



| asset management group

17 C.F.R. Parts 37.12(a)(2)

February 14, 2014

Mr. Vincent McGonagle
Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Request for Relief: Trade Execution Requirement -- Implementation Phase-In Recommendation

Dear Mr. McGonagle:

The Asset Management Group (“AMG”)¹ of the Securities Industry and Financial Markets Association (“SIFMA”) is writing to renew our request in our letter to you of January 13, 2014 (the “January 2014 AMG Letter”) that the Commodity Futures Trading Commission’s (the “Commission’s”) Division of Market Oversight (the “Division”) grant relief from Commission regulation 37.12(a)(2)’s currently pending effective dates for mandatory swap execution facility (“SEF”) execution (such date, the “MAT Effective Date”) for market participants that are neither swap dealers (“SDs”) nor major swap participants (“MSPs”) (collectively “non-SDs/MSPs”) by not recommending enforcement action against any non-SD/MSP for non-compliance with a SEF execution requirement for 90 days after the applicable MAT Effective Date. As detailed in the January 2014 AMG Letter and our previous letters,² and as we have explained in discussions with Division and Commission staff, our members have had a host of concerns regarding the

¹ 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 Request for Relief Relating to Swap Execution Facility Implementation and Swap Trade Execution, SIFMA AMG, Sept. 23, 2013, available at <http://www.sifma.org/issues/item.aspx?id=8589945265> (the “September 2013 AMG Letter”) (requesting, among other things, an extension of the SEF implementation date until April 1, 2014); Straight-Through Processing, SEF Implementation and Relief Relating the Aggregation Provision in the Block Trade Rule, SIFMA AMG, Oct. 25, 2013, available at <http://sifma.org/issues/item.aspx?id=8589945882> (the “October 2013 AMG Letter”) (requesting, among other things, clarity around certain points in the Commission’s Straight-Through Processing guidance); Request for Interpretive Guidance and Relief on Application of Rule 1.35(a) to Asset Managers, SIFMA AMG and Managed Funds Association, Dec. 10, 2013, available at <http://www.sifma.org/issues/item.aspx?id=8589946605> (the “December 2013 AMG Letter”); and Request for Interpretive Guidance Relating to Consent to Jurisdiction on Swap Execution Facilities, SIFMA AMG, Jan. 23, 2014, available at <http://www.sifma.org/issues/item.aspx?id=8589947194> (“AMG Consent to Jurisdiction Letter”).

implementation timeline of the SEF mandate. With the first MAT Effective Date rapidly approaching, our concerns have not dissipated, but rather, have intensified based on the multitude of issues that our members have experienced in testing and/or trading on SEF platforms. In our most recent discussion with Division staff, we were asked to identify the biggest concerns that remain for asset managers on-boarding SEFs. In light of our ongoing concerns and in response to the Division's request, we are providing this supplemental information in furtherance of the relief requested in the January 2014 AMG Letter for phased implementation of the SEF mandate.

Results of SIFMA AMG Member Survey

As previously indicated to you, AMG polled its members to gauge their preparedness for execution of swaps on SEFs in late January.³ We received responses from 19 asset management firms, the results of which are summarized below:

- 42% of respondents were not yet connected to any SEFs;
 - Of those connected, 80% are only connected to 1 or 2 SEFs (the other 20% are connected to 3);
 - Of those connected, only 20% are conducting live trades and 20% are not trading at all (the other 60% are in testing environments only);
 - Only 1 respondent is conducting more than ten percent of their swap trades on SEFs;
- 77% of respondents answered that they are either “uncomfortable” or “not at all comfortable” with trading swaps on SEFs starting on February 15. Only 1 respondent answered that they were “comfortable” with the first MAT Effective Date of February 15; and
- We asked respondents to identify “the biggest hurdles you face with regards to trading on SEFs” and here is a sampling summarizing some of the most salient responses we received, sorted by the most common responses first:
 - Rulebook Issues (e.g., rulebook churn, differing provisions, unclear and/or objectionable provisions, one-sided rulebooks) (See “Broad Client Representations Required in SEF Rulebooks” below);⁴
 - Pre trade credit check workflows and pre trade allocation are poorly designed;
 - Internal systems (connectivity across the trading platform, lack of specifications to properly integrate with SEFs);
 - Recordkeeping and recording, both written and oral requirements (i.e., CFTC Rule 1.35), when and if they become applicable;⁵

³ All survey responses were received during the period of January 28, 2014 through January 31, 2014.

⁴ See September 2013 AMG Letter; see also Request for Action by CFTC to Conduct Pre-MAT Compliance Reviews of SEF Onboarding Documentation and to Enforce SEF Rules and Related Guidance, Managed Funds Association, Jan. 8, 2014 (the “MFA Letter”).

⁵ See December 2013 AMG Letter and Division of Swap Dealer and Intermediary Oversight and Division of Market Oversight Time-Limited No-Action Relief for Certain Members of Swap Execution Facilities from the (...continued)

- Different processes for each SEF;
- Consent to jurisdiction (See “Consent to Jurisdiction” below);⁶
- Potential technology limitations of certain derivatives clearing organizations (“DCOs”) (e.g., bunched order flow is not available for certain credit default swap index contracts through any affirmation platform other than a DCO’s affiliated affirmation platform to which many clients of our members are not linked) (See also “Bunched Orders for Credit Default Swaps” below);⁷
- New documentation for standby FCMs and concerns with the evolution of standby FCMs;
- Concerns over selecting the “best” SEFs (i.e. enough liquidity);
- SEFs are untested/lack of familiarity;
- Treatment of packaged transactions;⁸
- Straight-through processing (“STP”) guidance;⁹
- SEFs being able to immediately handle an environment where everyone will be required to execute mandated swaps on SEFs at once;
- Confirmations;¹⁰

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Requirement to Record Oral Communications Pursuant to Commission Regulation 1.35(a), CFTC Letter No. 13-77, Dec. 20, 2013, available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/doc> (“CFTC Recordkeeping No-Action Letter”). Notwithstanding the CFTC Recordkeeping No-Action Letter, our members remain highly concerned as to whether the written and oral recordkeeping requirements of 17 CFR 1.35 will apply to them once they begin executing swaps on SEFs (and in the case of the oral recordkeeping requirements, when the CFTC Recordkeeping No-Action Letter expires). As such, our members are hesitant about accessing SEFs directly until the requirements that may be applicable to them under 17 CFR 1.35 are further clarified.

⁶ See AMG Consent to Jurisdiction Letter. The Division responded to this letter on February 11, 2014. See Division of Market Oversight Guidance on Swap Execution Facility Jurisdiction, Feb, 10, 2014, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmostaffguidance021014.pdf> (the “Consent to Jurisdiction Guidance”). As described further below, many of our members remained concerned about consent to jurisdiction notwithstanding the issuance of the Consent to Jurisdiction Guidance.

⁷ See MFA Letter.

⁸ The Commission has addressed this concern for the time being by issuing 90 day no-action relief. See No-Action Relief from the Commodity Exchange Act Sections 2(h)(8) and 5(d)(9) and from Commission Regulation § 37.9 for Swaps Executed as Part of a Package Transaction, CFTC Letter No. 14-12, Feb. 10, 2014, available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/letter/14-12.pdf>.

⁹ See October 2013 AMG Letter.

¹⁰ See September 2013 AMG Letter and October 2013 AMG Letter, where we made the following observations:

“Challenges relating to confirming trades are also unresolved. If a SEF must deliver a written record of all of the terms of the transaction which shall legally supersede any previous agreement and which constitutes the “confirmation” of the transaction, but the trading counterparties have negotiated bespoke terms (for example, product definitions, tax representations or additional disruption events), how will that SEF know that these terms exist to incorporate them into the confirmation? We acknowledge Commission guidance suggesting that counterparties should address this matter by delivering master agreements to the SEFs ahead of execution, so that the SEFs may incorporate relevant terms into confirmations. We respectfully

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- Questions around affiliated advisors with the same list of authorized traders entering the SEF as different participants (See “Trading on a SEF for Multiple Clients and Affiliated Advisers” below);
- Multiple FCMs on the same trade (e.g., when a position is rolled across portfolios); and
- Issues with coding compliance tests (i.e. what documents need to be in place to put an account in a cleared swap trade on a SEF).

As indicated above, some of these concerns (and others) are discussed in further detail below. In addition to the concerns articulated in our survey, we have recently heard from members who have reported significant complications in testing or executing trades on SEFs and having them cleared in this past week alone. The issues span a variety of areas, including problems with pre-trade credit check flows for clearing certainty, account mappings, transaction pricing issues and middleware bugs, among others.

Significant Unaddressed Concerns and Ongoing Issues with SEF Implementation

As our survey has indicated, many of the concerns with the implementation of mandatory SEF execution that we have highlighted in our prior letters and in our discussions with Division and Commission staff remain outstanding. Below we address in more detail some of the most significant concerns that our members face as asset managers accessing SEFs to execute swaps on their clients behalf:

Trading on a SEF for Multiple Clients and Affiliated Advisers. Asset managers often execute large notional/bunched order trades on behalf of multiple clients, which, for regulatory, governance or other reasons may be advised by different affiliated investment advisers. Our members have reported that SEFs they are using have not shown the capability to allow traders to designate more than one participant identification for the same trade that ordinarily would be executed contemporaneously, including in some cases requiring a trader to log off and then log back on to the SEF platform. As a result, some of our members have been forced to break down their large trades by adviser, which results in a sequencing of orders rather than bunching of orders as permitted under the CFTC rules. In turn, this could result in clients of asset managers receiving different prices for transactions which effectively should be included in the same transaction, which runs counter to the policy reasons why asset managers enter into large trades

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submit that this approach is unworkable as our members’ discussions with provisionally registered SEFs suggest that they would be unable to comply with such a “master agreement delivery” paradigm. We also note that delivering master agreements may conflict with the confidentiality and other/ fiduciary obligations our members have to their clients. In addition, it is highly impractical for a SEF to familiarize itself with the often complex, bespoke master agreement and trade terms (and the various documents that may be incorporated by reference) in order to produce a customized, potentially complex confirmation on a trade by trade basis. We are also unsure of how this guidance would be implemented when counterparties are entering into transactions anonymously on an order book. Finally, we are uncertain whether our members’ trading counterparties will agree to the delivery of master agreements (and the proprietary terms contained therein) to SEFs in this context.”

for their clients. Fragmented liquidity could very likely result in suboptimal execution levels, which presents unique challenges to asset managers with respect to their fiduciary and best execution obligations.

Broad Client Representations Required in SEF Rulebooks. Our members are continuing to negotiate overly broad provisions of SEF rulebooks which attempt to require representations that asset managers may not be practically in a position to make on behalf of their clients. Examples of such provisions include the following:

- Notice of any proceedings that may be initiated against a client by any government body or self-regulatory organization;
- Notice of any indictment, conviction or guilty plea by principals or officers of a client;
- Requirements to provide SEF rulebooks and any notices from SEFs to clients; and
- Representations that clients are in compliance with all applicable laws.

Asset managers will not have any mechanism to monitor or be aware of violations by clients or their representatives, nor would clients welcome the institution of such a mechanism merely so asset managers can trade certain swap instruments on their behalf. Similarly, it would be atypical and unwarranted for asset managers to provide clients with copies of rulebooks or notices.

Bunched Orders for Credit Default Swaps (“CDS”). As articulated by the Managed Funds Association in the MFA Letter, there is currently no alternative to a “super FCM” or standby arrangement for trading CDS in bunched orders. Unlike bunched orders for interest rate swaps, no DCO has yet implemented the technology to allow asset managers to pre-allocate bunched orders for CDS and for futures clearing merchants (“FCMs”) to perform pre-execution checks of such allocations before the bunched order is entered. It is our understanding that this functionality will be rolled out in the second quarter of 2014. While many of our members see benefits in a standby FCM model, others would prefer not to utilize this model. In any event, our members should not be forced into a choice of using a standby FCM for CDS or not trading CDS in bunched orders.

Block Trades. As indicated in the MFA letter, it is still unclear how the workflows for block trades will work. In particular, the market had been under the impression that a request-for-quote (“RFQ”) to one would be permitted on SEFs for block trades and some SEFs have been planning on providing for this capability. If this will not be permitted on SEFs, it raises questions as to how some SEFs will be able to process block trades and how FCMs will perform pre-execution credit checks for pre-allocated blocks.¹¹ It remains unclear how this will work for asset managers entering into block trades following the first MAT Effective Date.

Limit Orders. Clients of asset managers do not have a way to execute limit orders on swaps as the agency model has not sufficiently evolved yet to address this.

¹¹ See October 2013 AMG Letter in which we raised this concern.

Consent to Jurisdiction. In the AMG Consent to Jurisdiction Letter, we requested that the Division issue the following guidance:

“Pursuant to Commission regulation 37.202(b), SEFs must require an ECP to consent to its jurisdiction prior to “granting access” to its facility. While in the preamble to the final rule the Commission states that the scope of Commission regulation 37.202(b) is not limited to members, and that, to the contrary, all members and market participants of a SEF, as defined under Commission regulation 37.200, are within the scope of Commission regulation 37.202(b), this consent requirement should only apply [to] persons accessing SEFs and making trading decisions on behalf of market participants that are parties to transactions executed on a SEF. Therefore, the Division believes that it is sufficient for regulation 37.202(b) for a SEF to have jurisdiction over an asset manager exercising trading discretion for its clients, regardless of whether the asset manager trades directly on the SEF or through an agent, without requiring such asset manager's clients to also submit to the jurisdiction of the SEF.”

While we appreciate the Division addressing this important issue, many of our members remain concerned with the Division’s approach in the Consent to Jurisdiction Guidance. With the guidance being issued less than one week before the first MAT Effective Date, our members have been left with little time in determining how to address the guidance with their clients.

Documentation with Particular Swap Dealer Entities. Although not an issue for mandated swap trades, for uncleared trades, SEF rulebooks require participants to put on trades only with counterparties with which they have documentation. However, SEF platforms often only identify dealer counterparties by family name, so if an RFQ is put out to a given dealer family, it is possible that the particular counterparty that executes the trade may be one with which the client does not have documentation, resulting in a violation of the SEF rulebook.

Recommendation and Requested Relief

As we have stated consistently, AMG supports an orderly transition to the SEF execution paradigm. An orderly transition will help avoid market disruption and fragmentation of liquidity and help ensure the success of mandatory SEF execution. Nevertheless, the forgoing considerations lead us to one inevitable conclusion: the market is not ready for mandatory SEF execution for asset managers and other end users. From our very first letter relating to SEFs after the final SEF rules were adopted, we have explained our rationale as to why the timeline for implementing SEF execution was too short.¹² In each subsequent letter, we have identified issues that should be adequately addressed before swaps are mandated for SEF execution.¹³ And now, with the first MAT Effective Date upon us, these issues (and others highlighted above) have not been sufficiently addressed, leaving the market with an abundance of uncertainties. As

¹² September 2013 AMG Letter.

¹³ See October 2013 AMG Letter, December 2013 AMG Letter, AMG Consent to Jurisdiction Letter and January 2014 AMG Letter.

we stated in the September 2013 AMG Letter: we “firmly believe that without sufficient time and guidance necessary to address key implementation challenges and interpretive questions, an orderly transition will not be possible.” If the Commission is indeed interested in an orderly implementation of the SEF mandate and preventing disruptions to liquidity in the swaps marketplace, we believe that it is incumbent upon you to provide asset managers and other end users with additional time. Accordingly, we strongly urge you to grant the request in the January 2014 AMG Letter and issue no-action relief or take other appropriate measures to grant relief from Commission regulation 37.12(a)(2) for all of the currently pending MAT Effective Dates for non-SDs/MSPs by not recommending enforcement action against any non-SD/MSP for non-compliance with a trade execution requirement for 90 days after the applicable MAT Effective Date.

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Based on the foregoing, we respectfully request that the Division grant the relief described herein and in the January 2014 AMG Letter. We appreciate your consideration of this request, and stand ready to provide any additional information or assistance that the Division might find useful. Should you have any questions, please do not hesitate to contact 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. Mark Wetjen, Acting Chairman, Commodity Futures Trading Commission
Hon. Bart Chilton, Commissioner, Commodity Futures Trading Commission
Hon. Scott O'Malia, Commissioner, Commodity Futures Trading Commission
David Van Wagner, Chief Counsel, Director, Division of Market Oversight
Nancy Markowitz, Deputy Director, Division of Market Oversight
Joseph Cisewski, Co-Chief of Staff
Scott Reinhart, Co-Chief of Staff

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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 February 14, 2014 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