



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521

### Division of Market Oversight

CFTC Letter No. 17-06  
No-Action  
February 6, 2017  
Division of Market Oversight

Timothy W. Cameron, Esq.  
Asset Management Group – Head  
Securities Industry and Financial Markets Association

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

Steven Kennedy  
Global Head of Public Policy  
International Swaps and Derivatives Association

Dear Mr. Cameron, Ms. Martin, and Mr. Kennedy:

On December 16, 2016, the Commodity Futures Trading Commission (the “Commission”) published in the Federal Register a rulemaking entitled Aggregation of Positions, which amended Commission Regulation 150.4.<sup>1</sup> The amendments to § 150.4 determine which accounts and positions a person must aggregate for the purpose of determining compliance with the applicable position limit levels set forth in § 150.2. The amendments to Commission Regulation 150.4 become effective on February 14, 2017.

Under amended Commission Regulation 150.4, market participants relying on exemptive relief under paragraphs (b)(1)(ii), (b)(2), (b)(3), (b)(4) or (b)(7) are required to file notice with the Commission demonstrating compliance with the conditions applicable to the claimed exemption.<sup>2</sup> The notice must generally be made before the exemption

---

<sup>1</sup> Aggregation of Positions, 81 FR 91454 (December 16, 2016) (“Final Rule”).

<sup>2</sup> *Id.* at 91491.

from aggregation is needed, since the filing would generally be a pre-requisite for obtaining the exemption.

### **Requests for No-Action Relief**

#### *SIFMA AMG Request for Relief*

On January 23, 2017, the Commission's Division of Market Oversight ( "DMO") received a request from the Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG") for time-limited no-action relief, until May 15, 2017, in regards to compliance with amended § 150.4 ("SIFMA AMG No-Action Request"). Specifically, the SIFMA AMG No-Action Request sought relief for market participants that are eligible to rely on an exemption from aggregation from the requirement to comply with the notice filing and certification requirements included in Commission Regulation 150.4(c).<sup>3</sup>

According to the SIFMA AMG No-Action Request, it is not practicable, notwithstanding good-faith efforts, to comply with the new notice filing and certification requirements of the Final Rule by the effective date. As described, market participants must analyze and adapt to the amended aggregation requirements, and determine where any new aggregation exemption is available, among other things.<sup>4</sup> The SIFMA AMG No-Action Request provides examples of these steps, such as determining which owned entities are eligible for disaggregation under the owned entity exemption.

---

<sup>3</sup> Specifically, the SIFMA AMG No-Action Request asked for time-limited no-action relief that "would provide that: (1) the Division of Market Oversight (the "Division") of the U.S. Commodity Futures Trading Commission (the "Commission") would not recommend an enforcement action against any person or entity that is eligible to rely on an exemption from aggregation for failing to comply with the new notice filing requirements of Commission Regulation 150.4(c) for 90 days following its effective date (i.e., prior to May 15, 2017), and (2) the failure to file such a notice during the period of relief would not cause such person or entity to violate the Commission's aggregation requirements or any position limit." SIFMA AMG No-Action Request at 1; *see also* SIFMA AMG No-Action Request at 2.

<sup>4</sup> "For example, all market participants potentially at risk of approaching position limits must simultaneously: (1) analyze what impact the regulatory changes have on their business structures and trading programs, (2) determine which accounts and positions are eligible for any new aggregation exemption, (3) prepare the new notice filing (including an explanation of the circumstances warranting disaggregation) in connection with most of the exemptions from aggregation requirements and (4) work with their senior officers who will be required to certify certain information contained in the notice filing." SIFMA AMG No-Action Request at 2.

The SIFMA AMG No-Action Request states that these steps are particularly problematic for asset managers because they must mobilize their own institutions to satisfy these requirements and assess the need for outreach plans to ensure that their clients are aware of and prepared for the coming changes. Finally, the notice filings and certifications will take significant time to prepare in and of themselves, for a number of reasons.<sup>5</sup>

SIFMA AMG further states that it does not believe there is sufficient time before February 14, 2017 for market participants to accomplish all of the above described tasks in order to satisfy the requirements of the Final Rule.<sup>6</sup> In addition, according to the SIFMA AMG No-Action Request, each of the tasks is a considerable undertaking for compliance personnel of asset managers and large corporate entities that already have a full plate of regulatory compliance responsibilities, and will require systems to address both current circumstances and business operations going forward. SIFMA AMG states its belief that, as a result, market participants will not have adequate time to also prepare the new notice filings and certifications required by Commission Regulation 150.4(c), and that the requested no-action relief would afford market participants necessary time to fulfill their own responsibilities in order to rely on an aggregation exemption under the Final Rule, and to conduct any necessary outreach efforts to their clients.<sup>7</sup>

#### *ISDA Request for Relief*

On January 27, 2017, DMO received a letter from the International Swaps and Derivatives Association (“ISDA”), which requested time-limited no-action relief in regards to compliance with amended § 150.4 for substantially similar reasons as the SIFMA AMG No-Action Request, but for a period of at least six months (the “ISDA No-Action Request”).

---

<sup>5</sup> The SIFMA AMG No-Action Request states “[f]irst, explanations of the circumstances that warrant disaggregation will have to be prepared. Second, compliance personnel will have to work with senior officers who are required to make the certifications to assure they are able to appropriately certify that the criteria for the relevant exemption (some of which are extremely complex) have been satisfied. And third, asset managers in particular must assess whether to engage in outreach to their clients to ensure that such clients are aware of the aggregation (and disaggregation) requirements of the Final Rule, especially where those clients may be required, or choose, to prepare and submit their own notice filings and certifications.” SIFMA AMG No-Action Request at 3.

<sup>6</sup> *Id.*

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

### **Time-Limited No-Action Relief**

DMO has reviewed each specific request and determined to grant relief subject to the conditions set forth below.

After consideration of both relief requests, DMO is issuing this time-limited no-action relief. Accordingly, when the Final Rule is required, DMO will not recommend that the Commission commence an enforcement action against any person or entity that is eligible to rely on an exemption from aggregation under Commission Regulation 150.4(b) that fails to comply with the notice filing requirements of Commission Regulation 150.4(c) until August 14, 2017. Upon the expiration of this relief, each person or entity that intends to rely on an exemption from aggregation under § 150.4(b) must file a notice as required under § 150.4(c).

DMO notes that although it is providing temporary relief from the aggregation notice filing compliance date under Commission Regulation 150.4(c), participants may chose, of their own accord, to file a notice with the Commission that complies with the requirements of § 150.4(c) of their intent to take advantage of an exemption from aggregation provided under § 150.4(b).

### **Conclusion**

This no-action relief shall remain in effect until 12:01 a.m. eastern standard time on August 14, 2017.

The relief provided by this letter is limited to the notice filing requirements of Commission Regulation 150.4(c) and does not excuse persons relying on it from compliance with any other applicable requirements contained in the Commodity Exchange Act (“CEA”) or in the Commission regulations issued thereunder. The relief also does not address issues related to aggregation for other purposes under the CEA and regulations, including manipulation or other abusive practices.

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 office or division of the Commission. Further, this letter, and the relief contained herein, is based upon the representations made to DMO by both SIFMA AMG, in the SIFMA AMG No-Action Request, and ISDA, in the ISDA No-Action Request. Any different, changed, or omitted material facts or circumstances might 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.

No-Action Position re: Regulation 150.4(c) Notice Filing Requirements  
February 6, 2017  
Page 5

If you have any questions regarding this staff no-action letter, please contact Stephen Sherrod at [ssherrod@cftc.gov](mailto:ssherrod@cftc.gov), (202) 418-5452; or Riva Spear Adriance at [radriance@cftc.gov](mailto:radriance@cftc.gov), 202-418-5494.

Sincerely,

---

Amir Zaidi  
Director  
Division of Market Oversight