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17 C.F.R. Parts 1, 37, 38, 39 and 43

October 25, 2013

Mr. Ananda Radhakrishnan
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Commodity Futures Trading Commission
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1155 21st Street NW
Washington, DC 20581

Mr. David Van Wagner
Chief Counsel, Division of Market Oversight
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Ms. Nancy Markowitz
Deputy Director, Division of Market Oversight
Commodity Futures Trading Commission
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Washington, DC 20581

Re: **Straight-Through Processing, Swap Execution Facility Implementation and Relief Relating to the Aggregation Provision in Final Block Trade Rule**

Dear Mr. Radhakrishnan, Mr. Van Wagner and Ms. Markowitz:

The Asset Management Group ("**AMG**")[1] of the Securities Industry and Financial Markets Association ("**SIFMA**") is writing to (i) express significant concerns with the Staff Guidance issued by the Division of Market Oversight ("**DMO**") and the Division of Clearing and Risk ("**DCR**" and collectively with DMO, the "**Divisions**") of the Commodity Futures Trading Commission (the "**Commission**") on September 26, 2013 regarding Swaps Straight-Through Processing (the "**STP Guidance**"), (ii) request an extension of certain no-action letters[2] issued

[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] Time-Limited No-Action Relief for Temporarily Registered Swap Execution Facilities from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations, CFTC Letter No. 13-55
(….continued)

by Commission staff relating to the implementation of the Commission's swap execution facility ("**SEF**") final rules (the "**SEF Final Rules**")[3] until at least February 1, 2014, and (iii) request further no-action relief (through March 31, 2014) relating to the aggregation prohibition in the final block trade rule.[4]

I. STP Guidance

The AMG has several, significant concerns with the STP Guidance which was issued on September 26, 2013, a mere six days before the date that SEF execution became effective. The STP Guidance unexpectedly changed the landscape for the execution of swaps that are intended to be cleared in several material ways. In some instances, the STP Guidance raised new questions that remain unanswered and, in others, it introduced new hurdles to execution of swaps on SEFs. Until these issues are adequately resolved, we believe that SEF execution of swaps that are intended to be cleared entails many important, open questions and unknown risks. It is for this reason and others, as discussed further below, that we make the requests in parts II. and III. of this letter.

Our concerns with the STP Guidance fall into the following categories: (a) the sudden, drastic decrease in the interpretation of "as soon as technologically practicable" from 60 seconds to 10 seconds; (b) the treatment of affirmation hubs; (c) the treatment of all trades that fail to clear within 10 seconds as void *ab initio*; (d) statements about breakage agreements; and (e) questions around block trades.

(a) Sudden, drastic decrease in interpretation of "as soon as technologically practicable" from 60 seconds to 10 seconds

The change in interpretation of "as soon as technologically practicable" from 60 to 10 seconds was an unexpected and substantial decrease in the time now expected for clearing

(continued….)

(amended) (Sept. 30, 2013); Time Limited No-Action Relief for Reporting Counterparties from Certain Continuation Data Reporting Requirements of Section 45.4 of the Commission's Regulations with respect to Uncleared Swaps Executed on or Pursuant to the Rules of a Temporarily Registered Swap Execution Facility, CFTC Letter No. 13-56 (Sept. 27, 2013); Time-Limited No-Action Relief for Temporarily Registered Swap Execution Facilities from Enforcement Responsibilities Under Commission Regulations 37.200(a), 37.200(b), 37.201(b)(1), 37.201(b)(3), 37.201(b)(5), 37.202(b) and 37.203, CFTC Letter No. 13-57 (Sept. 27, 2013); Time-Limited No-Action Relief to Temporarily Registered Swap Execution Facilities from Commission Regulation 37.6(b) for Non-Cleared Swaps in All Asset Classes, CFTC Letter No. 13-58 (Sept. 30, 2013); Time-Limited No-Action Relief for (1) Futures Commission Merchants from Requirement to Comply with Commission Regulations 1.73(a)(2)(i) and (a)(2)(ii); and (2) Temporarily Registered Swap Execution Facilities from Requirement to Comply with Commission Regulation 37.702(b), CFTC Letter No. 13-62 (Sept. 30, 2013) (collectively, the "**SEF Implementation No-Action Letters**").

[3] Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33,476 (June 4, 2013).

[4] 17 C.F.R. 43.6(h)(6). See Procedures To Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 Fed. Reg. 32,866, 32,940 (May 31, 2013) (the "**Block Trade Rule**").

certainty. While we do not take issue with the figures cited by the Divisions in the STP Guidance, just because 99% of trades may be accepted in 10 seconds or less does not mean that 10 seconds should now be the right standard, especially when combined with the treatment of trades that do not clear within 10 seconds as being void *ab initio* (as discussed further below). Furthermore, the figures cited in the STP Guidance are based off of clearing of the most liquid and standard cleared swaps; and we question whether these numbers would be the same when factoring in additional swap categories. The change to 10 seconds also does not account for additional time that may be necessary for derivatives clearing organizations ("**DCOs**") to aggregate risk being executed through multiple venues, which the Commission recognized in adopting rules allowing DCOs to screen trades before accepting or rejecting them.[5] These factors could result in increased rejections of trades and market disruption. Prior to issuance of the STP Guidance, everyone in the market had been operating under the so-called "60 second rule" and had built their workflows to comply with this timeframe. The changes described in the STP Guidance create considerable concern around swap trades that do not clear within 10 seconds but would be accepted within 10 and 60 seconds. We do not believe that these trades should suddenly be put at risk.

(b) ***Treatment of affirmation hubs***

While the Divisions' statement in the STP Guidance that affirmation hubs are permissible is helpful, it is conditioned on the applicable DCO viewing the affirmation hub as "an acceptable means for routing the swap." While we recognize that the language in the STP Guidance was excerpted from the SEF Final Rules, as we requested in our letter to DMO of September 23, 2013 (the "**September 23 AMG Letter**")[6], we believe that it would be beneficial to the market for the Commission to make a stronger statement, without conditioning the permissibility of these providers on the DCO's views. Today, many market participants use post-execution affirmation and allocation platforms as part of their central clearing models. Accordingly, the ongoing uncertainty continues to be a considerable hurdle to SEF execution.

We also do not think it is appropriate to hold swap trades routed through an affirmation platform to the 10 second standard adopted by the Divisions in the STP Guidance. By explicitly noting that use of an affirmation hub "does not excuse compliance with this timing standard,"[7] and without further clarity regarding how this period would be measured, the Divisions may be forcing many participants to significantly restructure their workflows and rework their

[5] See Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 Fed. Reg. 21278 at 21284 (April 9, 2012). "The Commission recognized that while immediate acceptance for clearing upon execution currently occurs in some futures markets, it might not be feasible for all cleared markets at this time. For example, where the same cleared product is traded on multiple execution venues, a DCO needs to be able to aggregate the risk of trades coming in to ensure that a clearing member or customer has not exceeded its credit limits."

[6] Available at http://www.sifma.org/issues/item.aspx?id=8589945265.

[7] See STP Guidance.

infrastructure to remove an important link in the chain, while providing an additional impediment to trading on SEFs.

(c) ***Treatment of all trades that fail to clear within 10 seconds as void ab initio and resubmission of trades***

AMG strenuously disagrees with the assessment of swap trades that fail to clear within 10 seconds as void *ab initio*. This interpretation creates considerable risk for trades that do not clear within this reduced timeframe, irrespective of the reason (e.g., for clerical errors, FCM limits with a DCO, or other reasons). We strongly disagree with the statements that failure to accept within 10 seconds would be "a rare event" and would result in "minimal financial exposure."[8] One percent of swap trades intended for clearing is too considerable of a number to brush off as "rare" and we are not sure what the basis is for the Divisions' conclusion that only minimal financial exposure would result. Treating these trades as void *ab initio* creates real, unnecessary risk for our members' clients. For example, a swap may be entered into to hedge another trade, which may or may not be a swap transaction itself. If the swap that fails to clear is deemed void *ab initio*, it would leave the other transaction unhedged and subject to the possibility of losses on the position during volatile markets.[9] Further, the deemed void *ab initio* trade may also leave a swap dealer counterparty exposed to unhedged risk if it has entered into an offsetting transaction for its part of the trade.

It is also unclear to us how quickly market participants would be notified of a swap trade that is voided for failure to clear within 10 seconds and how that determination will be communicated to other parties. For example, if the trade has already been reported to a swap data repository ("**SDR**"), it is unclear how the status of the reported transaction would be updated to reflect that it is void *ab initio*.

Perhaps most importantly though, we vehemently disagree with DMO's reading of Section 22(a)(4)(B) of the Commodity Exchange Act. Specifically, that Section clearly states that no swap between ECPs "shall be void, voidable, or unenforceable, ***and*** no party to such agreement, contract or transaction shall be entitled to rescind…. based solely on the failure of the agreement… (ii) to be cleared in accordance with section 2(h)(1) of this title." (emphasis added). The STP Guidance reads out the word "and" highlighted above. We do not agree that Section 22(a)(4)(B) only applies to participants in a swap and "does not prohibit the Commission or a SEF from declaring a trade to be void."[10] We urge the Commission to take a closer look at this statute and the position in the STP Guidance.

[8] *Id.*

[9] For example, an asset manager may enter into an interest rate swap on behalf of a client to hedge interest rate risk related to a mortgage bond held by that client; if the interest rate swap fails to clear within 10 seconds, the interest rate risk relating to the mortgage bond will be left unhedged.

[10] See STP Guidance.

We see no reason why swaps that fail to clear cannot just be resubmitted for clearing, and in some cases, resubmission may even be required by Commission regulations.[11] We understand that the Commission may be reassessing whether trades that fail to clear can be resubmitted and we encourage the Commission to reevaluate the position in the STP Guidance. To the extent that trades that fail to clear are allowed for resubmission, the Commission should also clarify that the trade does not need to be re-executed on a SEF, can be resubmitted at the same price on which it was originally executed and that the trade is not considered void if it is subsequently accepted for clearing.

(d) ***Statements about breakage agreements***

While we do not disagree with the Divisions that the usage of breakage agreements should not be a condition to access SEFs, we see no reason why a swap that was intended to be cleared cannot indeed revert to a bilateral contract if both parties agree to that remedy, even if the contract was indeed priced to be a cleared swap.[12] We see no reason why the Commission should take a view on what parties to a trade want to privately agree as a remedy for a trade that fails to clear, as long as the remedy is not in contravention of Commission rules or SEF user agreements.

(e) ***Questions around block trades***

We believe that the STP Guidance raises a host of questions regarding its application to block trades that should be addressed by the Commission.[13] For example, it is unclear whether pre-execution screening by a futures commission merchant ("**FCM**") would require pre-allocation of block trades or identification of clearing members for each transaction included

[11] See Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74284 at 74288 (Dec. 13, 2012)("[I]f counterparties submit their swap to a DCO for clearing and the swap fails to clear because it contains a term or terms that prevent any eligible DCO from clearing the swap, then the swap is not subject to the Commission's clearing requirement. On the other hand, if the swap fails to clear because one or both of the counterparties have not met the DCO's or their clearing members' credit requirements, then the swap remains subject to the clearing requirement and must be cleared as soon as technologically practicable after the counterparties learn of the credit issue. [. . .] Accordingly, a swap that fails to clear because of credit issues may not be voided by either eligible counterparty solely for the failure of the swap to be cleared in accordance with section 2(h)(1), but the basis for the failure to clear must be addressed by the counterparties and they must promptly resubmit the swap for clearing.")(emphasis added).

[12] We also note that a cleared swap may be priced to account for parties' ability to hedge the risk related to the swap without the risk of the swap being deemed void *ab initio*.

[13] CFTC regulation 43.2 defines "block trade" to mean "a publicly reportable swap transaction that: (1) Involves a swap that is listed on a registered swap execution facility or designated contract market; (2) Occurs away from the registered swap execution facility's or designated contract market's trading system or platform and is executed pursuant to the registered swap execution facility's or designated contract market's rules and procedures; (3) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (4) Is reported subject to the rules and procedures of the registered swap execution facility or designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5 of this [Part 43]." 17 C.F.R. 43.2.

within the block. As indicated above, depending on the ultimate resolutions of the issues identified in this letter, the vital role played by affirmation hubs could also be undermined. Additionally, it should be clarified that if one transaction within a block trade is rejected or deemed void *ab initio*, it should not impact the block trade or the other transactions in the block.

II. Extension of SEF Implementation No-Action Letters

We believe that the effectiveness of the SEF Implementation No-Action Letters (as defined in footnote 2 of this letter) should be extended until at least February 1, 2014. As the September 23 AMG Letter pointed out, there are a host of unanswered questions relating to reporting and confirmation, among other areas. Many of the questions we raised around confirmation and settlement[14] and trade reporting[15] remain unresolved, even after the issuance of the SEF Implementation No-Action Letters. While the industry continues to work through solutions, we do not believe that the requisite infrastructure will be in place before October 30, 2013 or even December 2, 2013. Similarly, our members continue to address the issues that they have identified in the SEF rulebooks, as described in the September 23 AMG Letter, but concerns over problematic provisions remain. While we greatly appreciate DMO's Guidance on September 30, 2013 regarding Application of Certain Commission Regulations to Swap Execution Facilities, it takes additional time for SEFs to update their rulebooks and have the changes reviewed by the industry and the Commission. The same applies for any rulebook

[14] The following excerpt from the September 23 AMG Letter identifies our questions and concerns relating to confirmation and settlement: "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? See 17 C.F.R. § 37.6(b). 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. See SEF Final Rules, 78 Fed. Reg. at 33491 n.195. We respectfully 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."

[15] The following excerpt from the September 23 AMG Letter identifies our questions and concerns relating to trade reporting: "Important and significant challenges exist with respect to trade reporting, which may affect the integrity of reported data. For example, if a SEF, a swap dealer and a central clearing counterparty each have Part 45 reporting obligations, and each entity reports the trade to their respective SDRs, will the marketplace connect a common universal swap ID ("**USI**") to these separate reports or will each have their own USI? See 17 C.F.R. § 45. ….. Potential fragmentation of reporting obligations under Parts 43, 45 and 46 will need to be clarified. More specifically, it is unclear whether trading counterparties, after SEFs report the transaction, will be capable of complying with their on-going reporting and valuation obligations and how all the reporting flows will work together. See 17 C.F.R. Part 43 (Real-Time Public Reporting of Swap Transaction Data)."

changes necessary as a result of the STP Guidance. We have also continued to work with Commission staff regarding some of the impartial access concerns that we believe need to be addressed in the rulebooks prior to many of our members enter into SEF user agreements. Perhaps most importantly, as described above, we have considerable concerns regarding the STP Guidance itself that we believe need to be further explored and clarified. We believe that the Divisions' September 30, 2013 no-action letter regarding the STP Guidance is helpful in that regard by deferring certain obligations, but we think it is essential that this letter be extended beyond November 1, 2013 while the issues identified above are sorted out and the necessary infrastructure is ready.[16] Further compounding the need for more time, it was very difficult to work through these outstanding issues with the Commission over the first three weeks of October while the Federal government was shut down. Ideally, had the Commission deferred SEF registration and compliance with the SEF Final Rules until April 1, 2014 as we requested in the September 23 AMG Letter, there would have been adequate time to address our concerns. However, given the path taken by the Commission in issuing the SEF Implementation No-Action letters, and the need for additional time to resolve these concerns and for SEFs to be able to revise their rules and obtain meaningful feedback from the industry on whether such changes are adequate, we hereby request that the Commission extend the effectiveness of each of the SEF Implementation No-Action Letters until no earlier than February 1, 2014. We believe that an extension beyond the end of the year is necessary as some firms shut down systems enhancements towards the end of the year for internal control reasons (e.g. so as to not have a systems modification jeopardize reporting obligations) and additional time will be necessary to make the technological changes necessary to connect to the SEF platforms that our members choose to use.

III. Request for Further Relief for Block Trade Size Order Aggregation

In light of the concerns expressed in this letter and in the September 23 AMG Letter relating to execution on SEFs, we renew our support of the letter submitted to DMO by International Swaps and Derivatives Association, Inc. (ISDA) on September 23, 2013 requesting further no-action relief relating to Order Aggregation of Certain Permitted Transactions. As substantial questions remain regarding the STP Guidance, the use of affirmation hubs and confirmation and reporting of swap trades executed on SEFs and our members remain concerned about provisions that still need to be adequately addressed in the rulebooks (all as described above), our members should not be required to aggregate orders on SEFs in order to avail themselves of block trade size treatment for purposes of the real-time reporting delay and cap size treatment for swaps that are listed, but not mandated, for trading on SEFs. In addition, as requested in the September 23 AMG Letter, we believe that the Commission should provide a central resource or database on its website of which swaps are listed on a SEF or designated contract market ("**DCM**") in order for market participants to know how to apply the no-action relief granted by DMO on July 30, 2013 (as amended August 6, 2013) relating to the Prohibition

[16] Time-Limited No-Action Relief for (1) Futures Commission Merchants from Requirement to Comply with Commission Regulations 1.73(a)(2)(i) and (a)(2)(ii); and (2) Temporarily Registered Swap Execution Facilities from Requirement to Comply with Commission Regulation 37.702(b), CFTC Letter No. 13-62 (Sept. 30, 2013).

of Aggregation under Regulation 43.6(h)(6) for Large Notional Off-Facility Swaps (the "**Block Trade Size Aggregation Relief**").[17] Without this type of central information source, AMG members are unable to plan or realize whether a SEF has listed such a transaction to its SEF platform, and therefore, know whether it can aggregate off of that SEF for purposes of the real-time reporting delay and cap size treatment.[18] As a result of the need for additional time to implement such central listing and to adequately address our ongoing concerns relating to SEF execution, we hereby request that the Commission extend the Block Trade Size Aggregation Relief for all large notional off-facility swaps, whether or not listed on a SEF, until March 31, 2014.[19]

Requested Relief: For the reasons stated herein, we respectfully request that the Divisions provide such clarification and relief as appropriate to address our concerns in this letter, including, without limitation, extending the SEF Implementation No-Action Letters until at least February 1, 2014 and the Block Trade Size Aggregation Relief for all large notional off-facility swaps, whether or not listed on a SEF, until March 31, 2014. Pursuant to regulation 140.99(c)(7), AMG also asks that if no-action relief under this request is denied in whole or in part, the Commission consider granting alternative relief, under the facts and circumstances described in this request.

* * *

[17] See No-Action Relief for Certain Commodity Trading Advisors and Investment Advisors From the Prohibition of Aggregation under Regulation 43.6(h)(6) for Large Notional Off-Facility Swaps, CFTC Letter No. 13-48 (July 30, 2013, amended August 6, 2013).

[18] The requested list should include a degree of specificity to identify the particular swap that is listed on a SEF or DCM.

[19] CFTC regulation 43.2 defines "large notional off-facility swap" to mean "an off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in § 43.2 of the Commission's regulations." 17 C.F.R. 43.2. For the avoidance of doubt, this request does not relate to any swaps that become mandated for execution on SEFs, upon the effective date of such mandate.

We appreciate your consideration of our comments and requests in this letter. We 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,

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

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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
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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 October 25, 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,

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

_____
Matthew J. Nevins, Esq.
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Securities Industry and Financial Markets Association