



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

CFTC Letter No. 18-27
No-Action
November 15, 2018
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 a request received by the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“Commission”) from [outside counsel], dated October 2, 2017, on behalf of _____ (the “Master Fund”), _____ (the “Holding Company”), and the four natural persons (“Natural Person Owners”) who are the only persons with a greater than 10 percent ownership interest in the Holding Company, (collectively, the “Requestors”),¹ for relief from compliance with certain position aggregation requirements under Commission Regulation 150.4.²

After consideration of the Request, DMO is issuing this time-limited letter to provide the requested relief to permit the Requestors to rely on aggregation exemptions even though transaction information firewalls are not maintained, because the use of such transaction information is only for the purposes of currency hedging, performance evaluation and risk management monitoring. In granting the relief, DMO is relying on the Request’s representations, including that the Requestors, who receive transaction

¹ DMO notes that, in this particular case, this relief is not being granted to a regulated banking institution. Rather, the six remaining beneficial owners are each also a natural person whose ownership interest is under 10 percent. An ownership interest of less than 10 percent, in and of itself, does not trigger the aggregation requirements of Commission § 150.4(a)(1); no relief is necessary, therefore, for those natural person owners based on ownership interest.

² The letter dated October 2, 2017 (the “Request Letter”) and later communications and representations together constitute the “Request.”

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portfolio information in contracts upon which the Commission has position limits, do not themselves engage in trading commodity interests other than commodity interests in currencies, and otherwise meet all the required firewall conditions. Such persons, according to the Request, would have no control over the trading decisions in contracts upon which the Commission has position limits and would not otherwise control trading, except for currency hedging.

In providing this aggregation relief, DMO intends to permit the foreign investment manager to more efficiently hedge the foreign exchange risk of non-U.S. dollar denominated accounts, for the benefit of foreign investors. DMO notes that the Requestors, who receive transaction information in contracts upon which the Commission has position limits, only engage in currency hedging, for which the Commission currently does not have position limits. Furthermore, DMO points out that the Commission has expressed a somewhat lesser concern over the years, regarding position limits for major foreign currencies.³ Finally, DMO notes that, according to the Request, the Requesters do not otherwise engage in any direct trading activities. If the hedging involved another commodity, or other trading was executed in other commodities or for other purposes, the relief provided in this letter would not be available.

I. Background

On December 16, 2016, the Commission published in the Federal Register a rulemaking entitled Aggregation of Positions, which amended Commission Regulation 150.4.⁴ 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. The amendments to Commission Regulation 150.4 became effective on February 14, 2017.⁵

³ See, e.g., 56 FR 51687, 51688-89 (Oct. 15, 1991) (requesting comment on whether to approve, for the first time, exchange rules providing for position accountability levels for certain financial contracts, including for certain major currencies, in lieu of position limits); see also 57 FR 29064, 29065 (June 30, 1992) (describing the Commission's statement, quoted above, from the October 15, 1991 request for comment, and noting its later approval of other exchange position accountability rules "consistent with the policies discussed in the [October 15, 1991] Federal Register notice . . .").

⁴ Aggregation of Positions, 81 FR 91454 (December 16, 2016) ("Final Aggregation Rule").

⁵ On August 10, 2017, DMO, pursuant to Commission Staff Letter No. 17-37 ("August 10th No-Action Relief"), issued relief from certain of disaggregation requirements under Commission § 150.4(b), including the notice filing requirements of Commission §§ 150.4(b)(1)(ii)(D) and 150.4(b)(2)(ii). According to the Request, the August 10th No-Action Relief does not address the circumstances of the Master Fund or of the Holding Company.

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Commission Regulation 150.4(b)(1) provides an exemption from aggregation for, among other things, a person that is a principal or affiliate of the operator of a pooled account, provided that such person and the pool operator meet the firewall conditions set forth in paragraphs (A)-(C) of Commission Regulation 150.4(b)(1)(ii). The firewall conditions in Regulation 150.4(b)(1)(ii) are that:

- (A) The pool operator has, and enforces, written procedures to preclude the person from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;
- (B) The person does not have direct, day-to-day supervisory authority or control over the pool's trading decisions; and
- (C) The person, if a principal of the operator of the pooled account, maintains only such minimum control over the commodity pool operator as is consistent with its responsibilities as a principal and necessary to fulfill its duty to supervise the trading activities of the commodity pool.

Commission Regulation 150.4(b)(2) provides an exemption from aggregation for any person with an ownership or equity interest in an owned entity of 10 percent or greater, provided that such person and the owned entity meet the firewall conditions set forth in paragraphs (A)-(E) of Regulation 150.4(b)(2)(i). The firewall conditions in Regulation 150.4(b)(2)(i) are that such person and the owned entity:

- (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.

At issue in the Request, certain persons do not meet the firewall conditions in Commission Regulation 150.4(b)(1)(ii)(A) and Commission Regulation 150.4(b)(2)(i)(A) and (C).

II. Request for No-Action Relief

In the Request Letter, DMO was asked to provide the following no-action relief:⁶

“1. The [Master Fund] be granted relief to disaggregate the commodity interest positions held as a result of its status as a greater than 10 percent pool participant in each of [Constituent Fund #1 and Constituent Fund #2], pursuant to CFTC Reg. § 150.4(b)(1);”⁷ and

“2. [the Holding Company, all Natural Person Owners, and all Individual Investment Vehicles] be permitted to disaggregate positions owned or controlled by [Master Fund Investment Manager, CPO #1, and CPO #2] as a result of [the Holding Company]’s greater than 10 percent ownership interest in each of [Master Fund Investment Manager, CPO #1, and CPO #2] pursuant to CFTC Reg. § 150.4(b)(2).”⁸

III. Discussion of Requests for Relief⁹

According to the Request, the Holding Company’s business consists of acquiring equity stakes in investment managers and acting as the parent company in the _____ group. The Holding Company’s Natural Person Owners are four individual shareholders,

⁶ As with all letters issued by DMO in response to a specific request for relief, this letter relies on the descriptions the requester provides regarding persons for whom relief is requested. Consequently, the persons detailed in the request, as quoted here, are summarized and discussed below based on the information provided in the Request.

⁷ According to the Request, _____ (“Constituent Fund #1”) is a fund subject to the [foreign investment managers act] and _____ (Constituent Fund #2”) is a fund that is regulated by the [foreign financial supervisory authority], and is a feeder fund that invests substantially all of its assets in _____ (“Constituent Fund #3).

⁸ The attached chart may be useful in understanding the relationships between the Holding Company, Natural Person Owners, Individual Investment Vehicles, the Master Fund, and the Constituent Funds. According to the Request: (i) _____ (“Master Fund Investment Manager”) is a [foreign] limited liability company that is subject to supervision by _____ (the [foreign financial supervisory authority] and serves as the investment manager for the Master Fund; (ii) _____ (“CPO #1”) is a [foreign] limited liability company that is subject to regulation by _____, is also registered as a commodity pool operator (“CPO”) and a member of National Futures Association (“NFA”), and serves as the CPO for Constituent Fund #1; and (iii) _____ (“CPO #2”) is a [foreign] limited liability partnership that is regulated by the [foreign financial supervisory authority], is also registered as a CPO and a member of NFA, and serves as the CPO for Constituent Fund #2 and Constituent Fund #3.

⁹ The discussion herein is a summary of the background information provided by the Request.

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who each, through a wholly-owned Individual Investment Vehicle, has a greater than 10 percent ownership interest in the Holding Company.¹⁰

The Master Fund Investment Manager is a 100 percent owned subsidiary of the Holding Company, and is the investment manager of the Master Fund.¹¹ The Master Fund invests in funds (“Constituent Funds”) that are partly or wholly-owned, directly or indirectly, by the Holding Company. Of the eight current Constituent Funds, only three funds trade commodity interests; this request for relief concerns two of these funds:¹² Constituent Fund #1 and Constituent Fund #3.¹³

The Master Fund Investment Manager does not engage in any direct trading activities other than currency hedging for the Master Fund and certain of its feeder funds via swaps or currency forward contracts.¹⁴

Additionally, neither of the Master Fund Investment Manager’s individual portfolio managers (each a “Portfolio Manager”), one of whom is one of the Natural Person Owners, nor any of the other Natural Person Owners, engage in personal trading

¹⁰ See Request Letter at 2.

¹¹ See Request Letter at 2. The Master Fund Investment Manager is located in [foreign domicile], and is exempt from CPO registration pursuant to Commission § 3.10(c)(3). *Id.*

¹² See Request Letter at 2-3. Regarding the Constituent Fund trading commodity interests for which no relief is being requested, the Master Fund relies on the pool participant exemption in Commission § 150.4(b)(1). *Id.*

¹³ According to [outside counsel], “of the nine agricultural commodities on which the CFTC currently has position limits, [Constituent Fund #2], through its investment in [Constituent Fund #3], currently trades corn and mini-corn, oats, soybeans and mini-soybeans, wheat and mini-wheat, soybean oil, soybean meal and cotton no. 2. [Constituent Fund #1] does not currently engage in trading any of the nine agricultural commodities on which the CFTC currently has position limits.” Email correspondence dated October 5, 2017 from [outside counsel], to DMO staff.

¹⁴ See Request Letter at 3. The Master Fund is denominated in [one foreign currency], certain Constituent Funds are denominated in U.S. Dollars, and certain feeder funds into the Master Fund are denominated in currencies other than the [currency in which the Master Fund is denominated]. The Master Fund Investment Manager places currency hedges for the Master Fund to manage these foreign exchange risks. *Id.*

The Request identified that each of the currencies in which the Master Fund and its feeder funds engage in hedging transactions are major foreign currencies, specifically: [various cross-currency pairs]. *Id.*

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of commodity interests. Further, the Holding Company does not engage directly in trading commodity interests.¹⁵

The Requesters are requesting relief because the Master Fund Investment Manager, in its capacity as the investment manager to the Master Fund, receives derivative transaction information from two of its Constituent Funds: on an almost real time basis with respect to Constituent Fund #1 and on an almost hourly basis with respect to Constituent Fund #3. Additionally, the individual Portfolio Managers for the Master Fund Investment Manager have access to this information as well, which they review for performance evaluation and risk management monitoring in connection with the Master Fund's investment in the Constituent Funds.¹⁶

However, for trading purposes, the Master Fund Investment Manager only uses such information with respect to currency hedging and does not otherwise share the information with any other pools, investment managers, commodity pool operators, or other persons. Consistent with a lack of commodity interest trading other than currency hedging by the Master Fund Investment Manager, both Constituent Fund #1 and Constituent Fund #2 (feeder fund to Constituent Fund #3) have only monthly subscription and redemption periods upon at least four days of prior written notice.¹⁷

In light of the sharing of derivative transaction information by the two Constituent Funds with the Master Fund Investment Manager, and its individual Portfolio Managers, and use of certain of such information to engage in currency hedging transactions, the Request requests relief from the firewall conditions of Commission Regulations 150.4(b)(1)(ii)(A) and 150.4(b)(2)(i)(A) and (C). That is, the request is limited to relief from meeting the Regulation 150.4(b) firewall conditions requiring that: (1) an owner (*i.e.*, Natural Persons ## 1-4, Individual Investment Vehicles ## 1-4, and Holding Company) and owned entity (Master Fund Investment Manager, CPO #1, and CPO #2) do not have knowledge of trading decisions of the other;¹⁸ and (2) a principal or affiliate of a pool operator (Master Fund Investment Manager) and the pool operator (CPO #1 and CPO #2) have and enforce procedures to preclude the sharing of trading data,¹⁹ in the

¹⁵ See Request Letter at 3. According to the Request, the Holding Company does not engage directly in trading commodity interests; DMO understands, based on the Request, that the Holding Company has interests in commodity pools that trade commodity interests.

¹⁶ See Request Letter at 3.

¹⁷ See Request Letter at 3-4.

¹⁸ Commission § 150.4(b)(2)(i)(A); *see also* Request Letter at 4-5.

¹⁹ Commission §§ 150.4(b)(2)(i)(C) and 150.4(b)(1)(ii)(A); *see also* Request Letter at 4-5.

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limited circumstances of sharing of trading data described above for purposes of performance evaluation, risk management monitoring and currency hedging.²⁰

According to the Request, since, except for the Constituent Funds, the various persons do not engage directly in trading commodity interests other than currency hedging, the requested relief is viewed as consistent with the regulatory intent to preclude sharing of information that “might affect trading strategies or influence trading decisions of the other.”²¹

IV. Relief Provided

After reviewing the Request, DMO has determined that it should provide a limited term of no-action relief to allow staff to evaluate whether or not granting permanent relief would hinder its ability to conduct surveillance, thereby impacting the policy purposes of the Final Aggregation Rules. The Request indicates that the sharing of transaction information by the Constituent Funds with the Requestors is only for the purposes of currency hedging, performance evaluation and risk management monitoring, and, according to the Request, the Requestors who receive transaction information from the Constituent Funds do not themselves engage in trading commodity interests other than commodity interests in currencies, and otherwise meet all the required firewall conditions, meaning such persons would still have no control over the trading decisions of the Constituent Funds and would not otherwise control trading, except for currency hedging.²²

²⁰ See Request Letter at 4-5.

²¹ Relief Request at 4-5, citing the Final Aggregation Rule at 91465, note 116. See also Request Letter at 6.

²² The Request representations include, among others, the following: (i) only three of the [x] current Constituent Funds trade commodity interests; (ii) all of the Constituent Funds are managed by separate investment managers, employing different portfolio management teams who operate independently of each other and pursue different investment strategies; (iii) the Master Fund Investment Manager receives almost real time or almost hourly commodity interest transaction information from Constituent Fund #1 and Constituent Fund #3, in each of which the Master Fund has greater than 10 percent ownership interest; (iv) the commodity interest transaction information is reviewed by the Master Fund Investment Manager’s Portfolio Managers only for performance evaluation and risk management monitoring in connection with the Master Fund’s investments in such investee funds and for currency hedging; (v) the commodity interest transaction information cannot be used by the Master Fund Investment Manager in making investment decisions for the Master Fund as the Master Fund does not engage in trading directly (other than with respect to currency hedging), and Constituent Fund #1 and Constituent Fund #2 each have only monthly subscription and redemption periods upon at least four days of prior written notice; (vi) the Master Fund is not involved in, and does not control the trading decisions of, Constituent Fund #1 and Constituent Fund #3; (vii) the commodity interest transaction information received by the Master Fund Investment Manager is not shared with any other pools, investment managers, commodity pool operators or other persons; (viii)

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The Commission has expressed a somewhat lesser concern over the years, regarding position limits for major foreign currencies. As the Commission noted in October 1991 in regards to major foreign currencies, “requests for exemptions would be appropriate . . . based upon the nearly-inexhaustible deliverable supply of major foreign currencies, such as those currently traded, coupled with the very high liquidity of the underlying cash markets and the ease of arbitrage between the cash and futures markets. The Commission believes, based upon its ten years of oversight of exchange-set speculative limits that this nearly-inexhaustible deliverable supply, which is readily arbitrated with the futures or options contract, substantially lessens the threat of market manipulation or distortions caused by large speculative positions. In this regard, it should be noted that the relative depth of deliverable supplies for futures and option contracts on foreign currencies is unique.”²³

Furthermore, while the Master Fund Investment Manager and its Portfolio Managers receive trading portfolio information in contracts upon which the Commission has position limits (certain agricultural contracts), DMO notes that, according to the Request, the commodity trading in which the Master Fund Investment Manager and its Portfolio Managers do engage, currency hedging, is in commodities upon which the Commission currently does not have position limits. Furthermore, the Request represents that the Master Fund Investment Manager, its Portfolio Managers and the Requesters, do not otherwise engage in any direct trading activities. DMO notes, however, that if the hedging involved another commodity, or other trading was executed in other commodities or for other purposes, the relief provided in this letter would not be available.

If the circumstances described in the Request cease to be true, or if the Commission’s surveillance functions or other policy goals appear to be impacted by this relief, DMO may in its discretion modify the terms of relief provided.

The relief provided below allows the Requestors²⁴ to disaggregate²⁵ even though the firewall conditions of Commission Regulations 150.4(b)(1)(ii)(A) and

the individual Portfolio Managers do not and will not engage in personal trading; (ix) the Holding Company does not engage in trading commodity interests (other than the Portfolio Managers’ currency hedging, as described above); and (x) the Natural Person Owners do not engage in personal trading in commodity interests.

²³ 56 FR 51687, 51688-89 (Oct. 15, 1991); *see also supra* note 2.

²⁴ As noted above, the Requestors include the Master Fund, the Holding Company, and the individual Natural Person Owners.

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150.4(b)(2)(i)(A) and (C) have not been met, as described above. The relief is available provided that: (i) all other applicable regulatory requirements, as modified by the August 10th No-Action Relief, have been satisfied, including, among others, that the firewall conditions set forth in Commission Regulations 150.4(b)(1)(ii)(B) and (C) and 150.4(b)(2)(i)(B), (D), and (E) are otherwise met; (ii) the Commission can continue to rely on its authority to request additional information under Commission Regulation 150.4(c)(3); and (iii) all other aggregation provisions of Regulation 150.4(a)(1) are met, including that two or more persons acting pursuant to an expressed or implied agreement or understanding will aggregate their positions in compliance with Regulation 150.4(a)(1) and that a person holding or controlling trading in more than one account or pool with substantially identical trading strategies will aggregate their positions in compliance with Regulation 150.4(a)(2) if such person is doing so in order to willfully circumvent applicable position limits.²⁶

During the period of this time limited relief, DMO will continue to evaluate whether the relief granted is hindering Commission staff's ability to conduct surveillance, and may in its discretion alter the relief if the surveillance functions or other policy goals appear to be impacted. DMO believes that the time limited 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 allow it to consider implementing changes to the Commission's aggregation policy.

Therefore, DMO will not recommend that until November 15, 2021, 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:

- (1) the Master Fund, as a person whose investment manager (the Master Fund Investment Manager) is a principal or affiliate of the operator of Constituent Fund #1 and Constituent Fund #2 (each a pooled account in which the Master Fund has

²⁵ As explained above, (i) the Master Fund requests to disaggregate the commodity interest positions held as a result of its status as a greater than 10 percent pool participant in Constituent Fund #1, Constituent Fund #2 and Constituent Fund #3; and (ii) the Holding Company, the individual Natural Person Owners, and the Individual Investment Vehicles request to disaggregate positions owned or controlled by the Master Fund Investment Manager, CPO #1 and CPO #2 as a result of the Holding Company's greater than 10 percent ownership interest in those entities.

²⁶ See August 10th No-Action Relief at 16 (providing relief from aggregation for a person holding or controlling trading in more than one account or pool with substantially identical trading strategies unless the person is doing so in order to willfully circumvent applicable position limits).

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ownership or equity interest of 10 percent or greater), 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)(1) but for the fact that the Master Fund's investment manager, and each of its individual Portfolio Managers, who engage in trading only for currency hedging purposes, receive portfolio transaction information from Constituent Fund #1 and Constituent Fund #3; and

(2) the Holding Company, the Natural Person Owners, and their Individual Investment Vehicles, as persons with an ownership or equity interest of 10 percent or greater in CPO #1, CPO #2 and in the Master Fund Investment Manager, 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 Master Fund Investment Manager, and each of its individual Portfolio Managers, who engage in trading only for currency hedging purposes, receive transaction information regarding positions owned or controlled by CPO #1, CPO #2 and the Master Fund Investment Manager.

Upon the expiration of this no-action relief, any of the Requestors that intend to rely on the exemption from aggregation under Commission Regulation 150.4(b)(1), for a person that is a principal or affiliate of the pool operator and is a limited partner, limited member, shareholder or other similar type of pool participant holding positions in which the person has a 10 percent or greater ownership or equity interest in a pooled account or positions, must meet the conditions contained in Commission Regulation 150.4(b)(1)(ii)(A)-(C), or would be in violation of Commission Regulation 150.4(a), and any applicable position limits, as appropriate. Similarly, upon the expiration of this no-action relief, any of the Requestors that intends to rely on the owned entity exemption from aggregation under Commission Regulation 150.4(b)(2) must meet the criteria in Commission Regulation 150.4(b)(2)(i)(A)-(E), or would be in violation of Commission Regulation 150.4(a), and any applicable position limits, as appropriate.

V. Conclusion

The no-action relief provided by this letter shall remain in effect until the earlier of 12:01 a.m. eastern standard time on November 15, 2021 or until the Requestors are otherwise notified.

The no-action relief provided by this letter is limited to the firewall conditions required for relief from aggregation for (1) a greater than 10 percent pool participant in a

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pooled account that is a principal or affiliate of the pool operator, under Commission Regulation 150.4(b)(1)(ii)(A), and (2) an owner of greater than 10 percent of an owned entity, under Commission Regulation 150.4(b)(2)(i)(A) and (C), in connection with the information received by the investment manager of the Master Fund for the limited purpose of currency hedging, 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 in the Request. 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 Riva Spear Adriance at radriance@cftc.gov, 202-418-5494; Aaron Brodsky at abrodsky@cftc.gov, 202-418-5349; or Jeanette Curtis at jcurtis@cftc.gov, 202-418-5669.

Sincerely,

Amir Zaidi
Director
Division of Market Oversight

