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TO:

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

6 September 2013

Re: Proposed OSC Rule 91-506 Derivatives: Product Determination and Companion Policy 91-506CP; and Proposed OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting and Companion Policy 91-507CP

Attached please find a copy of our comment letter to the Canadian Securities Administrators on CSA Staff Notice 91-302 – Updated Model Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting. We appreciate your consideration of these comments to Proposed OSC Rule 91-506 and Companion Policy 91-506CP, and Proposed OSC Rule 91-507 and Companion Policy 91-507CP. Should you have any questions, please do not hesitate to contact Tim Cameron at 212-313-1389 or Matt Nevins at 212-313-1176.

Sincerely,

Timothy W. Cameron, Esq.
Managing Director,
Asset Management Group
Securities Industry and Financial Markets Association

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

Copy of

September 6, 2013 Letter from SIFMA AMG

to Canadian Securities Adminstrators

September 6, 2013

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Re: Canadian Securities Administrators
CSA Staff Notice 91-302 – Updated Model Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting

The Asset Management Group (the "AMG")[1] of the Securities Industry and Financial Markets Association ("SIFMA") welcome the opportunity to comment on the Updated Model Rules issued by the Canadian Securities Administrators ("CSA", or, the "Committee") in CSA Consultation Paper 91-302.

Our commentary is limited to the topic of FX security conversion transactions in Clause 2(c)(i)(B) of the Model Provincial Rule (and Explanatory Guidance) – Derivatives: Product Determination. The addition of this clause 2(c)(i)(B) which allows for an FX trade entered into to facilitate the settlement of a securities transaction which settles beyond trade date + 2 (T+2) as a spot trade, and therefore an "excluded derivative," is consistent with the approach taken by the CFTC and SEC.[2] However, our members continue to experience interpretive issues in applying the US interpretation of "security conversion transactions"[3] to FX trades that our members believe are bona fide FX spot trade

[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] *See* http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-18003a.pdf (pages 48256-48258).

[3] The CFTC will consider the following to be a "Securities Conversion Transaction" (and therefore a spot FX transaction): "An agreement, contract or transaction for the purchase or sale of an amount of foreign currency equal to the price of a foreign security with respect to which (i) the security and related foreign currency transactions are executed contemporaneously in order to effect delivery by the relevant securities settlement deadline and (ii) actual delivery of the foreign security and foreign currency occurs by such deadline." Further Definition of "Swap," "Security-Based Swap," and "Security-
(….continued)

and we believe these very same issues are raised by proposed Clause 2(c)(i)(B) of the Model Provincial Rule (and Explanatory Guidance).

We refer your attention to our most recent letter filed with the CFTC on this issue, a copy of which is attached as *Appendix 1* hereto ("AMG August 27th letter").[4] Significant uncertainty has arisen in the industry as to the proper interpretation of bona fide FX spot transactions under U.S. regulations, in general, and the "securities conversion transactions" language in the Swap Definition Rule, in particular, and whether many types of FX transactions that are commonly entered into by asset managers in connection with the purchase, sale or ownership of a security qualify as bona fide FX spot transactions. We believe that treating such transactions as bona fide FX spot transactions is consistent with current market practices and our members' clients' guidelines and expectations. We think it would be extremely helpful for the Canadian Securities Administrators to confirm in the Model Rules or Explanatory Guidance that certain common FX transactions are appropriately categorized as FX spot transactions. To that end, we are suggesting adoption of the principles included in Appendix 1 hereto that could be utilized by market participants as guidance in determining whether an FX trade is a bona fide FX spot transaction in the manner and for the reasons set forth in the AMG August 27th Letter.

* * *

(continued….)

Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208, 48257 (Aug. 13, 2012) (the "Swap Definition Rule").

[4] Published at http://www.sifma.org/comment-letters/2013/sifma-amg-submits-comments-to-the-cftc-requesting-interpretive-guidance-relating-to-certain-foreign-exchange-transactions/.

We appreciate your consideration of this request, and stand ready to provide any additional information or assistance that you might find useful. Should you have any questions, please do not hesitate to contact Tim Cameron at 212-313-1389 or Matt Nevins at 212-313-1176.

Sincerely,

Timothy W. Cameron, Esq.
Managing Director,
Asset Management Group
Securities Industry and Financial Markets Association

Matthew J. Nevins, Esq.
Managing Director and Associate General Counsel,
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Appendix 1

asset management group

August 27, 2013

Gary Barnett
Director of Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for Interpretive Guidance Relating to Certain Foreign Exchange Transactions

Dear Mr. Barnett:

The Asset Management Group (the "**AMG**")[1] of the Securities Industry and Financial Markets Association ("**SIFMA**") requests that the Commodity Futures Trading Commission (the "**Commission**") provide interpretive guidance with respect to the status of certain types of foreign exchange ("**FX**") transactions as bona fide spot foreign exchange transactions. The Commission, in the adopting release for its rules further defining the term "swap" (hereinafter, the "**Product Definitions**") set forth a distinction between FX spot transactions and FX forwards, including providing guidance as to "securities conversion transactions" which are entered into in connection with a related foreign securities transaction.[2] We are seeking clarification that FX

[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] *See* Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208, 48256-58 (Aug. 13, 2012), stating, in relevant part that the Commission is:

> . . . providing an interpretation that a bona fide foreign exchange spot transaction, *i.e.*, a foreign exchange transaction that is settled on the customary timeline of the relevant spot market, is not within the definition of the term "swap." In general, a foreign exchange transaction will be considered a bona fide spot transaction if it settles via an actual delivery of the relevant currencies within two business days. In certain circumstances, however, a foreign exchange transaction with a longer settlement period concluding with the actual delivery of the relevant currencies may be considered a bona fide spot transaction depending on the customary timeline of the relevant market. In particular, as discussed below, the Commissions will consider a foreign exchange transaction that is entered into solely to effect the purchase or sale of a foreign security to be a bona fide spot transaction where certain conditions are met.

transactions which conform to certain parameters set forth below would be treated as bona fide FX spot transactions for purposes of compliance with the Commission's rules.

Dialogue among market participants on this topic has been ongoing, with a tremendous amount of attention focused on the "securities conversion transactions" language set forth in the Product Definitions. Significant uncertainty has arisen in the industry as to the proper interpretation of bona fide FX spot transactions, in general, and the "securities conversion transactions" language, in particular, and whether many types of FX transactions that are commonly entered into by asset managers in connection with the purchase, sale or ownership of a security qualify as bona fide FX spot transactions. We believe that treating such transactions as bona fide FX spot transactions is consistent with the intent of the Product Definitions, current market practices and our members' clients' guidelines and expectations.[3] In order to alleviate the market uncertainty that exists, we think it would be extremely helpful to the market for the Commission to publish further interpretive guidance, confirming that certain common FX transactions are appropriately categorized as FX spot transactions. To that end, we are suggesting adoption of the following principles that could be utilized by market participants as guidance in determining whether an FX trade is a bona fide FX spot transaction. To illustrate the type of transactions encompassed by these principles and that we believe should appropriately be considered FX spot transactions[4], we have included some examples in the attached Exhibit 1.

(1) The "securities conversion transaction" language which states that the amount of foreign currency bought or sold should be "equal to the price" of the related securities transaction should not be read to exclude as a FX spot transaction an FX transaction where an amount of currency bought or sold is less than the price of the related securities transaction, provided the FX transaction is executed in

(continued…)

> The CFTC will consider the following to be a bona fide spot foreign exchange transaction: An agreement, contract or transaction for the purchase or sale of an amount of foreign currency equal to the price of a foreign security with respect to which (i) the security and related foreign currency transactions are executed contemporaneously in order to effect delivery by the relevant securities settlement deadline and (ii) actual delivery of the foreign security and foreign currency occurs by such deadline (such transaction, a "Securities Conversion Transaction"). For Securities Conversion Transactions, the CFTC will consider the relevant foreign exchange spot market settlement deadline to be the same as the securities settlement deadline.

[3] For example, Section 408(b)(18) of the Employee Retirement Income Security Act of 1974, as amended, permits pension plans to engage in foreign currency transactions "in connection with" securities transactions. Because pension plans routinely acquire foreign securities that require currency exchanges, the Department of Labor created an exemption for FX which permits "any foreign currency transaction" between a plan and a party in interest that is a bank or broker-dealer (or affiliate of either) if the foreign exchange transaction is "in connection with" the purchase, holding or sale of securities. 29 U.S.C. §1108 (b)(18)(A). Some of our members' clients, therefore, may have guidelines based on the language in this statute.

[4] The examples in Exhibit 1 are for illustrative purposes and are not intended to be inclusive of all FX spot transactions that may be implicated by the principles set forth herein.

connection with and for the purpose of converting funds into or out of the settlement currency of the securities trade (See Example 1 and Example 2).[5]

(2) The requirement that a "securities conversion transaction" is entered into "solely to effect the purchase or sale of a security" should not be read to exclude as an FX spot transaction an FX transaction executed in connection with the termination, cancellation, or unwind of a securities transaction (See Example 3). [6]

(3) The "securities conversion transaction" language which states that "actual delivery" of both the foreign currency and related security should occur by the relevant securities settlement deadline should not be read to exclude as an FX spot transaction an FX transaction executed in connection with the termination, cancellation, or unwind of a securities transaction (See Example 3).

(4) FX transactions executed in order to convert payment obligations and cash flows that arise in connection with the purchase, sale or ownership of a security (such as transaction fees or taxes, dividends, coupon payments, other distributions with respect to securities, or capital calls) should be deemed bona fide FX spot transactions, provided that such FX transactions are executed in connection with and for the purpose of converting funds into or out of the currency of the payment flow, and such FX transactions will settle within seven local business days (absent unintentional settlement error or delay) (See Example 4).

(5) The "securities conversion transaction" language which states that both the FX transaction and the related foreign securities transaction should be "executed contemporaneously" should be read to include an FX transaction executed in connection with and for the purpose of converting funds into or out of the settlement currency of the securities transaction, notwithstanding that the FX trade may not be entered into on the same day or same time as the related securities transaction, provided the FX transaction and related securities transaction occur within one or two local business days of each other (See Example 2).

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[5] For example, an FX transaction executed to settle a foreign securities transaction may not be "equal to the price of the foreign security" because the purchaser already holds a currency balance in reserve, or receives a currency payment in connection with other trades in the same currency as the foreign security being purchased, that can be used to settle the foreign security purchase (See Example 1). Further, an FX transaction may be executed on a net basis in connection with the purchase or sale of multiple foreign securities that is then allocated to each foreign security for settlement (See Example 2).

[6] For example, in the event a securities transaction is canceled in part prior to settlement, market participants commonly will execute a subsequent FX transaction in order to partially offset the initial FX transaction that was entered into in connection with the original securities trade. Such offsetting FX transactions may be the only way to ensure that the correct amount of currency is delivered at settlement.

(6) The "securities conversion transaction" language which states that the amount of foreign currency bought or sold should be "equal to the price" of the related securities transaction should not be read to exclude as a FX spot transaction an FX transaction that is executed as a net trade, where the net trade is comprised of multiple FX transactions that individually would have satisfied the conditions of the securities conversion transaction if executed on a gross basis, provided that such FX transactions are then allocated on a gross basis for settlement (See Example 2).

(7) The "securities conversion transaction" language which states that the amount of foreign currency bought or sold should be "equal to the price" of the related securities transaction should not be read to exclude as a FX spot transaction an FX transaction where an amount of currency bought or sold is greater than the price of the related securities transaction, provided the FX transaction is executed in connection with and for the purpose of converting funds into or out of the settlement currency of the related securities trade, and the entity executing the FX transaction has estimated the amount of FX needed in good faith (See Example 5).

* * *

Based on the foregoing, we respectfully request that the staff of the Commission provide the guidance requested in this letter. We appreciate your consideration of this request, and stand ready to provide any additional information or assistance that you might find useful. Should you have any questions, please do not hesitate to contact Tim Cameron at 212-313-1389 or Matt Nevins at 212-313-1176.

Sincerely,

Timothy W. Cameron, Esq.
Managing Director,
Asset Management Group
Securities Industry and Financial Markets Association

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

cc: Hon. Gary Gensler, Chairman, Commodity Futures Trading Commission Hon.
Bart Chilton, Commissioner, Commodity Futures Trading Commission Hon.
Scott O'Malia, Commissioner, Commodity Futures Trading Commission Hon.
Mark Wetjen, Commissioner, Commodity Futures Trading Commission
Frank Fisanich, Chief Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission
David E. Aron, Counsel, Office of General Counsel, Commodity Futures Trading Commission

* * *

Certification Pursuant to Commission Regulation 140.99(c)(3)

As required by Commission Regulation 140.99(c)(3), we hereby (i) certify that the material facts set forth in the attached letter dated August 27, 2013 are true and complete to the best of our knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,

Timothy W. Cameron, Esq.
Managing Director, Asset Management Group
Securities Industry and Financial Markets Association

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

Exhibit 1
Securities Conversion Transaction Examples

Example 1 – FX Trade Not Equal to the Price of Security Trade

Asset manager purchases or sells a foreign security and needs to purchase or sell the foreign currency in which that security is denominated in order to either: (i) settle the security purchase or (ii) repatriate the funds arising from the security sale into the base currency of the fund. If the asset manager has or will have available amounts of the required foreign currency in its account at the time of the settlement of the security trade (possibly due to the settlement of earlier transactions in the same currency pair), or the asset manager wishes to leave a portion of the proceeds in the foreign currency to cover future needs, the manager may instruct its trading desk to purchase or sell only the difference needed for settlement of the security trade or repatriation of the funds, rather than the entire amount due or to be received.

Example 2 –Bulk Trades, Net Settlement and Delayed Trade Execution

Asset manager purchases and sells foreign securities denominated in a particular currency with a settlement date of T+4 for various accounts throughout the day. This can either be a single bulk transaction which is allocated for settlement to the particular accounts, or multiple transactions over the course of the day. In order to facilitate settlement and avoid increased transaction costs (in the form of a bid-offer spread) associated with executing FX transactions concurrently with each separate securities transaction, the asset manager will aggregate, net, price and execute one or more covering FX transactions in a net amount as needed to meet the requirements for settlement of the foreign securities purchased (or repatriation of funds into the base currency of the account if the overall transaction is a sale) with settlement intended to occur on the same day as the settlement date of the foreign securities transaction. These FX transactions are typically executed during the same trading day or, if the securities transactions are executed late in the trading day, during the morning of the next following trading day (i.e., with a maturity of either T+4 or, if the FX transaction is entered into the next day, T+3).

Example 3 – Cancellations and Modifications

Asset manager purchases foreign securities on behalf of an account. Suppose the securities are South African securities. The securities market convention for South Africa is T+7 settlement and this purchase requires settlement in South African Rand (ZAR). In order to ensure that the USD/ZAR trade settles on the same day as the securities, the asset manager executes an USD/ZAR FX transaction for settlement on T+7 and in a notional amount equal to the purchase price of the security. Following the initial trade on T+0, due to changing market conditions, the asset manager determines as a fiduciary matter that it needs to terminate all (or part of) the securities trade. Suppose this termination takes place on T+3 (i.e., 4 days before the original planned settlement date). Consequently, the covering FX trade also needs to be modified or cancelled. Market practice for this type of modification or cancellation in the FX market is to enter into an offsetting transaction rather than cancel and terminate the original trade (e.g., the account would sell back all (or a portion of) the ZAR it bought rather than unwind the original FX trade). Therefore, once the securities transaction is modified or cancelled, the account will enter into a new FX trade with a maturity of T+4 and a notional amount equal to the ZAR equivalent amount of the portion of the securities trade that was canceled. If it is a complete cancellation, the entire ZAR amount will be sold back with a maturity of T+4.

Example 4 – Dividends, Coupons and Other Corporate Actions

Asset manager may execute (or instruct the custodian to execute) FX transactions in connection with corporate actions or income repatriation related to foreign securities holdings on behalf of an account. These conversions are necessary to facilitate the normal business and operations of the account with respect to transaction fees or taxes, dividends, coupon payments, other distributions with respect to securities, or capital calls. For example, if a dividend is paid on a foreign security, the asset manager will issue instructions to the custody bank (or its trading desk) upon its receipt of notice of such event, to enter into an FX transaction with settlement linked to the payment of the dividend. The same rationale that requires entering into a FX transaction with respect to the purchase of a foreign security equally applies in connection with the receipt of dividend payments with respect to the holding of a foreign security. Among other things, the FX transaction minimizes operational risk for the client account. The same would be true of other situations giving rise to payment flows such as coupon payments, tax payments, class action settlements, capital calls and other routine corporate actions, such as stock splits, mergers and acquisitions, rights issues and spin-offs, arising from the ownership of securities which result in foreign currency payments to shareholders whose accounts are denominated in another currency.

Example 5 – FX Trade Exceeding the Price of Securities Transaction

An asset manager may need to enter into an FX transaction in an amount different than the price of the related securities transaction to cover taxes, fees or other transactional costs related to the securities transaction. Further, an asset manager may believe it is best for the client to enter into an FX transaction relating to an outstanding unfilled securities transaction order prior to execution of the securities transaction order. In such a situation, the asset manager will necessarily have to estimate the amount of currency that will be needed or received. While the securities transaction will typically be executed shortly after the asset manager decides to buy or sell, in certain market conditions it may take longer for the securities transaction to be fully executed, and therefore the FX transaction may occur on an earlier business day than the related securities transaction.