



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

Vincent McGonagle
Director

Re: Extension of No-Action Relief from Certain Position Aggregation Requirements under Commission Regulation 150.4

Ladies and Gentlemen:

This letter responds to a request received by the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“Commission”) from the Futures Industry Association (“FIA”), the Asset Management Group of the Securities Industry and Financial Markets Association (“SIFMA AMG”), and the Managed Funds Association (“MFA”) (collectively, the “Associations”), for an extension of the no-action relief DMO granted in CFTC Letter No. 17-37 (“CFTC Letter 17-37”)¹ and subsequently extended in CFTC Letter No. 19-19 (“CFTC Letter 19-19,” and collectively with CFTC Letter 17-37, the “CFTC Letters”).² CFTC Letter 17-37, which expired at 12:01 a.m. eastern standard time on August 12, 2019, granted relief from compliance with certain position aggregation requirements in Commission Regulation 150.4. At the request of the Associations, CFTC Letter 19-19 extended the relief provided in CFTC Letter 17-37 by an additional three years, to August 12, 2022. The Associations have requested a further extension of relief for an additional three years, to August 12, 2025.

I. Background

On December 16, 2016, the Commission published in the Federal Register a final rulemaking “Aggregation of Positions”, which amended Commission Regulation 150.4 (“Aggregation Rule”).³ The Aggregation Rule determines which accounts and positions a person must aggregate for the purpose of determining compliance with the applicable position limit levels set forth in Commission Regulation 150.2, and includes a process by which a person may file with

¹ CFTC Letter No. 17-37 (Aug. 10, 2017), available at: <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-37.pdf>.

² CFTC Letter No 19-19 (July 31, 2019), available at: <https://www.cftc.gov/csl/19-19/download>.

³ Aggregation of Positions, 81 FR 91454 (Dec. 16, 2016).

the Commission a notice seeking an exemption from such aggregation requirements (*i.e.*, a process by which a person may “disaggregate” its positions from those of another entity with which the person has certain ownership or control relationships). The Aggregation Rule became effective on February 14, 2017.

On February 6, 2017, DMO issued CFTC Letter 17-06,⁴ which provided time-limited no-action relief from all the notice filing requirements in Commission Regulation 150.4(c) to any person or entity that is eligible to rely on an exemption from aggregation under Commission Regulation 150.4(b). The relief in CFTC Letter 17-06 expired at 12:01 a.m. on August 14, 2017. On August 10, 2017, DMO issued CFTC Letter 17-37, which provided continued no-action relief from certain of the notice filing requirements in Commission Regulation 150.4(c), including by allowing notice filings to be submitted only upon request and by limiting the nature of the information included in such notice filings, as well as relief from additional position aggregation requirements in Commission Regulation 150.4. The relief in CFTC Letter 17-37 expired at 12:01 a.m. on August 12, 2019. At the request of the Associations, on July 31, 2019, DMO issued CFTC Letter 19-19 to extend the relief provided in CFTC Letter 17-37 for an additional three years until 12:01 a.m. on August 12, 2022.

On January 14, 2021, the Commission published in the Federal Register a final rule regarding the Commission’s position limits framework by amending part 150 of the Commission’s regulations (“Position Limits Final Rule”).⁵ Among other changes, the Position Limits Final Rule: (1) increased the number of commodities subject to federal position limits from nine to twenty-five commodities; (2) expanded the list of bona fide hedge exemptions; (3) eliminated the risk management exemption; (4) included a new pass-through swap provision; (5) subjected financially-settled “look-alike” futures contracts to federal position limits; (6) subjected swaps that are economically equivalent to a particular referenced contract to federal position limits; (7) revised certain requirements and guidance applicable to designated contract markets (“DCMs”) and swap execution facilities; and (8) expanded the scope of international affiliates that could be subject to the Aggregation Rule by counting positions in referenced contracts on foreign boards of trade toward position limits levels. For the changes identified in items three and six, the Position Limits Final Rule provided an extended compliance date to January 1, 2023.

While the Position Limits Final Rule did not amend the Aggregation Rule itself, as noted above, the Position Limits Final Rule substantially changed the existing scope of the federal position limits framework, by among other changes, subjecting new contract markets and market participants to federal position limits for the first time, and DMO notes that certain of these changes have yet to take affect under the extended January 1, 2023 compliance date.

⁴ CFTC Letter No. 17-06 (Feb. 6, 2017), available at: <https://www.cftc.gov/csl/17-06/download>.

⁵ Position Limits for Derivatives, 86 FR 3236 (Jan. 14, 2021).

II. Summary of No-Action Relief Granted in the CFTC Letters⁶

The CFTC Letters provided that DMO would not recommend the Commission commence an enforcement action against any person for violating any position aggregation requirement in Commission Regulation 150.4, or any applicable position limits, where the person:

- (1) otherwise would be in compliance with the applicable position limits in Commission Regulation 150.2 and position aggregation requirements under Commission Regulation 150.4(b) 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 a notice within five business days after receiving a request from the Commission, Commission staff,⁷ a DCM, or DCM staff,⁸ to file such a notice;
- (2) otherwise would be in compliance with the applicable position limits in Commission Regulation 150.2 and position aggregation requirements under Commission Regulations 150.4(b) and 150.4(c) but for the fact that in its notice filing, the person addresses the circumstances warranting disaggregation only for the particular account or position identified by the Commission or a DCM in the request;⁹
- (3) otherwise would be in compliance with the applicable position limits in Commission Regulation 150.2 and position aggregation requirements under Commission Regulation 150.4(b)(2) but for the fact that the person complies with 150.4(b)(2)(i)(A) only in connection with derivatives trading;
- (4) otherwise would be in compliance with the applicable position limits in Commission Regulation 150.2 and position aggregation requirements under Commission Regulations 150.4(b)(2) and 150.4(c) but for the fact that in its notice filing seeking an owned entity aggregation exemption under Commission Regulation 150.4(b)(2), the person's certification:

⁶ See CFTC Letter 17-37 for a complete explanation of the no-action relief.

⁷ As is currently the case for calls for additional information under § 150.4(c)(3), under the relief provided in the CFTC Letters, Commission staff has the discretion, where Commission staff deems it warranted, to extend the five-business day period for submitting a disaggregation notice in response to a request from the Commission.

⁸ DMO's understanding is that several DCMs apply the same policy with respect to notice filings contained in the relief granted in the CFTC Letters and require submission of disaggregation notice filings only after receipt of a request for such a filing by the DCM. Moreover, certain DCM rules currently provide for some of the relief addressed in the CFTC Letters. Under those rules, DCM staff has discretion to extend the DCM's deadline for submitting a disaggregation notice required by that DCM's rules. DMO observes that the Commission's regulations do not inhibit the discretion that DCM staff may have with respect to the DCM's processing of applications for exemptions from the aggregation requirements.

⁹ For example, if a person is relying upon the owned entity exemption in § 150.4(b)(2), and the Commission or a DCM ask whether the participant is eligible to disaggregate the owner's positions from those of a particular owned entity, under the CFTC Letters, the notice filing must address the circumstances warranting disaggregation for that particular owned entity, but not for all accounts and positions that the owner is eligible to disaggregate. The relief in the CFTC Letters does not in any way circumscribe the number and range of owned entities about which the Commission or DCM staff can ask an owner to file a § 150.4(c) notice.

- (a) in regards to controlling the owned entity or having routine access to relevant information about the owned entity addresses only derivatives trading;
 - (b) provides that it does not control derivatives trading of the owned entity nor have routine access to derivatives trading information about the owned entity with no mention of whether it is able to do so; or
 - (c) only addresses the owner, and not the owned entity, in circumstances where the owner is not aware, and should not be aware, of the derivatives trading activity of the owned entity;
- (5) otherwise would be in compliance with the independent account controller exemption in Commission Regulation 150.4(b)(4) but for the fact that the person is not eligible to rely on that exemption because either: (a) 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 commodity trading advisor that is not registered as such by virtue of meeting the criteria for an exemption from registration; 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 150.1;¹⁰ or
- (6) does not aggregate its positions with those of another person pursuant to the “substantially identical trading strategies” requirement in Commission Regulation 150.4(a)(2), 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.

III. Extension of the CFTC Letters

DMO has determined that it is appropriate to grant the Associations’ request to extend CFTC Letter 19-19 to the earlier of either August 12, 2025 or the effective date of a rulemaking codifying the relief described herein. DMO believes that, for the reasons set forth in the CFTC Letters,¹¹ as well as due to the substantive changes made by the Position Limits Final Rule, the additional three-year period of no-action relief set forth below will provide DMO with a reasonable period of time to continue to: evaluate whether the relief granted is hindering Commission staff’s ability to conduct surveillance; assess the impact of the relief, especially with respect to the new contract markets and market participants subject to federal position limits for the first time under the Position Limits Final Rule; and consider long-term solutions that must, appropriately, be

¹⁰ The independent account controller exemption in § 150.4(b)(4) requires an eligible entity, rather than an independent account controller, to make a notice filing. However, if the Commission nonetheless requests a filing from an independent account controller in connection with the independent account controller exemption, then the independent account controller need only identify the relevant eligible entity or entities, and the eligible entity shall have five business days to make such notice filing after the date it receives a request from the Commission, or a DCM, to submit such filing.

¹¹ See CFTC Letter 17-37 at 8-13.

implemented by a notice and comment rulemaking. DMO may alter the relief if it finds that the Commission's surveillance functions or other policy goals appear to be impacted.

IV. Conclusion

This letter extending CFTC Letter 19-19 will be effective on the date that it is issued, and shall remain in effect until the earlier of either 12:01 a.m. eastern standard time on August 12, 2025 or the effective date of a rulemaking codifying the relief described herein.

This letter and the position taken herein represent the views of DMO only, and do not necessarily represent the views of the Commission or of any other division or office of the Commission. Further, this letter, and the relief contained herein, is based upon the representations made to DMO by the Associations. It should be noted that any different, changed, or omitted material facts or circumstances may render this letter void. Finally, as with all no-action letters, DMO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein in its discretion.

If you have any questions regarding this staff no-action letter, please contact Brigitte Weyls at bweyls@cftc.gov, (312) 596-0547; or Steven A. Haidar at shaidar@cftc.gov, (202) 418-5611.

Sincerely,

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