operational difficulties. Furthermore, the timing of collateral posting is typically established by mutual agreement of the counterparties and set out in the transaction documentation. We do not believe that the Proposal should supersede the terms of these agreements. Instead, any regulatory consequences that arise from these calculations should be directed towards the capital requirements of the SBS Entities who must perform the calculations. Margin calls should not be required more frequently than daily, subject to the terms of specific transaction agreements.

[39] Proposal at 70349 (to be codified at 17 C.F.R. § 240.18a–3(c)(7)). We note that nowhere in the Proposal does the Commission provide guidance as to meaning of "extreme volatility" or "concentrated position," making a full assessment of the impact of this proposed requirement difficult.

[40] *Id.* at 70260 and 70262–63, n.519.

[41] *Id.*

**8. The Commission should raise the allowable minimum transfer amount to $500,000.**

The Commission has sought comment on whether a minimum transfer amount is appropriate, and whether the proposed $100,000 cap on the size of a minimum transfer amount is appropriate.[42] The AMG believes the minimum transfer amount should be increased to $500,000 to avoid transaction costs that would otherwise accompany the daily transfer of small amounts of margin.

**9. SBS Dealers should not be required to collect margin for legacy SBS or take a capital charge in lieu of margin collateral, but should be allowed to include legacy SBS in margin calculations if both counterparties agree.**

We support the Proposal's exception from the collateral requirements for accounts that only include SBS entered into prior to the effectiveness of the collateral collection rules ("**legacy SBS**" in "**legacy accounts**").[43] We do not, however, support requiring SBS Dealers to take a capital charge equal to the calculated margin amount less positive equity in the legacy account.[44] A capital charge increases the cost of the SBS to the SBS Dealer, which may be passed on, directly or indirectly, to the SBS Dealer's counterparties. We believe that SBS entered into prior to the effectiveness of final rules, and certainly prior to the issuance of the Proposal, were entered into by counterparties based on an understanding of the regulatory requirements applicable at that time and the SBS Dealer's analysis of its counterparty's credit quality. We do not believe that Commission rules adopted after the execution of the SBS should change that calculus.

The same logic supports an exception from the margin requirement for legacy SBS held in an account together with SBS executed after the effective date of collateralization rules. While we believe that such SBS should be included in the account equity calculations, we do not believe that additional positive equity should be required in order to protect against potential future exposure of the legacy SBS. The fact that the legacy SBS is held in an account with other SBS does not change the risk posed by the legacy SBS. As a result, such legacy SBS should not be treated differently from those in legacy accounts.

However, we believe that the two counterparties to an SBS should be able to agree to include legacy SBS, whether or not held in a legacy account, in margin calculations. To the extent that the risk of a legacy SBS offsets the risk of an SBS entered into after the effectiveness of margin rules, that offset should be reflected in lower margin requirements. In addition, counterparties may find it operationally easier to

[42] *Id.* at 70272, Questions 1 and 2.

[43] *Id.* at 70269. As a result of unclear language in the Proposal, we ask the Commission to confirm that legacy SBS in legacy accounts would be exempt from margin collateral requirements but not from equity calculations and resulting collateral transfers.

[44] *Id.* at 70247.

include all SBS, whether legacy or not, in margin calculations and should be permitted to do so by mutual agreement.

**10. Uncleared SBS collateral collection rules should become effective only after operational requirements for non-cleared margin requirements can be met and submitted models have been reviewed.**

The AMG believes that non-cleared margin rules should only become effective once operational requirements for uncleared margin requirements can be met and once submitted models have been reviewed. Significant operational issues are raised by the Proposal for which sufficient phase-in time is necessary. For example, in order to meet the Proposal's requirements, firms will need to develop margin collection and posting systems, develop and test models, develop and test new account systems and may need to set up tri-party accounts and agreements, if they so elect. If collateral collection requirements become effective before these operational requirements can be met, the rules may increase, rather than decrease, systemic risk.

In addition, to the extent the Commission determines to permit the use of models for the calculation of margin amount, we believe that the collateral collection rules should come into effect only after submitted models have been approved by the Commission or other relevant regulator. If collateral collection requirements for uncleared SBS are effective before pending models are approved, counterparties to SBS Entities whose models have been submitted but are awaiting approval by the appropriate regulator will be forced to post initial margin as calculated under the standardized haircuts, which the AMG believes could yield a larger margin requirement than should be required. This result would be unnecessarily punitive both to the end user and to the SBS Entity.

**11. If the Commission phases in SBS clearing requirements by category of SBS, an SBS in a category not yet subject to mandatory clearing should, like cleared SBS, be included in the equity calculation but not subject to margin requirements.**

We believe that the Commission should follow the CFTC's example and phase in SBS clearing requirements by category of SBS. If the Commission does so, the Commission should not require margin collateral to be collected for a given SBS until the category of SBS is required to be cleared. It will take some time before the complex operational issues related to SBS clearing have been worked out and the market has moved to clearing standardized SBS. Subjecting all SBS, including those that the counterparties would like to clear, but cannot, to the margin requirements developed for uncleared SBS is too draconian. However, we believe that the value of such SBS should be considered as part of an SBS Entity's equity calculation in determining whether the equity level of an account held for its counterparty is sufficient. In other words, for the purpose of calculating equity under the uncleared SBS collateral collection rules, an uncleared SBS for which the clearing requirement is not yet effective should be treated in the same way as a cleared SBS—subject to the account equity requirements, but not subject to additional positive margin collection requirements.

### 12. A counterparty's decision to exercise its right to third-party segregation should not result in an increased capital charge to the SBS Dealer.

Under the Proposal, SBS Entities must notify counterparties of their statutory right to elect third-party segregation for all collateral posted to satisfy a margin amount.[45] If the counterparty does not elect individual third-party segregation, the SBS Entity may commingle the counterparty's margin with that of other counterparties but must treat that pool separate from the SBS Entity's own funds.[46]

If a counterparty elects to exercise its right to independent third-party segregation of margin collateral, however, an SBS Dealer must take a capital charge equal to the margin amount minus any positive equity in the counterparty's account.[47] The Proposal explains this requirement as "designed to address the risk to nonbank SBS Dealers that arises from not collecting the margin collateral."[48] Because this collateral "would not be in the physical possession or control of the nonbank SBSD, nor would it be capable of being liquidated promptly without intervention of another party," instruments held in tri-party segregation would not satisfy the proposed margin requirements.[49] This capital charge would raise the cost of the SBS transaction to the SBS Dealer, who will likely pass that additional cost through to the SBS counterparty. In some extreme cases, SBS Dealers may even refuse to transact with counterparties who wish to elect third-party segregation. Not only would this charge be more costly to our members, but the proposed capital charge would dissuade counterparties from taking measures to safeguard their collateral from risk related to the SBS Dealer. Accordingly, we oppose this capital charge.

### 13. The Commission should ensure that all counterparty collateral held by an SBS dealer through the proposed "omnibus segregation" model be protected from the risk of default of other counterparties of the SBS dealer.

To the extent that customer collateral is held at the SBS Dealer and is subject to internal omnibus segregation, we believe that an SBS Dealer should not be able to use one customer's collateral, including excess collateral held at the SBS Dealer, to cover amounts owed by another customer of the same SBS Dealer. Consequently, we strongly

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[45] *Id.* at 70352 (to be codified at 17 C.F.R. § 240.18a–4(d)(1)).

[46] A counterparty may waive even this form of segregation but, to do so, must subordinate its claims to those of the SBS Entity's other SBS customers.

[47] Proposal at 70336 (to be codified at 17 C.F.R. § 240.18a–1(c)(1)(viii)(B)(2)).

[48] *Id.* at 70245.

[49] *Id.* at 70246–47.

believe that the Commission should work to ensure that all collateral, including excess SBS customer collateral, be protected from “fellow-customer risk,” as the CFTC has undertaken to do for swaps collateral.[50] Therefore, the segregation requirements adopted by the Commission for SBS should make clear that one customer’s collateral will not be used to secure another customer’s positions under any circumstances.

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[50] These protections should be similar to the protections of the “legally segregated operationally commingled” customer fund protection regime that the CFTC has adopted for use in the cleared swap context. *See* Protection of Cleared Swaps Customer Contracts and Collateral, 77 Fed. Reg. 6336 (Feb. 7, 2012).

The AMG appreciates the opportunity to provide the Commission with the foregoing comments and recommendations regarding the Proposal and stands ready to provide any additional information or assistance that the Commission might find useful. Should you have any questions, please do not hesitate to call Tim Cameron at 212-313-1389 or Matt Nevins at 212-313-1176.

Respectfully submitted,

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