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November 13, 2015

*Via Electronic Submission*

Christopher Kirkpatrick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: Supplemental Notice of Proposed Rulemaking: Aggregation of Positions  
(RIN 3038-AD82)**

Dear Mr. Kirkpatrick:

The Futures Industry Association (“**FIA**”) appreciates the opportunity to provide the Commodity Futures Trading Commission (“**Commission**” or “**CFTC**”) with comments and recommendations in response to the Commission’s supplemental notice of proposed rulemaking to modify its policy regarding the aggregation of positions toward speculative position limits in Part 150 of the Commission’s regulations.<sup>1</sup> FIA’s regular and associate members, their affiliates, and their customers actively participate in the listed and over-the-counter derivatives markets as intermediaries, principals, and users.<sup>2</sup> Consequently, FIA and its members have a significant interest in the Aggregation Proposal and the Supplemental Aggregation Proposal.

FIA appreciates the Commission’s willingness to reconsider various aspects of the Aggregation Proposal and the Commission’s consideration of FIA’s prior comments on this topic. Furthermore, FIA applauds the Commission’s proposed modifications to its aggregation rule in the Supplemental Aggregation Proposal. Our comments today focus on refinements to the Commission’s aggregation rule that should further the Commission’s goal of requiring the aggregation of positions that are commonly controlled or result from coordinated trading.<sup>3</sup>

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<sup>1</sup> See Aggregation of Positions, 80 Fed. Reg. 58365 (Sep. 29, 2015) (proposed rule) (“**Supplemental Aggregation Proposal**”); see also *Aggregation of Positions*, 78 Fed. Reg. 68946 (Nov. 15, 2013) (proposed rule) (“**Aggregation Proposal**”).

<sup>2</sup> FIA is the leading trade organization for the futures, options, and cleared swaps markets worldwide. FIA’s membership includes clearing firms, exchanges, clearinghouses, and trading firms from more than 25 countries as well as technology vendors, lawyers, and other professionals serving the industry. FIA’s mission is to support open, transparent, and competitive markets, to protect and enhance the integrity of the financial system, and to promote high standards of professional conduct. As the principal members of derivative clearinghouses worldwide, FIA’s member firms play a critical role in the reduction of systemic risk in the global financial markets. FIA along with its affiliated associations, FIA Europe and FIA Asia, make up the global alliance, FIA Global, which seeks to address the common issues facing its collective memberships.

<sup>3</sup> FIA incorporates by reference its prior comments to the Commission concerning the aggregation of positions. FIA Comment Letter to CFTC dated February 7, 2014; FIA Comment Letter to CFTC dated July 31, 2014; FIA Comment Letter to CFTC dated January 22, 2015; and FIA Comment Letter to CFTC dated March 30, 2015.

## **I. FIA Supports the Commission's Proposed Expansion of the Owned-Entity Exemption**

FIA supports the Commission's proposed expansion of the minority owned-entity exemption in the Supplemental Aggregation Proposal to include all ownership interests, including wholly owned entities. FIA appreciates the Commission's consideration of FIA's prior comments, along with those of other commenters such as the Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA"), as a basis to expand the minority owned-entity exemption.<sup>4</sup> For the reasons stated in the Supplemental Aggregation Proposal, the Commission should extend the owned-entity exemption to all ownership interests provided that positions are not commonly controlled.

Contrary to the claims of some commenters, expanding the owned-entity exemption will not "allow traders to easily circumvent Position Limits by creating multiple subsidiaries and dividing its positions among them."<sup>5</sup> As the Commission correctly pointed out, the separate management and control conditions that must be met to rely on the proposed owned-entity exemption preclude a single entity from lawfully orchestrating trading decisions and dividing the positions amongst various subsidiaries.

## **II. FIA Supports the Commission's Proposed Expansion of the Broker-Dealer Exemption**

FIA supports the Commission's proposed expansion of the broker-dealer exemption in the Supplemental Aggregation Proposal to include all broker-dealer ownership interests acquired in the dealer's normal course of business. As FIA has commented in the past, allowing a broker-dealer to disaggregate all ownership interests acquired in the normal course of business as a dealer does not jeopardize the requirement to aggregate commonly controlled positions. These ownership interests will be temporary and not implicate the independence of the owned-entity's trading activity.<sup>6</sup>

## **III. The Commission Should Clarify the Proposed Conditions of the Owned-Entity Exemption**

The proposed expansion of the owned-entity exemption includes the same conditions as the previously proposed owned-entity exemption. FIA requests that the Commission clarify certain of the conditions in order to maintain the independence of trading decisions among the owner and owned-entity and, at the same time, enhance prudent risk management.

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<sup>4</sup> See SIFMA Letter to CFTC dated February 10, 2014.

<sup>5</sup> See Supplemental Aggregation Proposal at 58369.

<sup>6</sup> See FIA Comment Letter to CFTC dated February 7, 2014 (section III.C).

A. *The Owned-Entity Exemption Should Require that the Owner and the Owned-Entity Trade Pursuant to Independent Trading Strategies*

One of the conditions of the owned-entity exemption is that the owner and the owned-entity trade pursuant to separately developed and independent trading “systems.” As FIA has commented previously, the Commission should replace the term “systems” with the term “strategies.”<sup>7</sup> The Commission’s key concern in crafting the aggregation rule should be to prevent the use of trading *strategies* that were developed in coordination with, rather than independently of, the other. The use of the term “systems” may restrict the development of trading technologies that promote efficient trading and risk management practices yet are unrelated to trading strategy.

B. *The Requirement to Implement and Enforce Written Procedures to Preclude Knowledge of Trading Should Only Apply to the Owner Claiming the Exemption from Aggregation*

Under the Supplemental Aggregation Proposal, one of the conditions intended to demonstrate independence of trading decisions requires that the owner and the owned-entity have written procedures to preclude access to trading information. As FIA has previously recommended, the Commission should clarify that the exemption only requires the owner claiming the exemption, and not the owned-entity, to have written procedures restricting access to trading information.<sup>8</sup>

Depending on the extent of an owner’s corporate control over an owned-entity, it may not be in a position to compel the owned-entity to establish the written procedures described in proposed CFTC Rule 150.4(b)(2)(i)(C). As long as the owner has and enforces written procedures that preclude the owner from (1) sharing trading information with, and (2) receiving trading information from, the owned-entity, each entity will not have access to the information of the other.

C. *The Owned-Entity Exemption Should Not Restrict the Sharing of Transaction and Position Information with Employees Who Perform Risk Management, Accounting, Compliance or Similar Mid- and Back-Office Functions*

Two of the conditions of the owned-entity exemption are that the owner and the owned-entity (1) not share employees that control the trading decisions of the other; and (2) not have risk management systems that permit the sharing of trades or trading strategies.<sup>9</sup> In the preamble to the Aggregation Proposal, the Commission clarified that the owned-entity exemption would not restrict the owner and the owned-entity from sharing transaction and position information

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<sup>7</sup> See FIA Comment Letter to CFTC dated July 31, 2014 (section II.H); and FIA Comment Letter to CFTC dated February 7, 2014 (Section III.B).

<sup>8</sup> See FIA Comment Letter to CFTC dated July 31, 2014 (section II.B).

<sup>9</sup> See Proposed 150.4(b)(2)(i)(D) & (E).

with and among employees who perform risk management, accounting, compliance or similar mid- and back-office functions. As FIA has commented in the past, the Commission should expressly permit the sharing of transaction and position information for risk management and similar purposes in the owned-entity exemption rule text in order to provide greater regulatory certainty to market participants.<sup>10</sup> Coordinated risk management, accounting and compliance activities across commonly-owned legal entities are fully consistent with the fundamental goals of the Dodd-Frank Act and the Commission's implementing regulations.

#### **IV. The Commission Should Adopt an Exemption for Transitory Ownership Interests Acquired Through Foreclosure or a Similar Credit Event**

FIA reiterates its prior recommendation regarding the need for an exemption from aggregation for transitory ownership or equity interests in an owned-entity, such as those acquired through foreclosure or a similar credit event.<sup>11</sup> Although these ownership interests should qualify for disaggregation under the proposed expansion of the owned-entity exemption, FIA expects that, given the transitory nature of these ownership interests, it will not be plausible or practical to implement written procedures regarding independence of trading or file a notice with the Commission. Because of these inherent and unavoidable impediments, the Commission should adopt a separate exemption to address transitory ownership interests of this nature.

#### **V. The Commission Should Clarify that the Failure to File a Notice to Disaggregate Constitutes a Reporting Violation, Not a Speculative Position Limits Violation**

As FIA commented previously, if a person is eligible to claim an exemption from aggregation, but fails to make a timely notice filing, such a failure should only constitute a single violation for failure to make the filing, not a separate violation of speculative position limits.<sup>12</sup> This clarification will not undermine the Commission's aggregation rule because it only applies where an entity is entitled to disaggregate. Thus, the positions should not both count toward the speculative position limit.

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<sup>10</sup> See FIA Comment Letter to CFTC dated July 31, 2014 (section II.C). Attachment A to FIA's July 31, 2014 comment letter included suggested rule text regarding a carve-out for employees related to risk management, accounting, compliance or similar mid- and back-office functions. For the convenience of the Commissioners and CFTC Staff, FIA has re-attached Attachment A to this letter with certain updates to address the Supplemental Aggregation Proposal. In his statement on the Supplemental Aggregation Proposal, Commissioner Giancarlo expressed similar concerns that the Supplemental Aggregation Proposal, as proposed, may "stymie critical risk-mitigation efforts" by requiring owners to aggregate owned-entity positions when affiliates employ risk-management systems allowing the sharing of trade information. See Statement of Commissioner J. Christopher Giancarlo, 80 Fed. Reg. 58381-82.

<sup>11</sup> See FIA Comment Letter to CFTC dated July 31, 2014 (section II.E); and FIA Comment Letter to CFTC dated February 7, 2014 (section III.D). Attachment A to FIA's July 31, 2014 comment letter included suggested rule text for the transitory ownership exemption.

<sup>12</sup> See FIA Comment Letter to CFTC dated July 31, 2014 (section II.G)

**VI. The Commission Should Provide a Reasonable Period within which to File a Notice to Disaggregate and Allow Market Participants to Rely on an Exemption in Good Faith**

FIA requests that the Commission allow a market participant to rely on an exemption from aggregation for a 90-day period before the participant must file a notice of the exemption with the Commission. As FIA has previously commented, this time-period should provide market participants with sufficient time to identify when an exemption from aggregation is permitted and to prepare and file the appropriate notice.<sup>13</sup> Furthermore, if a market participant relies on an exemption in good faith, but the Commission subsequently determines that an exemption was not available, the Commission should require that the market participant aggregate positions only from the date of its determination forward.

**VII. The Commission Should Not Presume Control and Require a Notice Filing to Disaggregate if an Ownership Interest is 50 Percent or Less**

FIA recommends that the Commission not presume that an owner controls an owned-entity based on an ownership interest of 50 percent or less.<sup>14</sup> Under the Supplemental Aggregation Proposal, an owner must rebut the presumption of control of an owned-entity if the owner holds a 10 percent or greater ownership interest. Setting a presumption of control at a 10 percent threshold will trigger an exorbitant number of “false positives” requiring owners with no actual control over an owned-entity’s trading activity to file a notice with the Commission. Such a construct will impose significant costs on market participants to prepare and file a notice with the Commission and on the Commission which will have to review and administer all of the filed notices. In contrast, if the Commission presumes control only where an owner holds a greater than 50 percent ownership interest, the Commission can focus its surveillance resources on entities where there is a greater likelihood of commonly controlled trading activity. Owners with a greater than 50 percent ownership interest then could rebut the presumption of control by making a notice filing that complies with the requirements of the proposed owned-entity exemption.

**VIII. The Commission Should Clarify that a Market Participant is Only Required to Update a Disaggregation Notice When there is a Material Change to the Information in the Initial Notice**

The text of the proposed rule requires a person filing a notice to disaggregate to file an update to the notice in the event of a material change.<sup>15</sup> In the Commission’s cost-benefit of the Supplemental Aggregation Proposal, it appears that the Commission may be assuming that there will be a material change to the information in a notice once per year.<sup>16</sup> To eliminate this

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<sup>13</sup> See FIA Comment Letter to CFTC dated July 31, 2014 (section II.F).

<sup>14</sup> See Supplemental Aggregation Proposal at 58381.

<sup>15</sup> See Proposed 150.4(c)(4).

<sup>16</sup> Supplemental Aggregation Proposal at 58376, 58378, and 58483.

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inconsistency and potential for unintended confusion, the Commission should clarify that a market participant is only required to file an update to a notice filing in the event of a material change in the originally submitted information.

## **IX. Conclusion**

FIA supports the Commission's proposals to enhance its aggregation rule. FIA's comments are intended to further the Commission's goal to require position limit aggregation where there is common control or coordinated trading across accounts and positions.

Please contact Allison Lurton, Senior Vice President and General Counsel, at 202-466-5460, if you have any questions about FIA's comments or recommendations.

Respectfully submitted,



Walter L. Lukken  
President and Chief Executive Officer

Enclosure: Attachment A

cc: Honorable Timothy G. Massad, Chairman  
Honorable Sharon Bowen, Commissioner  
Honorable J. Christopher Giancarlo, Commissioner  
Vincent A. McGonagle, Director  
Stephen Sherrod, Senior Economist  
Riva Spear Adriance, Senior Special Counsel  
Mark Fajfar, Assistant General Counsel

## § 150.4 Aggregation of positions.

(a) *Positions to be aggregated*—

(1) *Trading control or ~~10 percent or greater~~ than 50 percent ownership or equity interest.* For the purpose of applying the position limits set forth in § 150.2, unless an exemption set forth in paragraph (b) of this section applies, all positions in accounts for which any person, by power of attorney or otherwise, directly or indirectly controls trading or holds a ~~10 percent or greater~~ than 50 percent ownership or equity interest must be aggregated with the positions held and trading done by such person. For the purpose of determining the positions in accounts for which any person controls trading or holds a ~~10 percent or greater~~ than 50 percent ownership or equity interest, positions or ownership or equity interests held by, and trading done or controlled by, two or more persons acting pursuant to an expressed or implied agreement or understanding shall be treated the same as if the positions or ownership or equity interests were held by, or the trading were done or controlled by, a single person.

(2) *Substantially identical trading.* Notwithstanding the provisions of paragraph (b) of this section, for the purpose of applying the position limits set forth in § 150.2, any person that, by power of attorney or otherwise, holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies, must aggregate all such positions.

(b) *Exemptions from aggregation.* For the purpose of applying the position limits set forth in § 150.2, and notwithstanding the provisions of paragraph (a)(1) of this section, but subject to the provisions of paragraph (a)(2) of this section, the aggregation requirements of this section shall not apply in the circumstances set forth in this paragraph (b).

(1) *Exemption for ownership by limited partners, shareholders or other pool participants.* Any person that is a limited partner, limited member, shareholder or other similar type of pool participant holding positions in which the person by power of attorney or otherwise directly or indirectly has a ~~10 percent or greater~~ than 50 percent ownership or equity interest in a pooled account or positions need not aggregate the accounts or positions of the pool with any other accounts or positions such person is required to aggregate, except that such person must aggregate the pooled account or positions with all other accounts or positions owned or controlled by such person if such person:

(i) Is the commodity pool operator of the pooled account;

(ii) Is a principal or affiliate of the operator of the pooled account, unless:

(A) The pool operator has, and enforces, written procedures to preclude the person from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;

(B) The person does not have direct, day-to-day supervisory authority or control over the pool's trading decisions;

(C) The person, if a principal of the operator of the pooled account, maintains only such minimum control over the commodity pool operator as is consistent with its responsibilities as a principal and necessary to fulfill its duty to supervise the trading activities of the commodity pool; and

(D) The pool operator has complied with the requirements of paragraph (c) of this section on behalf of the person or class of persons; or

(iii) Has, by power of attorney or otherwise directly or indirectly, a ~~25 percent or~~ greater than 50 percent ownership or equity interest in a commodity pool, the operator of which is exempt from registration under § 4.13 of this chapter.

(2) *Exemption for certain ownership of greater than ~~10-50~~ percent in an owned entity.* Any person with an ownership or equity interest in an owned entity of ~~10 percent or~~ greater ~~but not more~~ than 50 percent (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:

(i) ~~Such person~~The owner, including any entity that such ~~person~~owner 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 ~~strategies~~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;~~

~~(CD)~~ Do not share employees that control the trading decisions of either; ~~and~~

~~(DE)~~ Do not have risk management systems that permit the sharing of trades or trading strategy; and

(E) Provided further that the restrictions applicable to persons that have knowledge of, or control, the trading decisions or positions of the owner and the owned entity in subparts (A) and (D) of this section shall not include employees engaged in risk management, accounting, compliance or similar functions among mid- and back-office personnel.

(ii) The owner has and enforces written procedures to preclude the owner and the owned entity 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 the owner's activities from the owned entity's activities, provided that the restrictions described in this subpart (ii) shall not apply to the sharing of information or employees related to risk management, accounting, compliance or similar mid- and back-office functions; and

(iii) ~~Such person~~The owner complies with the requirements of paragraph (c) of this section.

~~(3) Exemption for certain ownership of greater than 50 percent in an owned entity. Any person with a greater than 50 percent ownership or equity interest in an owned entity (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:~~

~~(i) Such person certifies to the Commission that the owned entity is not required under U.S. generally accepted accounting principles to be, and is not, consolidated on the financial statement of such person;~~

~~(ii) Such person, including any entity that such person must aggregate, and the owned entity meet the requirements of paragraphs (b)(2)(i)(A) through (E) of this section and such person demonstrates to the Commission that procedures are in place that are reasonably effective to prevent coordinated trading decisions by such person, any entity that such person must aggregate, and the owned entity;~~

~~(iii) Each representative (if any) of the person on the owned entity's board of directors (or equivalent governance body) certifies that he or she does not control the trading decisions of the owned entity;~~

~~(iv) Such person certifies to the Commission that either all of the owned entity's positions qualify as bona fide hedging transactions or the owned entity's positions that do not so qualify do not exceed 20 percent of any position limit currently in effect, and agrees with the Commission that:~~

~~(A) If such certification becomes untrue for any owned entity of the person, such person will aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate; however, after a period of three complete calendar months in which such person aggregates such accounts or positions and all of the owned entity's positions qualify as bona fide hedging transactions, such person may make such certification again and be permitted to cease such aggregation;~~

~~(B) Any owned entity of the person shall, upon call by the Commission at any time, make a filing responsive to the call, reflecting only such owned entity's positions and transactions, and not reflecting the inventory of the person or any other accounts or positions such person is required to aggregate (this requirement shall apply regardless of whether the owned entity or the person is subject to § 18.05 of this chapter); and~~

~~(C) Such person shall inform the Commission, and provide to the Commission any information that the Commission may request, if any owned entity engages in coordinated activity regarding the trading of such owned entity, such person, or any other accounts or positions such person is required to aggregate, even if such coordinated activity does not conflict with any of the requirements of paragraphs (b)(2)(i)(A) to (b)(2)(i)(E) of this section;~~

~~(v) The Commission finds, in its discretion, that such person has satisfied the conditions of this paragraph (b)(3);~~

~~(vi) Such person, when first requesting disaggregation relief under this paragraph, complies with the requirements of paragraph (c)(2) of this section; and~~

~~(vii) Such person complies with the requirements of paragraph (c)(1) of this section if, subsequent to a Commission finding that the person has satisfied the conditions of this paragraph (b)(3), there is a material change to the information provided to the Commission in the person's original filing under paragraph (c)(2) of this section.~~

**(43)** *Exemption for accounts held by futures commission merchants.* A futures commission merchant or any affiliate of a futures commission merchant need not aggregate positions it holds in a discretionary account, or in an account which is part of, or participates in, or receives trading advice from a customer trading program of a futures commission merchant or any of the officers, partners, or employees of such futures commission merchant or of its affiliates, if:

(i) A person other than the futures commission merchant or the affiliate directs trading in such an account;

(ii) The futures commission merchant or the affiliate maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account;

(iii) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant or the affiliate holds, has a financial interest of greater than 50~~10~~ percent ~~or more in~~, or controls; and

(iv) The futures commission merchant or the affiliate has complied with the requirements of paragraph (c) of this section.

**(54)** *Exemption for accounts carried by an independent account controller.*

(i) An eligible entity need not aggregate its positions with the eligible entity's client positions or accounts carried by an authorized independent account controller, as defined in § 150.1(e), except for the spot month in physical delivery commodity contracts, provided that the eligible entity has complied with the requirements of paragraph (c) of this section, and that the overall positions held or

controlled by such independent account controller may not exceed the limits specified in § 150.2.

(ii) *Additional requirements for exemption of affiliated entities.* If the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(A) Have, and enforce, written procedures to preclude the affiliated entities 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; provided, however, that such procedures may provide for the disclosure of information which is reasonably necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities to the managed positions and accounts and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(B) Trade such accounts pursuant to separately developed and independent trading systems;

(C) Market such trading systems separately; and

(D) Solicit funds for such trading by separate disclosure documents that meet the standards of § 4.24 or § 4.34 of this chapter, as applicable, where such disclosure documents are required under part 4 of this chapter.

(65) *Exemption for underwriting.* A person need not aggregate the positions or accounts of an owned entity if the ownership or equity interest is based on the ownership of securities constituting the whole or a part of an unsold allotment to or subscription by such person as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(76) *Exemption for broker-dealer activity.* A broker-dealer registered with the Securities and Exchange Commission, or similarly registered with a foreign regulatory authority, need not aggregate the positions or accounts of an owned entity if ~~such broker-dealer does not have greater than a 50 percent ownership or equity interest in the owned entity~~ and the ownership or equity interest is based on the ownership of securities acquired in the normal course of business as a dealer, *provided that* such person does not have actual knowledge of or control the trading decisions of the owned entity.

(87) *Exemption for information sharing restriction.* A person need not aggregate the positions or accounts of an owned entity if the sharing of information associated with such aggregation (such as, only by way of example, information reflecting the transactions and positions of a such person and the owned entity) creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder, provided that such person does not have actual knowledge of information associated with such aggregation, and provided further

that such person has filed a prior notice pursuant to paragraph (c) of this section and included with such notice a written memorandum of law explaining in detail the basis for the conclusion that the sharing of information creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder. However, the exemption in this paragraph shall not apply where the law or regulation serves as a means to evade the aggregation of accounts or positions. All documents submitted pursuant to this paragraph shall be in English, or if not, accompanied by an official English translation.

*(98) Exemption for higher-tier entities.* If an owned entity has filed a notice under paragraph (c) of this section, any person with an ownership or equity interest of ~~10 percent or~~ greater than 50 percent in the owned entity need not file a separate notice identifying the same positions and accounts previously identified in the notice filing of the owned entity, provided that:

(i) Such person complies with the conditions applicable to the exemption specified in the owned entity's notice filing, other than the filing requirements; and

(ii) Such person does not otherwise control trading of the accounts or positions identified in the owned entity's notice.

(iii) Upon call by the Commission, any person relying on the exemption in this paragraph (b)(98) shall provide to the Commission such information concerning the person's claim for exemption. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

*(9) Exemption for transitory ownership or equity interests acquired through foreclosure or a similar credit event.* An owner need not aggregate the positions or accounts of an owned entity if it acquires, in the normal course of such person's business, a transitory ownership or equity interest in the owned entity as a result of a default, foreclosure, or similar credit event, provided that such owner does not have actual knowledge of the trading decisions of, and disposes of its ownership or equity interest in, the owned entity within a commercially reasonable period with due regard to the then prevailing circumstances.

*(c) Notice filing for exemption.*

(1) Persons seeking an aggregation exemption under paragraph (b)(1)(ii), (b)(2), (b)(3)(~~vii~~), (b)(4), (~~b)(5)~~, or (b)(~~8~~7) of this section shall file a notice with the Commission, which shall be effective upon submission of the notice, and shall include:

(i) A description of the relevant circumstances that warrant disaggregation; and

(ii) A statement of a senior officer of the entity certifying that the conditions set forth in the applicable aggregation exemption provision have been met.

~~(2) Persons with a greater than 50 percent ownership or equity interest in an owned entity seeking an aggregation exemption under paragraph (b)(3)(vi) of this section shall file a request with the Commission, which shall not become effective unless and until the Commission finds, in its discretion, that such person has satisfied the conditions of paragraph (b)(3) of this section, and shall include:~~

~~(i) A description of the relevant circumstances that warrant disaggregation;~~

~~(ii) A statement of a senior officer of the entity certifying that the conditions set forth in paragraph (b)(3) of this section have been met;~~

~~(iii) A demonstration that procedures are in place that are reasonably effective to prevent coordinated trading decisions by such person, any entity that such person must aggregate, and the owned entity; and~~

~~(iv) All certifications required under paragraph (b)(3) of this section.~~

(32) Upon call by the Commission, any person claiming an aggregation exemption under this section shall provide such information demonstrating that the person meets the requirements of the exemption, as is requested by the Commission. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

(43) In the event of a material change to the information provided in any notice filed under this paragraph (c), an updated or amended notice shall promptly be filed detailing the material change.

(54) Any notice filed under this paragraph (c) shall be submitted in the form and manner provided for in paragraph (d) of this section.

(d) *Form and manner of reporting and submitting information or filings.*

(1) Unless otherwise instructed by the Commission or its designees, any person submitting reports under this section shall submit the corresponding required filings and any other information required under this part to the Commission using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission. Unless otherwise provided in this section, the notice shall be effective upon filing. When the reporting entity discovers errors or omissions to past reports, the entity shall so notify the Commission and file corrected information in a form and manner and at a time as may be instructed by the Commission or its designee;:-

(2) The notice required under paragraph (c) shall be filed with the Commission no more than 90 days after an aggregation exemption under this section is relied upon;

(3) the failure of a person that otherwise would qualify for an aggregation exemption under this section to file such a notice within 90 days shall constitute a single violation of paragraph (c), and not a violation of the position limits set forth in § 150.2.

(e) *Delegation of authority to the Director of the Division of Market Oversight.*

(1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

~~(i) In paragraph (b)(3) of this section:~~

~~(A) To determine, after consultation with the General Counsel or such other employee or employees as the General Counsel may designate from time to time, if a person has satisfied the conditions of paragraph (b)(3) of this section; and~~

~~(B) To call for additional information from a person claiming the exemption in paragraph (b)(3) of this section, reflecting such owned entity's positions and transactions (regardless of whether the owned entity or the person is subject to § 18.05 of this chapter).~~

(ii) In paragraphs (b)(~~89~~)(iii) and (c)(2) of this section to call for additional information from a person claiming the exemption in paragraphs (b)(~~9~~)(~~i8~~) and (c)(2) of this section.

(iii) In paragraph (d) of this section for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

(2) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.