

**MEMO# 30478**

December 14, 2016

## **CFTC Issues Final Rule on Aggregation for Position Limits**

[30478] December 14, 2016 TO: ICI Members  
ICI Global Members  
Derivatives Markets Advisory Committee  
ICI Global Trading & Markets Committee SUBJECTS: Derivatives  
Trading and Markets RE: CFTC Issues Final Rule on Aggregation for Position Limits

Recently, the Commodity Futures Trading Commission (“CFTC” or “Commission”) adopted final rules on aggregation for purposes of its position limits regime.[\[1\]](#) In November 2013, the Commission proposed to amend the existing aggregation rules to determine which accounts and positions a person must aggregate.[\[2\]](#) The final rules will be effective 60 days after publication in the Federal Register, which is expected shortly. This memorandum briefly summarizes the final rules and some of the exemptions from aggregation that may be of most interest to regulated funds.[\[3\]](#)

### **Aggregation of Positions**

For purposes of applying the position limits, the final rules require all positions in accounts for which a person controls trading or holds a 10 percent or greater ownership or equity interest to be aggregated with the positions held and trading done by such person unless an exemption applies.[\[4\]](#) Moreover, despite ICI’s objections, any person that holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies must aggregate all such positions (determined pro rata) with all other positions held and trading done by such person and the positions in accounts which the person must aggregate.[\[5\]](#) The CFTC reasoned that the provision aggregating positions of “pools with substantially identical trading strategies” was necessary to prevent circumvention of the aggregation requirements. Finally, the CFTC did not adopt ICI’s suggestion that aggregation should not be required for an investment adviser to registered funds, provided that those funds have different investment strategies.

### **Exemptions from Aggregation**

#### ***Exemption for Accounts Carried by an Independent Account Controller***

The CFTC has adopted the exemption for accounts carried by an IAC generally as proposed by modifying the definition of IAC to include any person with a role equivalent to a general partner in a limited liability partnership or a managing member of a limited liability company. The CFTC, however, did not expand the definition of IAC to include exempt

commodity trading advisors, registered commodity pool operators (“CPOs”), or exempt or excluded CPOs as requested by commenters, including ICI. The CFTC stated that these comments were beyond the scope of the proposal but it is considering these comments and may take them up in a later proceeding.

### ***Exemption for Certain Ownership of Greater than 10 Percent in an Owned Entity***

Under the final rules, a person with an ownership or equity interest in an owned entity of 10 percent or greater need not aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate subject to certain conditions. These conditions include that the person (including any entity that such person much aggregate) and the owned entity: (1) do not have knowledge of the trading decisions of the other; (2) trade pursuant to separately developed and independent trading systems;<sup>[6]</sup> (3) have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other;<sup>[7]</sup> (4) do not share employees that control the trading decisions of either; and (5) 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 entity. To qualify for the exemption, a person must file a notice with the CFTC, which will be effective upon submission.<sup>[8]</sup>

In response to commenters, the CFTC modified some aspects of this exemption and provided certain clarifications. Specifically, the CFTC included language to clarify that the owner is charged with awareness of the owned entity’s activities if it is able to control the owned entity or routinely has access to relevant information about the owned entity. The CFTC also stated that the term trading “system” would include various methods, procedures, and plans that market participants may use to initiate trading and include a program that provides the impetus for the initiation of trades. The final rules also clarify that the provision regarding risk management information sharing is focused on the sharing of trades or trading strategy with employees that control the trading decisions of the other entity. The CFTC stated that the final rules would not prohibit sharing of information to be used only for risk management and surveillance purposes when the information is not used for trading purposes and not shared with employees that control, direct, or participate in the entities’ trading decisions.

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#### **endnotes**

<sup>[1]</sup> Aggregation of Positions (Dec. 5, 2016), *available at* <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister120516a.pdf>. The final rules would apply to the CFTC’s position limits regime for futures and option contracts on nine agricultural commodities. The Commission also issued a reproposal of the position limits for 25 core physical commodity futures contracts and their “economically equivalent” futures, options and swaps. Once those position limits are finalized, these final rules also would apply to position limits regime for those contracts and swaps. Position Limits for Derivatives (Dec. 5, 2016), *available at* <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister120516.pdf>

[2] In September 2015, the CFTC revised the proposal to permit the disaggregation of positions of owned entities in expanded circumstances.

[3] Exemptions in the final rules include: (1) ownership interest by limited partners , shareholders or other pool participants; (2) ownership interest greater than 10 percent in an owned entity ; (3) accounts held by futures commission merchants (“FCMs”); (4) accounts carried by independent account controllers (“IACs”); (5) ownership interest based on underwriting, (6) ownership from broker-dealer activities; (7) sharing of information that would violate or create reasonable risk of violating federal or state or law of a foreign jurisdiction; and (8) affiliated entities.

[4] The positions of any other person with which the person is acting pursuant to an express or implied agreement or understanding would be treated as if the positions or ownership or equity interests were held by or the trading were done or controlled by a single person.

[5] Under this provision of the final rules, a person must aggregate the positions held or controlled in the accounts or pools that have substantially identical trading strategies regardless of ownership level (*i.e.*, the 10 percent threshold does not apply).

[6] According to the Commission, “trading systems” do not to include an order execution platform, systems used for back-office functions (such as order capture or trade reporting), or broad principles to guide trading.

[7] The Commission explained that sharing attorneys, accountants, risk managers, compliance and other mid-and back-office personnel would generally not result in violation of the criteria so long as the employees do not influence or direct the entities’ trading decisions.

[8] The notice filing must demonstrate compliance with the conditions of the exemption. In addition, although the notice filing will be effective upon submission, the CFTC will be able to call subsequently for additional information and to amend, terminate, or otherwise modify the person’s aggregation exemption for failure to comply with the provisions of the exemption.