



Christopher Kirkpatrick  
Secretary to the Commission  
Commodity Futures Trading Commission (CFTC) (Commission)  
Three Lafayette Center  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

November 13, 2015

Supplemental notice of proposed rulemaking: Aggregation of Positions RIN 3830 AD-82<sup>i</sup>

Submitted electronically at <http://comments.cftc.gov>

Dear Mr. Kirkpatrick,

The Institute for Agriculture and Trade Policy (IATP)<sup>ii</sup> appreciates this opportunity to comment on the Commission's above captioned Proposed Rule. IATP last wrote to the Commission on position aggregation on February 10, 2014.<sup>iii</sup> At that time, we noted that "If exemptions to aggregation are pervasive, position data will be inadequate to determine compliance with the position limit rule. The aggregation pillar will collapse and with it the efficacy of the position limits regime to prevent, diminish and if possible, eliminate excessive speculation." (p.1)

Without repeating our argument in that letter, the "Proposed Revision To Allow for Relief [from position reporting and aggregation] to Owners of More than 50 Percent of an Owned Entity Based on Notice Filing" further extends the Commission's liberality in granting exemptive relief from position aggregation requirements. The so-called passive owner, owning up to 100 percent of "owned entities" engaged in trading positions, would have to file a notice with the Commission to demonstrate that the owner had no control, direct or indirect, over the trading practices or strategies of the owned entity. IATP agrees with Better Markets that "allowing [position] disaggregation of majority-owned subsidiaries would violate the clear language" the Commodity Exchange Act section 4a(a) (1) and would allow the owner of such subsidiaries to circumvent position limits through the creation of multiple subsidiaries (Federal Register. Vol. 80. No. 188, September 29, 2015, p. 58369). IATP supports the Better Market's position that disaggregation of positions should not be allowed for an owner of more than 10 percent of a subsidiary.

However, the Commission seems determined to allow owners of up to 100 percent of a subsidiary to not aggregate positions, provided that they can demonstrate the owner is truly passive, exercising no direct or indirect control over trading practices or strategies. Since it appears that the Commission will so revise the Position Aggregation rule, IATP is slightly relieved that the owners of the owned trading entities will at least have to file a notice to demonstrate that they are truly passive owners.

IATP strongly disagrees with the Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce that having "to submit an application to the Commission and await its approval would be unworkable in practice and not provide any regulatory benefit" (FR 58369). Computer technology is enabling a near real time aggregation of positions in all asset classes, so determining

whether or not a passive owner is exercising control over trading should become easier.<sup>iv</sup> As the means to aggregate derivatives data in near real time become more feasible, the will to not aggregate seems to become stronger. The regulatory benefits of filing to demonstrate that a legal document of passive ownership means no indirect control of trading strategies and practices may appease those who see the potential for regulatory evasion in interoffice communication technologies.<sup>v</sup> If the news media or the Commission discover that the very generous exemptive relief from position aggregation granted by the Commission for passive owners is circumvented, IATP believes that the Commission should not only withdraw exemptive relief for the ‘passive’ owner of the owned entity, but should suspend the owned entity’s right to trade until such time as the Commission is persuaded that ownership is operationally passive, not just legally so.

As the Commission deliberates whether to adopt the proposed revision to position aggregation, IATP would invite the Commission to consider the impact of this and other aggregation exemptions on the ability of the Commission and other financial regulators to aggregate cross-border positions. The Financial Stability Board (FSB) has reported to the G20 Leaders that progress towards fulfilling the Leaders’ 2009 commitments to make the Over the Counter derivatives markets safer and more transparent continues to face challenges, including inadequate aggregation of trading data: “An FSB peer review found weaknesses in the quality and completeness of data reported to TR [Trade Repositories]s, and in authorities’ ability to access, use and aggregate this data (Annex 1, Box 4).”<sup>vi</sup>

The FSB has demonstrated that cross-border trade data aggregation in all asset classes is feasible.<sup>vii</sup> IATP grants that OTC commodity derivatives data amounts to just a small sliver of the OTC data universe. Nevertheless, it is crucial that position aggregation exemptions for non-commercial traders of commodity derivatives contracts not become the thin wedge that opens a floodgate of position aggregation exemptions and evasion in the trading of commodity contracts and other, much larger asset classes.

IATP looks forward to assisting the Commission to ensure that the position limit regime serves the needs of commercial hedgers in all price environments, because these price environments can change very rapidly and with them the challenges for commercial hedgers to manage price risks. Absent regulatory reforms, such as requiring commodity index traders to aggregate positions and be subject to position limits, commercial hedgers could in the very near future still be vulnerable to the price levels and volatility driven by much larger investment flows from much larger owned entities. As a recent United Nations Conference on Trade and Development report concluded, “there is no reason to presume that the economic mechanisms that have driven the financialization of commodity markets, and made these markets follow more the logic of financial markets than that of a typical goods market, have disappeared. Nor does the empirical evidence related to financial investment in commodity markets or the development of return correlations across different asset markets suggest that commodity markets have de-financialized.”<sup>viii</sup>

Sincerely,

Steve Suppan, Ph.D.  
Senior Policy Analyst

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<sup>i</sup> <http://www.cftc.gov/idc/groups/public/@Irfederalregister/documents/file/2015-24596a.pdf>

<sup>ii</sup> IATP is a U.S. nonprofit, 501(c)(3) nongovernmental organization, headquartered in Minneapolis, Minn., with an office in Washington, D.C. Our mission states, “The Institute for Agriculture and Trade Policy works locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems.” To carry out this mission, as regards commodity market regulation, IATP has participated in the Commodity Markets Oversight Coalition (CMOC) since 2009, and the Derivatives Task Force of Americans for Financial Reform since 2010. IATP has submitted several comments on U.S. Commodity Futures Trading Commission rulemaking, and on consultation papers of the International Organization of Securities Commissions, Financial Stability Board, the European Securities and Markets Authority, and the European Commission’s Directorate General for Internal Markets.

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<http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59704&SearchText=Institute%20for%20Agriculture%20and%20Trade%20Policy>

<sup>iv</sup> Bearing Point Institute, “Reforming Regulatory Reporting: Are We Headed Towards Real Time?” Risk Tech Forum, November 9, 2015. <http://risktech-forum.com/research/BearingPoint-Institute-Reforming-Regulatory-Reporting-Are-We-Headed-Toward>

<sup>v</sup> E.g., Peter Schroeder, “Warren: New Wall Street chat system could skirt regulatory oversight,” *The Hill*, August 10, 2015. <http://thehill.com/policy/finance/250771-warren-new-wall-street-chat-system-could-skirt-oversight>

<sup>vi</sup> “Implementation and effects of the G20 financial regulatory reforms: Report of the Financial Stability Board to the G20 Leaders,” November 9, 2015, at 12. <http://www.financialstabilityboard.org/wp-content/uploads/Report-on-implementation-and-effects-of-reforms-final.pdf>

<sup>vii</sup> “Feasibility study on aggregation of OTC derivatives data,” Financial Stability Board, September 19, 2014. [http://www.financialstabilityboard.org/wp-content/uploads/r\\_140919.pdf](http://www.financialstabilityboard.org/wp-content/uploads/r_140919.pdf)

<sup>viii</sup> *Trade and Development Report 2015: Making the International Financial Architecture Work for Development*, United Nations Conference on Trade and Development, at 25. [http://unctad.org/en/PublicationsLibrary/tdr2015\\_en.pdf](http://unctad.org/en/PublicationsLibrary/tdr2015_en.pdf)