

# CFTC Modifies Proposed Aggregation Standards for Owned Entities under its Position Limit Rules

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## Introduction

On September 22, 2015, the Commodity Futures Trading Commission proposed modifications to its position limit aggregation requirements for owned entities (the “[2015 Aggregation Proposal](#)”). This proposal would revise aggregation standards previously proposed by the CFTC in November 2013 (the “[2013 Aggregation Proposal](#)”). These proposed rules would set revised aggregation requirements for purposes of the CFTC’s current position limit regime, which covers nine agricultural futures and options contracts, and also would apply to any revised position limits which may be adopted by the CFTC, including those that would apply to swaps.

Consistent with the CFTC’s current aggregation requirements and the 2013 Aggregation Proposal, the 2015 Aggregation Proposal would require a person or entity (an “**Owner**”) to aggregate the Owner’s positions with those of any account or entity in which the Owner has a 10% or greater ownership or equity interest (an “**Owned Entity**”). The 2013 Aggregation Proposal contained two exemptions available for disaggregation of positions held by Owned Entities. First, an Owner that owns between 10% and 50% of an Owned Entity could disaggregate the positions of the Owned Entity if the Owner and Owned Entity meet several requirements that are primarily designed to ensure independent trading between the Owner and Owned Entity. (These requirements are described in more detail below.) Second, under the 2013 Aggregation Proposal, if an Owner owns more than 50% of an Owned Entity, the Owner could disaggregate the positions of the Owned Entity if the Owner and Owned Entity met the requirements of the first exemption plus additional requirements, including that the Owner and the Owned Entity do not report consolidated financials and that the Owner obtains prior approval from the CFTC for disaggregation.

The 2015 Aggregation Proposal deletes this second exemption and instead would make the first exemption available to an Owner for any Owned Entity, regardless of the Owner’s level of ownership in the Owned Entity. Thus, under the 2015 Aggregation Proposal, an Owner could disaggregate the positions of an Owned Entity so long as:

- the Owner (and any entity with which such Owner must aggregate) and the Owned Entity:
  - do not have knowledge of the trading decisions of the other;
  - trade pursuant to separately developed and independent trading systems;
  - have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities;
  - do not share employees that control the trading decisions of either;
  - do not have risk management systems that permit the sharing of trades or trading strategies; and
- the Owner makes a notice filing with the CFTC providing specified information about the Owner and Owned Entity and stating the claim for the exemption from aggregation, which must be updated or amended upon any material change.

The 2015 Aggregation Proposal, consistent with the 2013 Aggregation Proposal, would allow the CFTC to amend, suspend, terminate or modify an Owner's ability to use the exemption from aggregation if an Owner fails to comply with the relevant requirements.

A person separately would need to aggregate positions for any account over which the person directly or indirectly controls trading. In addition, the 2015 Aggregation Proposal does not modify the 2013 Aggregation Proposal's requirement for a person to aggregate positions in accounts or pools with substantially identical trading strategies that are held or controlled by the person, regardless of whether an exemption from aggregation would otherwise be available. The Proposal also does not modify the aggregation exemption for positions held in commodity pools through limited partnership or other similar interests, and thus remains the same as under the 2013 Aggregation Proposal and existing position limit rules. Finally, aggregation of positions would be required in circumstances where two (or more) persons trade for different accounts or entities together pursuant to an express or implied agreement, regardless of whether the persons are affiliated or whether an exemption is otherwise available.

The CFTC states that the revisions made by the 2015 Aggregation Proposal reflect its view that the position limit regime is better served by focusing aggregation requirements on situations where an Owner is actually able to control the day-to-day trading activity of an Owned Entity. In a statement accompanying the Proposal, CFTC Commissioner Giancarlo stated that the changes made by the Proposal better reflect the "the realities of modern commerce in which global trading firms may often have many unconnected subsidiaries that neither communicate nor share trading strategies or market position information."

Comments on the 2015 Aggregation Proposal are due on or before November 13, 2015.

The CFTC's proposed position limit rules, which were issued in November 2013, have not yet been finalized. Davis Polk's client memorandum on those proposed rules is available [here](#).

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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