

Investment Management Alert

Akin Gump
STRAUSS HAUER & FELD LLP

CFTC Staff Extends Relief With Respect to Certain Position Limit Aggregation Requirements

August 8, 2019

Key Points:

- Until August 12, 2022, CPOs and CTAs may continue to file position limit disaggregation notices upon request, rather than prospectively, and exempt CTAs may continue to rely upon the “independent account controller” disaggregation exemption.

On August 10, 2017, staff of the U.S. Commodity Futures Trading Commission (CFTC) issued No-Action Letter 17-37¹, which provides relief with respect to the position limit disaggregation notice filing requirements under Rule 150.4(c)² as well as certain other interpretive relief. On July 31, 2019, staff issued No-Action Letter 19-19³, which extends all existing relief provided in No-Action Letter 17-37 until August 12, 2022. Accordingly, commodity pool operators (CPOs) and commodity trading advisors (CTAs) may continue to rely on the following relief with respect to the CFTC’s position limit aggregation rules:

- **Notices.** Disaggregation exemption notices required pursuant to Rule 150.4(c) must only be filed if and when requested by the CFTC or a designated contract market (DCM). To the extent requested, such notice filings need only address the particular account or position identified by the CFTC or DCM.
- **Owned Entity Exemption.** For purposes of any notice requested to claim the “owned entity” disaggregation exemption under Rule 150.4(b)(2), a CPO or CTA need only make the required certifications with respect to derivatives trading (as opposed to other trading) and need only address the owner (and not the owned entity) in situations where the owner is not aware, and should not be aware, of the derivative trading of the owned entity.
- **IAC.** CTAs who qualify for an exemption from registering with the CFTC as a CTA may rely upon the “independent account controller” disaggregation exemption under Rule 150.4(b)(4), despite not technically qualifying as an “eligible entity” or “independent account controller.”
- **Substantially Identical Trading.** CPOs and CTAs need not aggregate positions pursuant to the “substantially identical trading strategies” requirement in Rule

Contact Information

If you have any questions regarding this alert, please contact the Akin Gump lawyer with whom you usually work or

Jan-Paul bruynes

Partner
pbruynes@akingump.com
New York
+1 212.872.7457

Jason M. Daniel

Partner
jdaniel@akingump.com
Dallas
+1 214.969.4209

150.4(a)(2) unless the CPO or CTA holds or controls the trading of positions in more than one account in order to willfully circumvent applicable position limits.

¹ <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-37.pdf>

² The CFTC's position limit aggregation rules are codified under 17 CFR 150.4(c).

³ <https://www.cftc.gov/csl/19-19/download>

akingump.com