Alternative Investment Management Association

Elizabeth M. Murphy
Securities and Exchange Commission
100 F Street, NE
Washington
DC 20549
USA

By email: rule-comments@sec.gov

17 March 2014

Dear Ms. Murphy,

Further comments on Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security Based Swap Participants and support of MFA Letter on Proposed Capital Charge for Segregation of Initial Margin

The Alternative Investment Management Association (**AIMA**)[1] is writing to the Securities and Exchange Commission (**SEC**) further to its comment letter of 22 February 2013[2] on the SEC's Proposed Rules on capital, margin and segregation requirements for security-based swap dealers (**SBSDs**) and major security-based swap participants (**MSBSPs**) (the **Proposed Rules**), more specifically, the SEC's proposed capital charge for segregation of initial margin.[3]

AIMA has been following and working alongside the Managed Funds Association (**MFA**) on the Proposed Rules and, in particular, the proposed 100 percent capital charge for initial margin held in tri-party segregated accounts. We wish to express our support for MFA's position on the aforementioned issue contained within the MFA letter submitted to the SEC on 24 February 2014 (the **MFA Submission**).[4]

1. AIMA support for MFA position on tri-party segregated accounts

AIMA agrees with MFA's reasoning that collateral held in a tri-party segregated account under current industry-standard arrangements should not attract additional capital charges. We stress the following:

- **The structural benefits of typical tri-party segregation in safeguarding customer assets are important and should be taken into account.** The proposed capital charge would treat tri-party segregation arrangements from a capital perspective the same as if the counterparty had failed to post any initial margin at all. We do not believe that this is appropriate.
- **The proposed capital charge would be inconsistent with the objective of customer protection** which underlies the collateral rules contained within Section 3(E)(f) of the Securities Exchange Act 1934 (as

[1] AIMA is the trade body for the hedge fund industry globally; our membership represents all constituencies within the sector – including hedge fund managers, funds of hedge fund managers, prime brokers, fund administrators, accountants and lawyers. Our membership comprises over 1,300 corporate bodies in over 50 countries

[2] responding to Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security Based Swap Participants and Capital Requirements for Broker-Dealers

[3] The SEC Proposed Rules would impose a 100% capital charge on SBSDs for initial margin held by a third-party custodian in a segregated account

[4] Available at: https://www.managedfunds.org/wp-content/uploads/2014/02/Supplemental-Comments-on-Tri-Party-SegregationTerms-MFA-Final-Letter.pdf

introduced by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **Dodd-Frank Act**) in response to the collapse of Lehman Brothers);[5]
- **SBSD's do in fact retain legal control over collateral and access upon counterparty default**. We agree with MFA that the SEC's concerns that under tri-party segregation arrangements: (1) collateral would not be in the physical possession and control of the SBSD, and (2) initial margin could not be liquidated without the intervention of another party, are unfounded.
- **Tri-party segregation arrangements mitigates significant credit risk for counterparties** by preventing the unsecured exposure that would accompany initial margin held by the dealer and limits exposure to changes in daily-mark-to-market values; and
- **No other regulator globally has imposed such a charge.**

2. AIMA support for MFA opinion on documentation for tri-party segregation

AIMA also would like to register its agreement with MFA on the issue of tri-party segregation documentation. We concur that it **is important for counterparties to be able to negotiate terms of their tri-party segregation documents** without giving rise to a capital charge. Alongside MFA we also appreciate the SEC objectives of providing SBSDs with legal control and access to initial margin whilst providing an appropriate degree of protection to counterparties upon SBSD default. We, therefore, support the proposals contained within the MFA Submission for **required and permitted contractual provisions** which seek to balance the relevant objectives.

We hope you will find our submission helpful and please do let us know if you would like to discuss any of the above comments in more detail.

Yours sincerely,

Adam Jacobs
Director, Head of Markets Regulation

[5] Pub. L 111 – 203, 124 Stat. 1376 (2010)