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FIA

May 25, 2011

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

Re: Position Limits for Derivatives (RIN 3038-AD 15 and 3038-AD 16)

Dear Mr. Stawick:

The Futures Industry Association, Inc. ("FIA") is submitting this letter to the Commodity Futures Trading Commission (the "Commission") pursuant to recent informal telephone conversations with Commission staff to supplement our comment letter to the Commission dated March 25, 2011 (the "March 25, 2011 Letter") in response to the Commission's Notice of Proposed Rulemaking concerning Position Limits for Derivatives, 76 Fed. Reg. 4752 (January 26, 2011).[1] The comments and recommendations in this letter focus on various aspects of the Commission's proposed new account aggregation standards. However, given that compliance with speculative position limits frequently depends upon the requirements relating to whether and under what circumstances positions must be aggregated, FIA believes that these issues, including whether it is necessary to impose position limits, and if so, what limits are appropriate, must be considered holistically and not in isolation.

I. Interest of FIA in the Commission's Proposed New Account Aggregation Standards

As noted in the March 25, 2011 Letter, FIA's members, their affiliates and their customers actively participate in the listed and over-the-counter derivatives markets as intermediaries, principals, asset managers and users.[2] For this reason, FIA participated in the

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[1] FIA refers to the Supplementary Information in the Commission's Notice of Proposed Rulemaking as the "NOPR" and to the text of the proposed position limit rules as the "Proposed Rules."

[2] FIA is the leading trade organization for the futures, options and over-the-counter cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world's largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. As the principal members of the derivatives clearinghouses, our member firms play a critical role in the reduction of systemic risk in the financial markets. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions. FIA's core constituency consists of futures commission merchants ("FCMs"), and the primary focus of the association is the global use of exchanges, trading systems and clearinghouses for derivatives transactions.

legislative process that led to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). Moreover, as the Commission and other federal agencies work to implement the Dodd-Frank Act, FIA has publicly committed to assist them by providing the information, comments, and recommendations they need to ensure that the U.S. derivatives markets remain the most efficient and competitive in the world.[3]

Section 737 of the Dodd-Frank Act amended the Commission's authority in Section 4a of the Commodity Exchange Act ("CEA") to authorize the Commission in specified circumstances and subject to specified conditions to set limits on the size of positions, other than bona fide hedging positions, in futures, options on futures, and swap contracts involving exempt and agricultural commodities (hereinafter, collectively, "referenced contracts") that may be held by any person. Unlike most other provisions in the legislation, amended Section 4a became effective on July 21, 2010.[4] Notably, while the Dodd-Frank Act amended Section 4a of the CEA in a number of significant respects, the language of the aggregation requirement in Section 4a(a) remains unchanged. FIA strongly believes that the Commission must be mindful of this basic statutory framework in connection with proposing any amendments to its rules relating to the aggregation of accounts. As active participants in, and users of the U.S. derivatives markets, FIA and its members have a significant interest in the Proposed Rules, including the intended applicability of the proposed new account aggregation standards.

II. Summary of FIA's Comments and Recommendations

For the convenience of the Commission and its staff, we are summarizing FIA's comments and recommendations concerning the new account aggregation standards in proposed Rule 151.7. Pursuant to informal telephone conversations with Commission staff subsequent to the close of the comment period, FIA has learned that the Commission apparently intends that the common parent of an integrated group of financial services companies would have to aggregate all positions in referenced contracts traded by its FCM and dealer subsidiaries on its behalf with all positions in referenced contracts traded independently by its walled-off asset management subsidiaries on behalf of their third party clients due to the ultimate common ownership of the companies, despite the absence of common ownership of the positions and the absence of common control with respect to the trading activities, and without any possibility for disaggregation relief. FIA respectfully believes that such an aggregation standard is not supported by any fair reading of the Dodd-Frank Act, the CEA, the Proposed Rules, or the NOPR, and would disregard the Commission's historic policy and practice in such circumstances and the policy and practice of other federal regulators in analogous cases. In our view, compulsory firm-wide aggregation in such circumstances would not advance any regulatory policy or purpose and the consequences to the markets and the industry of imposing such an onerous standard would be harmful and vast.

FIA's regular members, who act as the majority clearing members of the U.S. exchanges, handle more than 90% of the customer funds held for trading on U.S. futures exchanges.

[3] On October 1, 2010, FIA provided the Commission with comments that made several substantive and process recommendations about whether, and if so how, the Commission should consider exercising its authority to establish position limits under Section 4a of the Commodity Exchange Act. Previously, on March 18, 2010, FIA submitted extensive comments and recommendations in response to the Commission's January 26, 2010 proposal to set Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, 75 Fed. Reg. 4143 (January 26, 2010).

[4] Because the amendments to Section 4a are effective, FIA generally refers to the CEA sections rather than Section 737 of the Dodd-Frank Act when discussing the Commission's position limit authority.

FIA has not attempted in this letter to identify all the potential issues, nor can we envision the full range of possible implications, if the Commission were to move forward with this rulemaking on the basis of such a massive change to its historic aggregation policy. However, as the Commission has noted, aggregation policy is one of the basic elements of the regulatory framework for speculative position limits. As such, we do not believe that the Commission can properly evaluate market data for the purposes of determining what position limits may be necessary or appropriate, if any, including with respect to swap contracts which heretofore have not been subject to position limits, without considering the aggregation standard it intends to apply to monitor and enforce compliance with any such limits. Nor can interested parties have an opportunity to assess the potential impact of the Proposed Rules without an informed understanding of the Commission's intended application of the proposed new account aggregation standards. FIA is therefore recommending that the Commission clarify its intention by republishing the Proposed Rules for public comment with an adequate explanation if it intends to proceed with this rulemaking or withdraw the Proposed Rules, as FIA previously recommended in the March 25, 2011 Letter.

III. The Commission Should Clarify Its Proposed New Account Aggregation Standards

In the March 25, 2011 Letter, FIA commented on certain issues relating to the proposed new account aggregation standards.[5] Among other things, the March 25, 2011 Letter addresses the proposed inapplicability of the independent account controller exemption with respect to positions in referenced contracts and the new exemption for non-financial entities in proposed Rule 151.7(f). However, as noted, subsequent to the close of the comment period on March 28, 2011, based upon informal telephone conversations with Commission staff, FIA has become aware that the Commission apparently intends to apply and interpret the proposed new account aggregation standards in a manner which we respectfully believe to be fundamentally inconsistent with the operative language in Section 4a(a) of the CEA relating to aggregating positions for purposes of applying speculative position limits, the language of proposed Rule 151.7, the Commission's historic policy and practice in applying and interpreting the same language in its existing Part 150 rules and the policy and practice adopted by other federal regulators in analogous contexts, in spite of the absence of any discussion of these issues in the NOPR.

As we describe below, if the Commission were to proceed with this rulemaking on such a basis, FIA is convinced that the consequences of such a significant departure from the Commission's historic aggregation policy to the markets and the industry would be drastic, severe, and far-reaching. This is because the Commission's aggregation policy determines whether and under what circumstances positions in the same contract in different accounts must be treated as a combined position by a market participant for purposes of applying the applicable limits. Whether or not we have correctly understood the Commission's intention, as stated previously, FIA respectfully requests the Commission to clarify its intention by republishing the Proposed Rules for public comment with an adequate explanation if it intends to proceed with this rulemaking or to withdraw the Proposed Rules, as FIA recommended in the March 25, 2011 Letter.

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5 See March 25, 2011 Letter at 21-27.

Section 4a(a) of the CEA

We begin our analysis with Section 4a(a) of the CEA. As previously noted, despite certain amendments made by the Dodd-Frank Act to Section 4a(a), Section 4a(a) continues to read in relevant part as follows:

> In determining whether any person has exceeded such 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; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person.[6]

Indeed, this language is identical to the language of Section 4a(a) as it existed for many years prior to the effectiveness of Section 737 of the Dodd-Frank Act. This language directs that three classes of positions be included in determining whether a person has a position in excess of an applicable speculative position limit: (i) positions held by that person or by a person controlled by that person; (ii) positions controlled by that person or by a person controlled by that person; and (iii) positions held or controlled by other person(s) which are acting pursuant to an expressed or implied agreement or understanding with that person. Consistent with this language, the Commission has applied a policy of aggregating positions on the basis of the following three criteria: (i) ownership of positions; (ii) control of trading decisions; and (iii) trading in concert. These criteria are typically referred to as ownership, control, and trading in concert. The Commission has applied the same criteria for aggregating positions for purposes of its large trader reporting requirements.

Additionally, in a new Section 4a(a)(7), Congress conferred broad authority on the Commission to exempt, conditionally or unconditionally, any person or class of persons and any class of contracts from any speculative position limits that it may set under Section 4a(a). In this regard, the Commission requests comment in the NOPR on whether it should grant exemptions from account aggregation under this new authority.[7] Again, at the very least, it is clear that there is no basis in the Dodd-Frank Act amendments to Section 4a(a) for the Commission to depart from its historic aggregation policy which is set forth in current Rule 150.4(a), 17 C.F.R. § 150.4(a) (2010), as well as reflected in comparable exchange rules.

Proposed Rules 151.7(a) and (b)

In proposed Rule 151.7(a), the Commission proposes to establish account aggregation standards specifically for positions in referenced contracts. The language of this provision is identical to the language of current Rule 150.4(a), which codifies the Commission's historic aggregation policy, with the sole exception that proposed Rule 151.7(a) uses the word "trader" in two instances in lieu of the word "person." Although "trader" is a term with a meaning which is narrower in scope than the meaning of the term "person," Commission staff has informally

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[6] For ease of comparison, we have attached a blackline of the relevant language of Section 4a(a) as Exhibit A.

[7] 76 Fed. Reg. at 4763.

indicated to us that this difference was not meant to be legally significant.[8] On that basis, the general account aggregation standard under proposed Rule 151.7(a) is worded identically to the current account aggregation standard under Rule 150.4(a). Similarly, the operative language of proposed Rule 151.7(b), which delineates the nature of an ownership interest in an account that generally would trigger aggregation of an account on the basis of the ownership criterion, tracks the language of current Rule 150.4(b), 17 C.F.R. § 150.4(b) (2010).[9]

Under this standard, the Commission has consistently interpreted the "hold or control" criteria as applying separately to ownership of positions or to control of trading decisions.[10] Yet, as noted, we understand from our recent telephone conversations with staff that the Commission apparently intends to reinterpret this language to require the common parent of an integrated group of financial services companies to aggregate all positions in referenced contracts traded by its FCM and dealer subsidiaries on its behalf with all positions in referenced contracts traded by its walled-off asset management subsidiaries on behalf of their third party clients on the basis of the ultimate common ownership of the companies, even though the asset management subsidiaries (i) are trading on behalf of third party clients, not the common parent, so common ownership of the positions does not exist and (ii) are conducting their trading activities separately and independently, so common control with respect to the trading decisions does not exist either. This is apparently the case, notwithstanding that, as we have noted, the language of proposed Rules 151.7(a) and (b) tracks the language of current Rules 150.4(a) and (b) and the NOPR does not apprise the public of this novel and unprecedented departure from longstanding interpretation.[11]

Proposed Rule 151.7(e)

The Commission is proposing to establish certain exemptions from the new account aggregation standards for positions in referenced contracts, which presumably are intended to provide relief from the potential applicability of proposed Rules 151.7(a) and (b). In this letter we specifically address one of them, the exemption in proposed Rule 151.7(e) for the positions of an FCM and its affiliates, which is hereinafter referred to as the "FCM exemption."

It should be noted that the Commission's January 26, 2010 proposal to set Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations did not include an exemption comparable to the current FCM exemption in Rule 150.4(d), 17 C.F.R. § 150.4(d) (2010). See n.3 supra. The Proposed Rules notably do include such an exemption in proposed Rule 151.7(e). Just like the provisions of Proposed Rule 151.7(a) and (b), the operative language of proposed Rule 151.7(e) tracks the language of current Rule 150.4(d).[12] To be sure, the current FCM exemption in Rule 150.4(d) is self-executing, whereas the exemption under

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[8] Compare the definition of "trader" in proposed Rule 151.1 and Rule 15.00(s), 17 C.F.R. § 15.00(s) (2010), with the definition of "person" in Section 1a(38) of the CEA and Rule 1.3(u), 17 C.F.R. § 1.3(u) (2010).

[9] For ease of comparison, we have attached a blackline of Rules 150.4(a) and (b) and Proposed Rules 151.7(a) and (b) as Exhibit B.

[10] See 64 Fed. Reg. 24038, 24043 (May 5, 1999) (Revision of Federal Speculative Position Limits and Associated Rules).

[11] In the NOPR the Commission does not purport to modify or reinterpret its account aggregation standards based upon the "control" criterion, but FIA is concerned that this novel and unprecedented admixture of the "hold or control" criteria may cause confusion and misunderstanding with respect to the proper application of the "control" criterion and also presage an intention to deviate from current law on this issue.

[12] For ease of comparison, we have attached a blackline of Rule 150.4(d) and Proposed Rule 151.7(e) as Exhibit C.

proposed Rule 151.7(e) would become effective only upon the Commission's approval of an application pursuant to proposed Rule 151.7(g).

Given that the operative language of proposed Rule 151.7(e) is identical to the language of current Rule 150.4(d), one would reasonably expect to find in the NOPR an explanation of the differences in the intended application of these provisions if in fact the Commission intends to depart substantially from its historic interpretation of the FCM exemption, which we describe in the following section of this letter. Yet no such explanation is provided in the NOPR. In contrast, the NOPR describes the proposed revision from the self-executing exemptions of Part 150 of the Commission's rules to the application process in proposed Rule 151.7(g).[13] Not surprisingly in view of the lack of appropriate notice, to our knowledge those commenters who addressed the FCM exemption in proposed Rule 151.7(e) in comment letters submitted prior to the close of the comment period objected to the proposed revision from a self-executing exemption and related proposed revisions, an objection which FIA fully endorses, but did not address any of the issues presented in this letter.

The FCM Exemption in Rule 150.4(d)

Because the NOPR is silent on this threshold issue, FIA believes that it is critical to understand the historical context and the Commission and staff interpretation of the FCM exemption under Rule 150.4(d). In connection with adopting Rule 150.4(d) in 1999, the Commission explained that it intended merely "to codify the 1979 Aggregation Policy, including the continued efficacy of the 1991 interpretative letter, and not to modify the current state of the law on this issue."[14] In doing so, the Commission referred to its Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules, 44 Fed. Reg. 33839 (June 13, 1979) (the "1979 Aggregation Policy"), which provides that an FCM need not aggregate the discretionary trading accounts or customer trading programs through which a trader affiliated with, but independent of, the FCM directs trading of customer-owned positions or accounts.[15] The Commission noted further that since 1991 the staff has interpreted the 1979 Aggregation Policy as applying to an FCM's affiliates. Id. at 24044 citing CFTC Interpretative Letter No. 92-15, reprinted in Comm. Fut. L. Rep. (CCH) ¶25,831. In that letter Commission staff opined that, where a diversified financial services holding company is the common parent of a commodity pool operator ("CPO") or a commodity trading advisor ("CTA") and an FCM and the entities' trading arrangements meet the 1979 Aggregation Policy's indicia of independence, the CPO/CTA "may calculate its trading positions for determining compliance with speculative position limits and reporting requirements separate from the proprietary positions held by, or on behalf of, the parent." 64 Fed. Reg. at 24044 (citing Comm. Fut. L. Rep. (CCH) ¶25,831 at 39286). In an effort to confirm this intent to codify the 1979 Aggregation Policy, as subsequently interpreted by the staff to include an FCM's dealer and asset management affiliates, the Commission modified the language of proposed Rule 150.4(d) to include explicit reference to

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13 76 Fed. Reg. at 4762-63.

14 64 Fed. Reg. 24038 at 24044.

15 The 1979 Aggregation Policy offers guidance on the criteria which the Commission has traditionally considered in determining whether a trader exercises independent control over the trading decisions of customer discretionary accounts or trading programs. As noted, FIA is concerned that the Commission may intend to deviate from settled law on the proper application of the "control" criterion, despite the absence of any discussion of this issue in the NOPR. See n.11 supra.

affiliates of an FCM.[16]

Moreover, the Commission explained that the omission of FCMs from the list of entities eligible for relief under the independent account controller exemption in Rule 150.1(d) was intended to avoid unnecessary confusion and that broadening the definition of "eligible entities" to the separately organized affiliates of the entities listed in Rule 150.1(d) in no way restricts the applicability of Rule 150.4(d) to an FCM and its affiliates even if an FCM happens to be an affiliate of a Rule 150.1(d) "eligible entity."[17] Thus, under current Commission and staff interpretations of identically worded provisions of existing law, the proposed inapplicability of the independent account controller exemption with respect to positions in referenced contracts, which FIA strongly opposes, would not affect the ability of an FCM and its commonly owned dealer and asset management affiliates to obtain an exemption under proposed Rule 151.7(e), if the Commission were to adopt the proposed change from a self-executing exemption.

In sum, for decades FCMs and FCM affiliates engaging in dealer trading activities on behalf of a common parent have been disaggregated from their "walled off" commonly owned asset management affiliates for purposes of determining compliance with applicable speculative position limits and reporting requirements, in accordance with the Commission's 1979 Aggregation Policy, as subsequently interpreted by the staff (see CFTC Interpretative Letter No. 92-15, supra) and as codified by the Commission in Rule 150.4(d) in 1999. Because FIA believes that there has been some misunderstanding or confusion on this fundamental point, it bears repeating that for this purpose FCMs and their commonly owned affiliates do not rely on the independent account controller exemption in Rule 150.3(a)(4), 17 C.F.R. § 150.3(a)(4) (2010), in the circumstances described in this letter. Thus, for this purpose, an FCM is not an "eligible entity" as defined in Rule 150.1(d), 17 C.F.R. § 150.1(d) (2010). Nonetheless, given the present ambiguity concerning how the Commission intends to interpret proposed Rules 151.7(a) and (b) and whether the Commission intends to apply the exemption in proposed Rule 151.7(e) to an FCM which is a component of a larger integrated financial services organization in a manner consistent with its historic policy and practice under Rule 150.4(d), FIA believes that the Commission should clarify its intention by republishing the Proposed Rules for public comment with an adequate explanation, if it determines to move forward with this rulemaking proceeding.

Impact of Requiring Firm-Wide Aggregation

Similar to the CFTC, other federal regulators have generally provided for disaggregation of holdings of financial services firms where positions are independently controlled or where appropriate information barriers are in place between business units for good reason.[18] As we

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[16] 64 Fed. Reg. at 24044.

[17] 64 Fed. Reg. 24043.

[18] For example, the Securities and Exchange Commission does not attribute ownership to a parent entity when it has in place "informational barriers that ensure that voting and investment powers are exercised independently from parent and affiliated entities." Amendments to Beneficial Reporting Requirements, Exchange Act Release No. 34-39538, 63 Fed. Reg. 2854, 2857-58 (January 12, 1998) (noting that "procedures reasonably designed to prevent the flow of information to and from other business units" may be relied upon "to avoid attributing beneficial ownership to the parent entities."). See also Regulation M, 17 C.F.R. § 242.100 (2010) (defining the term "affiliated purchaser" to exclude an affiliate satisfying certain conditions, including the maintenance and enforcement of "written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of Rules 101, 102, and 104" under Regulation M).

will explain, the alternative scenario in which all client positions in referenced contracts traded independently by an FCM's asset management affiliates would need to be combined with all positions in referenced contracts traded by the FCM or its dealer affiliates for purposes of applying speculative position limits is quite simply untenable for a number of reasons.

First, we believe that the cumulative impact of the proposed speculative position limits, together with the proposed amendments to the hedging definition and novel and burdensome aggregation requirements, would lead to a reduction in market liquidity because the effect would be to curtail the capacity of firms to engage in dealer trading activities. This is so because the common parent of an integrated financial services organization would need to allocate the applicable limit in each referenced contract across all its dealer subsidiaries and all its asset management subsidiaries. Thus, asset management affiliates might be unable to implement their current client mandates. In any event, asset managers and their clients would be adversely affected by the reduction in market liquidity and the consequent increase in costs to market participants and the detrimental effect on their investment returns. Second, we believe that allocating an applicable limit across information barriers separating different subsidiaries of an integrated financial services organization is inherently problematic and could compromise the integrity of existing "Chinese Wall" procedures which are designed to maintain confidentiality of information about trading activities on opposite sides of the wall, as well as create other significant conflicts of interest. Such a result could lead to these organizations being in breach of obligations and restrictions applicable to them pursuant to other laws and regulations, as well as confidentiality obligations and fiduciary duties owed to third parties.

It is obvious that the outcomes which we have described in this letter cannot be reconciled with any fair reading of the Dodd-Frank Act, the CEA, or the Commission's regulations, or with any regulatory policy or purpose thereunder. Nor has the Commission provided any substantive reason for putting market participants through such an upheaval or for disregarding historic Commission and staff precedent and policy. If the Commission instead is seeking to effect a restructuring of integrated financial services organizations of which many FCMs are a component, including the possibility of spin-offs of their asset management businesses, then again the Commission needs to clarify this intention by republishing the Proposed Rules for public comment with an adequate explanation before moving forward with this rulemaking proceeding.

IV. Conclusion

For the foregoing reasons, FIA respectfully requests that the Commission withdraw the Proposed Rules in accordance with the comments and recommendations in the March 25, 2011 Letter. In the alternative, FIA requests that the Commission clarify its intention by republishing the Proposed Rules for public comment with an adequate explanation.

Please direct any questions about FIA's comments and recommendations to Barbara Wierzynski, Executive Vice President and General Counsel, at 202-466-5460.

Respectfully yours,

John M. Damgard
President

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Daniel Berkovitz, General Counsel
Terry Arbit, Deputy General Counsel, Office of the General Counsel
Stephen Sherrod, Acting Director of Surveillance
Bruce Fekrat, Special Counsel

Exhibit A

Comparison of Relevant Language of Prior Section 4a(a) with Amended Section 4a(a)

(a) (1)"In general.—" Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities, or ~~on electronic trading facilities with respect to~~swaps that perform or affect a significant price discovery ~~contract~~function with respect to registered entities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person, including any group or class of traders under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or ~~on an electronic trading facility with respect to~~swaps traded on or subject to the rules of a designated contract market or a swap execution facility, or swaps not traded on or subject to the rules of a designated contract market or a swap execution facility that performs a significant price discovery ~~contract~~function with respect to a registered entity as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such 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; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person.

Exhibit B

Comparison of Rules 150.4(a) and (b) with Proposed Rules 151.7(a) and (b)

(a) Positions to be aggregated. The position limits set forth in ~~§150.2 of this part~~Sec. 151.4 shall apply to all positions in accounts for which any ~~person~~trader by power of attorney or otherwise directly or indirectly holds positions or controls trading ~~or~~and to positions held by two or more ~~persons~~traders acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the position were done by, a single individual.

(b) Ownership of accounts generally. For the purpose of applying the position limits set forth in ~~§150.2, except for the ownership interest of limited partners, shareholders, members of a limited liability company, beneficiaries of a trust or similar type of pool participant in a commodity pool subject to the provisos set forth in paragraph (c) of this section,~~Sec. 151.4, any trader holding positions in more than one account, or holding accounts or positions in which the trader by power of attorney or otherwise directly or indirectly has a 10% percent or greater ownership or equity interest, must aggregate all such accounts or positions.

Exhibit C

Comparison of Rule 150.4(d) with Proposed Rule 151.7(e)

(~~d~~e) Trading control by futures commission merchants. The position limits set forth in ~~§150.2 of this part~~Sec. 151.4 shall be construed to apply to all positions held by a futures commission merchant or its separately organized affiliates 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 its separately organized affiliates, unless:

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

(2) 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; ~~and~~

(3) 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

(4) The futures commission merchant has complied with the requirements of paragraph (g) of this section and has received an exemption from aggregation from the Commission.