PRIVATE EQUITY GROWTH CAPITAL COUNCIL

SUBMITTED ELECTRONICALLY

October 24, 2014

Mr. Chris Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, D.C. 20581

Re: CFTC, Notice of Proposed Rulemaking on Aggregation,
Aggregation of Positions (RIN 3038–AD82); Supplemental Comments

Dear Mr. Kirkpatrick:

This letter is submitted by the Private Equity Growth Capital Council ("***PEGCC***", "***we***" or "***us***", as applicable)[1] to follow-up on our September 22, 2014 meetings with the Commodity Futures Trading Commission ("***CFTC***" or "***Commission***") and further supplements the comments we have previously submitted on the Commission's Notice of Proposed Rulemaking on Aggregation of Positions (the "***Proposing Release***" or "***Proposal***").[2] We appreciate the opportunity to submit these supplemental comments that further address certain issues raised during our recent visit.

I. Summary

We continue to be appreciative and supportive of the CFTC's decision to provide for and permit, in appropriate circumstances, disaggregation notwithstanding an investment by an "owner entity" that exceeds 50 percent, up to and including 100 percent, of the ownership

[1] The PEGCC is an advocacy, communications and research organization established to develop, analyze and distribute information about the private equity and growth capital investment industry and its contributions to the national and global economy. Established in 2007, and formerly known as the Private Equity Council, the PEGCC is based in Washington, D.C. The PEGCC's members are the world's leading private equity and growth capital firms united by their commitment to growing and strengthening the businesses in which they invest.

[2] Aggregation of Positions, 78 Fed. Reg. 68946 (Nov. 15, 2013). We have submitted four previous comment letters on the Commission's aggregation policies, available at:

http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58295 (June 29, 2012 submission),
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58418 (Aug. 20, 2012 submission),
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59650 (Feb. 10, 2014 submission), and
http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59913 (July 3, 2014 submission).

interest in an "owned entity" (the "Greater-than-Fifty Exemption"). Our prior letters focused on refinements to the conditions applicable to claiming the Greater-than-Fifty Exemption. In this letter we address the mechanics of implementing the changes we have previously requested. Specifically, this letter will address (i) the timing of submitting a notice filing in order to claim the Greater-than-Fifty Exemption, and (ii) more generally, the ability of the Commission to notify exchanges with respect to exemptions from aggregation that have been claimed by market participants.

II. Timing of Submitting Notice Filing to Claim Greater-than-Fifty Exemption

The Proposing Release would require an owner entity to submit an application to the Commission and then wait for Commission approval prior to the effectiveness of the Greater-than-Fifty Exemption. As addressed in our previous submissions and at the Commission's public roundtable addressing aggregation,[3] we believe that the Commission should permit an owner entity to claim the Greater-than-Fifty Exemption via a notice filing to the Commission that does not require any Commission response prior to becoming effective. In addition to permitting the Greater-than-Fifty Exemption to be claimed via a notice filing, and as described during our recent meetings with the Commission, we also believe that the Commission should adopt final aggregation rules that will permit an owner entity to claim aggregation exemptions via quarterly submissions. Specifically, we believe that the Commission should adopt final aggregation rules that allow for a notice filing to claim either the Greater-than-Fifty Exemption or the "Ten-to-Fifty Exemption" (which is the Commission's related proposed exemption from aggregation for ownership interests that do not exceed fifty percent), and we believe the final rules should require that the notice filings be submitted on or before the end of the quarter following the quarter in which an owner entity acquires the requisite ownership interest in an owned entity. We also suggest that the Commission clarify that an entity anticipating that it will claim these exemptions (by making the notice filing) be permitted to rely on the exemption as soon as it acquires an ownership interest at a level that otherwise triggers aggregation, provided that (i) the other conditions of the applicable exemption are put in place, if not already in place, as soon as practical after the acquisition and (ii) those conditions continue to be met for that period of time before the notice filing is required to be submitted.[4]

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[3] Public Roundtable to Discuss Position Limits for Physical Commodity Derivatives [and Aggregation], CFTC, Washington, DC (June 19, 2014) (the "Roundtable"), see http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff061914. As noted at the Roundtable, across the private equity industry alone, the application requirement could result in the submission of thousands of applications for disaggregation relief. We remain of the view that it is unrealistic to suggest that any application and review process, however conducted, would provide a meaningful or timely review of this volume of submissions.

[4] For example, the entity anticipating claiming the exemption would be required to be able to demonstrate, upon request by the Commission, that the appropriate separations of control with respect to trading activity and trading decisions were put in place as soon as practical after the closing of the underlying acquisition transaction and that such conditions remain in place.

The reason for this practical implementation approach is two-fold. First, portfolio company turnover in the private equity industry can be in the range of ten-percent per year.[5] For a large private equity firm that has, for example, 100 portfolio companies in multiple funds, this can mean exiting up to ten companies and obtaining ownership interests in up to ten or more new companies in any given 12-month period. To the extent that obtaining an aggregation exemption became a pre-requisite to closing a new investment, there would be unnecessary risk of inefficiency and delay introduced into the private equity investment process. These delays are particularly unnecessary in light of the fact that, as we have previously noted, private equity funds generally do not become involved in the day-to-day management of their portfolio companies, and in particular, generally do not control day-to-day trading activities of their portfolio companies.

Second, it is typically impractical (or impossible) for an owner entity to claim an exemption prior to closing a transaction in which it takes a new ownership interest in an owned entity. Instead, once an investment is made into a new owned entity, the owner entity requires time to undertake post-closing diligence and operational measures necessary to confirm (i) that claiming an aggregation exemption is appropriate for a given investment, and (ii) that the management relationship between the owned and owner entities can be established in such a way as to ensure ongoing compliance with the conditions of an aggregation exemption. By permitting the notice filing window that we have suggested, the Commission also will be allowing for the appropriate diligence and conformance period to occur – in this way owner entities will not be compelled to pre-emptively claim an aggregation exemption only to subsequently withdraw the exemption. This could happen in instances where, for example, either (i) the transaction did not close as expected, or (ii) the owner entity determines, upon further diligence, that the owned entity does not engage in relevant derivatives activity and aggregation is not required in any event.

III. One-Stop Notice Filing

We believe that coordination between the CFTC and exchanges on issues regarding aggregation is important. Specifically, we suggest that once a notice filing to claim any exemption from aggregation is filed with the Commission, the Commission should undertake to distribute that filing to (or make the filing available to) the various exchanges that administer their own position limits and aggregation programs. That is, the entities that are the subject of a CFTC notice filing should be exempt from aggregation for both CFTC and exchange-set position limits and related requirements. We believe that this practical implementation approach, with respect to claiming an aggregation exemption, is the most efficient way to coordinate aggregation policies between the Commission and exchanges, and we encourage the Commission to provide for this outcome in its final rules.

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The PEGCC again thanks the CFTC for its decision to include the Greater-than-Fifty Exemption in the Proposing Release and for the opportunity to meet with the Commission and its staff to discuss these issue further. We also appreciate this opportunity to provide further

[5] Historically, the turnover percentage in any given year will vary due to a variety of factors, including the general economic environment and the nature of a specific fund's underlying investments.

comment on the Proposing Release. In order to make the exemption practical and effective for market participants, we urge the Commission to include the few modifications we have previously suggested and the technical changes described in this letter in its final aggregation rules. We stand ready to discuss any of these issues further or to assist the Commission in any way that may be helpful.

Respectfully submitted,

Steve Judge
President and CEO
Private Equity Growth Capital Council

cc: Honorable Timothy G. Massad, Chairman
Honorable Mark P. Wetjen, Commissioner
Honorable Sharon Y. Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner

Vincent McGonagle, Director, Division of Market Oversight
Stephen Sherrod, Senior Economist
Riva Spear Adriance, Senior Special Counsel