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July 31, 2014

Via Electronic Submission

Melissa Jurgens, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Supplemental Comment Regarding Commission Re-Opening of Comment Period for Position Limits for Derivatives (RIN Number 3038-AD99) and Aggregation of Positions (RIN Number 3038-AD82)

Dear Ms. Jurgens:

The Futures Industry Association ("FIA") appreciates the opportunity to provide the Commodity Futures Trading Commission ("Commission" or "CFTC") with the comments and recommendations set forth below as a supplement to FIA's prior comments filed in response to the Commission's Notice of Proposed Rulemakings concerning *Position Limits for Derivatives*, 78 Fed. Reg. 75680 (Dec. 12, 2013) ("Proposed PL Rule") and *Aggregation of Positions*, 78 Fed. Reg. 68946 (Nov. 15, 2013) ("Proposed Aggregation Rule") (collectively, "Proposed Rules").[1] FIA appreciates the Commission's willingness to reconsider various aspects of the Proposed Rules and to host the June 19, 2014 CFTC Staff position limits roundtable ("Roundtable"). The comments and recommendations below focus on issues raised in connection with the Roundtable. FIA incorporates by reference, where applicable, its prior comments to the Proposed Rules.

FIA's regular and associate members, their affiliates, and their customers actively participate in the listed and OTC derivatives markets as intermediaries, principals, and users.[2] Consequently, FIA and its members have a significant interest in the Proposed Rules.

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[1] *See* Letter from FIA to Commodity Futures Trading Commission (RIN 3038-AD82), dated Feb. 6, 2014 ("FIA 2014 Aggregation Comment Letter"); Letter from FIA to Commodity Futures Trading Commission (RIN 3038-AD99), dated Feb. 7, 2014 ("FIA 2014 Position Limits Comment Letter"); Letter from FIA to Stephen Sherrod (Jan. 15, 2013).

[2] FIA is the leading trade organization for the futures, options, and cleared swaps markets worldwide. FIA's membership includes clearing firms, exchanges, clearinghouses, and trading firms from more than 25 countries as well as technology vendors, lawyers, and other professionals serving the industry. FIA's mission is to support open, transparent, and competitive markets, to protect and enhance the integrity of the financial system, and to promote high standards of professional conduct. As the principal members of derivative clearinghouses worldwide, FIA's member firms play a critical role in the reduction of systemic risk in the global financial markets. FIA along with its affiliated associations, FIA Europe and FIA Asia, make up the global alliance, FIA Global, which seeks to address the common issues facing its collective memberships.

I. Summary of FIA's Comments

Based upon its prior comment letters, as supplemented herein, and in response to the discussion at the Roundtable, FIA requests that the Commission:[3]

- expand the owned entity exemption in the Proposed Aggregation Rule to permit the disaggregation of all owned entities when the owner and owned entity meet the conditions proposed for minority owned entities and, therefore, do not control, or have knowledge of, the trading decisions of the other;
- clarify that the condition to adopt policies and procedures to restrict knowledge of trading only applies to the owner claiming the exemption;
- incorporate into the rule the Commission's guidance from the Proposed Aggregation Rule that the owned entity exemption does not restrict the owner and the owned entity from sharing information or employees related to risk management, accounting, compliance or similar mid- and back-office functions;
- permit registered broker-dealers to disaggregate any ownership interest predicated on the ownership of securities acquired in the normal course of business as a dealer without regard to the level of ownership;
- adopt an exemption from aggregation for transitory ownership or equity interests in an owned entity, such as those acquired through foreclosure or a similar credit event;
- permit a market participant that otherwise qualifies for an exemption from aggregation to rely upon the exemption during a 90-day period before filing the required notice with the CFTC;
- clarify that if a market participant otherwise qualifies for an exemption from aggregation, but does not provide timely notice to the Commission, the failure to provide such notice does not result in a separate violation of speculative position limits;
- make conforming changes to the proposed rule-text to clarify that the owned entity exemption requires that the owner and the owned entity trade pursuant to independent trading "strategies" rather than "systems;" and

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[3] As emphasized in FIA's prior comment letters, FIA requests that the Commission defer imposing speculative position limits until after it has collected and analyzed the data necessary to make, and has made, an empirical finding that speculative position limits are "necessary" to "diminish, eliminate or prevent" the burden on interstate commerce caused by excessive speculation, and that the limit levels proposed by the Commission are "appropriate."

- continue to provide a process that allows for timely responses to non-enumerated hedge exemption applications and rely on the expertise of the exchanges to recognize non-enumerated hedge exemptions.

II. FIA's Recommendations for the Proposed Aggregation Rule

For the convenience of the Commissioners and Commission Staff, FIA submits herewith as Attachment A, proposed revisions to the rule-text of the Proposed Aggregation Rule that reflect FIA's comments during the Roundtable and in prior comment letters. FIA describes below the rationale for each of its proposed revisions to the rule-text.

A. The Commission Should Expand the Scope of the Owned Entity Exemption

Section 4a(a)(1) of the Commodity Exchange Act, as amended ("CEA"), 7 U.S.C. § 6a(a)(1), provides, in part, that "[i]n determining whether any person has exceeded [position] limits, the *positions held and trading done by any persons directly or indirectly controlled* by such person shall be included with the positions held and trading done by such person." Historically, the Commission has construed the word "held" to refer to the ownership of positions.[4] Consequently, the Proposed Aggregation Rule uses common ownership of legal entities as an indicator of control over Referenced Contract trading decisions and positions.[5]

FIA does not dispute that, under the CEA, common ownership of positions is a relevant factor that should be considered in determining whether aggregation of positions is warranted. However, unlike the degree of corporate control that an owner has over the activities of an owned entity, the percentage ownership that an owner has in an owned entity is not necessarily correlated with the degree of control, if any, that an owner has over the day-to-day trading of, or positions held, in Referenced Contracts of an owned entity. Consequently, for the reasons explained by FIA during the Roundtable and set forth in FIA's prior comment letter, FIA recommends that the Commission modify its approach to using ownership as a trigger for the requirement to aggregate positions. The Commission should retain the ten percent threshold to trigger an analysis of whether ownership results in common control of trading and positions. However, once a market participant's ownership interest in another legal entity reaches a ten percent or greater threshold, the Commission should then focus only on whether the owner has actual control over trading decisions and positions of the owned entity, as opposed to general corporate control over the entity.

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[4] *See* Proposed Aggregation Rule at 68956 ("In light of the language in section 4a, its legislative history, subsequent regulatory developments, and the Commission's historical practices in this regard, the Commission continues to believe that section 4a requires aggregation on the basis of either ownership or control of an entity.").

[5] *See* Proposed Aggregation Rule at 68958.

FIA recommends that the Commission expand the owned entity exemption in proposed CFTC Rule 150.4(b)(2) to apply equally to both minority and majority owned entities. The criteria in the Proposed Aggregation Rule that must be met to rely on the owned entity exemption for minority ownership interests provides a sufficient and appropriate basis to demonstrate independence of trading decisions between the owner and the owned entity, regardless of ownership percentage. If the owner meets the conditions for disaggregation, then it demonstrates a lack of actual control over the trading decisions of the owned entity, regardless of whether it is majority or minority owned. Therefore, the CFTC should permit the owner of either a minority or majority owned entity that meets the Commission's proposed conditions in Rule 150.4(b)(2)(i) to make a notice filing for disaggregation.

In Attachment A, FIA recommends specific modifications to the CFTC's proposed rule-text regarding the aggregation requirements. As noted above, the proposed criteria that must be satisfied to rely on the proposed minority owned entity exemption ensure that the owner does not control the trading decisions of the owned entity. These same conditions would ensure the independence of trading between the owner and a majority owned entity. In situations where the owner does not control the trading of the owned entity, ownership no longer serves as an indicator of control over trading for position limit purposes and, therefore, it is not an appropriate basis for requiring aggregation of positions. FIA's recommended rule-text makes conforming revisions to the remainder of the rule-text to permit majority owners of owned entities to rely on the exemption in proposed CFTC Rule 150.4(b)(2).

Because the owner of a minority or majority owned entity that meets the CFTC's proposed conditions for independence does not control the trading of either the minority or majority owned entity, FIA recommends that all owners with an ownership interest of ten percent or greater be eligible to rely on the notice filing procedure in proposed CFTC Rule 150.4(c)(1). This process provides market participants with legal certainty about when the aggregation requirements apply and reduces the burden on CFTC resources required to review an extensive number of applications for disaggregation. Importantly, if the Division of Market Oversight ("DMO") has any questions about the independence of trading, or would like more information about the owner's satisfaction of the criteria for disaggregation, DMO has the authority to request additional information from the owner or the owned entity under proposed CFTC Rule 150.4(c).

B. The Requirement to Implement and Enforce Written Procedures to Preclude Knowledge of Trading Should Only Apply to the Owner Claiming the Exemption from Aggregation

Under the Proposed Aggregation Rule, one of the conditions to demonstrate independence of trading decisions for purposes of the owned entity exemption is proposed CFTC Rule 150.4(b)(2)(i)(C), which requires that the owner and the owned entity have written procedures to preclude access to trading information. FIA requests that the Commission clarify that the exemption only requires the owner claiming the exemption to have written procedures restricting access to trading information.

Depending on the extent of an owner's corporate control over an owned entity, it may not be in a position to compel the owned entity to establish the written procedures described in proposed CFTC Rule 150.4(b)(2)(i)(C). As long as the owner has and enforces written procedures to preclude the sharing of trading information with an owned entity, it will not have knowledge of or control over the owned entity's trading decisions and positions. Such a result should provide a sufficient basis for disaggregation. In Attachment A, FIA recommends that the Commission re-designate current proposed CFTC Rule 150.4(b)(2)(i)(C) as CFTC Rule 150.4(b)(2)(ii) and clarify that the exemption only requires the owner claiming the exemption to have written procedures restricting access to trading information.

C. The Commission Should Incorporate into the Rule its Guidance that the Owned Entity Exemption Does Not Restrict the Owner and Owned Entity from Sharing Information or Employees Related to Risk Management, Accounting, Compliance or Similar Mid- and Back-Office Functions

In the preamble to the Proposed Aggregation Rule, the Commission clarified that the owned entity exemption would not restrict the owner and the owned entity from sharing information and employees related to risk management, accounting, compliance or similar mid- and back-office functions.[6] To provide market participants with certainty regarding the scope of the conditions that must be met to rely on the owned entity exemption, FIA recommends, as provided in Attachment A, that the Commission incorporate this guidance in the rule-text for the owned entity exemption.

D. The Broker-Dealer Exemption Should Apply to All Ownership Interests Acquired in the Normal Course of Business as a Dealer

The Proposed Aggregation Rule provides an exemption from aggregation for an ownership or equity interest of a registered broker-dealer that is acquired in the dealer's normal course of business. However, in contrast to the exemption for issuers and underwriters, the exemption for registered broker-dealers is available only where the ownership interest is equal to fifty percent or less.

As previously stated in the FIA 2014 Aggregation Comment Letter, and consistent with FIA's general recommendations on aggregation, the Commission should permit broker-dealers to rely upon the exemption from aggregation regardless of whether the broker-dealer's ownership or equity interest in an owned entity exceeds fifty percent, provided that the broker-dealer does not have actual knowledge of or control over the trading decisions and positions of the owned entity. Absent knowledge or control, the rationale behind providing the exemption extends to all situations where a broker-dealer acquires an ownership interest as part of its brokering or dealing activities in the normal course of business, irrespective of ownership percentage.

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[6] *See* Aggregation Proposed Rule at 68961 and 68962.

FIA recommends that the Commission not distinguish between underwriting and dealing in securities. As set forth in Attachment A, the Commission should remove the fifty percent ownership cap to rely on the proposed exemption for ownership interests acquired in the broker-dealer's normal course of business. Even where the ownership interest exceeds fifty percent, an ownership interest acquired in the normal course of business of a broker-dealer will be temporary and the broker-dealer will not control the trading of the entity. Therefore, the ownership interest will not implicate the independence of the owned entity's trading decisions, which is consistent with the Commission's proposed exemption for underwriters.

E. The Commission Should Provide an Exemption for Transitory Ownership Acquired Through Credit or Similar Events

FIA incorporates by reference its prior recommendation in the FIA 2014 Aggregation Comment Letter regarding the need for an exemption from aggregation for transitory ownership or equity interests in an owned entity, such as those acquired through foreclosure or a similar credit event. FIA recommends that the Commission adopt this exemption from aggregation in the rule-text of CFTC Rule 150.4, and FIA has provided in Attachment A hereto proposed language to implement this exemption in CFTC Rule 150.4(b)(9).

F. The Commission Should Permit Market Participants that Otherwise Qualify for an Exemption from Aggregation to Rely upon the Exemption for a 90-Day Period before Filing the Required Notice with the CFTC

FIA incorporates by reference its prior recommendation that the Proposed Aggregation Rule provide market participants that otherwise qualify for an exemption a reasonable period before they must file the required notice to rely on the exemption. As discussed in the FIA 2014 Aggregation Comment Letter, when a large and complex corporate entity acquires a ten percent or greater ownership or equity interest in another entity, it may take time to determine whether the acquired entity directly or indirectly holds positions in Referenced Contracts that are subject to aggregation. Although sharing such information may be relatively simple in some circumstances, in many other cases it likely will be very difficult to establish the necessary protocols to ensure timely compliance with the aggregation requirement. This is particularly true where the acquisition involves a *minority* interest in an entity that only *indirectly* holds positions in Referenced Contracts.

FIA recommends that the Commission provide a 90-day period during which a market participant can rely upon an exemption for which it is otherwise eligible, prior to submitting the requisite notice to the Commission.[7] FIA requests that the Commission make this clarification in

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[7] FIA previously requested that the Commission provide for a 180-day period to make a filing for an exemption from aggregation. After further consultation, FIA believes that a 90-day period will provide market participants sufficient time to come into compliance with the Proposed Aggregation Rule without imposing unworkable administrative burdens.

the rule-text, and recommends that the Commission adopt the language provided in CFTC Rule 150.4(d)(2) of Attachment A.

G. Any Failure to Make a Timely Filing for an Aggregation Exemption Should Constitute a Single Reporting Violation, Not a Daily Position Limits Violation

FIA incorporates by reference its prior recommendation that if a person is eligible to claim an exemption from aggregation, but fails to make a timely notice filing within the 90-day period, such failure constitutes a single violation for failure to make the filing, not a separate violation of speculative position limits. To effectuate this recommendation, FIA requests that the Commission clarify the rule-text by adopting the revised language provided in CFTC Rule 150.4(d)(3) of Attachment A. This modification would provide market participants with a 90-day period to make the required filings, and would clarify that failure to make such a filing would constitute a single reporting violation, not a position limits violation.

H. To Conform with the CEA and Other Provisions of Part 150, the Owned Entity Exemption Should Require that the Owner and the Owned Entity Trade Pursuant to Independent Trading "Strategies"

Under the Proposed Aggregation Rule, one of the conditions to demonstrate independence of trading for purposes of the owned entity exemption is proposed CFTC Rule 150.4(b)(2)(i)(B), which requires that the owner and the owned entity trade pursuant to separately developed and independent trading "systems." FIA recommends that the Commission change references to independent trading "systems" to independent trading "strategies," to conform CFTC Rule 150.4(b)(2)(i)(B) to the CEA and other provisions in Part 150. This revision would provide market participants with greater clarity about the scope of the condition by ensuring that CFTC Rule 150.4(b)(2)(i)(B) will be interpreted and applied in the same manner as related provisions in the CEA and CFTC Rules.

III. The Commission Should Establish a Process to Timely Respond to Applications for Non-Enumerated Hedge Exemptions

The Commission has proposed to eliminate the existing process to request a non-enumerated hedge exemption under current CFTC Rule 1.47. As explained in the FIA 2014 Position Limits Comment Letter, CFTC Rule 1.47 provides market participants with a timely response to a request for a non-enumerated hedge exemption because the rule contains a deadline for the Commission to respond to a request. The Commission adopted non-enumerated hedge exemptions, in CFTC Rule 1.3(z)(3), and the process of applying for these exemptions, under CFTC Rule 1.47, to provide "flexibility in the application of the general definition [of *bona fide* hedging] and to avoid an extensive specialized listing of enumerated *bona fide* hedging

transactions and positions in [the list of enumerated hedge exemptions]."[8] Given the Commission's proposal to expand the products subject to position limits to cover swaps, the Commission should retain the flexibility to recognize non-enumerated hedge exemptions in CFTC Rule 1.47.

During the Roundtable, CFTC Staff expressed concern about its ability to review non-enumerated hedge exemption requests in a timely manner. CFTC Staff also expressed concern about the transparency of non-enumerated hedge exemptions if the requests were granted on a case-by-case basis. As discussed below, FIA recommends that the Commission rely on the exchanges to review applications for non-enumerated hedge exemptions in the first instance and provide a public comment process should exchanges receive multiple requests for the same non-enumerated hedge exemption.

A. The Exchanges Should Review Non-Enumerated Hedge Exemption Applications in the First Instance

FIA recommends that the Commission continue to provide a process for the review of non-enumerated hedge exemption applications that establishes a timeline upon which an application is deemed approved. Consistent with comments made by the exchanges during the Roundtable, FIA recommends that the CFTC delegate the review and approval of non-enumerated hedge exemption requests to the designated contract market ("DCM") that lists the relevant core referenced futures contract ("CRFC") or Referenced Contract. For example, if a market participant held positions in a CRFC or Referenced Contract on a DCM, the participant could apply to the DCM for the non-enumerated hedge exemption. To the extent that a market participant held positions exclusively in over-the-counter swaps that are directly or indirectly linked to a CRFC, the market participant could apply to any DCM that lists the Referenced Contract for a non-enumerated hedge exemption.[9]

DCMs historically have applied the general definition of *bona fide* hedging positions in CFTC Rule 1.3(z)(1) when evaluating whether a futures position qualifies as a *bona fide* hedging position.[10] Non-enumerated hedge exemptions provide the exchanges with the flexibility to recognize company-specific commercial hedging practices. Given DCM's significant experience in evaluating enumerated and non-enumerated hedging positions, DCMs should review non-enumerated hedging positions in the first instance. FIA members believe that the exchanges have provided market participants with timely responses to applications for *bona fide* hedging positions.

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[8] *See Definition of Bona Fide Hedging and Related Reporting Requirements*, 42 Fed. Reg. 42748 (Aug. 24, 1977).

[9] When a DCM grants a non-enumerated hedge exemption, it should notify the Commission of the exemption. In addition, a market participant that receives a non-enumerated hedge exemption from a DCM could make that information available to other DCMs.

[10] *See*, *e.g.*, CME Rule 559(1); ICE Futures U.S. Rule 6.26(a).

B. The Commission Could Adopt a Public Comment Process to Add Enumerated Exemptions if the Exchanges Receive Multiple Requests for the Same Non-Enumerated Hedge Exemption

FIA understands the CFTC's preference for transparency in the non-enumerated hedge exemption process. FIA recommends that to the extent the exchanges receive multiple applications for the same type of non-enumerated hedge exemption, the CFTC should initiate a process to expand the list of enumerated hedging positions through a public request for comment or a proposed amendment to the regulations with a public comment period. FIA's proposal would enable the exchanges to address bespoke, company-specific hedging requests on a case-by-case basis, and the CFTC to address industry-wide requests through a transparent public comment process.

IV. Conclusion

FIA requests that the Commission adopt FIA's recommended revisions to the Proposed Rules before issuing final position limit regulations. Please contact Barbara Wierzynski, Executive Vice President and General Counsel, or Allison Lurton, Senior Vice President and Deputy General Counsel, at 202-466-5460, if you have any questions about FIA's comments or recommendations.

Respectfully submitted,

Walt L. Lukken
President and Chief Executive Officer

Enclosure: Attachment A

cc: Honorable Timothy G. Massad, Chairman
Honorable Scott D. O'Malia, Commissioner
Honorable Mark P. Wetjen, Commissioner
Honorable Sharon Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner
Vincent A. McGonagle, Director
Stephen Sherrod, Senior Economist
Mark Fajfar, Assistant General Counsel
Riva Spear Adriance, Senior Special Counsel

§ 150.4 Aggregation of positions.

(a) *Positions to be aggregated—*

(1) *Trading control or 10 percent or greater ownership or equity interest.* For the purpose of applying the position limits set forth in § 150.2, unless an exemption set forth in paragraph (b) of this section applies, all positions in accounts for which any person, by power of attorney or otherwise, directly or indirectly controls trading or holds a 10 percent or greater ownership or equity interest must be aggregated with the positions held and trading done by such person. For the purpose of determining the positions in accounts for which any person controls trading or holds a 10 percent or greater ownership or equity interest, positions or ownership or equity interests held by, and trading done or controlled by, two or more persons acting pursuant to an expressed or implied agreement or understanding shall be treated the same as if the positions or ownership or equity interests were held by, or the trading were done or controlled by, a single person.

(2) *Substantially identical trading.* Notwithstanding the provisions of paragraph (b) of this section, for the purpose of applying the position limits set forth in § 150.2, any person that, by power of attorney or otherwise, holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies, must aggregate all such positions.

(b) *Exemptions from aggregation.* For the purpose of applying the position limits set forth in § 150.2, and notwithstanding the provisions of paragraph (a)(1) of this section, but subject to the provisions of paragraph (a)(2) of this section, the aggregation requirements of this section shall not apply in the circumstances set forth in this paragraph (b).

(1) *Exemption for ownership by limited partners, shareholders or other pool participants.* Any person that is a limited partner, limited member, shareholder or other similar type of pool participant holding positions in which the person by power of attorney or otherwise directly or indirectly has a 10 percent or greater ownership or equity interest in a pooled account or positions need not aggregate the accounts or positions of the pool with any other accounts or positions such person is required to aggregate, except that such person must aggregate the pooled account or positions with all other accounts or positions owned or controlled by such person if such person:

(i) Is the commodity pool operator of the pooled account;

(ii) Is a principal or affiliate of the operator of the pooled account, unless:

(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;

(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; and

(D) The pool operator has complied with the requirements of paragraph (c) of this section on behalf of the person or class of persons; or

(iii) Has, by power of attorney or otherwise directly or indirectly, a 25 percent or greater ownership or equity interest in a commodity pool, the operator of which is exempt from registration under § 4.13 of this chapter.

(2) *Exemption for certain ownership of greater than 10 percent in an owned entity.* Any person with an ownership or equity interest in an owned entity of 10 percent or greater ~~but not more than 50 percent~~ (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~~The owner, including any entity that such ~~person~~owner must aggregate, 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 strategies~~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 document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities;~~

(C~~D~~) Do not share employees that control the trading decisions of either; ~~and~~

(D~~E~~) Do not have risk management systems that permit the sharing of trades or trading strategy; and

(E) Provided further that the restrictions applicable to persons that have knowledge of, or control, the trading decisions or positions of the owner and the owned entity in subparts (A) and (D) of this section shall not include employees engaged in risk management, accounting, compliance or similar functions among mid- and back-office personnel.

(ii) The owner has and enforces written procedures to preclude the owner and the owned entity from having knowledge of, gaining access to, or receiving data

about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of the owner's activities from the owned entity's activities, provided that the restrictions described in this subpart (ii) shall not apply to the sharing of information or employees related to risk management, accounting, compliance or similar mid- and back-office functions; and

(iii) ~~Such person~~The owner complies with the requirements of paragraph (c) of this section.

~~(3) *Exemption for certain ownership of greater than 50 percent in an owned entity*. Any person with a greater than 50 percent ownership or equity interest in an owned entity (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 certifies to the Commission that the owned entity is not required under U.S. generally accepted accounting principles to be, and is not, consolidated on the financial statement of such person;~~

~~(ii) Such person, including any entity that such person must aggregate, and the owned entity meet the requirements of paragraphs (b)(2)(i)(A) through (E) of this section and such person demonstrates to the Commission that procedures are in place that are reasonably effective to prevent coordinated trading decisions by such person, any entity that such person must aggregate, and the owned entity;~~

~~(iii) Each representative (if any) of the person on the owned entity's board of directors (or equivalent governance body) certifies that he or she does not control the trading decisions of the owned entity;~~

~~(iv) Such person certifies to the Commission that either all of the owned entity's positions qualify as bona fide hedging transactions or the owned entity's positions that do not so qualify do not exceed 20 percent of any position limit currently in effect, and agrees with the Commission that:~~

~~(A) If such certification becomes untrue for any owned entity of the person, such person will aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate; however, after a period of three complete calendar months in which such person aggregates such accounts or positions and all of the owned entity's positions qualify as bona fide hedging transactions, such person may make such certification again and be permitted to cease such aggregation;~~

~~(B) Any owned entity of the person shall, upon call by the Commission at any time, make a filing responsive to the call, reflecting only such owned entity's positions and transactions, and not reflecting the inventory of the person or any other accounts or positions such person is required to aggregate (this requirement shall apply regardless of whether the owned entity or the person is subject to § 18.05 of this chapter); and~~

~~(C) Such person shall inform the Commission, and provide to the Commission any information that the Commission may request, if any owned entity engages in coordinated activity regarding the trading of such owned entity, such person, or any other accounts or positions such person is required to aggregate, even if such coordinated activity does not conflict with any of the requirements of paragraphs (b)(2)(i)(A) to (b)(2)(i)(E) of this section;~~

~~(v) The Commission finds, in its discretion, that such person has satisfied the conditions of this paragraph (b)(3);~~

~~(vi) Such person, when first requesting disaggregation relief under this paragraph, complies with the requirements of paragraph (c)(2) of this section; and~~

~~(vii) Such person complies with the requirements of paragraph (c)(1) of this section if, subsequent to a Commission finding that the person has satisfied the conditions of this paragraph (b)(3), there is a material change to the information provided to the Commission in the person's original filing under paragraph (c)(2) of this section.~~

(4~~3~~) *Exemption for accounts held by futures commission merchants.* A futures commission merchant or any affiliate of a futures commission merchant need not aggregate positions it holds in a discretionary account, or in an account which is part of, or participates in, or receives trading advice from a customer trading program of a futures commission merchant or any of the officers, partners, or employees of such futures commission merchant or of its affiliates, if:

(i) A person other than the futures commission merchant or the affiliate directs trading in such an account;

(ii) The futures commission merchant or the affiliate maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account;

(iii) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant or the affiliate holds, has a financial interest of 10 percent or more in, or controls; and

(iv) The futures commission merchant or the affiliate has complied with the requirements of paragraph (c) of this section.

(~~5~~4) *Exemption for accounts carried by an independent account controller.*

(i) An eligible entity need not aggregate its positions with the eligible entity's client positions or accounts carried by an authorized independent account controller, as defined in § 150.1(e), except for the spot month in physical delivery commodity contracts, provided that the eligible entity has complied with the requirements of paragraph (c) of this section, and that the overall positions held or

controlled by such independent account controller may not exceed the limits specified in § 150.2.

(ii) *Additional requirements for exemption of affiliated entities.* If the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(A) Have, and enforce, written procedures to preclude the affiliated entities from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities; provided, however, that such procedures may provide for the disclosure of information which is reasonably necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities to the managed positions and accounts and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(B) Trade such accounts pursuant to separately developed and independent trading systems;

(C) Market such trading systems separately; and

(D) Solicit funds for such trading by separate disclosure documents that meet the standards of § 4.24 or § 4.34 of this chapter, as applicable, where such disclosure documents are required under part 4 of this chapter.

(~~6~~5) *Exemption for underwriting.* A person need not aggregate the positions or accounts of an owned entity if the ownership or equity interest is based on the ownership of securities constituting the whole or a part of an unsold allotment to or subscription by such person as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(~~7~~6) *Exemption for broker-dealer activity.* A broker-dealer registered with the Securities and Exchange Commission, or similarly registered with a foreign regulatory authority, need not aggregate the positions or accounts of an owned entity if ~~such broker-dealer does not have greater than a 50 percent ownership or equity interest in the owned entity and~~ the ownership or equity interest is based on the ownership of securities acquired in the normal course of business as a dealer, *provided that* such person does not have actual knowledge of or control the trading decisions of the owned entity.

(~~8~~7) *Exemption for information sharing restriction.* A person need not aggregate the positions or accounts of an owned entity if the sharing of information associated with such aggregation (such as, only by way of example, information reflecting the transactions and positions of a such person and the owned entity) creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder, provided that such person does not have actual knowledge of information associated with such aggregation, and provided further

that such person has filed a prior notice pursuant to paragraph (c) of this section and included with such notice a written memorandum of law explaining in detail the basis for the conclusion that the sharing of information creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder. However, the exemption in this paragraph shall not apply where the law or regulation serves as a means to evade the aggregation of accounts or positions. All documents submitted pursuant to this paragraph shall be in English, or if not, accompanied by an official English translation.

(~~9~~8) *Exemption for higher-tier entities.* If an owned entity has filed a notice under paragraph (c) of this section, any person with an ownership or equity interest of 10 percent or greater in the owned entity need not file a separate notice identifying the same positions and accounts previously identified in the notice filing of the owned entity, provided that:

(i) Such person complies with the conditions applicable to the exemption specified in the owned entity's notice filing, other than the filing requirements; and

(ii) Such person does not otherwise control trading of the accounts or positions identified in the owned entity's notice.

(iii) Upon call by the Commission, any person relying on the exemption in this paragraph (b)(~~9~~8) shall provide to the Commission such information concerning the person's claim for exemption. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

(9) *Exemption for transitory ownership or equity interests acquired through foreclosure or a similar credit event.* An owner need not aggregate the positions or accounts of an owned entity if it acquires, in the normal course of such person's business, a transitory ownership or equity interest in the owned entity as a result of a default, foreclosure, or similar credit event, provided that such owner does not have actual knowledge of the trading decisions of, and disposes of its ownership or equity interest in, the owned entity within a commercially reasonable period with due regard to the then prevailing circumstances.

(c) *Notice filing for exemption.*

(1) Persons seeking an aggregation exemption under paragraph (b)(1)(ii), (b)(2), (b)(3~~)(vii~~), (b)(4), ~~(b)(5),~~ or (b)(~~8~~7) of this section shall file a notice with the Commission, which shall be effective upon submission of the notice, and shall include:

(i) A description of the relevant circumstances that warrant disaggregation; and

(ii) 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) Persons with a greater than 50 percent ownership or equity interest in an owned entity seeking an aggregation exemption under paragraph (b)(3)(vi) of this section shall file a request with the Commission, which shall not become effective unless and until the Commission finds, in its discretion, that such person has satisfied the conditions of paragraph (b)(3) of this section, and shall include:~~

~~(i) A description of the relevant circumstances that warrant disaggregation;~~

~~(ii) A statement of a senior officer of the entity certifying that the conditions set forth in paragraph (b)(3) of this section have been met;~~

~~(iii) A demonstration that procedures are in place that are reasonably effective to prevent coordinated trading decisions by such person, any entity that such person must aggregate, and the owned entity; and~~

~~(iv) All certifications required under paragraph (b)(3) of this section.~~

(~~3~~2) Upon call by the Commission, any person claiming an aggregation exemption under this section shall provide such information demonstrating that the person meets the requirements of the exemption, as is requested by the Commission. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

(~~4~~3) In the event of a material change to the information provided in any notice filed under this paragraph (c), an updated or amended notice shall promptly be filed detailing the material change.

(~~5~~4) Any notice filed under this paragraph (c) shall be submitted in the form and manner provided for in paragraph (d) of this section.

(d) *Form and manner of reporting and submitting information or filings.*

(1) Unless otherwise instructed by the Commission or its designees, any person submitting reports under this section shall submit the corresponding required filings and any other information required under this part to the Commission using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission. Unless otherwise provided in this section, the notice shall be effective upon filing. When the reporting entity discovers errors or omissions to past reports, the entity shall so notify the Commission and file corrected information in a form and manner and at a time as may be instructed by the Commission or its designee~~;~~.

(2) The notice required under paragraph (c) shall be filed with the Commission no more than 90 days after an aggregation exemption under this section is relied upon;

(3) the failure of a person that otherwise would qualify for an aggregation exemption under this section to file such a notice within 90 days shall constitute a single violation of paragraph (c), and not a violation of the position limits set forth in § 150.2.

(e) *Delegation of authority to the Director of the Division of Market Oversight.*

(1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

~~(i) In paragraph (b)(3) of this section:~~

~~(A) To determine, after consultation with the General Counsel or such other employee or employees as the General Counsel may designate from time to time, if a person has satisfied the conditions of paragraph (b)(3) of this section; and~~

~~(B) To call for additional information from a person claiming the exemption in paragraph (b)(3) of this section, reflecting such owned entity's positions and transactions (regardless of whether the owned entity or the person is subject to § 18.05 of this chapter).~~

(i~~i~~) In paragraph~~s~~ (b)(8~~9~~)(iii) and (c)(2) of this section to call for additional information from a person claiming the exemption in paragraph~~s~~ (b)(~~9)(i~~8) and (c)(2) of this section.

(ii~~i~~) In paragraph (d) of this section for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

(2) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.