

CFTC extends and revises relief for position aggregation requirements and notice filings

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[CFTC Staff Letter 17-06](#)

[CFTC Staff Letter 17-37](#)

[Comment](#)

The Commodity Futures Trading Commission (CFTC) has extended and revised no-action relief that provides an exemption from compliance with certain aggregation requirements for CFTC-specified position limits for futures and option trading. CFTC staff have indicated that they may consider further modifications to these requirements during the term of the relief.

CFTC Staff Letter 17-06

On February 6 2017 the CFTC Division of Market Oversight (DMO) issued a time-limited no-action relief letter (CFTC Staff Letter 17-06), stating that it would not recommend an enforcement action for failure to file certain notices when relying on certain exemptions from the aggregation requirements in connection with CFTC position limits. (1) CFTC Staff Letter 17-06 was issued in response to concerns from industry groups and market participants about their ability to comply with amendments to the CFTC's position limit aggregation requirements in CFTC Rule 150.4, (2) which were finalised on December 16 2016 and would have become effective on February 14 2017 (the 'Aggregation Rules'). (3) This no-action relief was set to expire on August 14 2017.

CFTC Staff Letter 17-37

On August 10 2017 the DMO issued a time-limited no-action relief letter (CFTC Staff Letter 17-37) (4) to parties extending and revising the relief issued in CFTC Staff Letter 17-06. Specifically, CFTC Staff Letter 17-37:

- extends the existing notice filing relief;
- broadens certain conditions to permit additional parties to benefit from the relief; and
- narrows the aggregation requirement for accounts with "substantially identical trading strategies", as described below.

The extended relief will expire on August 12 2019.

Under the Aggregation Rules, parties must make a notice filing with the CFTC before using certain exemptions to permit them to disaggregate accounts. However, CFTC Staff Letter 17-37 modifies this requirement by requiring a notice filing only in the event that such a filing is requested by the CFTC or the relevant exchange. Any requested filing must be made within five business days of the request. The relief also limits the information required in a notice filing to the particular account or position identified in the request.

CFTC Staff Letter 17-37 also expands the availability of the independent account controller exemption. Under the Aggregation Rules, an eligible entity that has positions managed by an independent account controller may disaggregate such positions with any other positions if certain other conditions are met. However, market participants have expressed concern that the definition of 'eligible entity' is narrow and prevents certain parties from using the exemption. Under CFTC Staff

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Letter 17-37, the exemption has been expanded to include exempt commodity trading advisers and entities that do not fall within the 'eligible entity' definition but have authorised an independent account controller to act in a fiduciary capacity by independently controlling the trading in the person's positions and accounts.

In addition, CFTC Staff Letter 17-37 facilitates use of the owned entity exemption, which permits an entity that owns 10% or more of another entity to disaggregate positions held by each entity. Under the Aggregation Rules, in order to use the exemption, the owning entity must file a notice with the CFTC that contains certain certifications, including that it has no knowledge of the trading decisions of the owned entity. Under CFTC Staff Letter 17-37, the scope of the certification has been limited to derivatives trading.

The relief also limits the scope of the requirement under CFTC Rule 150.4(a)(2) for aggregation by a holder or controller of accounts using "substantially identical trading strategies" to cases where positions are held by a person in one or more account or pool in order to wilfully circumvent applicable position limits.

Comment

This relief results from requests by the Securities Industry and Financial Markets Association's Asset Management Group, the Managed Funds Association and the Futures Industry Association to extend and revise CFTC Staff Letter 17-06. Unless otherwise provided in CFTC Staff Letter 17-37, all market participants must comply with all applicable position limits in CFTC Regulation 150.2 and with all position aggregation requirements in CFTC Regulation 150.4.

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Endnotes

(1) CFTC Staff Letter 17-06 is available at www.cftc.gov/idc/groups/public/@lrlattergeneral/documents/letter/17-06.pdf. More information on CFTC Staff Letter 17-06 is available [here](#).

(2) CFTC Regulations 150.2 and 150.4 are available at www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-29582a.pdf.

(3) More information on the CFTC's amended aggregation rules is available [here](#).

(4) CFTC Staff Letter 17-37 is available at www.cftc.gov/idc/groups/public/@lrlattergeneral/documents/letter/17-37.pdf.

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