



asset management group



October 21, 2015

Request for Relief – 17 C.F.R. §1.35(a)

Via E-mail

Ms. Eileen Flaherty
Director, Division of Swap Dealer and Intermediary Oversight

Mr. Vincent McGonagle
Director, Division of Market Oversight

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: **Extension of Time-Limited No-Action Relief for Certain Members of Swap Execution Facilities from the Requirement to Record Oral Communications Pursuant to Commission Regulation 1.35(a) — No-Action Letters 13-77, 14-60 and 14-147**

Dear Ms. Flaherty and Mr. McGonagle:

The Asset Management Group (“AMG”)¹ of the Securities Industry and Financial Markets Association (“SIFMA”) and Managed Funds Association (“MFA”)² request an

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

² Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

extension of No-Action Letter 14-147's Time-Limited No-Action Relief for Certain Members of Swap Execution Facilities from the Requirement to Record Oral Communications Pursuant to Commodity Futures Trading Commission (the "Commission") Regulation 1.35(a). While AMG and MFA believe that this relief should be provided through amending Regulation 1.35(a) pursuant to the proposed rulemaking published in the *Federal Register* on November 14, 2014,³ AMG and MFA request that the no-action relief be extended if the final Commission Regulation is not in effect prior to the no-action relief's December 31, 2015 expiration.

I. Background

On December 10, 2013, the AMG and MFA requested, among other things, that the Commission exempt asset managers that participate on swap execution facilities ("SEFs") from the oral and written recordkeeping requirements of Commission Rule §1.35(a).⁴ Material representations in the December 10, 2013 request continue to be true and complete.

On December 20, 2013, the Division of Swap Dealer and Intermediary Oversight ("DSIO") and the Division of Market Oversight ("DMO") issued No-Action Letter 13-77 through which the Divisions stated that they "will not recommend that the Commission take enforcement action against a commodity trading advisor that is a member of a SEF for failure to comply, prior to May 1, 2014, with the requirement under Regulation 1.35(a) to record oral communications."⁵

On April 17, 2014, AMG requested an extension of No-Action Letter 13-77, renewing its request to exempt asset managers that are members of SEFs or designated contract markets ("DCMs") from the oral and written recordkeeping requirements of Regulation 1.35(a).⁶ Material representations in the April 17, 2014 request continue to be true and complete.

³ 79 Fed. Reg. 68140 (November 14, 2015); comments available at: <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1538>.

⁴ SIFMA AMG and MFA's Letter dated December 10, 2013 to Mr. Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight re: Request for Interpretive Guidance and Relief on Application of Rule 1.35(a) to Asset Managers, available at: <http://www.sifma.org/issues/item.aspx?id=8589946605>.

⁵ No-Action Letter 13-77, available at: <http://www.cftc.gov/idx/groups/public/@lrlattergeneral/documents/letter/13-77.pdf>.

⁶ SIFMA AMG's Comments on Proposed Rule 79 Fed. Reg. 68140 available at: <http://www.sifma.org/issues/item.aspx?id=8589948677>.

On April 25, 2014, DSIO and DMO issued No-Action Letter 14-60, extending the no-action relief provided by No-Action Letter 13-77 until December 31, 2014.⁷

On November 14, 2014, the Commission published in the *Federal Register* a Notice of Proposed Rulemaking, by which the Commission proposed, among other things, to amend Commission Regulation 1.35(a) to exclude unregistered members of DCMs and SEFs from the requirements to retain text messages and to maintain records in a particular form and manner, and exclude commodity trading advisors from the oral recordkeeping requirement (the “Proposed Amendment”).⁸ The comment period closed on January 13, 2015.

On December 16, 2014, DSIO and DMO issued No-Action Letter 14-147, extending the no-action relief provided by No-Action Letter 14-60 until December 31, 2015.⁹

As of the submission of this letter, the proposed amendment to Commission Regulation 1.35(a) has not been promulgated and the relief in No-Action Letter 14-147 has not been extended.

⁷ No-Action Letter 14-60, available at:
<http://www.cftc.gov/idc/groups/public/@lrlattergeneral/documents/letter/14-60.pdf>.

⁸ 79 Fed. Reg. 68140 (November 14, 2015); see MFA’s Comments dated January 13, 2015, available at:
<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60238&SearchText=Management%20Funds%20Association>.

⁹ No-Action Letter 14-147, available at:
<http://www.cftc.gov/idc/groups/public/@lrlattergeneral/documents/letter/14-147.pdf>.

II. Relief Requested

AMG and MFA request that the no-action relief in No-Action Letter 14-147 be extended to expire on the earlier of: (i) December 31, 2016; or (ii) the effective date of any Commission action with respect to the Proposed Amendment.

* * *

Should you have any questions, please do not hesitate to contact AMG through Tim Cameron (202-962-7447/ tcameron@sifma.org) or Laura Martin (212-313-1176/ lmartin@sifma.org), or MFA through Stuart Kaswell or Laura Harper Powell (202-730-2600/ lharperpowell@managedfunds.org).

Respectfully submitted,

/s/ Timothy W. Cameron, Esq.
Timothy W. Cameron, Esq.
Managing Director
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/s/Laura Martin
Laura Martin
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/s/ Stuart J. Kaswell
Stuart J. Kaswell
Executive Vice President, Managing Director and General Counsel
Managed Funds Association

cc: The Honorable Timothy Massad, Chairman
The Honorable Sharon Bowen, Commissioner
The Honorable J. Christopher Giancarlo, Commissioner
Mr. Christopher Kirkpatrick, Secretary
Ms. Katherine Driscoll, Associate Chief Counsel, Division of Swap Dealer and
Intermediary Oversight

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 October 21, 2015 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.

Respectfully submitted,

/s/ Timothy W. Cameron, Esq.

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/s/Laura Martin

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