August 11, 2017

SIDLEY UPDATE

CFTC Issues Aggregation Exemption Notice Filing Relief

On August 10, 2017, the Division of Market Oversight (DMO) of the Commodity Futures Trading Commission (CFTC) granted time-limited no-action relief from a number of requirements applicable to persons who rely on certain exemptions from the CFTC’s position limit aggregation rules, including the requirement to file notices to rely in aggregation exemptions. This latest relief expands the scope of previously granted no-action relief that was scheduled to expire on August 14, 2017, which would have resulted in a number of market participants becoming subject to those filing requirements on that date. As detailed below, the notice filing requirement and elements of certain aggregation exemptions will not be enforced until August 12, 2019.1

For a more detailed overview of the CFTC’s aggregation rules and exemptions, please consult prior Sidley Updates.2

Notice Filing Requirement

In late 2016, the CFTC amended its aggregation rules to, among other things, add a requirement that persons seeking to disaggregate accounts using certain aggregation exemptions must file a notice with the CFTC before relying on an exemption. The latest no-action relief delays these requirements for two years. Now, rather than having to file notice as a condition of disaggregation, notice filings are only required upon request by the CFTC or a U.S. futures exchange (each, an “Exchange”). In the event that a filing is requested by the CFTC or an Exchange, the recipient of the request will have five business days in which to submit the necessary notices.

Other than as noted below, the no-action relief does not change the substantive requirements of the CFTC’s aggregation rules and does not directly alter the aggregation rules that each Exchange has adopted. However, in the no-action letter, DMO indicated its understanding that several futures exchanges “intend to apply the same policy with respect to notice filings contained in the relief” provided today by DMO, and to “require submission of disaggregation notice filings only after receipt of a request for such a filing by the [Exchange.]” It remains to be seen exactly how the Exchanges will respond.

Changes to the Independent Account Exemption

The no-action relief expands the scope of the “eligible entity” and “independent account controller” definitions to include commodity trading advisors (CTAs) that are exempt from registration and further expands the definition of “eligible entity” to include any person that has authorized an independent account controller to act in a fiduciary capacity by independently controlling the trading in the person’s positions and accounts. These changes represent substantial and long-requested expansions of the independent account controller exemption.

Changes to the Owned Entity Exemption

DMO has broadened the applicability of the owned entity exemption by permitting entities that wish to rely on the exemption to satisfy the requirements of the exemption only with respect to derivatives trading activity, rather than all trading activity. Before relief was granted, owning entities that wanted to rely on the owned entity
exemption had to certify that they did not have knowledge of any of the owning entities trading decisions. Pursuant to the latest no-action relief, an owning entity can now meet this requirement if it can certify that it does not have knowledge of the owned entity’s derivatives trading decisions. Additionally, if a notice is requested and the owning entity is not aware of the derivatives trading of the owned entity, then the owning entity’s disaggregation notice need only make representations with respect to itself and not with respect to the owned entity.

Changes to the Requirement to Aggregate Accounts with Substantially Identical Trading

A person will not be required to aggregate the positions of multiple accounts and pools that trade pursuant to “substantially identical trading strategies” unless that person holds or controls the positions in such accounts or pools in order to “willfully circumvent” applicable position limits.

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

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