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Via Email
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Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
Attn: Mr. David Stawick, Secretary

Re: Proposed Position Limits for Derivatives/
RIN Numbers 3038-AD15 and 3038-AD16

Dear Mr. Stawick:

We are writing to the Commodity Futures Trading Commission ("CFTC") on behalf of a client which is a registered commodity trading advisor and in such capacity a member of the National Futures Association (the "CTA"), with respect to the proposed Part 151 Regulations – position limits for derivatives (hereinafter, the "Part 151 Regulations").

By way of background, the CTA does not own any accounts or positions but only controls trading of its clients' accounts. Therefore, the CTA aggregates all positions in its clients' accounts for determining the CTA's compliance with speculative position limits. Some of the clients of the CTA are commodity pools which pool investors' assets into accounts the trading of which is controlled by the CTA.

1. Current situation

Consistent with CFTC Reg. § 150.4(c)(1)-(3), investors with an equity interest of 10% or greater in any of the commodity pools controlled by the CTA currently do not need to aggregate the positions of the commodity pool with all other accounts or positions owned or controlled by that investor because (1) the investor is not a commodity pool operator, (2) the investor is not a principal or affiliate of the operator, and even if the investor

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were an affiliate of the pool operator, then (a) the commodity pools have written and operational procedures in place to preclude investors from having knowledge of, gaining access to, or receiving current data about the trading or positions of the pool, and (b) the investor has no authority over the pool's trading decisions (this is delegated to the CTA), and (3) the commodity pool operators of these pools are not exempt from registration under §4.13.

2. Comments and recommendations regarding the proposed 'owned non-financial entity exemption'[1]

2.1. The new and amended criteria of independence

The CTA supports the CFTC's additional proposed criteria of independence and fully agrees with the CFTC that these criteria should be considered. Including the criteria that "the owned entity's trading decisions are controlled by persons employed exclusively by the owned entity, who do not in any way share trading control with persons employed by the entity", and that "the owned entity maintains a risk management system that is separate from the risk management system of the entity and any of its affiliates" will enable the CFTC to force aggregation in cases where personnel or risk management systems overlap and the owned entity's trading is therefore not completely independent.

The CTA believes these are important substantive modifications to the independent account controller framework and will, in combination with proposed CFTC Reg. §151.7(f)(5), which grants the CFTC full discretion to consider other factors "that indicate that the owned entity's trading is independently controlled and managed", ensure that there will be no way to circumvent the requirements of the proposed Federal position limit framework.

2.2. The restriction of the 'owned entity exemption' to non-financial entities

The proposal changes the aggregation requirements for pool participants with an equity interest of 25% or greater by, in principle, forcing aggregation in these cases. Currently, investors in such pools the operator of which is exempt from registration under CFTC Reg. § 4.13 can make use of the independent account controller exemption in CFTC Reg. § 150.3(a)(4). The proposal abolishes the independent account controller exemption and introduces an owned non-financial entity exemption. The proposed exemption would allow "disaggregation primarily in the case of a conglomerate or holding company that merely has a passive ownership in one or more non-financial operating companies". The CFTC's

[1] Proposed CFTC Reg. § 151.7(f).

underlying rationale for this exemption is that "operating companies may have complete trading and management independence and operate at such a distance from the holding company that it would not be appropriate to aggregate positions".

The current proposed definition of financial entity references certain categories of "eligible contract participants" set forth in Section 1(a)(18)(A)(i) through (iv), (vi), (viii) through (x) and B(ii) of the U.S. Commodity Exchange Act, as amended, including commodity pools. Accordingly, as proposed, an investor in a financial entity (such as a commodity pool) could not apply for the exemption even if the investor has no knowledge of or access to the pool's trading or current positions, and the pool delegates trading control to a third party, such as the CTA. See Figure 1 for a brief overview of this situation.

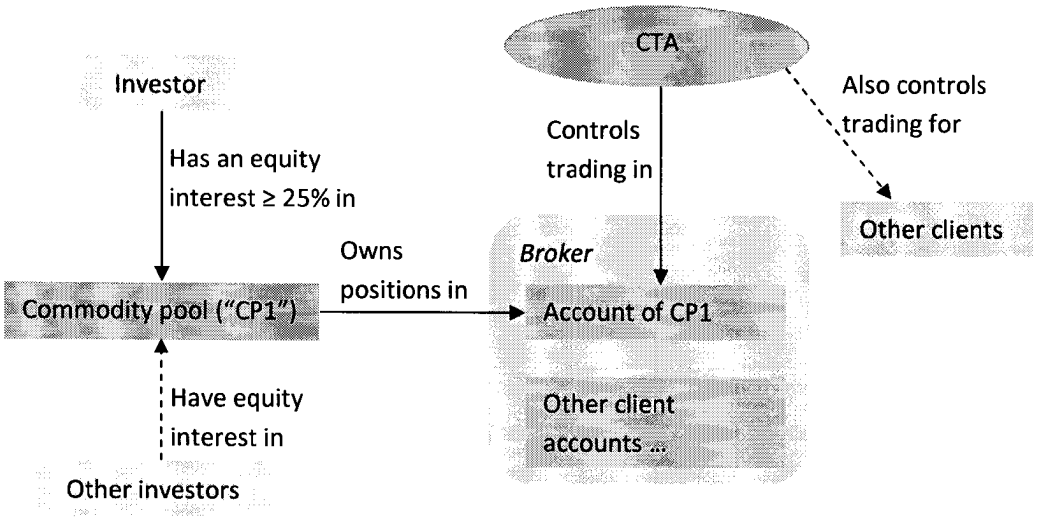


Figure 1: schematic overview of ownership / control scenario

While the CTA supports the inclusion of the owned entity exemption from aggregation, the CTA unequivocally requests the CFTC to include financial entities in this exemption. Restricting the proposed exemption to non-financial entities (A) is entirely without justification, (B) will reduce the number and/or size of independent traders in commodity markets, and (C) is contrary to the stated goals of the CFTC and the Dodd-Frank Act.

A. The restriction is without justification

The CFTC has provided no justification whatsoever for restricting the owned entity exemption from aggregation to non-financial entities. The CTA believes that the CFTC unnecessarily distinguishes between financial and non-financial entities in a manner that is discriminatory against financial entities. The new and amended indicia of independence combined with the formal application procedure and the discretionary power of the CFTC to consider other factors, taken together, provide for a more than adequate framework that enables the CFTC to properly perform its market surveillance responsibilities while making sure there is no way to circumvent the requirements for owned entities that do not trade completely independently.

If the CFTC believes that there are additional ways to circumvent the requirements that are not covered by the new and amended indicia of independence, then the CFTC did not make clear why the circumvention of the requirements would be easier for financial entities than for non-financial entities. The CTA feels that if there are any additional perceived ways to circumvent the requirements, then the CFTC should address such concerns by requiring additional criteria of independence to be demonstrated by financial entities rather than excluding all financial entities.

B. The restriction will reduce the number and/or size of independent traders

In determining aggregation obligations for investors, there is a fundamental difference between (1) holding a managed account and (2) owning an equity interest of 25% or greater in a commodity pool, where the commodity pool has in place procedures to prevent the investor from having knowledge of or access to current position or trading information ("large equity interest in an independent commodity pool"). Investors that own managed accounts, of which the trading control is delegated to a third party, can have knowledge of all positions taken on their behalf. As such, a theoretical case can be made that ownership in combination with the possible knowledge of positions (as in the case of managed accounts), could potentially be used to circumvent position limits. In practice however, this would not work for diversified or actively managed accounts.

Investors that have a large equity interest in an independent commodity pool, on the other hand, have no knowledge of the current positions by the commodity pool[2]. Therefore, the potential manner in which speculative position limits could be circumvented through ownership of managed accounts is not present in situations where passive investors have a

[2] Sometimes delayed position information is provided on a monthly, quarterly or annual basis to investors to comply with applicable regulations or to cater to client demand. This information is typically too stale to be used by the investor to coordinate strategy with other positions.

large equity interest in a passive commodity pool. The only way that an investor can 'control' its exposure is by increasing or decreasing the allocation to the commodity pool, and, unlike in managed accounts which often offer daily liquidity, in a commodity pool this can usually only be done on a monthly basis with a notice period of several days.

In summary, investors that own managed accounts (a) can have knowledge of the positions taken on their behalf, (b) have the means to frequently increase or decrease allocations to these managed accounts, and (c) could theoretically use (a) and / or (b) to circumvent position limits if ownership of accounts was not considered for aggregation purposes. Investors that have a large equity interest in an independent commodity pool, on the other hand, have (a) no knowledge of the positions in this pool, (b) no means to frequently increase or decrease allocations to this pool, and (c) no means therefore to circumvent speculative position limits.

An additional undesired consequence of restricting the owned entity exemption to 'non-financial' entities is that large investors such as pension funds or endowments, which have a significant passive equity interest in fully independent, unaffiliated commodity pools will have to aggregate all positions held by the pool with all other positions held or controlled by the investor. Of course, this would force the independent commodity pool to share position information not currently disclosed (in line with CFTC Reg. § 150.4(c)(2)(i)). Although disclosure itself is already problematic, treating large investors in the pool different from smaller investors is an even more undesirable result. If the aggregation requirement would lead an investor's desired positions to exceed speculative position limits, then the investor would have to reduce its desired positions – either through reducing its allocation to the commodity pool, or through reducing positions in its own accounts. Without the aggregation requirement, both the commodity pool and the investor independently reached trading conclusions and independently took positions. With the aggregation requirement, either the commodity pool or the investor will have fewer assets allocated to these independent viewpoints, resulting in an overall reduction in market liquidity.

C. The restriction is contrary to the stated goals of the CFTC

The CFTC states that "position limits address these risks through ensuring the participation of a minimum number of traders that are independent of each other and have different trading objectives and strategies". As previously discussed, restricting the exemption to only non-financial entities has the effect of either (1) reducing the number of independent traders with different trading objectives and strategies, and/or (2) reducing the size with which the independent traders with different trading objectives and strategies can execute these strategies. Both effects will adversely impact the price discovery function and market liquidity

of futures markets and will result in a relative increase in the number of traders with similar strategies and trading objectives (e.g. more passively managed long-only commodity funds).

3. Conclusions

In summary, the proposed restriction of the 'owned entity exemption' from aggregation in the Part 151 Regulations to non-financial entities:

(1) is without justification,
(2) will reduce the number and/or size of independent traders, and
(3) is contrary to the stated goals of the proposed regulation and the mandate of the CFTC.

Therefore, the CTA respectfully requests the CFTC to amend the Part 151 Regulations to:

(a) allow entities with an ownership or equity interest of 10% or greater in either non-financial or financial entities to apply for an 'owned entity exemption' and determine based upon the criteria in CFTC Regs. § 151.7(f)(1)-(4) or on any additional criteria whether an entity should be exempt from aggregation,

(b) to provide an exception to the aggregation requirement for pool participants with a passive equity interest of 25% or greater along the lines of CFTC Regs. §151.7(c)(1)(i)-(ii), perhaps extended by additional criteria of independence based on the proposed owned entity exemption, and

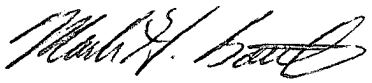
(c) to remove the requirement in CFTC Reg. § 151.7(c)(1)(iii) for entities with an equity interest of 10% or greater to apply for an exemption from aggregation.

The CTA is of the opinion that the amendment proposed in (a), above, would bring the aggregation framework more in line with the CFTC's stated goals and is therefore absolutely necessary. If the CFTC is concerned that this change would allow certain financial entities, which the CFTC does not consider to be sufficiently independent, to qualify for the aggregation exemption, the CTA feels that such considerations should be specified using additional criteria. The amendments proposed in (b) and (c) above, are also necessary. They would allow situations which are clearly not intended to be aggregated to avoid the laborious exemption procedure, which will conserve precious resources both at the CFTC and for numerous institutional investors.

Commodity Futures Trading Commission
March 25, 2011

The views expressed in this letter are those of the CTA and not of Akin Gump Strauss Hauer & Feld LLP or any other client of Akin Gump Strauss Hauer & Feld LLP.

Sincerely yours,



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