



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. 17-37
No-Action
August 10, 2017
Division of Market Oversight

Re: No-Action Relief from certain Position Aggregation Requirements under Commission Regulation 150.4

Ladies and Gentlemen:

This letter responds to requests received by the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“Commission”) from the Asset Management Group of the Securities Industry and Financial Markets Association (“SIFMA AMG”) and the Managed Funds Association (“MFA”) (“SIFMA AMG/MFA Request”), as well as from the Futures Industry Association (“FIA”) (“FIA Request”), for relief from compliance with certain position aggregation requirements under Commission Regulation 150.4. DMO is issuing this letter to provide time-limited no-action relief from certain aspects of the position aggregation requirements under Commission Regulation 150.4.

I. Background

On December 16, 2016, the Commission published in the Federal Register a rulemaking entitled Aggregation of Positions, which amended Commission Regulation 150.4.¹ Amended Commission Regulation 150.4 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 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 amendments to Commission Regulation 150.4 became effective on February 14, 2017.

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

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On February 6, 2017, DMO, pursuant to Commission Staff Letter No. 17-06, issued temporary relief from all of the notice filing requirements under 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). That relief expires at 12:01 a.m. on August 14, 2017, meaning from that point forward, an entity relying on certain aggregation exemptions² would have to file a notice with the Commission pursuant to Commission Regulation 150.4(c), and would generally have to do so before the exemption from aggregation is needed, since the filing would generally be a pre-requisite for obtaining the exemption.

This letter involves several provisions in amended Commission Regulation 150.4, including:

(1) Commission Regulation 150.4(c)(1), which requires that any notice required to be filed by an entity seeking an exemption from aggregation under Commission Regulation 150.4(b) include a “description of the relevant circumstances that warrant disaggregation” and a “statement of a senior officer of the entity certifying that the conditions set forth in the applicable aggregation exemption provision have been met;”

(2) Commission Regulation 150.4(c)(6), which provides that failure to timely file such a notice shall not constitute a violation of the aggregation requirements in Commission Regulation 150.4(a)(1), or position limits set forth in Commission Regulation 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;”³

(3) Commission Regulation 150.4(b)(2), which provides that any person with an ownership or equity interest in an owned entity of 10 percent or greater generally need not aggregate the accounts or positions of the owned entity with any other account or position such person is required to aggregate, provided that “Such person, including any entity that such person must aggregate, and the owned entity (to the extent that such person is aware or should be aware of the activities

² Commission Regulation 150.4(c) requires a person relying on an exemption under paragraphs (b)(1)(ii), (b)(2), (b)(3), (b)(4) or (b)(7) to file a notice with the Commission.

³ The notice required by § 150.4(c) must otherwise generally be made before the exemption from aggregation is needed, since the filing would generally be a pre-requisite for obtaining the exemption.

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and practices of the aggregated entity or the owned entity)”⁴ meet the 150.4(b)(2)(i)(A)-(E) firewall conditions, including that they “[d]o not have knowledge of the trading decisions of the other;”⁵

(4) Commission Regulation 150.4(b)(4), which allows an “eligible entity,” as defined in 150.1(d),⁶ to file a notice seeking a non-spot month aggregation

⁴ As stated in the preamble to the Final Aggregation Rule, in recognizing that an owner may not have knowledge of, or an ability to find out about, the trading practices of an owned entity, the Commission has stated that it understands the phrase “should be aware” to mean that “the owner is charged with awareness of the owned entity’s activities if it is, in effect, able to control the owned entity or routinely has access to relevant information about the owned entity.” See Final Aggregation Rule at 91468.

⁵ The owned-entity exemption in § 150.4(b)(2) provides as follows:

Any person with an ownership or equity interest in an owned entity of 10 percent or greater (other than an interest in a pooled account subject to paragraph (b)(1) of this section), need not aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate, provided that:

(i) Such person, including any entity that such person must aggregate, and the owned entity (*to the extent that such person is aware or should be aware of the activities and practices of the aggregated entity or the owned entity* [emphasis added]):

- (A) Do not have knowledge of the trading decisions of the other;
- (B) Trade pursuant to separately developed and independent trading systems;
- (C) 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 security arrangements, including separate physical locations, which would maintain the independence of their activities;
- (D) Do not share employees that control the trading decisions of either;
- and
- (E) Do not have risk management systems that permit the sharing of its trades or its trading strategy with employees that control the trading decisions of the other; and

(ii) Such person complies with the requirements of paragraph (c) of this section.

⁶ The “eligible entity” definition in § 150.1(d) covers a limited set of entities which authorize an independent account controller independently to control all trading decisions on the eligible entity’s behalf. “Eligible entities” are limited to: commodity pool operators; vehicles excluded from the definition of “pool” or “commodity pool operator” under § 4.5; limited partners, limited members, or shareholders in a commodity pool, the operator of which is exempt from registration under § 4.13; commodity trading advisors; banks or trust companies; savings associations; insurance companies; or separately organized affiliates of any of the above.

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exemption in certain circumstances for accounts carried by an “independent account controller,” as defined in 150.1(e);⁷ and

(5) Commission Regulation 150.4(a)(2), which includes an aggregation requirement for persons holding or controlling the trading of positions in more than one account or pool with “substantially identical trading strategies.”⁸

II. Requests for No-Action Relief

A. SIFMA AMG/MFA Request

On July 17, 2017, DMO received a request from SIFMA AMG and MFA for no-action relief from compliance with certain provisions of Commission Regulation 150.4. Specifically, the SIFMA AMG/MFA Request sought relief in circumstances where a person:⁹

“(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 [a designated contract market (“DCM”)] to file such a notice;

⁷ The “independent account controller” definition in § 150.1(e) covers a limited set of entities authorized by an “eligible entity” independently to control trading decisions on behalf of the eligible entity. “Independent account controllers” are limited to: persons registered as futures commission merchants, introducing brokers, commodity trading advisors, or an associated person of any such registrant; or general partners, managing members, or managers of a commodity pool, the operator of which is excluded from registration under § 4.5(a)(4) or § 4.13, provided that such general partner, managing member or manager complies with the requirements of § 150.4(c).

⁸ Aggregation under § 150.4(a)(2) is not subject to the exemptions from aggregation in § 150.4(b), and § 150.4(a)(2) does not include an ownership threshold, meaning if the accounts or pools have substantially identical trading strategies, a person must aggregate its positions, regardless of ownership level. *See* Final Aggregation Rule at 91477.

⁹ The term “person” as used in the context of the SIFMA AMG/MFA request has the meaning set forth in Commission § 1.3(u), 17 C.F.R. § 1.3(u), and includes, among others, individuals, partnerships, and corporations.

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(2) otherwise would be in compliance with the independent account controller (“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 150.1(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)[], 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.”¹⁰

According to the SIFMA AMG/MFA Request, without relief addressing each of the items listed above, certain aspects of the Final Aggregation Rule are unworkable for and/or impose substantial and undue burdens on investment funds, asset managers, and the passive investors on whose behalf they act.¹¹ In particular, with respect to the notice-filing requirement, the SIFMA AMG/MFA Request asserts that requiring notice filings to be submitted on a prospective basis would impose significant operational challenges and burdens which would be largely avoided, without interfering with the Commission’s need for information, if DMO granted no-action relief from the notice filing requirement except in circumstances where such notice is requested by the Commission or a DCM.¹²

With respect to the independent account controller exemption and the definitions of “eligible entity” and “independent account controller,” the SIFMA AMG/MFA Request notes that exempt CTAs do not qualify as either an “eligible entity” or an “independent account controller,” and asserts that registration status for CTAs has no relevance to the purpose of the independent account controller exemption, and that all trading advisors should be able to avail themselves of the independent account controller exemption, regardless of their registration status.¹³ The SIFMA AMG/MFA Request further states that a significant number of market participants (including foundations,

¹⁰ SIFMA AMG/MFA Request at 2.

¹¹ *Id.* at 4.

¹² *Id.* at 5.

¹³ *Id.* at 7-8.

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endowments, and foreign pension vehicles) that grant discretionary trading authority to asset managers may not fall within the categories set out in the definition of an “eligible entity,” yet SIFMA AMG/MFA is aware of no policy rationale for their exclusion.¹⁴ SIFMA AMG/MFA, therefore, requested that the Division grant no-action relief.

Finally, SIFMA AMG/MFA requests relief with respect to the substantially identical trading requirement. The SIFMA AMG/MFA Request states that the Final Aggregation Rule did not provide any definition or guidance as to the meaning of “substantially identical trading strategies,” and that absent any metrics to assess whether trading strategies are “substantially identical,” asset managers and investment funds cannot operationalize the rule in order to determine whether they are aggregating positions in compliance with Commission requirements.¹⁵

B. FIA Request

On July 12, 2017, DMO received a letter from FIA which, among other things, requested relief, for substantially similar reasons as the SIFMA AMG/MFA Request, from compliance with the timeline for filing an aggregation exemption notice required by Commission Regulation 150.4(c)(6).¹⁶

FIA also requested that, in regards to filing a notice within five business days of a Commission or DCM request, the relief DMO provides specify “that the notice filing would need to address the circumstances warranting disaggregation *for the particular account or position identified in the request*” [emphasis added]. SIFMA AMG and MFA

¹⁴ *Id.* at 8. The SIFMA AMG/MFA Request states that “[a]s 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 § 4.5, cannot claim the independent account controller 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 independent account controller exemption.” *Id.*

¹⁵ *Id.* at 9-10.

¹⁶ For example, the FIA Request states that a “requirement that all market participants must file a notice before relying upon an exemption would result in thousands of filings from all types of market participants that in many, if not the vast majority, of cases, will not be relevant to the CFTC’s position limits monitoring program. . . . By contrast, the relief that will be requested by SIFMA AMG and that is supported by FIA’s membership, would enable Staff to focus on information that is specifically relevant to the accounts or positions that prompted the CFTC’s need to review the accounts or positions for compliance with an applicable limit. This process would be significantly more efficient and less burdensome for Staff and market participants alike.” FIA Request at 2.

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indicated their support for this request for relief.¹⁷ FIA provided the following example: if a market participant is relying upon the owned-entity exemption in Commission Regulation 150.4(b)(2), and the staff of either the Commission or a DCM ask whether the participant is eligible to disaggregate the owned entity, the notice filing would address “the circumstances warranting disaggregation *for the particular owned entity*” [emphasis added]. FIA also clarified that it was requesting that its requested relief “would not require that a market participant’s notice filing in response to a CFTC or DCM request address all accounts and positions that the participant is eligible to disaggregate.”¹⁸

According to FIA, requiring a market participant to address all accounts and positions that the participant is eligible to disaggregate “would impose a substantial burden on industry and not provide Staff with important or necessary information. For example, within the context of the owned-entity exemption, FIA expects that a requirement to identify all owned entities in a notice filing would result in many participants filing notices with hundreds or thousands of owned entities, many of which will not trade futures or swaps. This would not provide Staff with helpful information to monitor compliance with position limits, but would impose a substantial burden for market participants to develop, file, and update notices with the list of disaggregated entities.”¹⁹

Finally, FIA requested additional clarity regarding the scope and content of any notice filing required to be submitted by market participants relying upon the owned entity exemption in Commission Regulation 150.4(b)(2).²⁰ In particular: the required contents of the notice filing in light of preamble language which distinguishes between circumstances where the owner is aware, and should be aware, or is not aware, and should not be aware, of the owned entity’s “activities and practices.”²¹ To further clarify

¹⁷ SIFMA AMG/MFA Request at 7. SIFMA AMG and MFA note that they “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.” *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ FIA Request at 1-3.

²¹ “The Commission understands the phrase “should be aware” to mean that the owner is charged with awareness of the owned entity’s activities if it is, in effect, able to control the owned entity or routinely has access to relevant information about the owned entity. If the owner is not aware, and should not be aware,

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the meaning of this language, the FIA Request provided for DMO's consideration for sufficiency under Commission Regulations 150.4(c) and 150.4(b)(2) examples of two notice filings, one which would be used in situations where the owner is aware, and should be aware, of the owned entity's activities and practices, and one where the owner is not aware, and should not be aware, of the owned entity's activities and practices.²² The example notice filings proposed by FIA include representations regarding control and access to information that are limited to control of, or access to information about, "derivatives trading."²³

III. Discussion of Requests for Relief

After reviewing each request for relief from SIFMA AMG/MFA and FIA, DMO has determined to grant the requests for the reasons outlined below. Section IV of this letter will describe the no-action relief provided, including the two-year term and conditions of the relief.

A. *Timing and Contents of the Notice Filing for Exemption from Aggregation*

With respect to the notice filing requirement in Commission Regulation 150.4(c), including the timing of when the notice is due and the contents of the required notice, DMO preliminarily believes that the no-action relief granted below will reduce burdens on market participants by streamlining the notice filing requirements in a manner that is consistent with the underlying purpose of the Final Aggregation Rule, while ensuring that Commission staff can continue to effectively monitor compliance with position limits.

In Commission Staff Letter No. 17-06, DMO granted time-limited no-action relief until August 14, 2017 from the notice requirements in Commission Regulation 150.4(c), based in part on representations from SIFMA AMG and others that it would not be

of the owned entity's activities, it would not have to certify as to the owned entity." Final Aggregation Rule at 91468.

²² See § 150.4(b)(2)(i). FIA provides "Example 1—Owner May Rely On Awareness Clause" in § 150.4(b)(2)(i), and "Example 2—Owner May Not Rely On Awareness Clause." DMO understands that the "awareness" clause referred to by FIA is the provision in § 150.4(b)(2)(i), described above, which provides that the owner of 10% or greater in an owned entity need not aggregate the accounts or positions of the owned entity with its accounts provided that "Such person, including any entity that such person must aggregate, and the owned entity (to the extent that such person is aware or should be aware of the activities and practices of the aggregated entity or the owned entity)..." complies with the firewall conditions in 150.4(b)(2)(i)(A)-(E).

²³ FIA Request at 3.

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practicable to comply with the new notice filing and certification requirements by the February 14, 2017 effective date of the Final Aggregation Rule.²⁴ Since issuing that relief, DMO staff has worked with market participants and exchanges to better understand the implications associated with the notice filing requirement going into effect, and to learn about which particular elements of the notice requirement in Commission Regulation 150.4(c) were causing potential difficulties for market participants.

One issue that was identified during those discussions was the requirement that the notice must generally be submitted before the exemption from aggregation is needed, and that the notice must address all disaggregated entities. In its letter requesting relief, SIFMA AMG/MFA stated that requiring such notice filings to be submitted on a prospective basis would impose significant operational challenges and burdens.²⁵

For example, in the context of the owned-entity exemption in Commission Regulation 150.4(b)(2), SIFMA AMG/MFA stated that “prospectively providing a description of the relevant circumstances that warrant disaggregation, certifying that the conditions of the 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,” and that whether a passive investor’s ownership interest percentage meets the 10 percent threshold requiring aggregation (and thus triggering the need to make an owned-entity disaggregation notice filing) could change on a real time basis.²⁶ In the context of the independent account controller exemption in Commission Regulation 150.4(b)(4), the SIFMA AMG/MFA Request states that the “likely result of a prospective notice filing requirement...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...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.”²⁷

²⁴ See Commission Staff Letter No. 17-06 at 2-3.

²⁵ SIFMA AMG/MFA request at 4.

²⁶ *Id.* at 5.

²⁷ *Id.*

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DMO staff discussed the validity of these concerns with several DCMs, which, like the Commission, also conduct surveillance over their markets, including for compliance with position limits. These DCMs have indicated that for contracts not subject to federal limits, they generally allow notice filings to be submitted to the DCM within five business days after receiving a request from the DCM. DMO's understanding is that this process has worked well both for DCMs and for market participants, and has not hindered the DCMs' ability to monitor position limit compliance and conduct surveillance.

In issuing the no-action relief delineated below, DMO has sought to strike a balance between the concerns outlined above and the Commission's ability to perform surveillance functions and monitor positions for compliance with federal limits. DMO has determined that granting no-action relief allowing notice filings to be made upon request, rather than before the exemption from aggregation is needed, and allowing notice filings to address only the circumstances warranting disaggregation for the particular account or position identified in the request, would ease the burdens described above, and would be in line with existing practices to which market participants are accustomed at several DCMs.²⁸ In addition, DMO preliminarily believes that doing so would not hinder the Commission's ability to conduct surveillance.

B. Definitions of "Eligible Entity" and "Independent Account Controller"

With respect to the definitions used in the independent account controller exemption in Commission Regulation 150.4(b)(4), the Commission has previously indicated that it was considering comments requesting an expansion of the definition of the term "eligible entity," and may take such comments up in a later proceeding.²⁹ The no-action relief set forth below will provide DMO with an opportunity to evaluate during the term of the relief whether any negative consequences result from the temporary expansions of the definitions of "eligible entity" and "independent account controller."

C. Substantially Identical Trading Requirement

With respect to the substantially identical trading requirement in Commission Regulation 150.4(a)(2), DMO acknowledges the concerns raised by SIFMA AMG/MFA.

²⁸ In fact, DMO's understanding is that these DCMs either already apply, or intend to apply, the same policy with respect to notice filings contained in the relief granted herein and require submission of disaggregation notice filings only after a DCM's request for such a filing.

²⁹ See Final Aggregation Rule at 91480.

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During the term of the no-action relief delineated below, DMO will evaluate the appropriateness of granting more permanent relief with respect to this requirement.

D. Owned Entity Exemption

As described above, the two examples of owned entity exemption notice filings included in the FIA Request include representations relating to the independence of the owner and the owned entity. FIA's representations address control of, or access to information about, "derivatives trading," rather than addressing control of, or access to information about, trading more broadly (such as cash market trading). While the Final Aggregation Rule does not directly address the scope of the relevant trading, the rule does include language regarding trading that is broader than the language used in the FIA Request, particularly in the context of the criteria for meeting the owned-entity exemption,³⁰ and in connection with the "aware or should be aware" language and its associated preamble discussion.³¹ Although not stated explicitly in the FIA Request, DMO understands the implication of the two examples provided by FIA³² to be that FIA is seeking relief which would allow a person seeking an owned entity exemption to: (1) satisfy the firewall condition for the exemption in 150.4(b)(2)(i)(A) only with respect to derivatives trading, rather than in connection with trading more broadly; (2) provide a notice filing that contains a certification in regards to controlling the owned entity or having routine access to relevant information about the owned entity that addresses only derivatives trading; and (3) in circumstances where the owner is not aware, and should not be aware, of the derivatives trading activity of the owned entity, provide certifications only with respect to the owner, but not the owned entity.

³⁰ For example, the first criteria for the owned entity exemption in § 150.4(b)(2)(i)(A) refers to knowledge of "trading decisions" broadly, rather than to knowledge of derivatives trading decisions.

³¹ The preamble discussion of the "aware or should be aware" language in § 150.4(b)(2)(i) discussed "trading practices" of an owned entity, and refers to an ability "to control the owned entity or routinely has access to relevant information about the owned entity" noting further that if the owner is not aware, and should not be aware, "of the owned entity's activities, it would not have to certify as to the owned entity." See Final Aggregation Rule at 91468.

³² DMO staff confirmed this understanding during a phone call with FIA's counsel. FIA counsel explained that it used the term "derivatives" in its request for relief to refer to the term "referenced contract," as used in the Commission's reproposal to amend Part 150. See Position Limits for Derivatives, 81 Fed. Reg. 96704, 96966, (Dec. 30, 2016) (proposed definition) ("Rep proposal"); see also Rep proposal at 96734-35 (discussing the proposed definition). Since the relief here is provided in response to FIA's request, the term "derivatives," for purposes of the relief provided in this letter, is defined as proposed by FIA.

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After consideration of the FIA Request, DMO is currently of the view that it should provide a term of no-action relief to allow staff to evaluate whether or not granting relief would hinder its ability to conduct surveillance, thereby impacting the policy purposes of the Final Aggregation Rules. If the Commission's surveillance functions or other policy goals appear to be impacted, DMO can modify the terms of relief provided.

The relief provided below, therefore, allows for a narrower firewall condition in 150.4(b)(2)(i)(A) that is limited to knowledge of "derivatives trading decisions," allows for a notice filing with narrower representations limited to derivatives trading, and allows for certifications pertaining only to the owner when the owner is not aware, and should not be aware, of the owned entity's derivatives trading activity, for the period of the no-action relief. The relief is available provided that all other applicable regulatory requirements have been satisfied, including, among others, that the conditions set forth in Commission Regulation 150.4(b)(2)(i)(B)-(E) are met, that the Commission can continue to rely on its authority to request additional information under Commission Regulation 150.4(c)(3), and that two or more persons acting pursuant to an expressed or implied agreement or understanding will aggregate their positions in compliance with 150.4(a)(1).

As a related matter, DMO notes that in the Final Aggregation Rule, the Commission includes in the "should be aware" language in Commission Regulation 150.4(b)(2) those persons who are "able to" control the owned entity (and, consequently, have the authority, if desired, to control trading),³³ rather than the more narrow language offered by FIA in the example it provided ("controls the derivatives trading of the owned entity" and "routine access to the derivatives trading of the owned entity").³⁴ Absent the relief granted below, an owner would have to certify that it had no ability to control the owned entity, and that it had no ability to routinely access relevant information about the owned entity.

In regards to the use of the term "able" in the preamble to the Final Aggregation Rule (as in "able to control the owned entity or routinely have access to relevant information about the owned entity"),³⁵ DMO notes that the Commission was speaking in

³³ In the Final Aggregation Rule, the Commission stated that it "understands the phrase 'should be aware' to mean that the owner is charged with awareness of the owned entity's activities if it is, in effect, able to [emphasis added] control the owned entity or routinely has access to relevant information about the owned entity. If the owner is not aware, and should not be aware, of the owned entity's activities, it would not have to certify as to the owned entity." Final Aggregation Rule at 91468.

³⁴ See FIA Request Letter at 3.

³⁵ See Final Aggregation Rule at 91468.

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the abstract in the preamble, and that it would be possible that an owner that did not control an owned entity at one point in time might at some future point control the trading of that owned entity, or might use its ownership interest to receive routine and timely trading information about the owned entity. While the preamble uses broad language when discussing an ability to control the owned entity, the certification required under the relief set forth below is narrower in that it only requires that the owner certify that it does not (rather than is not able to) control the derivatives trading of the owned entity, and that it does not (rather than is not able to) have routine access to the derivatives trading information of the owned entity. Such a certification would constitute a direct commitment by the owner—if that certification ceases to remain true (*i.e.* if the owner does at some point control the derivatives trading of the owned entity, or does at some point gain routine access to the derivatives trading information of the owned entity), the no-action relief granted herein would no longer be applicable.

To provide the additional clarity requested by FIA and SIFMA AMG/MFA, and to provide an example of how the various elements of the no-action relief delineated below might function together in practice in connection with the owned-entity exemption, DMO notes the following: in circumstances where the owner is not aware, and should not be aware, of the owned entity's activities and practices, the owner seeking an owned entity exemption under Commission Regulation 150.4(b)(2) would be required to submit a notice filing that addresses only the owner's circumstances that warrant disaggregation of the owned entity identified by the Commission or a DCM (but not the owned entity's circumstances). The notice must also include a certification from a senior officer which states that the owner: (i) does not control the derivatives trading of the owned entity; (ii) does not have routine access to the derivatives trading information of the owned entity; (iii) does not have knowledge of the derivatives trading decisions of the owned entity; and (iv) meets the conditions specified in Commission Regulation 150.4(b)(2)(i)(B)-(E). The owner also must provide additional information, if any, requested by the Commission or Commission staff, to the extent required by 150.4(c)(3).

In circumstances where the owner is aware, or should be aware, of the owned entity's activities and practices, the owner must submit a notice filing that addresses both the owner's and the owned entity's circumstances that warrant disaggregation of the owned entity identified by the Commission or a DCM. The notice must also include a certification from a senior officer which states that both the owner and the owned entity do not have knowledge of the derivatives trading decisions of the other and meet the conditions specified in Commission Regulation 150.4(b)(2)(i)(B)-(E). The owner also must provide additional information, if any, requested by the Commission or Commission staff, to the extent required by 150.4(c)(3).

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IV. Relief Provided

After consideration of the requests for relief, DMO has determined that it is appropriate to provide no-action relief, as detailed below. During the period of the relief, DMO intends to continue to evaluate whether the relief granted is hindering Commission staff's ability to conduct surveillance, and may alter the relief if the surveillance functions or other policy goals appear to be impacted. DMO believes that the two-year period of no-action relief set forth below will provide DMO with a reasonable period of time in which it can assess the impact of the relief and consider long-term solutions that must, appropriately, be implemented by a notice and comment rulemaking.

Therefore, DMO will not recommend that until August 12, 2019, during the period the no-action relief is in effect, 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 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,³⁶ a DCM, or DCM staff³⁷ ("Commission or a DCM"), 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 Regulation 150.4(b) and Commission Regulation 150.4(c) but for

³⁶ DMO notes that, as is currently the case for calls for additional information under § 150.4(c)(3), under the relief provided here, Commission staff would have 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.

³⁷ DMO's understanding is that several DCMs intend to apply the same policy with respect to notice filings contained in the relief granted herein 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 being addressed here. 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.

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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;³⁸

(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 Regulation 150.4(b)(2) and Commission Regulation 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:

(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 CTA that is not registered as such by virtue of meeting the criteria for an exemption from

³⁸ 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, 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. DMO notes that this relief 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.

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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(d);³⁹ 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.

Upon the expiration of this no-action relief: each person or entity that intends to rely on an exemption from aggregation under paragraphs (b)(1)(ii), (b)(2), (b)(3), (b)(4), or (b)(7) of Commission Regulation 150.4(b) must file a notice as required under Commission Regulation 150.4(c); each person or entity that intends to rely on the independent account controller exemption in Commission Regulation 150.4(b)(4) must meet the definition of an "eligible entity" or an "independent account controller" in Commission Regulation 150.1, as appropriate; each person or entity that intends to rely on the owned entity exemption in Commission Regulation 150.4(b)(2) must meet the criteria in 150.4(b)(2)(i)(A)-(E) and must file a notice as required under Commission Regulations 150.4(b)(2) and 150.4(c); and each person or entity that 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) would be in violation of Commission Regulation 150.4(a), and any applicable position limits, as appropriate.

DMO notes that this no-action relief would not preclude a person from filing an aggregation exemption notice with the Commission prior to being contacted by the Commission or by a DCM should it choose to do so.

V. Conclusion

The no-action relief provided by this letter shall remain in effect until 12:01 a.m. eastern standard time on August 12, 2019.

³⁹ While 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, 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.

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The no-action relief provided by this letter is limited to the notice filing requirements of Commission Regulation 150.4(c), the definitions of “eligible entity” and “independent account controller” referenced in the independent account controller exemption in Commission Regulation 150.4(b)(4), the “aware or should be aware language” in 150.4(b)(2), the firewall conditions for the owned entity exemption in 150.4(b)(2)(i)(A), and the substantially identical trading requirement in Commission Regulation 150.4(a)(2), 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 division or office of the Commission. Further, this letter, and the relief contained herein, is based upon the representations made to DMO by both SIFMA AMG/MFA, in the SIFMA AMG/MFA Request, and FIA, in the FIA Request. It should be noted that 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.

If you have any questions regarding this staff no-action letter, please contact Aaron Brodsky at abrodsky@cftc.gov, 202-418-5349; Riva Spear Adriance at radriance@cftc.gov, 202-418-5494; or Stephen Sherrod at ssherrod@cftc.gov, (202) 418-5452.

Sincerely,

Amir Zaidi
Director
Division of Market Oversight