sifma

asset management group

MANAGED FUNDS ASSOCIATION

Request for No-Action Relief Regarding:
17 C.F.R. § 150.4

July 17, 2017

Mr. Amir Zaidi, Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request under Regulation 140.99 for No-Action Relief Relating to Position Aggregation Requirements under Commission Regulation 150.4

Dear Mr. Zaidi,

The Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG" or "AMG")[1] and the Managed Funds Association ("MFA")[2] write to request no-action relief relating to position aggregation requirements in Regulation 150.4 promulgated by the Commodity Futures Trading Commission (the "Commission" or "CFTC"). The requested relief would enable asset managers, investment funds, clients and other persons to apply the Commission's final rulemaking regarding position aggregation requirements (the "Final Rule")[3] while mitigating some of the unduly burdensome obligations and severe operational challenges associated with those requirements. Specifically, pursuant to Commission Regulation 140.99, AMG and MFA request that the Commission's Division of Market Oversight (the "Division") provide no-action relief confirming that the Division will not recommend

[1] SIFMA AMG brings the asset management community together to provide views on policy matters and to create industry best practices. SIFMA AMG's members represent U.S. and multinational asset management firms whose combined global assets under management exceed $39 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[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 funds 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, North and South America, and many other regions where MFA members are market participants.

[3] *See* Aggregation of Positions, 81 Fed. Reg. 91454 (Dec. 16, 2016).

enforcement action against any person[4] for violating any position aggregation requirement in Commission Regulation 150.4, or any applicable position limit, where that person:

(1) otherwise would be in compliance with applicable position limits and position aggregation requirements but for the fact that the person does not submit a notice pursuant to Commission Regulation 150.4(c)(6) that it is relying on an exemption from position aggregation requirements, unless the person fails to file such notice within five (5) business days after receiving a request from the Commission (or, for a contract that is subject to Commission-imposed position limits, a request from an Exchange) to file such a notice;[5]

(2) otherwise would be in compliance with the independent account controller exemption ("IAC exemption") from aggregation but for the fact that the person is not eligible to rely on that exemption because:

(a) the person or its independent account controller is an exempt commodity trading advisor ("CTA"); or

(b) the person has authorized an independent account controller to act in a fiduciary capacity by independently controlling the trading in the person's positions and accounts, but the person does not fall within the categories of "eligible entity" set out in Commission Regulation 150.(d); or

(3) does not aggregate its positions with those of another person pursuant to the "substantially identical trading strategies" requirement of Commission Regulation 150.4(a)(2) (the "SITS Rule"), unless that person holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies in order to willfully circumvent applicable position limits.

AMG and MFA also agree with and join in the Futures Industry Association's ("FIA") request for relief dated July 12, 2017, with respect to the form and timing of notice filings with respect to the owned-entity aggregation exemption, discussed further below.

Background

The Final Rule originally was proposed as part of a larger set of rule amendments regarding position limits. Although the Commission re-proposed its position limits rule amendments, it finalized the aggregation requirements in the Final Rule published on December 16, 2016.

The Final Rule amends the Commission's existing position aggregation requirements by, among other things: (1) creating a new "owned entity" exemption from such requirements, (2) creating a new notice filing and certification requirement that must be satisfied in order to rely on most of the exemptions from aggregation requirements, and (3) imposing a new aggregation

[4] The term "person" as used herein has the meaning set forth in Commission Regulation 1.3(u), 17 C.F.R. § 1.3(u), and includes, among others, individuals, partnerships, and corporations.

[5] References herein to requests by the "Commission" or an "Exchange" with respect to disaggregation notice filings include requests by Commission or Exchange staff.

requirement under the SITS Rule for persons holding or controlling the trading of positions in more than one account or pool with "substantially identical trading strategies."

With respect to the notice filing required by Commission Regulation 150.4(c), market participants relying on an exemption from aggregation historically did not need to file anything with the Commission.[6] In response to certain comments in this regard, the Commission promulgated Commission Regulation 150.4(c)(6) in the Final Rule, which provides that a failure to timely file a notice of exemption will not constitute a violation of aggregation or position limits requirements if the notice filing is made within five (5) business days after the person is "aware, or should be aware," that such notice has not been timely filed.[7]

With respect to the SITS Rule, AMG has raised concerns about its lack of clarity, potential overbreadth, and whether it is workable in practice in the asset management context.[8] In one comment letter, AMG provided an example noting that a $10,000 investor in a fund-of-funds that, in turn, invests $10,000 in two $1 billion funds that follow "substantially identical trading strategies" may have to aggregate his or her positions in those two $1 billion funds. The Final Rule responded to this example, stating: "In the example described by one commenter, where a person has holdings of $10,000 each in two commodity index funds with substantially identical strategies, the terms of the rule require the owner to aggregate the positions that it (*i.e.*, the owner) holds in the two commodity index mutual funds, not the positions of the funds themselves."[9] The Final Rule also explained that: "To apply [the SITS Rule], a person holding or controlling the trading of positions in more than one account or pool with substantially identical trading strategies must determine the person's pro rata interest in the number of contracts such accounts or pools are holding."[10]

We appreciate these responses from the Commission, as well as the issuance of time-limited no-action relief from the Division extending the compliance date for the notice filing requirement until August 14, 2017.[11] AMG and MFA members have been working diligently to meet the new compliance deadline for submitting required notice filings and certifications, but for the reasons set forth herein, AMG and MFA believe further relief is needed with respect to the notice filing requirement, as well as with respect to the SITS Rule and other issues discussed below.

Requested Relief

AMG and MFA believe that certain aspects of the Final Rule, without targeted no-action relief, are unworkable for and/or impose substantial and undue burdens on investment funds, asset managers and the passive investors on whose behalf they act. AMG's members act as

[6] Instead, the Commission had explicit special call authority regarding such exemptions.

[7] *See* 17 C.F.R.§ 150.4(c)(6).

[8] *See* SIFMA AMG Comment Letter re: Notice of Proposed Rulemaking – Aggregation of Positions (RIN 3038-AD82) at 14 (Feb. 10, 2014) [the "February 2014 Comment Letter"].

[9] Final Rule, 81 Fed. Reg. at 91477 (footnotes omitted).

[10] *Id.* at 91477 n.268.

[11] *See* No-Action Letter 17-06 (Feb. 6, 2017).

investment managers and fiduciaries for passive investors including pension funds and other institutional investors. AMG members also act as investment managers for investment vehicles in which these passive investors may have interests, including, without limitation, registered and private commodity pools and other public and private funds. MFA members include these types of funds with passive investors. In each instance, these passive investors have no control over, nor any real-time knowledge of, the specific commodity derivatives trading activities of the entities in which they have invested.

We believe some operational challenges and undue burdens can be mitigated, without undermining the Commission's objectives underlying the Final Rule, through the tailored no-action relief set forth below.

1. A Person Should Not be Required to File a Notice of Aggregation Exemption Until such Filing is Requested.

Commission Regulation 150.4(c)(6) provides that:

> If a person is eligible for an aggregation exemption under paragraph (b)(1)(ii), (b)(2), (b)(3), (b)(4), or (b)(7) of this section, a failure to timely file a notice under this paragraph (c) shall not constitute a violation of paragraph (a)(1) of this section or any position limit set forth in § 150.2 if such notice is filed no later than five business days after the person is aware, or should be aware, that such notice has not been timely filed.

We note that this provision was added to the Final Rule in response to concerns about the new notice filing requirement, and we appreciate the Commission's inclusion of this provision because it generally reduces regulatory risk associated with a good faith failure to file a notice filing. However, the provision raises some question as to when disaggregation notice filings must be made, and it is not clear when a person would be deemed to be "aware," or when a person "should be aware" that such a notice filing is required.

As discussed further below, requiring notice filings to be submitted on a prospective basis would impose significant operational challenges and burdens.[12] These undue burdens, and ambiguity concerning when a market participant is "aware, or should be aware" that a notice filing is required would be largely avoided, without interfering with the Commission's need for information, if the Division granted no-action relief from the notice filing requirement except in circumstances where such a notice is requested by the Commission (or, for a contract that is subject to Commission-imposed position limits, requested by an Exchange) -- which request would trigger the five-business day period in Commission Regulation 150.4(c)(6).

In the context of the owned-entity exemption, prospectively providing a description of the relevant circumstances that warrant disaggregation, certifying that the conditions of the

[12] Further discussion of these issues also can be found in AMG's prior comment letters. *See, e.g.*, the February 2014 Comment Letter at 15; SIFMA AMG Comment Letter re: Notice of Proposed Rulemaking – Aggregation of Positions (RIN 3038-AD82) at 6 (Aug. 1, 2014) [the "August 2014 Comment Letter"].

owned-entity exemption have been met, and updating those notices when material changes occur with respect to all direct and indirect entities for which disaggregation may be permitted would consume substantial resources of asset managers, investment funds and other persons. For example, if a person invests in an entity but does not have the right to prevent the concentration or magnification of its investment over time, whether the passive investor's ownership interest percentage meets the 10% threshold (and thus may trigger the need to make an owned-entity disaggregation notice filing) could change on a real-time basis.

In the context of the IAC exemption, a prospective notice filing requirement is particularly problematic for asset managers, who must assess the need for outreach to ensure that their many clients who may be "eligible entities" for purposes of the IAC exemption are aware of the aggregation requirements of the Final Rule and are prepared to submit aggregation exemption notice filings.[13] Many clients grant asset managers discretionary trading authority, and therefore may not closely follow regulatory developments affecting derivatives and may not be aware of the requirement to make a notice filing in order to disaggregate positions in reliance on the IAC exemption. The likely result of a prospective notice filing requirement with respect to the IAC exemption is that asset managers' clients who qualify as "eligible entities" will submit disaggregation notice filings as a prophylactic measure out of an abundance of caution to ensure they do not exceed position limits due to aggregation issues. And given the Commission's resource limitations and budgetary constraints, it is not clear the Commission will be able to review the flood of notice filings it may receive as it seeks to identify potential position limits issues.

Respectfully, we do not believe the burdens that will follow absent further relief can be justified based on regulatory need. We note that pursuant to Commission Regulation 150.4(b)(1), passive investors in a commodity pool that are not affiliated with the pool operator are generally permitted to disaggregate their positions from those of the pool, yet they need not submit a notice filing for such disaggregation. There is no more reason to impose the onerous burden of making prospective disaggregation notice filings on passive investors in owned entities, or eligible entities relying on the IAC exemption, than there generally is for pool participants.

This is particularly the case given that the Commission has stated that the recent amendments to its Ownership and Control reporting regime were adopted, in part, for the specific purpose of providing it with better information in order to monitor for position limits issues based on aggregation requirements.[14] Thus, the Commission has the ability to use the information contained in these reports to evaluate, at least on a preliminary basis, whether the positions of entities should be aggregated. When the Commission or an Exchange believes that a

[13] Asset managers also routinely invest and withdraw money from different funds with different sub-advisors based on a myriad of considerations relating to performance, trading strategies, etc. Requiring asset managers to submit a prospective notice filing detailing the basis upon which they are eligible for the IAC exemption in each instance, and to update that filing each time relevant circumstances materially change, would consume substantial resources and be operationally impractical to perform.

[14] *See, e.g.*, Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, Final Rule, 78 Fed. Reg. 69178, 69212 (Nov. 18, 2013) ("When combined with the position data reported on Form 102A, New Form 102B will improve the Commission's ability to: (i) Aggregate accounts under common ownership and/or control. . . .").

position limit may have been exceeded as a result of relevant aggregation requirements, it can ask market participants for an explanation of the relevant circumstances in the form of an aggregation exemption notice filing. Such a filing would then provide the market participant the opportunity to demonstrate to the Commission (and/or the Exchange, as applicable) why the positions should *not* be aggregated because the conditions of an aggregation exemption have been satisfied.

AMG and MFA, therefore, request that the Division grant no-action relief and confirm that it will not recommend that the Commission commence an enforcement action against any person for violating any position aggregation requirement in Commission Regulation 150.4, or any applicable position limit, if that person otherwise would be in compliance with applicable position limits and position aggregation requirements but for the fact that the person relies on an exemption from position aggregation requirements and does not submit a notice filing[15] – unless the person fails to submit a notice filing within five (5) business days of receiving a request from the Commission (or, for a contract that is subject to Commission-imposed position limits, a request from an Exchange) to file such a notice.[16] We further request that a letter issuing such relief by the Division confirm that:

- the Commission understands that futures Exchanges intend to apply the same policy and require the submission of disaggregation notice filings only after receipt of a request for such a filing by the Exchange; provided, that a market participant submitting a notice filing to an Exchange in connection with a contract that is subject to Commission-imposed position limits also submit such notice filing to the Commission; and
- while the IAC exemption requires the eligible entity, rather than the independent account controller, to make a notice filing,[17] if the Commission (or, for a contract that is subject to Commission-imposed position limits, an Exchange) nonetheless requests a filing from an independent account controller in connection with the IAC exemption, then the independent account controller need only identify the relevant eligible entity or entities, and the eligible entity shall have five (5) business days to make a notice filing after the date it receives a request from the Commission (or Exchange) to submit such filing.

We believe this tailored approach would meet the Commission's regulatory needs, while mitigating unnecessary burdens on investment funds, asset managers and their clients in the vast majority of circumstances where no question has arisen concerning eligibility for disaggregation or a potential position limits violation due to aggregation requirements.

---

[15] Specifically, Commission Regulation 150.4(c)(6) requires a notice filing in connection with the exemptions set forth in Commission Regulations 150.4(b)(1)(ii) (ownership interest in a commodity pool by a person related to the pool operator); (b)(2) (owned entities); (b)(3) (accounts held by futures commission merchants); (b)(4) (IAC exemption); and (b)(7) (exemption for information sharing restrictions).

[16] The five business day period provided for in Commission Regulation 150.4(c)(6), like other filing deadlines such as special calls, could be extended in the discretion of Commission staff.

[17] *See* 17 C.F.R. § 150.4(a)(4) ("An eligible entity need not aggregate . . . provided that the eligible entity has complied with the requirements of paragraph (c) of this section. . . .").

2. The Notice Filing Requirement to Rely on the Owned Entity Aggregation Exemption Should be Streamlined

AMG and MFA support the FIA's request for relief concerning the scope and content of the owned-entity aggregation exemption notice filing. We understand that, generally speaking, FIA requests that, in order for an entity to rely on the owned-entity aggregation exemption where the owner is not aware, and should not be aware, of the derivatives trading activity of a particular owned entity: (1) neither the owner nor the owned entity needs to file a notice under Commission Regulation 150.4(c) unless the Commission requests such a filing, and (2) the notice filing must provide only information certifying that the owner meets the conditions to disaggregate the positions of the specific owned entity or entities identified by the CFTC.

3. Additional Entities Should Be Eligible to Qualify for the IAC Exemption

In order to rely on the IAC exemption, the owner or controller of an account must meet the definition of an "eligible entity," and the advisor must meet the definition of an "independent account controller." Asset managers' clients will need to assess whether they fall within the "eligible entity" definition, while asset managers themselves may fall within either the "eligible entity" or "independent account controller" definitions in different circumstances.[18]

a. Exempt CTAs

The Final Rule enumerates the categories of entities that meet these definitions for purposes of the IAC exemption,[19] but exempt CTAs do not qualify as either an "eligible entity" or an "independent account controller." Several commenters on the Commission's proposed aggregation rules, including AMG and MFA,[20] requested that the Commission rectify this disparity. The Final Rule did not do so on the basis that these requests went beyond the scope of

[18] An asset manager could be either: (1) an "eligible entity" if it hires another asset manager (a "sub-advisor") to manage certain portions of a fund or account; or (2) an "independent account controller" with respect to a client (e.g., a pension fund) that hires the asset manager to provide investment management services on its behalf and exercise trading control. In the former scenario, the asset manager as the "eligible entity" under the IAC exemption disaggregates the positions that are managed and controlled by the sub-advisor (i.e., the independent account controller); in the latter scenario, the client of the asset manager as the "eligible entity" under the IAC exemption (e.g., the pension plan) disaggregates the positions that are managed and controlled by the asset manager as the "independent account controller" under the IAC exemption.

[19] *See* 17 C.F.R.§ 150.1(d) ("*Eligible entity* means a commodity pool operator; the operator of a trading vehicle which is excluded, or which itself has qualified for exclusion from the definition of the term "pool" or "commodity pool operator," respectively, under §4.5 of this chapter; the limited partner, limited member or shareholder in a commodity pool the operator of which is exempt from registration under §4.13 of this chapter; a commodity trading advisor; a bank or trust company; a savings association; an insurance company; or the separately organized affiliates of any of the above entities"); 17 C.F.R. § 150.1(e) ("Independent account controller means a person . . . Who is: (i) Registered as a futures commission merchant, an introducing broker, a commodity trading advisor, or an associated person of any such registrant. . . .").

[20] *See* February 2014 Comment Letter at 15; August 2014 Comment Letter at 6; MFA Comment Letter re: RIN 3038-AD82 at 10 (Nov. 12, 2015).

the proposal, but noted that the Commission was "considering these comments and may take them up in a later proceeding."[21]

The Final Rule did not articulate a reason why eligibility to rely on the IAC exemption should hinge upon status as a registrant. We do not believe there is any reason for that to be the case, as registration status for CTAs has no relevance to the purpose of the IAC exemption: to permit disaggregation for position limits purposes where there is no trading control between the ultimate owner and/or controller of an account (i.e., the eligible entity) and the advisor controlling the actual trading of the account (i.e., the independent account controller). All trading advisors should be able to avail themselves of the IAC exemption, regardless of their registration status.[22]

b. Categories of Eligible Entities

In addition, the definition of an "eligible entity" in Commission Regulation 150.1(d) does not include all categories of market participants that authorize asset managers to act as fiduciaries in controlling independently the trading decisions with respect to the market participant's positions and accounts. A significant number of market participants that grant discretionary trading authority to asset managers (e.g., foundations and endowments) may not fall within the categories set out in the definition of an "eligible entity," yet we are aware of no policy rationale for their exclusion.

As just one example, neither the operator of a foreign pension vehicle nor the pension vehicle itself is explicitly included as a category of "eligible entity," even if the required separations of control and trading information are in place and observed. This creates an anomalous situation in which a non-US pension vehicle that is substantively similar to pension vehicles that are exempt under Commission Regulation 4.5, cannot claim the IAC exemption, notwithstanding the fact that they are substantially similar to the types of entities covered in Rule 4.5 and otherwise satisfy the terms of the IAC exemption.

When the Commission expanded the scope of the definition of an "eligible entity" to include registered CTAs in 1991, it noted that it would "undertake further expansion of the [IAC] exemption after it has an opportunity to assess the impact of the current expansion," and that the "current exemption and the proposed expansion are limited to those who trade professionally for others, and who have a fiduciary relationship to those for whom they trade."[23] The quarter century since then has not witnessed a problem with, or an abuse of, the IAC exemption. We believe that the Division, consistent with the Commission's statements in 1991, should permit all persons that establish a fiduciary relationship by granting discretionary trading authority over the

[21] *See* Final Rule, 81 Fed. Reg. at 91480 & n.295.

[22] We note, however, that many exempt CTAs are regulated in some capacity by the Commission or the Securities and Exchange Commission. *See, e.g.*, 17 C.F.R. § 4.14(a)(3) (exemption for registered associated persons); (a)(4) (exemption for registered commodity pool operators ("CPOs")); (a)(5) (exemption for exempt CPOs); (a)(6) (exemption for registered introducing brokers); (a)(7) (exemption for registered leverage transaction merchants and retail foreign exchange dealers); and (a)(8) (exemption for registered investment advisers).

[23] *See* Exemption From Speculative Position Limits for Positions Which Have a Common Owner, But Which Are Independently Controlled, 56 Fed. Reg. 14308, 14312 (April 9, 1991).

person's positions and accounts, to be treated as "eligible entities" that are eligible for the IAC exemption.

Therefore, we request that the Division grant no-action relief and confirm that it will not recommend that the Commission commence an enforcement action against any person for violating any position aggregation requirement in Commission Regulation 150.4, or any applicable position limit, where that person otherwise would be in compliance with the IAC exemption but for the fact that the person is not eligible to rely on the IAC exemption because:

(1) the person or the person's independent account controller does not meet the definition of an "eligible entity" or an "independent account controller" because it is a CTA that is not registered as such by virtue of meeting the criteria for an exemption from registration; or

(2) the person has authorized an independent account controller to act in a fiduciary capacity by independently controlling the trading in the person's positions and accounts, but the person does not fall within the categories of "eligible entity" set out in Commission Regulation 150.(d).

4. The Intent Element of the SITS Rule Should be Recognized

The SITS Rule provides that holding or controlling the trading of positions in more than one account or pool (collectively "funds") with "substantially identical trading strategies" requires aggregation of all such positions (determined pro rata) with all other positions held and trading done by such person and the positions or accounts which the person is required to aggregate. This requirement applies notwithstanding any applicable aggregation exemption for which the person may qualify.

The Final Rule did not provide any definition or guidance as to the meaning of "substantially identical trading strategies." Absent any metrics to assess whether trading strategies are "substantially identical" – in terms of commodities traded, percentage of the portfolio that must be traded in a similar manner, etc. – asset managers and investment funds cannot operationalize the SITS Rule in order to determine whether they are aggregating positions in compliance with the Commission's requirements.[24]

And while we appreciate that the Final Rule responded to our example and clarified the SITS Rule to address the concern about its breadth, this clarification still leaves several unanswered questions that make it difficult for asset managers and investment funds to determine whether they are in compliance with the SITS Rule. Specifically, the Final Rule concurred that the investor in AMG's example would need to know the number of contracts the investee funds hold in order to determine the investor's pro rata interest in those contracts[25] --

[24] By way of contrast, with respect to the "substantial position" element of the definition of a "major swap participant," the Commission adopted a detailed rule to comprehensively define that term and enable market participants to determine whether they meet that threshold. *See* 17 C.F.R. § 1.3(jjj).

[25] *See* Final Rule, 81 Fed. Reg. at 91477 n.268 ("a person holding or controlling the trading of positions in more than one account or pool with substantially identical trading strategies must determine the person's pro rata interest in the number of contracts such accounts or pools are holding.).

but, passive investors in funds, much less investors in funds-of-funds, generally have no ability to obtain this information.

The SITS Rule is stated in absolute terms. Any person that holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies must aggregate. The SITS Rule can be read, like the underlying position limits rules, to be a strict liability offense.

The preamble to the Final Rule, by contrast, reads quite differently. There, the Final Rule justifies the SITS Rule on the basis that the Commission "continues to believe that this provision is necessary to prevent *circumvention* of the aggregation requirements." It cites as an example that, absent the SITS Rule, a trader could "*separate a large position* in a given commodity derivative into positions held in pools that have substantially identical trading strategies . . ."[26]

We believe that the Commission's use of the term "circumvent" and the phrase "separate a large position" in the Final Rule make clear that a violation of the SITS Rule is meant to be an intent-based offense directed at willful conduct. Indeed, the term "circumvent" is synonymous with "evade."[27] We note that the Commission's general anti-evasion rule explicitly incorporates an intent requirement by making it unlawful "to willfully evade or attempt to evade" requirements of the Dodd-Frank Act.[28]

Accordingly, we request that the Division grant no-action relief and confirm that it will not recommend that the Commission commence an enforcement action against any person for violating any position aggregation requirement in Commission Regulation 150.4, or any applicable position limit, where that violation is due to a failure to aggregate positions under the SITS Rule, unless that person holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies in order to willfully circumvent applicable position limits. Such relief would address many of the concerns regarding the clarity and workability of the SITS Rule by explicitly confirming the intent element that is implicit in the Final Rule, thereby providing assurance to asset managers and investment funds that they cannot inadvertently violate the SITS Rule.

* * * *

[26] *See* Final Rule, 81 Fed. Reg. at 91477 (emphasis added).

[27] Roget's II The New Thesaurus at 164 (1988); dictionary.com Unabridged, Random House, Inc., at http://www.dictionary.com/browse/circumvent (accessed June 10, 2017).

[28] 17 C.F.R. § 1.6(a); *see also* 17 C.F.R. § 1.3(xxx)(6)(i) (incorporating the following intent-based anti-evasion provision into the Commission's swap definition: An agreement, contract, or transaction that is "willfully structured to evade" any provision of the Dodd-Frank Act.).

We would be happy to further discuss the issues identified herein at your convenience. If you have questions, please contact Laura Martin at 212-313-1176 or lmartin@sifma.org, Jennifer Han at (202) 730-2600 or jhan@managedfunds.org, or Terry Arbit at Norton Rose Fulbright at 202-662-0223 or terry.arbit@nortonrosefulbright.com.

Respectfully submitted,

/s/ Stuart J. Kaswell

Laura Martin
Asset Management Group – Managing Director & Associate General Counsel
Asset Management Group
Securities Industry and Financial Markets Association

Stuart J. Kaswell
Executive Vice President & Managing Director, General Counsel
Managed Funds Association

cc: Honorable J. Christopher Giancarlo, Acting Chairman
Honorable Sharon Y. Bowen, Commissioner
Stephen Sherrod, Division of Market Oversight
Riva Spear Adriance, Division of Market Oversight
Aaron Brodsky, Division of Market Oversight
Mark Fajfar, Office of General Counsel

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 July 17, 2017 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.

Laura Martin
Asset Management Group – Managing Director & Associate General Counsel
Asset Management Group
Securities Industry and Financial Markets Association

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President & Managing Director, General Counsel
Managed Funds Association