

Investment Management Alert

September 23, 2015

CFTC Proposes Amendments to Position Limit Aggregation Exemption Rules

On September 22, 2015, the Commodity Futures Trading Commission (CFTC) proposed certain changes in a supplemental notice of proposed rulemaking (the “Supplemental Notice”) to the position limit aggregation rules and exemptions which were re-proposed by the CFTC on November 15, 2013 (the “Re-Proposed Aggregation Rules”). The proposed changes in the Supplemental Notice are subject to a 45-day comment period.

Amended Aggregation Exemption

The Re-Proposed Aggregation Rules contained an exemption from aggregation of positions for owners that hold between 10-50% of an ownership or equity interest in an owned entity (the “10-50% Owner Exemption”) and a separate, more burdensome and potentially unworkable exemption for owners that hold a greater than 50% ownership or equity interest in an owned entity (the “Greater than 50% Owner Exemption”).

Unlike the 10-50% Owner Exemption which would be effective upon filing with the CFTC, the Greater than 50% Owner Exemption would have required a person seeking to rely on the exemption to apply to the CFTC for relief on an individual case-by-case basis. Moreover, the Greater than 50% Owner Exemption would also have required that the owned entity and the owner not be consolidated on the financial statements of the owner, in addition to certain certifications from the members of the board of directors of the owned entity.

In the Supplemental Notice, the CFTC is proposing to allow a person with a greater than 50% ownership or equity interest in an owned entity to claim an exemption from aggregation with the positions of the owned entity under the same conditions as set forth in the 10-50% Owner Exemption language from the Re-Proposed Aggregation Rules. As such, the CFTC is proposing to make the same exemption available for all owners of a 10% or greater ownership or equity interest in an owned entity (other than an interest in a commodity pool) regardless of the size of the stake held in the owned entity. The conditions for the newly proposed exemption set forth in proposed CFTC Reg. § 150.4(b)(2) are as follows:

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) is not required to aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate if such person and the owned entity:

- do not have knowledge of the trading decisions of the other
- trade pursuant to separately developed and independent trading systems

- have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other¹
- do not share employees that control the trading decisions of either
- do not have risk management systems that permit the sharing of trades or trading strategy
- make a notice filing with the CFTC.

¹ Such procedures must include document routing and other security procedures or security arrangements, including separate physical locations, which would maintain the independence of the two persons' activities.

Contact Information

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

J.P. Bruynes

jpbruynes@akingump.com

212.872.7457

New York

Prakash H. Mehta

pmehta@akingump.com

212.872.7430

New York

Kelli L. Moll

kmoll@akingump.com

212.872.8041

New York

Eliot D. Raffkind

eraffkind@akingump.com

214.969.4667

Dallas

Stephen M. Vine

svine@akingump.com

212.872.1030

New York