



Alternative Investment Management Association

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW.
Washington, DC 20581

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Dear Mr Kirkpatrick,

Aggregation of Positions - Supplemental Notice of Proposed Rulemaking

The Alternative Investment Management Association (AIMA)¹ welcomes the opportunity to respond to the Commodity Futures Trading Commission's (the Commission) supplemental notice of proposed rulemaking on the aggregation of positions (the Proposed Rule)².

We continue to have significant concerns regarding the ultimate market impact of position limits, and note the absence of compelling evidence in support of the establishment of broad, *ex ante* position limits. We are of the view that the extension of the regime to "economically equivalent" OTC positions will, in particular, be difficult to administer, and encourage the CFTC to provide the necessary guidance on calculation of economically equivalent OTC positions such that market participants can develop automated systems to monitor their positions as far as possible.

In the Annex to this submission, we focus further on the specific issues raised in the context of the Proposed Rule, highlighting our view that the independent account controller exemption and owned entity exemption could usefully be modified to allow entities to share an execution desk and thereby avoid any risk of cross-trading. Disaggregation relief would still be premised on ensuring that the original trading decisions of the entities involved were made separately.

If you wish to discuss any aspect of our submission, please don't hesitate to get in touch.

Yours sincerely,

Jiří Król
Deputy CEO
Global Head of Government and Regulatory Affairs
AIMA

¹ Founded in 1990, the Alternative Investment Management Association (AIMA) is the global representative of the hedge fund industry. Our membership is corporate and comprises over 1,600 firms (with over 10,000 individual contacts) in more than 50 countries. Members include hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors. AIMA's manager members collectively manage more than \$1.5 trillion in assets.

² 80 FR 58365.

The Alternative Investment Management Association Limited
167 Fleet Street, London, EC4A 2EA

Tel: +44 (0)20 7822 8380 Fax: +44 (0)20 7822 8381 E-mail: info@aima.org Internet: <http://www.aima.org>



Annex 1

Criteria for disaggregation relief

In responding to the Commission's 2013 Proposed Rule on the Aggregation of Positions (**the 2013 Aggregation Proposal**)³ we encouraged the Commission to streamline the approach taken in respect of ownership stakes of greater than 50%, by stipulating a timeframe within which the Commission would grant or refuse a case-by-case application for relief from the aggregation requirement. We therefore welcome the Commission's efforts to simplify the approach taken for ownership stakes of greater than 50%, by adopting a common approach for all ownership stakes of greater than 10%.

We note that the entity seeking to disaggregate the positions of the entity in which it holds an ownership stake of greater than 10% would still have to attest that it and the owned entity:

- do not have knowledge of the trading decisions of the other;
- trade pursuant to separately developed and independent trading systems;
- have and enforce written procedures to preclude each person from having knowledge of, gaining access to, or receiving data about, trades of the other, and such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities;
- do not share employees who control the trading decisions of either; and
- do not have risk management systems that permit the sharing of trades or trading strategy.⁴

We are concerned that these criteria remain unduly restrictive and will limit the ability of market participants to disaggregate positions of an owned entity in situations where it would be entirely appropriate to do so. Accordingly, we endorse the concerns expressed by Commissioner Giancarlo in his statement accompanying the Proposed Rule:

I am concerned that, by requiring an owner to aggregate an owned entity's positions when its affiliates have risk-management systems that permit the sharing of trades or trading strategy, the proposed rule may stymie critical risk-mitigation efforts. Owners and their affiliates may need to share information regarding trades or trading strategy to verify compliance with applicable credit limits as well as restrictions and collateral requirements for inter-affiliate transactions, among other risk-management and compliance-related objectives.

Accordingly, I invite public comment on whether the Commission should consider modifying the current proposal to clarify that owners and their affiliates may share such trading information as is necessary for effective risk safeguards without forfeiting eligibility for disaggregation. If the Commission remains concerned that this accommodation will facilitate coordinated trading, it might require affiliates sharing trading data to restrict dissemination of the information to those responsible for compliance and risk-management efforts, maintaining internal firewalls to conceal the information from employees who develop or execute trading strategies.

We strongly believe that the Commission should modify the proposed restrictions associated with the owned entity exemption, as well as those associated with the Independent Account Controller exemption, on which many asset managers are likely to rely.

In this regard, we note that the Commission has previously clarified that "the sharing of attorneys, accountants, risk managers, compliance, and other mid- and back-office personnel [...] would generally not compromise independence so long as the employees do not control, direct or participate in the entities' trading decisions".⁵

³ 78 FR 68946.

⁴ 80 FR 58368.

⁵ 78 FR 68962.



However, we believe that there is a strong case in favour of further relaxing the relevant criteria and would argue that effective risk and compliance management could also entail trading strategies of separate fund vehicles being executed via a single execution desk, as long as the funds' portfolio managers were not coordinating placement of the trades. There are a number of reasons why this might be an appropriate approach: to prevent cross and wash trading; to ensure that the firm does not submit an excessive numbers of orders/messages; to ensure that the firm's different trading strategies do not bid each other up or down unnecessarily; to monitor other thresholds such as European stock short position limits and long position disclosure requirements (which are relevant to the constituents of stock index futures); to guard against excessive levels of trading; and to ensure fair treatment of investors in terms of execution and aggregation. Accordingly, we believe disaggregation relief should be available if the original investment decisions are made independently, even if they are subsequently executed and risk managed on an aggregated basis.