

Client Update

No-Action Relief from Notice Filing Requirement under the CFTC Rules on Aggregation of Positions

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On February 6, 2017, the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (the “CFTC”) published a no-action letter¹ (the “No-Action Letter”) granting temporary relief from the notice-filing requirement in CFTC Regulation 150.4 on aggregation of positions.

The relief remains in effect until August 14, 2017.

BACKGROUND

In December 2016, the CFTC published final rules (the “Final Aggregation Rules”) amending the aggregation provisions of Part 150.² The Final Aggregation Rules maintain the general aggregation requirement in current Regulation 150.4 (for ownership or control of positions) and add an additional aggregation requirement for controllers of multiple accounts with “substantially identical” trading strategies. The Final Aggregation Rules also provide a number of exemptions from aggregation requirements.³ The Final Aggregation Rules will become effective on February 14, 2017.

The Final Aggregation Rules require a notice (a “Notice of Exemption”) to be filed with the CFTC if a person seeks an exemption for:

¹ CFTC Letter No. 17-06 (Feb. 6, 2017).

² For additional information on the Final Aggregation Rules, see our client update, “Final CFTC Rules on Aggregation of Positions” (Dec. 16, 2016), available at: <http://www.debevoise.com/insights/publications/2016/12/final-cftc-rules-on-aggregation-of-positions>.

³ The Notice of Exemption requirement is set forth in Regulation 150.4(c) of the Final Aggregation Rules.

- a commodity pool participant that is a principal or affiliate of the pool's operator and has an ownership or equity interest of 10% or greater in a pooled account or positions;
- a person with an ownership or equity interest in an owned entity of 10% or greater;
- accounts held by futures commission merchants;
- accounts carried by an independent account controller; and
- information sharing restrictions.

The Notice of Exemption must describe the circumstances warranting disaggregation and include a statement of a senior officer certifying that the conditions of the applicable exemption are met.

NO-ACTION RELIEF

The Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG") and the International Swaps and Derivatives Association ("ISDA") requested temporary relief⁴ from compliance with the notice filing and certification requirements described above. They cited the need to analyze and adapt to the amended aggregation requirements, and determine when exemptions are available, noting that the challenge is particularly problematic for asset managers, who must mobilize their own institutions and assess the need for outreach to clients. They also noted that it will take significant time to prepare the notice filings and certifications.

The No-Action Letter provides that the DMO will not recommend that the CFTC take enforcement action against any person or entity that is eligible to rely on any of the exemptions from aggregation (under Regulation 150.4(b)) for failure to file a Notice of Exemption until **August 14, 2017** (at 12:01 a.m. EST).⁵

Upon the expiration of this relief, each person or entity that intends to rely on any relevant exemption must file a notice as required under 150.4(c).

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Please do not hesitate to contact us with any questions.

⁴ SIFMA AMG requested relief until May 15, 2017, while ISDA requested relief until at least July 2017.

⁵ DMO notes in the No-Action Letter that despite this temporary relief, participants may choose (of their own accord) to file a Notice of Exemption with the CFTC (of their intent to claim an exemption).