



| asset management group

January 23, 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 Interpretive Guidance Relating to Consent to Jurisdiction on Swap Execution Facilities

Dear Mr. McGonagle:

The Asset Management Group¹ (“AMG”) of the Securities Industry and Financial Markets Association (“SIFMA”), is writing to request interpretive guidance from the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”) regarding an issue of extreme importance to our members relating to the implementation of mandatory swap execution on swap execution facilities (“SEFs”). Specifically, we recommend that the Division issue guidance relating to the consent to jurisdiction provisions contained in Commission regulation 37.202(b) (the “Jurisdiction Provision”) as described below.

As we have indicated in our prior letters to the Division relating to SEF implementation,² AMG supports an orderly transition to swap execution on SEFs. In order to ensure that this transition is not disruptive to market participants, it is imperative that uncertainties relating to the rules of the road for swap execution are eliminated to the fullest extent possible. As we have discussed in our meetings with the Commission and Division staff and as we have addressed in the Prior AMG SEF Letters, SEF rulebooks have been a source of a great deal of confusion and contention in our members’ attempts to onboard SEFs. We appreciate the efforts of the Division

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 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>; 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>; Request for No-Action Relief: Trade Execution Requirement -- Implementation Phase-In Recommendation, SIFMA AMG, Jan. 13, 2014, available at <http://www.sifma.org/issues/item.aspx?id=8589946972> (collectively, the “Prior AMG SEF Letters”).

to help clarify areas where there have been issues emanating out of the SEF rulebooks and interpretations of the final rules applicable to SEFs³ in the past.⁴

However, with less than one month before execution on SEFs will become mandatory for some swaps, we remain highly concerned about one particular rulebook issue that we have discussed with you in the past, the Jurisdiction Provision, as it relates to asset managers and their clients.⁵ The Jurisdiction Provision states that “[p]rior to granting any eligible contract participant access to its facilities, a swap execution facility shall require that the eligible contract participant consent to its jurisdiction.” We believe that the intention of this provision was to ensure a SEF has jurisdiction over persons accessing its markets and making trading decisions about entering into swaps on a SEF in order to effectively investigate and potentially sanction persons that may violate the SEF rules.⁶ Clients of an asset manager do not have “access” to trading on SEFs. They are neither authorized users of the SEFs nor do they directly engage in any trading activity on the SEF platforms. When a SEF is accessed by an asset manager (directly through an agent), it is the asset manager, and not its underlying clients, who is exercising discretion to enter into trades on the SEF. Therefore we believe that it should be sufficient for the asset manager, and not every underlying client, to consent to the jurisdiction of the SEF.

Where an asset manager determines when, how and on which SEF to execute a trade, the potential questions and issues arising from that activity should be directed to the asset manager, not the underlying client. To the extent that there is an issue with a particular swap trade executed on a SEF by an asset manager on behalf of a client or with enforcement of a Commission or SEF rule relating to that trade, the party that the SEF would need jurisdiction over is the asset manager, not the underlying client. As the Commission noted in the preamble to the Final SEF Rules, “a SEF’s ultimate recourse against a market participant is to deny such market participant access to the SEF and if appropriate, refer the market participant to the Commission.”⁷ A SEF may enforce such rights by terminating the asset manager’s access. Furthermore, to the extent that it is necessary to obtain records relating to a trade entered into on a SEF by an asset manager on behalf of a client, the asset manager should have the relevant records relating to those trades.

Requiring the client, in addition to the asset manager, to consent to SEF jurisdiction would add little or no incremental benefit for the SEF or the Commission. However, requiring clients of asset managers to affirmatively consent to jurisdiction of a SEF would result in unnecessary burdens on asset managers to educate their clients about this requirement and the terms of each of the SEF’s rulebooks and to obtain these consents before they could execute

³ Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33476 (Jun. 4, 2013) (the “Final SEF Rules”).

⁴ See, e.g., CFTC Division of Market Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities, Sept. 30, 2013; CFTC Division of Market Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities, Nov. 15, 2013, <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmosefguidance111513.pdf>.

⁵ Our concerns are particularly acute for asset managers that include swaps in separate accounts that they manage for institutional clients. The majority of our members include such accounts among the clients that they manage.

⁶ Final SEF Rules, 77 Fed. Reg. at 33509.

⁷ Id.

trades on SEFs on the clients' behalf. To the extent that such an affirmative consent is required from a client and can not be obtained before a SEF mandate goes into effect, an asset manager would need to cease trading a swap included in the mandate on behalf of that client (or to the extent the client is not a U.S. person, to execute the swap outside of the United States). This result would be disruptive to the client's investment portfolio, the swaps market and SEF implementation. Accordingly, we view the Jurisdiction Provision as a gating issue which may prevent many asset managers from being able to adhere to the SEF rulebooks and trade on SEF platforms.

In order to address this significant concern, we recommend that the Division issue guidance to all SEF registrants and applicants stating the following:

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 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.

In our members' experience to date, we believe that most SEFs would be supportive of this clarification. Some SEFs have already been willing to make the requested change in their rulebooks, while others have indicated that they would be willing to do so upon clear guidance from the Commission. We believe that issuing the requested guidance will remove the uncertainty that is currently present in the marketplace and eradicate a substantial hurdle to ensuring a smooth transition to SEF execution. Without this guidance, we remain highly concerned that the transition to SEFs will be disruptive to our members and their clients, which will result in impaired liquidity and market fragmentation. Accordingly, we hereby request that the Division issue the interpretive guidance set forth above.

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Based on the foregoing, we respectfully request that the Division issue the interpretive guidance described in this 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 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. 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
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