MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

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Via CFTC Web site: http://comments.cftc.gov

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

Re: RIN 3038-AD82

Dear Mr. Kirkpatrick:

Managed Funds Association ("**MFA**")[1] appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "**Commission**" or "**CFTC**") on its supplemental notice of proposed rulemaking concerning aggregation of positions (the "**Supplemental Proposal**").[2] MFA and its members have been especially interested in the Commission's aggregation of positions proposals regarding modifications to part 150 of the Commission's regulations as MFA members may implement multiple independent trading strategies, may be invested in "owned entities" (including operating companies that are not commodity pools), and may be passive owners in the fund-of-funds context.

MFA submitted comments to the Commission's 2013 Aggregation of Positions proposal[3] (the "**Aggregation Proposal**") ("**MFA 2014 Aggregation Letter**") and is pleased to see the Supplemental Proposal, which proposes a modification to the Aggregation Proposal with respect to the aggregation provisions of part 150. The Supplemental Proposal proposes to extend the notice filing and conditions for relief from aggregation for entities with an ownership interest of

[1] Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

[2] Supplemental Proposal, 80 Fed. Reg. 58,365 (Sept. 29, 2015), available at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2015-24596a.pdf.

[3] Aggregation of Positions, 78 Fed. Reg. 68,946 (proposed Nov. 15, 2013), available at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-27339a.pdf.

between 10 and 50 percent in another entity, as proposed in the Aggregation Proposal,[4] to owners that have more than a 50 percent ownership interest in another entity.[5] MFA generally supports the Supplemental Proposal and provides additional comments to the Commission on aggregation of positions under part 150.

I. EXECUTIVE SUMMARY

MFA provides comments and recommendations with respect to the Supplemental Proposal and the Aggregation Proposal, which are summarized as follows:

- MFA supports the provision in the Supplemental Proposal to provide relief through a notice filing process to owners of more than 50 percent of an owned entity from aggregating positions with those held by owned entities under the Commission's aggregation exemption.

- MFA supports modifying the disaggregation relief criteria to require only affirmative obligations by an "Owner" entity.

- MFA respectfully believes that the Commission should amend aspects of the Supplemental Proposal to coordinate better with other changes to CFTC rules as well as to accommodate changes in the industry. As a result of statutory changes, the operators of many investment funds are now considered commodity pool operators due to swaps exposure in the pools they operate; and seek a Rule 4.13(a)(3)[6] exemption from registration for trading a *de minimis* level of commodity interests. Rule 4.13 was amended subsequent to the adoption of the original aggregation exemption rule to include subsection (a)(3). Since Rule 4.13(a)(3) pools were not the type of entities that the Commission was concerned with when it promulgated the aggregation exemption and the industry has changed, MFA recommends the following amendments:

    - Amending the aggregation of accounts exemption to take into account subsequent rule amendments to Rule 4.13 and changes in the commodity pool industry. MFA recommends that the Commission amend proposed rule 150.4(b)(1)(iii) to apply only to participants that have a 25 percent or greater ownership in a pool, the operator of which is exempt from registration under sections 4.13(a)(1) or (2).

    - Amending the Rule 150.1 definitions of the terms "Eligible entity" and "Independent account controller" to expand the classes of entities eligible for the exemption to reflect industry changes regarding the professional management of trading funds.

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[4] Aggregation of Positions at 68,958.

[5] Supplemental Proposal at 58,369.

[6] 17 C.F.R. 4.13(a)(3).

II. COMMENTS TO DISAGGREGATION RELIEF FOR OWNED ENTITIES

A. MFA Supports the Disaggregation Relief for Owners of More Than 50 Percent of an Owned Entity Based on Notice Filing

MFA supports providing relief to owners of more than 50 percent of an owned entity from aggregating positions held by owned entities through a notice filing process. We appreciate the Commission's earlier attempts to provide a bright-line test under the aggregation exemption by allowing owners of between 10 and 50 percent of an owned entity to seek relief under the aggregation exemption through a notice filing process, and requiring owners of more than 50 percent to seek relief through a different process.[7] However, as ownership is not always indicative of control, we believe it is appropriate for the Commission to extend the same proposed relief from aggregation for owners of more than 50 percent of an owned entity as to owners of between 10 and 50 percent of an owned entity. As the Commission has acknowledged, "aggregation of positions held by owned entities may in some cases be impractical, burdensome, or not in keeping with modern corporate structures."[8]

The U.S. capital markets have been successful in enabling the efficient deployment of capital between investors and businesses needing resources to grow. MFA member firms or other institutional investors may engage in multiple, independent investment/trading strategies that are implemented by different and separate business units or employees. As such, we appreciate the Commission's disaggregation relief and offer some further recommendations to achieve the goal of allowing efficient capital allocation yet ensuring that a person does not create an unduly large speculative position through control of multiple accounts.

B. MFA Recommends Modifying the Disaggregation Relief Criteria to Only Require Affirmative Obligations by an "Owner" Entity

MFA is concerned that an entity that owns 10 percent or more (an "**Owner**") of an operating company (an "**Owned Entity**") will not be able to satisfy the disaggregation criteria under proposed rule 150.4(b)(2) because such Owners are often not large or important enough to garner the attention of the operating company, *i.e.*, the Owned Entity.[9] , As a condition for allowing disaggregation by certain owners of greater than 10 percent in an Owned Entity, proposed rule 150.4(b)(2) would provide criteria that an Owner and an Owned Entity must meet to qualify.[10]

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[7] Aggregation of Positions at p. 68,959.

[8] *Id.*

[9] In the MFA 2014 Aggregation Letter, MFA recommended that the Commission increase the 10 percent threshold under proposed rule 150.4(b)(2) to 25 percent to address the concern that a 10 percent Owner may not be influential enough to garner the prompt attention and response of an Owned Entity. MFA believes this issue may be addressed by only requiring an affirmative obligation by an Owner for purposes of the aggregation exemption, as discussed in Section B.

[10] Proposed rule 150.4(b)(2), *Exemption for certain ownership of greater than 10 percent in an owned entity*, provides:

The criteria include that the Owner and the Owned Entity have certain written procedures. MFA believes that it could be very difficult and burdensome for an Owner to ensure that an Owned Entity is complying with the Commission's regulations to warrant disaggregation. Thus, MFA recommends that the Commission modify proposed rule 150.4(b)(2) to require only an affirmative obligation by the Owner of an Owned Entity. We recommend requiring only an Owner to certify that it: (A) does not have knowledge of the trading decisions of an Owned Entity; (B) trades pursuant to separately developed and independent trading systems; (C) has and enforces written procedures to preclude it from having knowledge of, gaining access to, or receiving data about, trades of the Owned Entity; (D) does not share employees that control the trading decisions of the Owned Entity;[11] and (E) does not have risk management systems that permit the sharing of trades or trading strategy with the Owned Entity.

Many different legal entities, such as investment funds invest in privately-owned, state-owned and public operating companies around the globe. As a minority owner, often an Owner is not able to obtain information, such as whether an Owned Entity trades futures contracts in the U.S. or economically equivalent swaps. A minority Owner also cannot guarantee that an Owned Entity will implement policies and procedures pursuant to proposed rule 150.4(b)(2). We believe requiring an Owner to make representations on behalf of an Owned Entity, especially where an Owner does not control the Owned Entity, puts an Owner in an untenable position with respect to regulatory compliance and potentially subjects an Owner that acted in good faith to punishment.

We are also concerned that it could be very costly and burdensome for an Owner to comply with proposed rule 150.4(b)(2). While it's not clear from the Aggregation Proposal or the Supplemental Proposal whether an Owner may rely on certifications by an Owned Entity with

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> Any person with an ownership or equity interest in an owned entity of 10 percent or greater (other than an interest in a pooled account subject to paragraph (b)(1) of this section), need not aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate, provided that:
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> (i) Such person, including any entity that such person must aggregate, and the owned entity:
>
> (A) Do not have knowledge of the trading decisions of the other;
>
> (B) Trade pursuant to separately developed and independent trading systems;
>
> (C) Have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities;
>
> (D) Do not share employees that control the trading decisions of either; and
>
> (E) Do not have risk management systems that permit the sharing of trades or trading strategy; and
>
> (ii) Such person complies with the requirements of paragraph (c) of this section.

[11] Consistent with the Commission's statement that the sharing between entities 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." *See* Aggregation of Positions at 68,962.

respect to compliance with proposed rule 150.4(b)(2), it would seem likely that an Owner would need to rely on certifications as regular monitoring would be impractical for an Owner as an Owned Entity may not provide an Owner with such access and an Owned Entity may be physically far away.[12]

Under proposed rule 150.4(b)(2), we believe an Owner will likely need to obtain certifications from an Owned Entity, such as:

- Whether an Owned Entity trades U.S. futures contracts or economically equivalent swaps ("**U.S. derivatives**");
- If the Owned Entity trades U.S. derivatives, that it certify that it will implement the CFTC required policies and procedures and comply with CFTC disaggregation requirements; or
- If the Owned Entity does not trade U.S. derivatives, that it certify that it will not trade U.S. derivatives without first notifying the Owner and complying with CFTC regulations.

From our members' experience, it can be difficult obtaining certifications from an Owned Entity, particularly if the Owner is a passive minority Owner, or if the Owned Entity is not based in the U.S. or familiar with CFTC regulations.[13] To the extent an Owned Entity trades U.S. derivatives, such entity is under the purview of the CFTC's oversight; and as such, we believe the CFTC is in a better position to enforce compliance with its regulations, such as requiring the Owned Entity to implement policies and procedures under an aggregation exemption, than an Owner. MFA members take compliance seriously and would find it unsettling if under proposed rule 150.4(b) an Owner could do everything in its ability to comply with the aggregation exemption requirements yet be in violation due to the activity of an Owned Entity. Such rule would make a compliance program with respect to the aggregation exemption requirements very costly and difficult to enforce; and would discourage investors from investing.

MFA is confident that the Commission's objective to ensure that a person does not create an unduly large speculative position through ownership or control of multiple accounts can be achieved by requiring only an Owner to make certifications with respect to disaggregation relief and to implement and enforce written procedures to preclude the sharing of trading information with an Owned Entity. Such proposal is consistent with the very reason that relief from aggregation is needed in the first place—because the Owner does not actually control, nor perhaps is it even able to obtain certain demands from, the Owned Entity. MFA also believes such requirement would be just as effective in achieving the policy objectives as proposed rule 150.4(b)(2), but would be more cost-effective as it would greatly reduce the cost and compliance burdens associated with complying with the Commission's position limits regulations; and minimize barriers for the efficient allocation of capital and investment in the U.S. and abroad. MFA recommends that the Commission modify proposed rule 150.4(b)(2) to require only an

[12] If the Commission adopts proposed rule 150.4(b)(2) as proposed, MFA believes it will be important for the Commission to clarify that an Owner seeking disaggregation relief may rely on certifications from an Owned Entity.

[13] For example, National Futures Association ("**NFA**") members commonly report difficulty with obtaining certifications from foreign investors or counterparts, for purposes of NFA Bylaw 1101, that they are either registered or exempt from registration with the CFTC.

Owner to make certifications outlined above with respect to disaggregation relief and to implement and enforce written procedures to preclude the sharing of trading information with an Owned Entity.

C. MFA Recommends Amending the Aggregation Exemption to Take Into Account Subsequent Rule Amendments to Rule 4.13 and Changes in the Commodity Pool Industry

MFA is concerned that CFTC Rule 150.4(c)(3), which has been proposed substantially the same as proposed rule 150.4(b)(1)(iii), is overly broad, does not accommodate many pool participants who cannot aggregate positions across pools in which they have an interest, and does not reflect subsequent changes to the Commission's regulations or the commodity pool industry. The proposed Commission rule provides for exemptive relief from aggregation for limited partners, limited members, shareholders or other similar types of pool participants, with certain conditions.[14] One such condition is that such person applying for relief may not have a direct or indirect 25 percent or greater ownership or equity interest in a commodity pool where the operator of the pool is exempt from registration under CFTC Rule 4.13.[15] Due to the Commission's subsequent amendments to Rule 4.13 and changes in the commodity pool industry, many pool participants that have a 25 percent or greater interest in a Rule 4.13(a)(3) pool cannot aggregate their positions across commodity pools or accounts because they don't control the pool and they don't have position level data. Unfortunately, in its current form, proposed rule 150.4(b)(1)(iii) requires aggregation of such positions. However, these passive participants are unlikely to raise the type of concerns, which the Commissions aggregation exemption is meant to address. We believe the Commission should amend proposed rule 150.4(b)(1)(iii) to only apply to participants in Rule 4.13(a)(1) and (2) pools, as the rule originally intended.

1. A limited partner, limited member, shareholder or other passive participant in a Rule 4.13(a)(3) pool does not possess the ability to control or direct the owned entity's trading decisions.

When an owner is a passive owner of a Rule 4.13(a)(3) pool, it should not be required to aggregate positions, regardless of such owner's ownership interest. A limited partner, limited member, shareholder or other passive pool participant has only a *passive* investment and, as a result does not possess the ability to control or direct the owned entity's trading decisions. The CFTC has already acknowledged this approach by generally not requiring aggregation of positions by a passive investor in a commodity pool.[16] Moreover, a pool that relies on Rule 4.13(a)(3), by

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[14] 17 C.F.R. 150.4(c).

[15] *Cf.* proposed rule 150.4(b)(1)(iii) *with* 17 C.F.R. 150.4(c)(3), *Ownership by limited partners, shareholders or other pool participants*.

[16] For example, a passive investor in a pool of a registered operator is generally not required to aggregate the positions of this pool with the positions of other accounts or pools, even in situations where the investor holds significantly more than 25 percent. This is despite the fact that such pool could provide significantly more exposure to futures positions than a Rule 4.13(a)(3) pool could. *See infra* Note 17.

its very nature is only allowed to invest in a *de minimis* amount of commodity interests, *i.e.*, a 5% initial margin limitation, or a 100% net notional value limitation, which should protect against concerns about excessive speculation by such funds.[17]

In the case of a private fund-of-funds[18] that has a 25 percent or greater investment in an investee fund/pool that is a Rule 4.13(a)(3) pool, investment managers of underlying investee funds/pools generally never provide a manager of a fund-of-funds with the type of detailed portfolio information that such manager would need to monitor compliance with the aggregation rules. To the extent a fund-of-funds receives portfolio information, it tends to be on a delayed basis by at least one month, and not at the position level detail. In fact, in response to a request[19] by MFA and the Investment Adviser Association relating to registration and exemption questions in the fund-of-funds context, the Commission acknowledged this problem. The Commission noted that, for a manager of a fund-of-funds, there may be a "lack of visibility…regarding the positions of an Investee Fund" and that "such opaqueness" may not allow such manager to perform the direct calculations required to determine whether it qualifies for an exemption from commodity pool operator ("**CPO**") registration.[20] For purposes of the aggregation of accounts exemption, however, the fund-of-funds context and many other Rule 4.13(a)(3) pool arrangements provide for an ideal set-up for providing disaggregation relief as the investee funds/pools in which an investor invests are generally independently managed, and thus, would naturally satisfy the criteria under proposed rule 150.4(b)(2).

Besides the fund-of-funds circumstance, however, many other institutional investors often have a 25 percent or greater investment in a Rule 4.13(a)(3) pool of which they have no control over the trading and do not have the ability to monitor or affect positions. Such investors may have a greater ownership interest in a pool for a number of reasons, such as they are providing seed or start-up investment, they are an early investor, for risk management and/or accounting reasons they have requested for assets to be traded in a managed account *pari passu* to a pool, or for Employee Retirement Income Security Act ("**ERISA**") or other regulatory reasons. In certain situations, institutional investors specifically limit their investment in a Rule 4.13(a)(3) pool to avoid a situation where the investor would be above 25 percent and have to address the difficulties of obtaining position level detail on a regular basis.

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[17] While a Rule 4.13(a)(3) pool could still take a significant futures position, particularly in commodity contracts that have relatively low margin requirements, excessive speculation would still be difficult, if not impossible for pools staying below a *de minimis* threshold.

[18] We refer to a private fund-of-funds as a privately-offered fund that invests in other privately-offered funds. Such products are generally used by sophisticated investors as diversification tools.

[19] MFA and Investment Adviser Association, Request for Delayed Compliance Date of Amended Part 4; Former Appendix A of the CFTC's Part 4 Regulations, 17 CFR Part 4 (Nov. 9, 2012), *available at* https://www.managedfunds.org/wp-content/uploads/2012/11/IAA-MFA-Comment-Letter-to-CFTC-re-Extension-of-Compliance-Date-of-Former-Appendix-A-11-9-12.pdf.

[20] MFA and Investment Adviser Association, CFTC No-Action Letter (Nov. 29, 2012), *available at* http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-38.pdf.

In the above mentioned situations, institutional investors do not have access to the detailed position level data they would need to monitor for position limits, nor do they have the capability to monitor all of their passive investments in real-time for position limits. However, as a passive investor in a pool (whose operator and manager is unaffiliated with the investor), including pools operating pursuant to Rule 4.13(a)(3), has no investment control over the pool in which it invests, nor position level transparency in the underlying pool that trades a *de minimis* level of commodity interests; such investor is highly unlikely to able to distort or manipulate the market with respect to excessive speculative positions.

2. Rule 150.4(b)(1)(iii) should be amended to reflect the subsequent amendments to Rule 4.13 and changes in the commodity pool industry.

The Commission should amend the aggregation requirement in proposed rule 150.4(b)(1)(iii) with respect to Rule 4.13 as the Commission subsequently amended Rule 4.13 after adopting this provision in 1999 and the original concerns with respect to Rule 4.13 operators were only applicable to Rule 4.13(a)(1) and (2) exempt operators. MFA believes proposed rule 150.4(b)(1)(iii) should be amended to reflect subsequent changes to Rule 4.13 and changes in the commodity pool industry.

In 1999, when the Commission adopted the aggregation of accounts exemption in Rule 150.4 in its current form,[21] Rule 4.13 only exempted from registration as a CPO: (1) single-pool operators; and (2) operators of pools with 15 or fewer participants that had no more than $400,000 in total capital contributions.[22] The Commission in both its proposing release and adopting release stated that it was concerned with "trading by single-investor commodity pools" and that it believed "the likelihood that limited partners may be involved to some degree in the trading decisions of the partnership's trading activity rises as the overall number of limited partners in a commodity pool decreases, such as in the single or limited-number investor pool or when a small number of limited partners have a relatively dominant ownership interest."[23] The Commission stated that it did not intend for its concern with certain limited partners "to modify the general treatment of limited partners or shareholders in typical commodity pools;"[24] and that it did not find evidence of questionable trading patterns "where the CPO was registered with the Commission or where greater than 25% ownership interest was the result of a seed money or start up investment."[25] As such, in 1999 the Commission adopted Rule 150.4 to require limited partners and other similar

[21] *See* Revision of Federal Speculative Position Limits and Associated Rules, 64 Fed. Reg. 24,038 (May 5, 1999) (hereinafter "**Rule 150.4 Adopting Release**"), available at: http://www.gpo.gov/fdsys/pkg/FR-1999-05-05/pdf/99-11066.pdf.

[22] *See, e.g.*, Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors, 68 Fed. Reg. 47221 (Aug. 8, 2003), available at: http://www.gpo.gov/fdsys/pkg/FR-2003-08-08/pdf/03-20094.pdf.

[23] *See* Proposed Revision of Federal Speculative Position Limits and Associated Rules, 63 Fed. Reg. 38,525 at 38,532 (July 17, 1998) (hereinafter "**Rule 150.4 Proposing Release**"), and Rule 150.4 Adopting Release at 24,044.

[24] Rule 150.4 Adopting Release at 24,044.

[25] *Id.*

types of pool participants that own 25 percent or more of a pool operated by a Rule 4.13 exempt pool operator to aggregate the positions of the pool with all other positions owned or controlled by that trader.[26]

Since the Commission adopted Rule 150.4 in its current form in 1999, Rule 4.13 has undergone a number of amendments and the commodity pool industry has dramatically changed. In 2003, the Commission amended Rule 4.13 by adding two additional CPO registration exemptions (*i.e.*, new Rule 4.13 exemptions that did not exist at the time the Rule 4.13 25 percent aggregation rule was implemented).[27] Rule 4.13(a)(3) provided an exemption from CPO registration for an operator of a pool that trades a *de minimis* level of commodity interests and consists of sophisticated participants.[28] Rule 4.13(a)(4) provided an exemption from CPO registration for an operator of a pool whose participants were highly sophisticated.[29] In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the definition of a commodity interest to include swaps.[30] By defining commodity interests to include swaps, thousands of legal entities previously not considered to be commodity pools became commodity pools. In addition, in 2012, the Commission adopted further amendments to Part 4, including the rescission of Rule 4.13(a)(4).[31] As a consequence, many more entities are now considered CPOs and must either register as CPOs with the Commission or file an exemption for registration, if applicable.

MFA believes that limited partners, limited members, shareholders or other passive pool participants that own 25 percent of more of a Rule 4.13(a)(3) pool should be eligible for the aggregation of accounts exemption on the same basis as other passive pool participants as such persons do not share the same patterns of pool formation or trading characteristics as "single or limited-number investor pools"—*i.e.*, Rule 4.13(a)(1) and (2) pools—with which the Commission was concerned.[32] Moreover, pursuant to NFA's database, NFA has received about 23,000 filings for exemptions under Rule 4.13(a)(3), while it has received only approximately 850 filings under Rules 4.13(a)(1) and (2) combined. Thus, a rule which was initially drafted with the intention of only affecting a handful of firms (*i.e.*, Rules 4.13(a)(1) and (2) pools) is now—perhaps

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[26] *Id.*

[27] Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors, 68 Fed. Reg. 47,221 (Aug. 8, 2003).

[28] *Id.* at 47,224.

[29] *Id.* at 47,225.

[30] Pub.L. 111-203 (July 21, 2010).

[31] Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11252 (Feb. 24, 2012), available at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2012-3390a.pdf.

[32] Rule 150.4 Proposing Release at 38,532.

inadvertently—affecting an additional 23,000 firms that do not possess the traits identified by Commission staff in 1999 that warrant aggregation.[33]

Given the subsequent amendments to Rule 4.13 and the changes in the commodity pool industry since the original adoption of Rule 150.4, MFA believes it is appropriate to narrow the scope of proposed rule 150.4(b)(iii) to match the Commission's original objective behind such provision. Accordingly, MFA recommends that the Commission amend proposed rule 150.4(b)(iii) to apply only to participants that have a 25 percent or greater ownership in a pool, the operator of which is exempt from registration under section 4.13(a)(1) or (2), provided that a participant in a section 4.13(a)(3) pool does not have knowledge of the trading decisions of the pool.

D. MFA Recommends Amending the Rule 150.1 Definition of "Eligible Entity" and "Independent Account Controller" to Expand the Classes of Entities Eligible for the Exemption to Reflect Industry Changes Regarding the Professional Management of Trading Funds

In 1998, the Commission proposed the aggregation of accounts exemption to "better reflect the continuing trend to greater complexity in the structure of financial services companies" and "to expand the classes of entities [that would be] eligible for the exemption in response to the continuing trend toward greater professional management of trading funds."[34] Since 1998, the hedge fund industry has grown to more than $3 trillion and diversified in ways to better serve investors. As discussed above, statutory and regulatory changes brought a significant influx of "newly" defined commodity pools with diverse trading strategies (*e.g.*, hedge funds, securitizations, private equity funds, fund-of-funds, real estate investment funds, etc.), CPOs and commodity trading advisors ("**CTAs**"), including operators/advisors exempt or excluded from registration. As such, MFA believes that the definitions under Rule 150.1 should be updated to reflect the industry changes.

MFA recommends that the Commission amend the definitions of the terms "Eligible entity" and "Independent account controller" to include: a CPO; a CPO exempt from registration; an operator excluded from the definition of CPO; a limited partner, a limited member, shareholder or other pool participant of a pool whose operator is either registered or exempt from registration; a CTA; a CTA that is exempt from registration; or a person that is excluded from the definition of

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[33] We note that the independent account controller exemption (the "**IAC**) under Rule 150.3 may be helpful for some participants of Rule 4.13(a)(3) pools, but is still limited in its effectiveness:

1. The IAC does not provide a full exemption and in the past, designated contract markets such as ICE Futures U.S. placed additional restrictions on the IAC, not permitting its use for contracts such as Cotton No. 2. While those restrictions are not currently in place, they may still be implemented in the futures; and
2. As discussed in Section D, the IAC has not been amended to take into consideration new financial structures.

[34] Rule 150.4 Proposing Release at 38,532.

CTA; or a general partner, managing member or manager of a commodity pool whose operator is either registered, exempt from registration, or excluded from the definition of CPO.[35]

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MFA appreciates the opportunity to offer suggestions to the Supplemental Proposal and the Aggregation Proposal. We would be happy to discuss our comments or any other issues raised in either proposal at greater length with the Commission or its staff. If the staff has any questions, please do not hesitate to contact Jennifer Han or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President & Managing Director,
General Counsel

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[35] *See* Supplemental Proposal at 58,378-9. Proposed rule 150.1 provides:

(d) *Eligible entity* means a commodity pool operator; the operator of a trading vehicle which is excluded, or which itself has qualified for exclusion from the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this chapter; the limited partner, limited member or shareholder in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter; a commodity trading advisor; a bank or trust company; a savings association; an insurance company; or the separately organized affiliates of any of the above entities:

(1) Which authorizes…..

(2)Which maintains: (i) . . .; or (2) If a limited partner, limited member or shareholder of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter, only such limited control as is consistent with its status.

(e) *Independent account controller* means a person – [(1) . . . (4)]

(5) Who is (i) Registered as a futures commission merchant, an introducing broker, a commodity trading advisor, or an associated person of any such registrant, or (ii) A general partner, managing member or manager of a commodity pool the operator of which is excluded from registration under § 4.5(a)(4) of this chapter or § 4.13 of this chapter, provided that such general partner, managing member or manager complies with the requirements of § 150.4(c).