asset management group

October 7, 2011

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

Re: ***Notice of Proposed Rulemaking – Position Limits for Derivatives***

Dear Mr. Stawick:

The Asset Management Group (the "**AMG**")[1] of the Securities Industry and Financial Markets Association ("**SIFMA**") wishes to express certain comments and concerns regarding the rules relating to position limits that the Commodity Futures Trading Commission (the "**Commission**") is considering adopting, as originally proposed in the Commission's Notice of Proposed Rulemaking (the "**NPR**")[2], under Section 737 of The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1375 (2010). These comments and concerns are directed at several aspects of the account aggregation standards to be adopted in Part 151 of the Commission's rules and supplement the AMG's prior comment letters dated March 28, 2011 and June 20, 2011.[3]

Based upon recent media reports, we understand that, despite making some modifications in response to comments, the Commission may be considering the adoption of account aggregation standards that remain problematic in a number of significant respects. Specifically, the AMG is concerned that these standards would (i) not provide industry participants with the legal certainty that they need in order to continue to operate their businesses as they have done for decades, (ii) blur the distinction between ownership of accounts and ownership of an entity on the one hand and control of an entity's trading and positions on the other hand, and (iii) be unduly burdensome or unmanageable to comply with as a practical matter.

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[1] The AMG's members represent U.S. asset management firms whose combined assets under management exceed $20 trillion. The clients of AMG member firms include, among others, registered investment companies, ERISA plans and state and local government pension funds, many of whom invest in commodity futures, options and swaps as part of their respective investment strategies.

[2] Position Limits for Derivatives, 76 Fed. Reg. 4752 (Jan. 26, 2011) ("**NPR**"), available at http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-1154a.pdf.

[3] *See* AMG Letters (filed Mar. 28, 2011 and June 20, 2011), available at http://www.sifma.org/Issues/item.aspx?id=24149.

Given the exigencies of timing involved, we have set forth each of these comments and concerns below in summary form.

The Final Rule Release Should Expressly State that Rule 151.7(e) Continues the Commission's Longstanding Policy to Permit Disaggregation of a Futures Commission Merchant and its Advisory Affiliates

We understand that the Commission intends to adopt in a new Rule 151.7(e) the longstanding exemption in current Rule 150.4(d), a move that we strongly support. Under Rule 150.4(d) and related Commission pronouncements issued over the past several decades, a futures commission merchant ("**FCM**") that is a component of a financial services holding company and its advisory affiliates may disaggregate independently traded client positions of these affiliates from any trading conducted by the FCM or its dealer affiliates on behalf of the common parent. Given the significance of this issue and to address any ambiguity on this point,[4] AMG urges the Commission to make unequivocally clear in the preamble to the final rules that the exemption in new Rule 151.7(e) will be applied and interpreted in the same manner as the existing exemption in Rule 150.4(d), namely, that the exemption is available for client positions traded by an FCM's advisory affiliates, as well as for client positions in an FCM's discretionary customer accounts. In addition, we request that the Commission clarify that the holding company parent of an FCM and its advisory affiliates may claim disaggregation relief with respect to such positions under the independent account controller exemption, which we understand will be reinstated in new Part 151 of the Commission's regulations under the draft final rule, but without in any way restricting the applicability of Rule 151.7(e), which specifically applies to an FCM that is a component of a financial services holding company and its affiliates, including its advisory affiliates.

The Final Rule Should Expressly Permit Disaggregation Of Ten Percent Owned Entities Absent Indicia of Control Over Their Trading Activities, In Continuance of Longstanding Commission Policy and Industry Practice

We understand further that the Commission intends to codify in Rule 151.7 a standard under which an ownership interest of ten percent or greater by one entity in another entity will in and of itself require the "owner" entity to aggregate the "owned" entity's positions, absent the applicability of a specific exemption. It is true that an ownership interest of ten percent or greater in an account has generally been a basis for requiring aggregation of the positions in that account, absent an applicable exemption such as for limited partners or shareholders in a commodity pool. However, the Commission staff has historically not required an investor in an entity to aggregate futures positions that may be traded by the owned entity, absent any indicia of control over the owned entity's trading activities.

Thus, while AMG fully supports the Commission's apparent intention to continue in a new Rule 151.7 an independent account controller exemption of the type contained in current Rule 150.3(a)(4), that exemption alone may not be sufficient to mitigate the harsh consequences of applying a rigid ten percent ownership standard in the context of ownership of a ten percent or greater interest in an operating company. For example, it is our understanding that the draft final

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[4] *See* AMG Letter (filed June 20, 2011) and Futures Industry Association, Inc. Letter (filed May 25, 2011).

rule may limit the independent account controller exemption to situations in which a professional asset manager (such as a registered commodity trading advisor) is trading on behalf of an eligible entity. Thus, if a fund (or funds managed by the same, or affiliated, investment adviser(s)) becomes an owner of ten percent or more of an operating company, the draft final rule could be construed as providing that the operating company and their trading personnel may not qualify as an "independent account controller" for purposes of this exemption, notwithstanding an absence of control over the operating company's trading activities. Therefore, absent clarification from the Commission that such operating companies and their trading personnel are independent account controllers for purposes of the exemption, this rule may leave the impression that asset managers would be required to aggregate positions of operating companies in which the funds and accounts they manage have a 10% or greater ownership interest, even where the ownership in such companies is passive and where the asset managers have absolutely no influence over the trading activities of such companies. Such an unexpected outcome could significantly affect how traditional and passive asset managers invest on behalf of their fiduciary clients, and also would place extraordinary and unnecessary burdens on asset managers and operating companies alike to meet the resulting aggregation and reporting requirements.

Therefore, if it determines to adopt a bright-line ten percent ownership standard and also to set aside the longstanding practice of not requiring an investor in an entity to aggregate futures positions that may be traded by the owned entity, absent any indicia of control over the owned entity's trading activities, we recommend that the Commission clarify that the independent account controller exemption would apply to asset managers and the operating companies in which the funds and accounts that they manage invest and also in analogous circumstances. Alternatively, the Commission could adopt a more meaningful exemption such as an "owned entity" exemption that is not limited to non-financial entities. Such exemptions would permit entities to continue disaggregating so long as they operate separately and independently from one another, appropriate information barriers are in place, and there is no sharing of position information between traders that might result in coordinated trading or pose other regulatory concerns. Under such circumstances, there is no possibility of concerted action causing excessive speculation or price manipulation.

The Final Rule Should Not Require Asset Managers to File Any Notices Necessary for a Disaggregation Exemption Where Control Does Not Exist

If the Commission intends to require a notice process to claim disaggregation relief in new Part 151 and if on the basis of mixing the ownership and control standards in a novel and unprecedented manner, an asset manager will need to monitor when its managed accounts' ownership of an operating company that may engage in trading Referenced Contracts, as defined, is at or above the ten percent threshold across all its funds and accounts, then we believe that such a process will simply not be practical or feasible to administer. In this regard, asset managers do not have the systems or infrastructure in place to monitor for compliance with such a standard on a real-time basis. As a result, the AMG urges the Commission to eliminate the requirement to file a notice for a disaggregation exemption in cases where asset managers do not have control over the companies in which the funds and accounts they manage invest or where the independent account controller exemption would otherwise apply. If, however, the Commission retains a notice process to claim disaggregation relief in such circumstances, AMG urges the Commission to modify the process, so that the notice may be filed within a reasonable

period of time after the claimant becomes aware that an ownership threshold has been reached or exceeded.

The Final Rule Should Not Require Aggregation of Funds with Identical Trading Strategies Where There is an Independent Account Controller

If the Commission adopts a provision which requires investors (including professional asset managers) to aggregate positions across pools or accounts with "identical trading strategies" without any possibility of disaggregation relief, the consequences will be severe, with an adverse impact on market liquidity and price discovery. For example, how are market participants, including both retail and institutional investors, to determine whether two funds have "identical trading strategies?" Even putting that fundamental issue aside, how are investors in two funds with "identical trading strategies" to obtain position level transparency from those funds on a real-time basis in order to monitor compliance with applicable speculative position limits? It is unclear whether such a requirement would apply to retail investors (i.e., individuals) or just to institutional investors and traders. If this requirement is intended to apply to individuals it may make investing in multiple funds or accounts with commodity interests impractical for retail investors, which as noted could have significant adverse consequences on liquidity and price. In addition, if the aggregation of funds with "identical trading strategies" is required notwithstanding any other exemption available under the rules, then this provision would disregard the sound policy reasons for recognizing disaggregation where separate and independent trading occurs. The AMG therefore urges the Commission to reconsider this provision and instead rely on its existing authority to prevent circumvention of speculative position limits and the aggregation requirements.

The AMG appreciates the opportunity to submit these additional comments and concerns regarding the impending position limit rules.

Respectfully submitted,

Timothy W. Cameron, Esq.
Managing Director, Asset Management Group
SIFMA

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner