sifma
Invested in America

| asset management group

17 C.F.R. §37.12(a)(2)

January 13, 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 No-Action Relief: Trade Execution Requirement -- Implementation Phase-In Recommendation

Dear Mr. McGonagle:

The Asset Management Group [1] ("AMG") of the Securities Industry and Financial Markets Association ("SIFMA"), as authorized by Commission regulation 140.99, respectfully requests no-action relief from the Commodity Futures Trading Commission's (the "Commission's") trade execution requirement compliance date, as prescribed under Commission regulation 37.12(a)(2). Under Commission regulation 37.12(a)(2), the trade execution requirement for a swap becomes effective 30 days after a "made available to trade" ("MAT") determination for that swap is deemed approved or certified (such date, the "MAT Effective Date"). To date, the Commission has received five MAT determination submissions[2] and may require compliance with the trade execution requirement as soon as mid-February 2014.

A. Request for Relief

The AMG supports the transition of swap trading to swap execution facilities ("SEFs") and strongly urges the Commission to implement this transition in an orderly manner in order to avoid any market disruptions and loss of liquidity. To this end, we hereby request that the Commission's Division of Market Oversight grant relief from Commission regulation 37.12(a)(2)'s 30-day MAT Effective Date for market participants that are neither swap dealers ("SDs") nor major swap participants ("MSPs") (collectively "non-SDs/MSPs") by not

[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] Swaps Made Available to Trade Determinations, sirt.cftc.gov/sirt/sirt.aspx?Topic=%20SwapsMadeAvailableToTradeDetermination .

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.

B. Support For Requested Relief

We believe that the request for an extended compliance for non-SDs/MSPs is justified in light of the following considerations surrounding SEF execution:

1. *Operational and regulatory challenges facing the market.* SEFs and market participants are still addressing expected and unexpected operational challenges associated with complying with the trade execution requirement. As we indicated in our September 23, 2013 letter to the Commission ("AMG September Letter")[3] and our October 25, 2013 letter to the Commission ("AMG October Letter")[4], a host of issues remain to be sorted out for participants before they can take the necessary steps to be ready for mandatory execution on SEFs. These issues include, but are not limited to:

- working with both SEFs and the Commission to make sure that rulebooks are compliant with Commission principles and client expectations in order to finalize our members' agreement to adhere to rulebooks;
- understanding the Commission's standards for straight-through processing of cleared trades and updating workflows and documentation to address the Commission's guidance on clearing certainty, affirmation hubs, breakage agreements and the resubmission process;[5]
- building the necessary infrastructure and connectivity to ensure that SEF trading is functional and seamless and will not result in market disruption; and
- ensuring SEF compliance with the Commission's confirmation and reporting requirements.

Although solutions are being developed, many open questions remain unresolved just over a month before execution on SEFs may be mandated for some swaps. Moving too quickly from testing and connecting to mandatory compliance will invite operational risk and market disruption.

SEFs also face operational and regulatory challenges. Many SEFs have yet to experience significant trade volumes, leaving their ability to onboard hundreds of participants promptly, or

---

[3] 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.

[4] 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.

[5] *See*, e.g., Staff Guidance on Swaps Straight-Through Processing, Sept. 26, 2013, available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/stpguidance.pdf (the "STP Guidance").

to process hundreds, thousands, or tens of thousands of trades daily, untested. We understand many SEFs remain uncertain of some of their core regulatory requirements even after recent Commission staff guidance and their difference in interpretations has resulted in sometimes conflicting or inconsistent requirements across rulebooks.[6]

2. *International implementation of swap trade execution*. The Commission should carefully weigh the current international context as it considers how to best implement the trade execution requirement. We note there has been slow international progress on comparable trade execution rules and, as a result, no comparable swap trade execution mandate will be in effect in other jurisdictions for some time.[7]

The risks of a rushed roll-out of the mandatory trade execution requirement for all parties in the U.S. would not only impose significant costs on AMG members and other market participants, but also likely dampen the will to implement comparable rules abroad. In turn, this would likely result in market fragmentation and a reduction in liquidity. In contrast, the Commission will be better positioned to enlist other regulatory authorities behind a trade execution requirement with a smooth implementation that does not encourage the migration of market liquidity away from U.S. shores.

Given the uncertainties that still exist and the issues that have not been resolved yet at this late stage, we think it is imperative that market participants have more time to successfully transition to SEF trading, especially non-SDs/MSPs that may not have historically traded on multilateral platforms. The Commission addressed similar concerns with respect to the mandatory clearing requirement by recognizing the dangers and disruptions of a "big bang" approach and, instead, adopting a more orderly and successful phase-in process.[8]

C. Differences between SEF Implementation for SDs and MSPs vs. Non-SDs/MSPs

We believe that the challenges in implementing SEF execution may not be as acute for SDs and MSPs as they are for non-SDs/MSPs, for the following reasons:

---

[6] See, e.g., 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.

[7] European and other foreign authorities are over one year away from imposing their own trade execution requirements. *See* Sixth FSB Progress Report on OTC Derivatives Market Reforms, http://www.financialstabilityboard.org/publications/r_130902b.pdf (Sept 13, 2013), at 2 ("There has been less regulatory progress in jurisdictions' implementation of central clearing, trade execution and margin requirements; in many instances authorities have indicated they are waiting for more detailed market information to become available through trade reporting, as well as the finalisation of remaining international work in some areas, such as margining requirements, before moving forward with specific regulatory proposals.").

[8] 17 CFR 50.25.

- SDs and MSPs are fewer in number. Therefore, the challenges associated with onboarding them, including operational challenges, onto SEFs are reduced relative to other market participants, including AMG members.

- SDs are accustomed to trading on multilateral interdealer platforms that either resemble SEFs in many ways or are now registering as SEFs and, therefore, are very familiar with a SEF-like trading environment. In contrast, end users, including AMG members and their clients, generally have not had access to interdealer, SEF-like trading platforms.

- As a general rule, SDs and MSPs have greater resources to deploy in building out connectivity to SEFs and may already have the technological functionality in place relative to other market participants, especially based on their experience trading on interdealer SEF-like platforms or as members of designated contract markets ("DCMs"). A shorter timeframe for SDs and MSPs reflects their ability to comply more quickly.

- As a general rule, SDs and MSPs are unlikely to have their SEF trading and connectivity model fundamentally altered with further Commission or staff guidance. Other market participants, however, have ongoing questions and are assessing Commission interpretations and guidance to determine how they will access SEFs (*e.g.*, whether they will access SEFs as principals or through agents).[9]

Accordingly, we believe there should be a phase-in of the trade execution requirement based on market participant status. Specifically, the trade execution requirement should apply to non-SDs/MSPs 90 days after the applicable MAT Effective Date that applies to SDs and MSPs. This phase-in approach is consistent with the Commission's successful approach to implementing the clearing requirement in phases.[10] Indeed, the Commission has stated that with respect to a phase-in timeline for the trade execution requirement that "accounts for a market participant's ability to comply based on risk profile, compliance burden, resources, and expertise" is as applicable in the clearing requirement context as it is in the trading requirement context.[11]

---

[9] For example, many non-SD/MSP financial entities that will have to execute swaps on a SEF are uncertain as to whether the recordkeeping requirements of 17 CFR 1.35 will apply to them once they begin executing swaps on SEFs. If so, then this would alter the calculus of accessing SEFs as principal versus through a SEF member agent for many of our members. See 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; 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 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.

[10] 17 CFR 50.25.

[11] Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement under the Commodity Exchange Act, 78 Fed. Reg. 33,606, 33,617 (June 4, 2013) ("To the extent that the phased-in compliance schedule for the clearing requirement previously adopted by the Commission may lead to phased-in compliance with the trade execution requirement, the Commission supports this approach. The Commission believes that the phased-in

D. Conclusion

The AMG supports an orderly transition to the new trade execution requirement paradigm. An orderly transition will help avoid market disruption and fragmentation of liquidity and help ensure the success of mandatory SEF execution. Accordingly, we hereby request that the Commission's Division of Market Oversight issue no-action relief or take other appropriate measures to grant relief from Commission regulation 37.12(a)(2)'s 30-day MAT Effective Date 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.

While this request for no-action relief presents our most important issues relating to the trade execution requirement at present, without limiting the forgoing request, we also recommend that the Commission (i) approve initial MAT determinations only for USD benchmark tenor interest rate swaps and on-the-run, and most recent off-the-run, credit default swaps and (ii) subject all new MAT submissions to the 90-day review period of 17 CFR 40.6(c). These recommendations to the Commission are discussed in more detail the Appendix to this letter.

*   *   *

schedule for the former requirement—which accounts for a market participant's ability to comply based on risk profile, compliance burden, resources, and expertise—also applies with respect to compliance with the latter requirement. The Commission further notes that the concerns about fragmenting market liquidity caused by a phased-in approach are mitigated by (1) the phasing-in of similar entities, who transact similar volumes of swaps, under similar timelines and (2) the relatively compact timeframe in which market participants in all three clearing implementation and compliance categories must comply with the trade execution requirement.").

Based on the foregoing, we respectfully request that the Division grant the relief 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 or, at Norton Rose Fulbright, Salman Banaei at 202-662-0287 or Michael Loesch at 202-662-4552.

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

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 January 13, 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

sifma
Invested in America

asset management group

APPENDIX

Recommendations to the Commission Regarding the Implementation of the Trade Execution Requirement

Without limiting the request for relief contained in the accompanying letter, the Asset Management Group[1] ("AMG") of the Securities Industry and Financial Markets Association ("SIFMA") respectfully submits these recommendations regarding the trade execution requirement. Consistent with our goal to ensure an orderly transition to the new SEF trade execution paradigm we recommend the Commission: (i) approve initial MAT determinations only for USD benchmark tenor interest rate swaps and on-the-run, and the most recent off-the-run, credit default swaps and (ii) that the Commission subject all new MAT submissions to the 90-day review period of 17 CFR 40.6(c):

1. Scope of Swap Products Subject to Trade Execution Requirement

We believe that mandatory SEF execution should apply only to the most liquid swaps at this time. As a result, non-benchmark tenor interest rate swaps and non-USD denominated interest rate swaps should not be subject to a trade execution mandate at this time. Similarly, no credit default index swaps ("CDX") other than on-the-run and the most recent off-the-run CDX should be subject to a MAT determination until a sufficient showing of liquidity can be made.[2] Additionally, as we discussed in our comment letter on the Javelin SEF, LLC MAT determination ("Javelin MAT determination"),[3] "spreads" and other packaged or compound interest rate products should not be "made available to trade" until such time that it can be demonstrated that there is sufficient trading liquidity and structural support for the trading of these products.

2. Extended Review Period for MAT Determination Submissions

We agree with the Commission that recognizing that requiring new products to be traded on recently untested operational SEF platforms by market participants unaccustomed to the developing SEF trading model present "novel and complex" issues warranting a 90-day review

[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] It is not coincidental that the list of products we recommend for the initial scope of the trade execution requirement is largely consistent with the consensus across the five SEF MAT determinations received to date by the Commission as to which swaps should be subject to the trade execution requirement.

[3] Javelin SEF, LLC Made Available to Trade Determination (Industry Filing 13-04), SIFMA AMG Comment Letter, Dec. 2, 2013, at 12, available at http://www.sifma.org/issues/item.aspx?id=8589946446 ("AMG December Letter").

period under 17 CFR 40.6(c). We recommend that the Commission subject all new MAT determinations to the 90-day review period provided by 17 CFR 40.6(c).

We believe that the 30-day MAT Effective Date for non-SDs/MSPs provided by 17 CFR 37.12(a) is inherently inconsistent with an orderly transition to mandatory SEF execution. The threat of a disorderly transition to mandatory SEF trading is heightened when a MAT determination submission is not subjected to a 90-day review period and is instead deemed certified 10 days after submission as allowed under 17 CFR 40.6(b). Moreover, we believe that while the market is in transition the public should continue to be provided the opportunity to comment on MAT determination submissions. Such an opportunity to comment would help the Commission ensure an appropriate scope of the trade execution requirement. For these reasons, and those described in the AMG September Letter, we believe that adequate time is necessary for most market participants to connect to the applicable SEF(s) and take the other operational measures necessary to trade a particular product in the new SEF trading environment.[4] These concerns can be mitigated by subjecting new MAT determinations to the 90-day review period provided by 17 CFR 40.6(c).

[4] SIFMA AMG September Letter, at 8 ("[T]he process for securing a new SEF and integrating the platform into the operational process will take a substantial amount of time. AMG believes that market participants need more than 30 days after a MAT determination to transition such trades through SEFs, including to integrate the technology and negotiate the necessary documentation without compromising prudent risk controls.").