



2001 Pennsylvania Avenue NW
Suite 600 | Washington, DC 20006
T 202 466 5460
F 202 296 3184

July 12, 2017

Mr. Amir Zaidi, Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

**RE: Request for Interpretive Letter Pursuant to CFTC Rule 140.99
Relating to CFTC Rule 150.4**

Dear Mr. Zaidi:

The Futures Industry Association (“**FIA**”) requests that the Division of Market Oversight (“**DMO**”) of the Commodity Futures Trading Commission (“**CFTC**”) issue an interpretative letter or provide no-action relief, pursuant to CFTC Rule 140.99, concerning the form and content of the notice that a person must file in order to rely upon certain exemptions from the requirement to aggregate positions specified in CFTC Rule 150.4 (the “**Aggregation Rule**”). FIA respectfully submits that the relief requested herein will streamline the notice filing requirement for its members and other market participants in a manner that is consistent with the underlying purpose of the Aggregation Rule and, at the same time, will ensure that Staff obtains the information necessary to monitor compliance with CFTC-set position limits.¹ In particular, FIA requests that DMO issue an interpretive or no-action letter clarifying that a person may comply with the Aggregation Rule by filing a notice, pursuant to CFTC Rule 150.4(c)(6), within five business days (or such longer period specified by Staff in its discretion) of when CFTC Staff or a Designated Contract Market (“**DCM**”) contacts the person about a specified account or position and that such notice would describe the circumstances warranting disaggregation for the account or position identified by Staff or a DCM in the form outlined below.²

I. A Notice Filing for an Aggregation Exemption Would be Due Within Five Business Days of a Request from CFTC Staff or a DCM

FIA understands that the Securities Industry and Financial Markets Association’s Asset Management Group (“**SIFMA AMG**”) will be requesting that DMO interpret CFTC Rule 150.4(c)(6), or grant no-action relief to allow market participants to make a notice filing relying upon an exemption from aggregation within five business days of receiving an inquiry from Staff or a DCM about a specified

¹ <http://www.cftc.gov/PressRoom/PressReleases/pr7555-17>.

² FIA’s requested relief would not preclude a person from filing an aggregation notice in advance of being contacted by the CFTC if it so chooses.

account or position.³ FIA supports relief that would implement the CFTC's notice filing requirement in a manner that provides Staff with relevant data to monitor positions subject to a limit, preserves CFTC resources, and limits unnecessary burdens on the industry. 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.⁴ 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.

II. A Notice Filing in Response to a CFTC or DCM Staff Request Would Need to Address the Account Specified in the Request

FIA requests that the CFTC Staff's relief relating to filing a notice within five business days of a Staff or DCM request specify that the notice filing would need to address the circumstances warranting disaggregation for the particular account or position identified in the request. For example, if a market participant is relying upon the owned-entity exemption in CFTC Rule 150.4(b)(2), and Staff 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.⁵

To assist the CFTC Staff in issuing FIA's requested relief, and to provide necessary clarity to the market, FIA recommends that, with respect to the owned-entity exemption in CFTC Rule 150.4(b)(2), the relief specify the form and content of the notice that would need to be submitted in response to a Staff or DCM inquiry about an account or position. FIA provides the following examples for Staff's consideration:

³ Because of the number of persons involved in, and complexity of, internal communications in large organizations, Staff should have the discretion to extend the five-business day period in appropriate circumstances.

⁴ For example, financial holding companies ("FCH") that hold ownership interests in portfolio companies pursuant to merchant banking authority would need to submit notice filings for an aggregation exemption even though applicable law precludes the FCH from being involved in the routine, day-to-day management and operations of a portfolio company. See *e.g.*, Section 4(k)(4)(H) of the Bank Holding Company Act; and 12 C.F.R. 225.171.

⁵ The 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. Such a requirement 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.

Example 1 – Owner May Rely on Awareness Clause

The CFTC or a DCM contacts a market participant about an owned entity, and the owner is not aware, and should not be aware, of the derivatives trading activity of the particular owned entity (*i.e.*, the owner does not control the trading of the owned entity and does not have routine access to the owned entity's positions).⁶ In this scenario, the owner would be required to submit a notice filing for the owned-entity exemption that addresses the owner's circumstances that warrant disaggregation of the owned entity identified by Staff or a DCM. The notice would include a certification from a senior officer, pursuant to CFTC Rule 150.4(c), which states that the owner:

- Does not control the derivatives trading of the owned entity;
- Does not have routine access to the derivatives trading information of the owned entity; and
- Meets the conditions specified in CFTC Rule 150.4(b)(2)(i)(A)-(E).

The owner also would provide additional information, if any, requested by Staff to the extent required by CFTC Rule 150.4(c)(3).

Example 2 – Owner May Not Rely on Awareness Clause

The CFTC or a DCM contacts a market participant about an owned entity, and the owner and the owned entity are eligible for the owned-entity exemption in CFTC Rule 150.4(b)(2), but the owner cannot rely on the awareness clause to submit a notice that only addresses the owner's eligibility for disaggregation. In this scenario, the owner would be required to submit a notice filing for the owned-entity exemption that addresses the owner's and the owned entity's circumstances that warrant disaggregation of the owned entity identified by Staff or a DCM. The notice would include a certification from a senior officer, pursuant to CFTC Rule 150.4(c), which states that both the owner and the owned entity:

- Do not have knowledge of the derivatives trading decisions of the other;
- Trade pursuant to separately developed and independent trading systems;
- Have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other (including security arrangements and separate physical locations to maintain independence);
- Do not share employees that control the trading decisions of either; and
- 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.

⁶ See CFTC Rule 150.4(b)(2)(i); *Aggregation of Positions*, 81 Fed. Reg. 91,454, 91,468 (Dec. 16, 2016).

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The owner also would provide additional information, if any, requested by Staff to the extent required by CFTC Rule 150.4(c)(3).

III. **Conclusion**

FIA appreciates DMO Staff's willingness to consider issuing relief that will streamline the requirements for complying with the Aggregation Rule. Please contact the undersigned at (202) 772-0357 or alurton@fia.com if you have any questions about FIA's requested relief.

Sincerely yours,



Allison Lurton
Senior Vice President and General Counsel
Futures Industry Association, Inc.

cc: David Van Wagner, Division of Market Oversight
Stephen Sherrod, Division of Market Oversight
Riva Spear Adriance, Division of Market Oversight
Aaron Brodsky, Division of Market Oversight
Mark Fajfar, Office of General Counsel
Harold Hild, Division of Market Oversight
Jeanette Curtis, Division of Market Oversight
Steven Benton, Division of Market Oversight

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Certification Pursuant to CFTC Rule 140.99(c)(3)

Pursuant to CFTC Rule 140.99, I hereby certify that the material facts set forth in the attached letter dated July 12, 2017 are true and complete to the best of my knowledge, information and belief.⁷



Allison Lurton
Senior Vice President and General Counsel
Futures Industry Association

⁷ In addition, I hereby agree that, if at any time prior to the issuance of the requested relief, any material statement made in this letter ceases to be true and complete, I will ensure that Commission Staff is informed promptly in writing of all materially changed facts and circumstances.