

## CFTC Division of Market Oversight Grants Time-Limited No-Action Relief from Notice Filing Requirements of Amended Aggregation Rules.

On February 6, 2017, the Division of Market Oversight (“**DMO**”) of the Commodity Futures Trading Commission (“**CFTC**”) issued a time-limited no-action letter<sup>1</sup> (the “**No-Action Letter**”) granting relief from the notice-filing requirements set forth in CFTC Rule 150.4(c), which was adopted as part of the amended aggregation requirements under Part 150 of the CFTC Rules published in the Federal Register on December 16, 2016 (the “**Aggregation Rules**”).<sup>2</sup> The No-Action Letter granted relief for market participants from Rule 150.4 requiring that a notice be filed with the CFTC by such participants when they are seeking certain exemptions from the aggregation requirements under the position limit rules. Such relief was granted by the DMO for a period of six months.

### Background

On December 5, 2016, the CFTC adopted the Aggregation Rules, which, among other things, require a notice to be filed by any person or entity seeking to rely upon certain exemptions from the aggregation requirements as set forth in paragraphs (b)(1)(ii), (b)(2), (b)(3), (b)(4) and (b)(7) of the Aggregation Rules. Under the Aggregation Rules, the notice-filing requirements were set to become effective on February 14, 2017.

In January 2017, both the Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”) and the International Swaps and Derivatives Association (“**ISDA**”) submitted requests to the CFTC’s DMO seeking time-limited<sup>3</sup> no-action relief from the new notice filing and certification requirements under the Aggregation Rules on the basis that there was insufficient time for market participants to analyze and adapt to the amended requirements as set forth under the Aggregation Rules. The DMO ultimately agreed with the requests from SIFMA AMG and ISDA, and the No-Action Letter provides relief from the notice filing requirements until August 17, 2017.<sup>4</sup>

<sup>1</sup> CFTC No-Action Letter No. 17-06 (Feb. 6, 2017), available at [No-Action Letter No. 17-06](#).

<sup>2</sup> *Aggregation of Positions*, 81 FR 91454 (Dec. 16, 2016), available at [Aggregation Rules](#).

<sup>3</sup> SIFMA AMG requested no-action relief for a period of 90 days, whereas ISDA requested such no-action relief to be extended for a period of six months. The DMO ultimately acceded to the six-month period set forth by ISDA in its request.

<sup>4</sup> More specifically, the no-action relief expires at 12:01 a.m. EDT on August 14, 2017.

### Contents

Background.....	1
Exemptions from Aggregation Rules requiring filing of a notice of exemption .....	2
Relief granted under No-Action Letter No. 17-06.....	3
Position Limits, the Trump Administration and the Giancarlo CFTC.....	3

## Exemptions from Aggregation Rules requiring filing of a notice of exemption

CFTC Rule 150.4(c) under the Aggregation Rules imposes upon those seeking certain exemptions from Aggregation Rules a requirement to file a notice with the CFTC, which shall be effective upon its submission. Such notice must include:

- > a description of the relevant circumstances warranting disaggregation; and
- > a statement of a senior officer of the entity seeking such exemption which certifies that the conditions set forth in the applicable exemption being claimed have been satisfied.<sup>5</sup>

Subject to the satisfaction of certain requirements precedent to eligibility, a notice of exemption must be filed with the CFTC if the person or entity is seeking such exemption for:

- > a pool participant holding 10% or greater ownership or equity interest in a pooled account or positions if such person is a principal or affiliate of the pooled account operator;<sup>6</sup>
- > a person with an ownership or equity interest of 10% or greater in the owned entity;<sup>7</sup>
- > accounts held by futures commission merchants;<sup>8</sup>
- > an entity whose eligible client positions or accounts are carried by an authorized independent account controller;<sup>9</sup> and/or
- > potential aggregations for which the sharing of information associated with such aggregation would create a reasonable risk of violating state or federal law or the law of a foreign jurisdiction.<sup>10</sup>

<sup>5</sup> The CFTC may request additional information and may amend, suspend, terminate or otherwise modify a person or entity's aggregation exemption for failure to satisfy such request for additional information. Rule 150.4(c)(3). A person or entity relying upon an exemption from the aggregation requirements must promptly file an updated or amended notice with the CFTC in the case of any material change to the facts or information as set forth in its initial notice of exemption. Rule 150.4(c)(4).

<sup>6</sup> In order to rely upon this exemption, the following criteria must be met:

- (a) the pool operator must have and enforce written procedures to preclude the person seeking the exemption from having knowledge of the trading or positions of the pool;
- (b) the person seeking the exemption must not have direct authority or control over the pool's trading decisions;
- (c) if the person seeking the exemption is a principal of the operator of the pool, such person must only maintain such minimum control over the operator as is necessary to fulfill its duty to supervise the operator; and
- (d) the pool operator has complied with the notice filing requirement of Rule 150.4(c) on behalf of the person seeking such exemption.

Rule 150.4(b)(1)(ii)(A)-(D).

<sup>7</sup> Rule 150.4(b)(2). See paragraphs (i)-(ii) thereof for the conditions that must be satisfied for a person or entity to be eligible for such exemption.

<sup>8</sup> Rule 150.4(b)(3). See paragraphs (i)-(iv) thereof for the conditions that must be satisfied for a person or entity to be eligible for such exemption.

<sup>9</sup> Rule 150.4(b)(4).

<sup>10</sup> Rule 150.4(b)(7).

## Relief granted under No-Action Letter No. 17-06

In separate no-action requests filed in January 2017, SIFMA AMG and ISDA sought relief on behalf of market participants from the notice filing requirements set forth under the Aggregation Rules. Such requests sought (1) a grace period during which the CFTC would not recommend an enforcement action against any person or entity for failure to satisfy the notice filing requirements as required under CFTC Rule 150.4(c) when such person or entity would otherwise be eligible to rely upon an exemption from the Aggregation Rules and (2) assurance that a failure to satisfy the notice filing requirements would not otherwise cause a person or entity to violate the Aggregation Rules or any position limit related thereto. In support of such requests, SIFMA AMG and ISDA cited the complexities of determining which owned entities would be eligible for disaggregation as well as the issues facing asset managers in mobilizing their respective institutions to satisfy the requirements and preparing outreach plans for liaising with their clients.

Ultimately, the DMO concurred with SIFMA AMG and ISDA's assessment and agreed to grant no-action relief to market participants subject to the notice filing requirements of the Aggregation Rules. In granting relief from the notice-filing requirement, the DMO agreed not to recommend enforcement action be taken against any person or entity for failure to file the requisite notice of exemption for a six-month period ending on August 14, 2017. On and after August 14, 2017, each person or entity seeking an exemption under paragraphs (b)(1)(ii), (b)(2), (b)(3), (b)(4) and (b)(7) of CFTC Rule 150.4 must file a notice of exemption as set forth in the Aggregation Rules.

## Position Limits, the Trump Administration and the Giancarlo CFTC

The time-limited relief granted by the CFTC in respect of compliance with the notice filing requirements under the Aggregation Rules was certainly welcome news for firms dealing with multiple and competing compliance deadlines. However, the delayed implementation is probably best understood in the context of the larger discussion about position limits. The Aggregation Rules form a part of the CFTC's overall position limits regime (the "**Position Limits Rules**"). The Position Limits Rules were repropose on December 5, 2016, and it remains unclear when they will be adopted by the CFTC.<sup>11</sup> The Position Limits Rules have had a long and difficult road since their initial proposal in 2011,<sup>12</sup> including a challenge in Federal court<sup>13</sup> which ultimately resulted in a reproposal in 2013 and subsequent supplementary proposals in 2015 and 2016, respectively. With the Trump administration having vowed to review existing financial regulation and with the transition from the post-crisis approach to regulation under former CFTC Chairmen Timothy Massad and Gary Gensler to the "Keep it Simple Stupid" (KISS) approach of newly nominated Chairman J. Christopher Giancarlo underway, the CFTC may take the view that it is best to proceed with caution on position limits.

<sup>11</sup> *Position Limits for Derivatives*, 81 FR 96704 (Dec. 30, 2016), available at [Position Limits Reproposal](#).

<sup>12</sup> *Final Position Limits for Futures and Swaps*, 76 FR 71626 (Nov. 18, 2011), available at [2011 Interim Final Position Limits](#). These rules established a new Part 151 of the CFTC's regulations and were in large part vacated by a court decision in September 2012. *Supra* note 13.

<sup>13</sup> See *Int'l Swaps and Derivatives Ass'n v. Commodity Futures Trading Comm'n*, 887 F.Supp. 2d 259 (D.D.C. Sept. 28, 2012).

# Linklaters

Chairman Giancarlo has been very transparent both in his critical view of the Position Limits Rules and his desire to wait until the CFTC has a full complement of five commissioners before moving to finalize any key rulemakings, including the Position Limits Rules.<sup>14</sup> With this in mind, and given that the CFTC currently has only two commissioners (Giancarlo and Commissioner Sharon Bowen) and no pending nominees, it seems reasonable to anticipate further delays both in the adoption of the Position Limits Rules and in the implementation date for the Aggregation Rules.

We will continue to monitor developments with respect to the Aggregation Rules and the notice-filing requirement thereunder, and we welcome any queries that you may have.

---

<sup>14</sup> Richard Hill, Position Limits Needs Full CFTC for Action, Giancarlo Says, Bloomberg BNA (Mar. 14, 2017),

Authors: Caird Forbes-Cockell, Jonathan Ching, Edward Ivey and Andrew Kummer

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2017

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on [www.linklaters.com](http://www.linklaters.com).

Please refer to [www.linklaters.com/regulation](http://www.linklaters.com/regulation) for important information on Linklaters LLP's regulatory position.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications.

We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms.

If any of your details are incorrect or have recently changed, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at [marketing.database@linklaters.com](mailto:marketing.database@linklaters.com).

CFTC Division of Market Oversight Grants Time-Limited No-Action Relief from Notice Filing Requirements of Amended Aggregation Rules.

//

## Contacts

For further information please contact:

**Caird Forbes-Cockell**  
Partner

(+1) 212 903 9040

[caird.forbes-cockell@linklaters.com](mailto:caird.forbes-cockell@linklaters.com)

**Jonathan Ching**  
Counsel

(+1) 212 903 9170

[jonathan.ching@linklaters.com](mailto:jonathan.ching@linklaters.com)

**Edward Ivey**  
Associate

(+1) 212 903 9118

[edward.ivey@linklaters.com](mailto:edward.ivey@linklaters.com)

**Andrew Kummer**  
Law Clerk

(+1) 212 903 9213

[andrew.kummer@linklaters.com](mailto:andrew.kummer@linklaters.com)

Linklaters.com