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MFA
MANAGED FUNDS ASSOCIATION

17 C.F.R. §1.35(a)

December 10, 2013

Mr. Gary Barnett
Director, Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for Interpretative Guidance and Relief on Application of Rule 1.35(a) to Asset Managers

Dear Mr. Barnett:

The Asset Management Group ("**AMG**")[1] of the Securities Industry and Financial Markets Association ("**SIFMA**") and Managed Funds Association ("**MFA**")[2] (collectively, the "**Trade Associations**") request that the Commodity Futures Trading Commission (the "**Commission**") provide interpretative guidance and relief that would take one of the following forms, expressed in order of preference: (1) exempt Asset Managers[3] that participate on swap

[1] AMG's members represent U.S. asset management firms whose combined assets under management exceed $20 trillion. The customers 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] 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.

[3] For purposes of this letter, Asset Managers ("**Asset Managers**") would include any person in the business of providing investment advice or advice regarding the value of securities or commodity interests for compensation and includes persons registered with the Securities and Exchange Commission or any U.S. state as an investment adviser under the Investment Advisers Act of 1940 (the "**Advisers Act**"), any person registered with the Commission as a commodity trading advisor ("**CTA**") or commodity pool operator ("**CPO**"), any person regulated by a foreign regulatory authority as an investment adviser and any person operating pursuant to an exemption or exclusion from registration with or regulation by any such regulators.

execution facilities ("**SEFs**") from the oral and the written recordkeeping requirements of Commission Rule §1.35(a) (the "**Rule**"); (2) suspend and re-propose the Rule as it applies to Asset Managers that may be treated as members of SEFs, including a detailed cost-benefit analysis that addresses application of the Rule to Asset Managers that are members of SEFs, and, if the re-proposed Rule is adopted, provide an implementation period of at least one year from the new adoption date; or, (3) if the Commission is unwilling to adopt either of the forgoing alternatives, postpone the compliance date of the Rule with respect to Asset Managers that are members of SEFs until December 31, 2014.

I. Background

The Commission proposed changes to its recordkeeping rules on June 7, 2011 (the "**Proposing Release**").[4] The Rule, as contemplated by the Proposing Release, applied to "futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets or swap execution facilities"[5] and required the firms to maintain records of ***oral communications*** that lead to the execution of a swap and specified pre-trade and order-related ***written communications*** relating to swaps and related hedging transactions. The Commission published the final rules on December 21, 2012 (the "**Adopting Release**"), in substantially the same form as the proposed Rule, but with the addition of a new exemption from the oral recordkeeping requirements of the Rule for certain parties, including small introducing brokers ("**IBs**"), floor traders, swap dealers, major swap participants ("**MSPs**") and commodity pool operators ("**CPOs**").[6] During the comment period for the Proposing Release,[7] and as of the publication date of the Adopting Release, no SEFs yet existed[8] and none of the SEF rulebooks had been published. There was, therefore, no context or clarity around what it would mean to "have trading privileges" on a SEF and Asset Managers did not expect that they would be considered to be members of SEFs because they had access to SEFs.

Prior to publication of the amendments to the Rule and the Adopting Release, what it meant to be a member of a SEF was still unknown.[9] Because SEFs were a new type of

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[4] Adaptation of Regulations to Incorporate Swaps, 76 Fed. Reg. 33,066 (June 7, 2011).

[5] Proposing Release at 33,090.

[6] Adaptation of Regulations to Incorporate Swaps, 77 Fed. Reg. 75,523 (December 21, 2012).

[7] The comment period was from June 7, 2011 to August 8, 2011.

[8] The Commission approved the temporary registration of the first SEF, operated by Bloomberg, on July 31, 2013. As of the date of this letter, there are nineteen provisionally-registered SEFs. The majority of these SEFs (fifteen) became provisionally registered in September 2013. *See, e.g.*,http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilities.

[9] *See* Commodity Exchange Act ("**CEA**") §1a(34) ("the term 'member' means, with respect to a registered entity…, an individual, association, partnership, corporation, or trust – (A) owning or holding membership in, or admitted to membership representation on, the registered entity …; or (B) having trading privileges on the registered entity."). The CEA does not define the term "trading privileges," which added to the uncertainty regarding the definition of member of a SEF.

marketplace, it was not clear how they would operate or how membership would be defined.[10] Based on statements by members of the Commission itself, Asset Managers expected that SEFs would operate as platforms that allow "all market participants, not just dealers … [to] have the ability to compete in the marketplace."[11] The final SEF rules[12] recognized a distinction between members of a SEF and SEF market participants, thereby implying that not all users of a SEF would be considered members of the SEF. As a result of this distinction, Asset Managers believed that they would be able to participate on SEFs as market participants that would be fully subject to the SEF's jurisdiction, with membership status being reserved to intermediaries that facilitate transactions and provide market liquidity.

Then, over the past few months, SEFs began to publish their rulebooks. Most SEF rulebooks condition platform access on having "trading privileges" on the SEF, which by definition may make direct access to a SEF synonymous with SEF membership.[13] These rulebook provisions, therefore, conflate the definitions of a member and a market participant of a SEF. If any participant on a SEF that accesses the platform directly rather than through an intermediary would be a member of the SEF, then such participant could become subject to at least the written recordkeeping requirements of the Rule.

II. Request for Relief

We request interpretive guidance and relief that would confirm that those Asset Managers that participate on a SEF would not be members of a SEF for purposes of the Rule or otherwise

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[10] *See, e.g.*, Letter from Timothy Cameron, Managing Director, AMG, and Matthew Nevins, Managing Director and Associate General Counsel, AMG, to David Van Wagner, Chief Counsel, Division of Market Oversight, CFTC (Sept. 23, 2013), *available at* http://sifma.org/issues/item.aspx?id=8589945265.

[11] Gary Gensler, Chairman, CFTC, Keynote Address on the Cross-border Application of Swaps Market Reform at the Sandler O'Neill Conference (Jun. 6, 2013), *available at:* http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-141; *See also* Statement of Chairman Gary Gensler to Open Commission Meeting for Consideration of Rules Implementing the Dodd-Frank Act, May 16, 2013 (referring to SEF trading rules and noting "These…rules together mean that anyone in the market can compete and offer to buy or a (sic) sell a swap and communicate that to the rest of the public….Market participants will benefit from the price competition that comes from trading platforms where multiple participants have the ability to trade swaps by accepting bids and offers made by multiple participants. Congress also said that market participants must have impartial access to these platforms.")

[12] Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33,476, 33,506 (Jun. 4, 2013) (the "**SEF Rules**"). *See* discussion on p. 33,506 ("In response to SIFMA AMG's comment about the ambiguous use of terms ["member" versus "market participant" in the context to SEFs], the Commission clarifies that 'market participant' … means a person that directly or indirectly effects transactions on the SEF. This includes persons with trading privileges on the SEF and persons whose trades are intermediated. The Commission also clarifies that 'member' has the meaning set forth in CEA §1a(34)").

[13] *See, e.g.*, Sample language from SEF rulebooks includes the following: "Each Participant shall have the right to access electronically the Platform, including the right to place Orders for each of its Proprietary Accounts and Customer accounts provided that such Participant is eligible for and has applied and received Trading Privileges." "'Participant' means any Person that has been granted, and continues to have, Trading Privileges under the …. Rules." "All Participants of … SEF shall have Trading Privileges on the … SEF which includes the right to access … SEF and enter orders for proprietary and customer accounts as authorized by the Participant's Participant Category."

exempt Asset Managers from application of the Rule. The Commission could base such exemptive relief on a clarification that the term members of SEFs would not include Asset Managers who trade on SEFs on a discretionary basis, in the name of their advisory clients (as opposed to intermediaries, who execute customer orders and provide market liquidity on SEFs to customers on an arms-length basis). Alternatively, the Commission could base the exemptive relief on policy considerations.

In the alternative, we request that the Commission take actions to allow all affected parties a fair and informed opportunity to evaluate and comment on the Rule. In order to accomplish this, we request that the Commission suspend application of the Rule (including both the written and oral requirements of the Rule) to Asset Managers that may be deemed to be members of SEFs and re-propose the Rule for comment. The Commission should include a comprehensive cost-benefit analysis that discusses application of the Rule to Asset Managers that may be deemed to be members of a SEF in the re-proposal. If, after evaluation of the comments, the Commission continues to believe that application of the Rule is appropriate to Asset Managers that may be deemed to be members of SEFs, it should provide a reasonable implementation period of at least one year from the new adoption date of the Rule for such Asset Managers.

If the Commission does not agree to exempt Asset Managers that are members of a SEF from the Rule or to suspend and re-propose the Rule as to those Asset Managers, it is critical that the Commission at the very least provide an implementation period of at least one year for Asset Managers that are members of a SEF to come into compliance with the Rule (including both the written and oral requirements of the Rule). As a result, we request that the Commission postpone the compliance date for the Rule, as it applies to Asset Managers that may be deemed to be members of SEFs, until December 31, 2014.

III. Discussion

1. <u>The Commission Should Exempt Asset Managers that Participate on a SEF from the Oral and the Written Recordkeeping Requirements of the Rule</u>

   A. Asset Managers that Participate on a SEF Should Not Be Deemed to Be Members of a SEF for Purposes of the Rule

The Trade Associations believe that the Commission designed the Rule to apply to market intermediaries that execute customer orders and provide market liquidity to customers on an arms-length basis.[14] As a result, the references to members of SEFs in the Rule should not be interpreted to apply to Asset Managers that trade on a SEF with discretion on behalf of and in the name of advisory clients. Instead, the Rule should be interpreted to apply exclusively to market intermediaries. All of the entities explicitly named in the Rule (*i.e.*, FCMs, retail foreign exchange dealers, introducing brokers) are market intermediaries or "**Liquidity Providers.**" These intermediaries take orders from customers in connection with trade execution, provide two-sided markets and are paid transaction-based compensation. In addition, designated contract

[14] Adopting Release at 75,523-75,524.

market ("**DCM**") members also act in the capacity of market intermediaries and order execution agents for customers.[15]

Although most intermediaries are market makers, they all specialize in providing liquidity to customers as opposed to providing investment advice or trading expertise. This distinction, which we refer to as a distinction between "Liquidity Providers" (*i.e.*, professional market intermediaries) and "**Liquidity Takers**" (*i.e.*, end-users and their discretionary advisers and agents), was recognized and highlighted by the Commission in connection with defining the term "swap dealer."[16] In that regard, the Commission distinguished between "traders" and "dealers." As interpreted by the Commission, dealers' activities are distinguished by activities such as "providing liquidity by accommodating demand for or facilitating interest in the instrument, holding out as willing to enter into swaps (independent of whether another party has already expressed interest)," and acting as a market maker[17] on an organized exchange or trading system for swaps.[18] The Commission has noted that non-dealers, or traders, on the other hand, are "hedgers or investors"[19] and are not engaged in the business of seeking to profit by providing liquidity in connection with swaps.[20]

Interpreting the phrase "member of SEFs" to exclude Asset Managers trading on a SEF on behalf of discretionary customers is consistent with the types of records that the Rule seeks to collect. The Rule's recordkeeping requirements are focused on records "of all transactions relating to [the participant's] business of ***dealing*** in commodity interests and related cash or forward transactions."[21] Asset Managers participating on a SEF are not acting as dealers but instead are acting, with discretion, on behalf of and in the name of advisory clients.

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[15] The agency role that is contemplated for DCM members is evident in the CEA definition of "Organized Exchange." That definition provides that an "organized exchange" (which is synonymous with "DCM" in terms of swaps trading) is conducted by persons "by and on behalf of a person that is not an eligible contract participant or by persons other than on a principal-to-principal basis." CEA §1a(37).

[16] Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," Major Security-Based Swap Participant," and "Eligible Contract Participant," 77 Fed. Reg. 30,595 ("**Entity Definitions Adopting Release**") at 30,597.

[17] The Commission has illustrated the activities that constitute "making a market in swaps," which activities include: "(i) [q]uoting bid or offer prices, rates or other financial terms for swaps on an exchange; (ii) responding to requests made directly, or indirectly through an interdealer broker, by potential counterparties for bid or offer prices, rates or other similar terms for bilaterally negotiated swaps; (iii) placing limit orders for swaps; or (iv) receiving compensation for acting in a market maker capacity on an organized exchange or trading system for swaps." Entity Definitions Adopting Release at 30,609. These are not activities carried out by members of the Trade Associations, which typically act as "traders" or "Liquidity Takers" and not market makers, market intermediaries or Liquidity Providers.

[18] Entity Definitions Adopting Release at 30,608.

[19] *Id.* at 30,607 n. 172.

[20] *Id.* at 30,619.

[21] *See* Rule §1.35(a)(1) (emphasis added).

Differentiating between the taping and written records required to be maintained by intermediaries on a SEF and those acting as Liquidity Takers or traders, such as Asset Managers, would be consistent with the different recordkeeping requirements imposed by the Commission on swap dealers, on the one hand, and Asset Managers and other end-users in the over-the-counter swaps market on the other. As is the case in the over-the-counter swaps market, it is appropriate for the intermediaries that execute customer orders and provide two-sided quotes to retain records reflecting the details of the orders and pricing provided, whereas in the case of Asset Managers and other end-users the record that is critical to retain is the trade confirmation.

The Trade Associations believe that SEFs offer an important opportunity for Asset Managers to trade without intermediation by market professionals. This paradigm is consistent with the language in the SEF Rules that allows participants to trade uncleared swaps without intermediation by a futures commission merchant ("**FCM**").[22] It is inconsistent with this model to treat Asset Managers the same way as the enumerated market intermediaries are treated. As a result, the Commission should confirm that Asset Managers participating on SEFs would not be members of SEFs and, therefore, would not be subject to the Rule.

B. Asset Managers that Participate on a SEF Should be Exempted from the Rule for Policy Reasons

The Rule should not apply to Asset Managers when participating on a SEF for their advisory clients. Asset Managers must already keep sufficient materials for advisory clients and regulators to audit the fiduciary's activities and ferret out wrongdoing, mistakes or unusual trade patterns. For example, Asset Managers are already subject to extensive written recordkeeping requirements under the Advisers Act, the Employee Retirement Income Security Act of 1974, and CFTC Rule §4.33, which is applicable to CTAs that are registered or required to be registered under the CEA, among others. National Futures Association ("**NFA**") imposes oral recordkeeping requirements on member advisors that have a history of disciplinary problems.[23] These existing recordkeeping requirements, including requirements that advisors maintain both advisory client trading records and employee and firm trading records, provide regulators with substantially all of the information they would need to have a robust audit trail to guard against wrongdoing by Asset Managers and their personnel. The addition of further oral and written recordkeeping requirements for Asset Managers would be overly burdensome and expensive.

The records that Asset Managers must retain under existing rules primarily apply to post-trade or trade-entry information rather than pre-trade information, as covered by the Rule. However, we believe that the distinction between post-trade/trade-entry information and pre-trade information is appropriate because the audit trail for a fiduciary must substantiate performance and best-execution rather than order taking and order implementation practices, which are important for market intermediaries. Similarly, although Asset Managers registered under the Advisers Act must retain a memorandum regarding trade ideas and execution of the

[22] SEF Rules at 33,481 n. 88.

[23] NFA Rule 2-9 authorizes NFA's Board of Directors to prescribe "enhanced supervisory requirements" for certain member firms that exhibit certain "red flags."

trade ideas,[24] the information contained in these records is focused on trade execution and not on pre-trade conversations. Pre-trade information is essential in determining whether a market intermediary executes customer orders in an accurate and timely manner, but it is not useful in evaluating whether an Asset Manager has managed an advisory client's account in a profitable manner that complies with the advisory client's investment guidelines, which are the criteria on which the performance of an Asset Manager are primarily measured.

Furthermore, the majority of records cited in the Rule are the type of records that are produced by market intermediaries and not by Asset Managers. These records include order blotters, trading cards, street books, cancelled checks, signature cards, solicitations, instructions and communications provided concerning quotes, bids and offers. As a result, it does not seem as though the Rule was targeted to Asset Managers.

We also believe that the Commission will have sufficient access to information about trades conducted by Asset Managers on SEFs through regulation of other Commission registrants. For example, the Adopting Release specifically permits CTAs to rely on other Commission registrants to fulfill the oral recordkeeping obligation to the extent that taping by both parties would be duplicative.[25] Applying the Rule to Asset Managers that are members of SEFs will not enhance the enforcement tools and written and oral records already available to regulators as a result of existing recordkeeping requirements applicable to swap dealers and MSPs,[26] and the SEFs[27]and DCMs[28] themselves, as well as the market intermediaries that are subject to the Rule (*i.e.*, FCMs, introducing brokers). These entities are either on the opposite side of trades with Asset Managers or, in the case of SEFs or DCMs, represent the platforms on which they execute the applicable trades. Accordingly, subjecting Asset Managers to the requirements of the Rule would be duplicative in many respects.[29]

Application of taping and pre-execution recordkeeping requirements to Asset Managers that wish to participate on a SEF on an unintermediated basis rather than through an intermediary is likely to discourage Asset Managers from trading on SEFs directly. If the "cost" of accessing a SEF involves either paying a market intermediary for access to the SEF or, in the case of a

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[24] *See* Advisers Act Rule 204-2(a)(3).

[25] Adopting Release at 75,531 ("[C]overed persons may reasonably rely on a DCM, SEF or other Commission registrant to maintain certain records on their behalf…Reliance on a third party is only appropriate where the records maintained by the third party duplicate the information required to be kept by the regulation. For example, if an FCM records its telephone calls with a covered IB, the IB need not separately record the same calls if the IB and FCM agree that the FCM will maintain the record and provide access to the IB.").

[26] 17 C.F.R. § 23.202.

[27] 17 C.F.R. §§ 37.1000-37.1001 (requiring maintenance of transaction-related information in connection with all swaps executed on the facility).

[28] 17 C.F.R. §§ 38.950-38.951; 38.10 (requiring maintenance of transaction-related information in connection with all swaps executed on the facility).

[29] Although recordkeeping requirements for SEFs and DCMs do not cover all of the records identified by the Rule, they do include transaction-related information as well as related information regarding pricing and execution, which we believe are the most material elements of the information required by the Rule.

registered CTA that is a member of a SEF,[30] building an infrastructure to tape record all conversations "leading to execution of a swap" and, for all other Asset Managers, maintaining pre-trade written records relating to the swap and any related hedge, it is likely that many Asset Managers will elect not to access the SEF directly. Lack of direct participation of buy-side firms in the SEF marketplace is completely contrary to the result that Congress and the Commission were seeking to achieve, could weaken market integrity, inhibit price transparency and potentially reduce overall liquidity in the swap market. Accordingly, we believe that the Commission should issue the interpretative guidance and relief to exempt Asset Managers from the scope of the Rule in order to achieve Congress' goals related to providing open access to SEF platforms and price transparency.

2. The Commission Should Suspend and Re-Propose the Rule as it Applies to Asset Managers that are Members of SEFs

The Administrative Procedures Act (the "**APA**") requires that persons affected by a rulemaking have a fair opportunity to comment on the proposal.[31] The Commission did not provide reasonable notice to Asset Managers that it intended the Rule to apply to them if they elected to participate directly in trading on a SEF. The meaning of the term member of a SEF was not discussed in the Proposing Release or the Adopting Release and was not clear to the industry until recently.

Importantly, in the cost-benefit analysis provided, the Commission does not describe the size of the class of Asset Managers that it expected would be members of SEFs. For example, the Adopting Release indicates that entities subject to the Rule should expect to incur between $236,000 and $393,000 in compliance costs per entity per year as a result of the Rule, but it did not evaluate how those costs would affect Asset Managers that are SEF members.[32]

In light of the lack of reasonable notice as to the meaning of the term member of a SEF due to the adoption of the SEF Rules and release of SEF rulebooks months after adoption of the final Rule, the Trade Associations respectfully request that the Commission, consistent with its obligations under the APA, suspend the Rule as it applies to Asset Managers that may be members of SEFs and re-propose the Rule for comment. In addition, consistent with its obligations under §15(a) of the CEA, the Commission should "consider the costs and benefits of the action" proposed by the Rule[33] and its specific application to Asset Managers that are members of SEFs. We believe it is essential for the Commission to prepare and provide a revised cost-benefit analysis explaining the rationale behind application of the Rule to Asset Managers in light of the existing recordkeeping requirements to which such firms are subject as

[30] The Commission has exempted certain entities, including CPOs and entities exempt from registration, from the oral recordkeeping requirements in Rule 1.35(a)(1)(v) and (viii).

[31] 5 U.S.C. § 553(b)(3)("either the terms or substance of the proposed rule or a description of the subjects and issues involved [must be provided]").

[32] Adopting Release at 75,540.

[33] CEA §15(a)(1), 5 U.S.C. §19.

well as the written and oral records already required to be maintained by FCMs and IBs trading with Asset Managers and the SEFs and DCMs themselves. If, after re-proposing the Rule with respect to Asset Managers that are members of SEFs and evaluating the comments, the Commission continues to believe that application of the Rule is appropriate to Asset Managers trading on a SEF for their advisory clients, it should provide a reasonable implementation period of at least one year from the date of adoption of the re-proposed Rule for Asset Managers that are members of a SEF to comply.

3. The Commission Should Postpone Compliance with the Rule for Asset Managers that are Members of SEFs until December 31, 2014

In the event that the Commission determines that it is necessary to subject Asset Managers to the Rule and elects not to suspend and re-propose the Rule, we request that the Commission postpone the compliance date for the Rule with respect to Asset Managers that are members of SEFs until December 31, 2014 to provide affected parties a reasonable period of time to comply with the Rule's requirements. Asset Managers will need time to implement the requirements of the Rule and evaluate how best to comply. Compliance may include revamping Asset Managers' current recordkeeping processes, engaging third-party service providers and/or building technology to comply with elements of the Rule, such as taping and record retention in the manner prescribed by the Commission, all of which will take a substantial period of time and resources. In addition, the Rule raises a number of difficult interpretive questions and uncertainties about its application and scope that Asset Managers will need time to address and better understand before they can fully comply.

IV. Conclusion

AMG and MFA hereby request that the Commission exempt Asset Managers that are members of SEFs from complying with the requirements of the Rule. If the Commission elects not to do so, we respectfully ask the Commission to suspend and re-propose the Rule as it applies to Asset Managers that are members of SEFs, including a detailed cost-benefit analysis, and, if the re-proposed Rule is adopted, provide an implementation period of at least one year from the date of adoption of the re-proposed Rule. In the event that the Commission is unwilling to adopt either of the foregoing alternatives, we request that the Commission postpone the compliance date for the Rule with respect to Asset Managers that are members of SEFs until December 31, 2014.

Based on the foregoing, we respectfully request that the Commission grant the interpretative guidance and relief described in this letter. The Commission is authorized to issue this guidance and relief under its general regulatory authority granted under §§4 and 5h of the CEA.

* * *

We appreciate your consideration of our request, and would be happy to provide any additional information or assistance that the Commission would find useful. Should you have any questions, please do not hesitate to contact Tim Cameron of AMG at 212-313-1389 or Matt Nevins of AMG at 212-313-1176, Stuart Kaswell of MFA or Laura Harper of MFA at 202-730-2600, or P. Georgia Bullitt of Morgan Lewis & Bockius LLP at 212-309-6683.

Sincerely,

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

/s/ Matthew J. Nevins, Esq.
Matthew J. Nevins, Esq.
Managing Director and Associate General Counsel, Asset Management Group
Securities Industry and Financial Markets Association

/s/ Stuart J. Kaswell
Stuart J. Kaswell
Executive Vice President, Managing Director and General Counsel
Managed Funds 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
Frank Fisanich, Chief Counsel, Division of Swap Dealer and Intermediary Oversight
Erik Remmler, Deputy Director, Division of Swap Dealer and Intermediary Oversight
Vincent McGonagle, Director, Division of Market Oversight
Nancy Markowitz, Deputy Director, Division of Market Oversight
Katherine Driscoll, Counsel, Office of the Chairman

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 December 10, 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,

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

/s/ Matthew J. Nevins, Esq.
Matthew J. Nevins, Esq.
Managing Director and Associate General Counsel, Asset Management Group
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/s/ Stuart J. Kaswell
Stuart J. Kaswell
Executive Vice President, Managing Director and General Counsel
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