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CFTC Staff Extends Position Limit Aggregation Relief

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The CFTC's position limit rules, which currently apply to limited types of futures contracts and options on futures, include aggregation requirements that specify the circumstances under which positions controlled or held by a person must be counted together for purposes of the position limits. These aggregation rules were significantly amended in 2016. While the amended rules included new exemptions from the aggregation requirements, they also imposed new filing requirements and, in some cases, raised interpretive questions for market participants, including asset managers and investment funds that trade futures and options.

The CFTC staff issued a no-action letter (**CFTC Letter 17-37**) on August 10 that extends and expands the staff's **February 2017 no-action relief** from some position limit aggregation requirements. Letter 17-37 continues the recent trend of the CFTC staff addressing concerns raised by industry associations and market participants.

Aggregation Requirement

CFTC Rule 150.4(a) generally requires any person to aggregate for position limit purposes any positions for which the person:

- exercises direct or indirect trading control;
- has 10% or greater ownership or equity interest, including where the positions are held by an entity in which the person has a 10% or greater ownership or equity interest (Owner Aggregation); or
- holds or controls trading of positions in more than one account or pool with "substantially identical trading strategies."

The rules contain several exemptions from this general aggregation requirement. Key exemptions include those from Owner Aggregation, subject to conditions designed to restrict knowledge of trading or positions between the owner and owned entity, and for client positions controlled by an "independent account controller" for an "eligible entity."

Relief Granted

The relief granted by Letter 17-37 relates to five specific provisions of the aggregation requirements or exemptions from those requirements, as described in the chart below. The relief expires on August 12, 2019, but the Letter explains that the two-year relief period is intended to provide the CFTC staff with time to assess and determine whether permanent modifications to the aggregation rules may be appropriate. The CFTC, with its newly confirmed commissioners, also **may be considering action** on its re-proposed position limit rules, that—in their current form—would expand CFTC position limits to additional types of physical commodity futures contracts and swaps on the same underlying commodities

Aggregation Requirement	Relief under Letter 17-37
Rule 150.4(c)(6) requires a person who seeks to rely upon an aggregation exemption to file a notice with the Commission. The notice must (among other requirements): • be filed in advance of reliance upon the exemption; • include a description of the relevant circumstances that warrant disaggregation; and • include a statement of a senior officer certifying that the conditions in the applicable exemption have been met.	No notice filing is required, except if requested by the CFTC or an exchange. Upon such a request, the notice must be filed within five business days. The notice may address only the circumstances warranting disaggregation for the particular entity, account or position identified by the Commission or exchange in its request.
Rule 150.4(b)(2) provides an exemption from Owner Aggregation, subject to several conditions. These conditions include, among others, that the owner and owned entity—to the extent that the owner is aware or should be aware of the activities and practices of the owned entity—do not have knowledge of the trading decisions of the other. In adopting the exemption, the CFTC stated that an owner would be viewed as aware of the owned entity's activities and practices if the owner was able to control the owned entity.	• Provides that an owner and owned entity may satisfy the restriction on having knowledge of trading decisions of the other by complying with the restriction only with respect to derivatives trading (e.g., not for cash market trading). For this purpose, derivatives refers to contracts subject to CFTC-established position limits. • The senior officer compliance certification can be limited as follows. These limited filings are available based upon actual control or awareness of trading activities, not the ability to control or be aware of those activities. o *Where the owned entity's activities are controlled by the owner*: the certification may address only derivatives trading activities under the conditions of the exemption. o *Where the owned entity's activities are not controlled by the owner:* the certification can provide that the owner does not control derivatives trading of the owned entity and does not have routine access to derivatives trading information about the owned entity. o *Where the owner is not aware, and should not be aware, of the derivatives trading activity of the owned entity:* the certification may address only the owner and not the owned entity under the conditions of the exemption.
Rule 150.4(b)(4) permits disaggregation of positions traded by an "independent account controller" for an "eligible entity." The definitions of independent account controller and eligible entity do not include commodity trading advisors or other persons acting in a fiduciary capacity that are exempt from registration with the CFTC.	This exemption is available where: • the person that is acting as an independent account controller or eligible entity is an exempt CTA; or • a person has authorized an independent account controller to act in a fiduciary capacity, even if the person does not meet the definition of eligible entity.

Trainee Solicitor Courtney Grafton contributed to this post.

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

Annette L. Nazareth
+1 202 962 7075
annette.nazareth@davispolk.com