



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Division of  
Market Oversight

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CFTC Letter No. 14-60  
No-Action  
April 25, 2014  
Division of Swap Dealer and Intermediary Oversight  
Division of Market Oversight

Timothy W. Cameron, Esq.  
Matthew J. Nevins, Esq.  
Securities Industry and Financial Markets Association  
120 Broadway, 35<sup>th</sup> Floor  
New York, NY 10271

**Re: Time-Limited No-Action Relief for Certain Members of Swap Execution Facilities and Designated Contract Markets from the Requirement to Record Oral Communications, Pursuant to Commission Regulation 1.35(a), in Connection with the Execution of Swap Transactions**

Dear Messrs. Cameron and Nevins:

This letter is in response to a letter dated April 17, 2014, received by the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) and the Division of Market Oversight (“**DMO**”) (collectively the “**Divisions**”) of the Commodity Futures Trading Commission (“**Commission**”) from the Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA**”). In the letter, SIFMA seeks relief from the recordkeeping requirements of Commission Regulation (“**Regulation**”) 1.35(a), with respect to oral communications, to the extent that such requirements apply to Asset Managers<sup>1</sup> that are members of a swap execution facility (“**SEF**”) or a designated contract market (“**DCM**”) in connection with the execution of swaps.<sup>2</sup>

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<sup>1</sup> While “Asset Manager” is not a registration category or defined term under the Commodity Exchange Act or the regulations promulgated pursuant thereto, SIFMA has defined the term broadly for purposes of the request for no-action relief to include certain persons who are required to register with the Commission (commodity pool operators and commodity trading advisors) as well as certain persons who are not required to register with the Commission.

<sup>2</sup> Although SIFMA also requested relief from the written recordkeeping requirements of the Regulation, the Divisions find it appropriate, in this letter, to address the request for relief solely with respect to oral communications.

The Commission promulgated Part 1 of its regulations pursuant to the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* The Commission recently amended Regulation 1.35(a) in order to integrate the Regulation more fully with the new statutory framework for swaps created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010), and to conform the existing recordkeeping requirements of Regulation 1.35(a) to the recordkeeping requirements for swap dealers and major swap participants, as set forth in Regulation 23.202. Regulation 1.35(a), as amended, states, in relevant part, that each member of a DCM or SEF “shall keep full, complete, and systematic records, which include all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity interests and related cash or forward transactions.”<sup>3</sup> As part of the systematic recordkeeping system that is required under Regulation 1.35(a), the Regulation states that:

“[I]ncluded among the records required to be kept by this paragraph are all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and related cash or forward transactions, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media.”<sup>4</sup>

Regulation 1.35(a) further states that the requirement to record oral communications shall not apply to certain enumerated persons, including commodity pool operators and members of a DCM or SEF that are not registered or required to be registered with the Commission in any capacity.<sup>5</sup> Commodity trading advisors are not among the exempted entities. Affected entities were required to be compliant with the requirement to record oral communications by December 21, 2013.

On December 20, 2013, the Divisions provided time-limited no-action relief from the requirement to record oral communications pursuant to Regulation 1.35(a) for commodity trading advisors that are members of SEFs.<sup>6</sup> The Divisions believed that additional time was warranted given that SEFs had only recently begun publishing their rulebooks, and based on the requestors’ representations that Asset Managers needed more time to adjust their recordkeeping processes in order to be compliant with the recordkeeping requirements, as articulated in the SEF rulebooks and in Regulation 1.35(a).<sup>7</sup> On March 21, 2014, the Divisions extended similar relief to commodity trading advisors that are members of trueEX, a DCM and temporarily registered

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<sup>3</sup> 17 CFR 1.35(a)(1).

<sup>4</sup> *Id.*

<sup>5</sup> 17 CFR 1.35(a)(1)(v), (viii).

<sup>6</sup> See CFTC Letter No. 13-77, 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) (Dec. 20, 2013), available at: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-77.pdf>.

<sup>7</sup> *Id.* at 3.

SEF, with respect to the execution of swaps on the trueEX DCM.<sup>8</sup> The relief was based on trueEX's representations that providing relief solely to commodity trading advisors trading on SEFs would deter commodity trading advisors from accessing swaps listed for trading on the trueEX DCM.<sup>9</sup> The relief granted by the Divisions in the two no-action letters will expire on May 1, 2014.

On April 3, 2014, Commission staff held a "Public Roundtable to Discuss Dodd-Frank End-User Issues," which included, among other things, a discussion of continuing concerns on the part of Asset Managers with respect to Regulation 1.35 compliance. In its April 17, 2014 letter (submitted in connection with the Roundtable), SIFMA contends that the costs associated with requiring Asset Managers that are members of a DCM or SEF to comply with the written and oral recordkeeping requirements of the Regulation significantly outweigh the benefits. SIFMA seeks an exemption from all aspects of the Regulation on behalf of such Asset Managers, or pending further evaluation by the Commission, postponement of the compliance date until December 31, 2014.

Given the issues raised by Asset Managers at the April 3, 2014 Roundtable and by SIFMA in its April 17, 2014 letter, the Divisions find it appropriate to grant relief to commodity trading advisors that are members of SEFs or DCMs with respect to the requirement to record oral communications in connection with the execution of swaps, in keeping with the prior relief granted by the Divisions in CFTC Letter Nos. 13-77 and 14-33. Accordingly, the Divisions will not recommend that the Commission take enforcement action against a commodity trading advisor that is a member of a SEF or a DCM for failure to comply, **prior to December 31, 2014**, with the requirement under Regulation 1.35(a) to record oral communications in connection with the execution of swap transactions.

This letter, and the positions taken herein, represent the views of the Divisions only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. As with all no-action letters, the relief issued by this letter does not excuse the affected persons from compliance with any other applicable requirements contained in the Act or in the Regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the information made available to the Divisions. Any different, changed or omitted material facts or circumstances might render this no-action relief void.

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<sup>8</sup> See CFTC Letter No. 14-33, Time-Limited No-Action Relief for Certain Members of a Designated Contract Market from the Requirement to Record Oral Communications, Pursuant to Commission Regulation 1.35(a), in Connection with the Execution of Swap Transactions (Mar. 21, 2014), available at: <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-33.pdf>.

<sup>9</sup> *Id.* at 3.

Should you have any questions, please do not hesitate to contact the undersigned. In the alternative, for DSIO issues, please do not hesitate to contact Frank Fisanich, Chief Counsel, at (202) 418-5949, Ward Griffin, Associate Chief Counsel, at (202) 418-5425, or Marcia Blase, Special Counsel, (202) 418-5138, and for DMO issues, please do not hesitate to contact Jonathan Lave, Associate Director, at (202) 418-5983.

Very truly yours,

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cc: Regina Thoele, Compliance  
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