

## Miscellaneous Current Compliance and Enforcement Issues for CTAs and CPOs

By: Gary DeWaal, Christian B. Hennion and Paul C. Huddle\*

This document was prepared for Managed Funds Association's *Compliance 2015* on May 5, 2015.

In 2012, the Commodity Futures Trading Commission (CFTC) issued final rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) imposing new registration requirements on commodity trading advisors (CTAs) and commodity pool operators (CPOs). Since the enactment of the Dodd-Frank Act, the CFTC and designated contract markets (exchanges) have consistently expressed a willingness to aggressively prosecute violations of their rules and regulations, particularly those involving manipulation and market disruption, improperly executed exchange for related position (EFRP) transactions and block trades and violations of speculative position limits.

This article navigates certain hot-button topics impacting CTAs and CPOs.

### NFA Bylaw 1101

National Futures Association (NFA) Bylaw 1101 prohibits an NFA member from carrying an account, accepting an order or handling a transaction in commodity futures contracts for, or on behalf of, any non-member of NFA that is required to be registered with the CFTC as a futures commission merchant, introducing broker, CPO or CTA.<sup>1</sup>

By its terms, NFA Bylaw 1101 imposes strict liability on any member conducting customer business with a non-member that is required to be registered; however, NFA has relied on evidence that a member knew or should have known of the violation when issuing complaints in Bylaw 1101 cases (including whether the member had adequate procedures to prevent such violations).<sup>2</sup>

Historically, the CFTC has considered a commodity pool's general partner, manager or board of directors to be that pool's CPO.<sup>3</sup> This interpretation would require, absent a specific exemption from the CFTC, a fund manager to ensure that its general partner, managing member or members of its board of directors are independently registered as CPOs. To avoid this outcome, a number of would-be CPOs that delegated investment management authority over a commodity pool to another affiliated CPO applied to the CFTC for no-action relief from CPO registration requirements.<sup>4</sup> The CFTC staff generally granted such requests for no-action relief, provided that the CPO that delegated investment management authority (delegating CPO) and the proposed delegation arrangement met certain criteria. This relief addressed concerns: (1) where a fund manager operated multiple pools that were structured as limited partnerships with separate general partners—each of which could otherwise be deemed a CPO and obligated to register as such; and (2) where a fund was

---

\* Gary DeWaal is special counsel in the Financial Services group at Katten Muchin Rosenman LLP, based in the firm's New York office. With a focus on financial services regulatory matters, Mr. DeWaal counsels clients on the application of evolving regulatory requirements to existing businesses and structuring more effective compliance programs. Mr. DeWaal writes a weekly blog on issues impacting players in the worldwide financial services industry, *Bridging the Week*, which can be accessed at [www.bridgingtheweek.com](http://www.bridgingtheweek.com). He can be reached at 1.212.940.6558 and [gary.dewaal@kattenlaw.com](mailto:gary.dewaal@kattenlaw.com). Christian B. Hennion is a partner in the Financial Services group in Chicago. He can be reached at 1.312.902.5521 and [christian.hennion@kattenlaw.com](mailto:christian.hennion@kattenlaw.com). Paul C. Huddle is a staff attorney in the Financial Services group in Chicago. He can be reached at 1.312.902.5216 and [paul.huddle@kattenlaw.com](mailto:paul.huddle@kattenlaw.com).

<sup>1</sup> NFA Bylaw 1101, "Prohibition" (last revised Aug. 21, 2001).

<sup>2</sup> See NFA Interpretative Notice 9007, "Compliance with NFA Bylaw 1101" (last revised July 1, 2000).

<sup>3</sup> See, e.g., CFTC Letter No. 75-11, *Comm. Fut. L. Rep. (CCH)* ¶ 20,098 (Sept. 19, 1975).

<sup>4</sup> See, e.g., CFTC Letter No. 07-19, *Comm. Fut. L. Rep. (CCH)* ¶ 30,697 (Sept. 13, 2007).

structured as a corporation or similar legal entity with a board of directors—each of which could otherwise be deemed a CPO and required to register as such.

In an August 2012 Frequently Asked Questions release, the CFTC reiterated these prior no-action positions. It did so by providing general guidance that, if authorized under the laws of the jurisdiction where the CPO is organized and the CPO's organizational documents, a general partner, managing member or member of a board of directors could delegate its rights and responsibilities as a CPO to certain other persons, provided that such other person was qualified to serve as a CPO, was registered with the CFTC as a CPO and agreed to assume such rights and responsibilities.<sup>5</sup> Both the delegating CPO and the CPO receiving delegation (designated CPO) would have to agree to joint and several liability for CFTC regulatory violations in order to take advantage of the CFTC guidance. Moreover, CFTC staff took the position that this guidance did not obviate the need for firms that intended to rely upon such relief to petition for their own no-action letters.

In May 2014, the CFTC introduced a procedure for delegating CPOs to submit a simplified and standardized form for relief.<sup>6</sup> However, this process was not self-executing and created an administrative burden on CPOs and the CFTC's Division of Swap Dealer and Intermediary Oversight (DSIO).

In response, in October 2014, DSIO provided self-executing relief from registration to would-be CPOs that delegate investment management authority to another person registered as a CPO, provided that the delegating CPO:

- (1) delegates all of its investment management authority to a designated CPO pursuant to a legally binding document;
- (2) refrains from participating in the solicitation of participants for, or managing any property of, the commodity pool;
- (3) is not subject to a statutory disqualification;
- (4) where applicable, is able to identify a business purpose (other than avoiding registration requirements) that explains why the designated CPO is a separate entity from the delegating CPO;
- (5) ensures that the designated CPO maintains books and records related to the commodity pool in accordance with CFTC regulations;
- (6) controls, is controlled by or is under common control with the designated CPO if both the delegating CPO and designated CPO are entities;
- (7) enters into an agreement to be jointly and severally liable with the designated CPO, unless the delegating CPO is an "unaffiliated board member" (as defined in the DSIO's letter); and
- (8) remains fully responsible as a board member under applicable law in cases where the delegating CPO is an unaffiliated board member.<sup>7</sup>

Due to these types of CPO delegation arrangements, NFA members conducting due diligence of a particular pool were not always readily able to confirm through NFA's Background Affiliation Status Information Center (BASIC) system that the CPO of a particular pool was an NFA member or exempt from such requirement. To help members identify delegation when conducting Bylaw 1101 due diligence, CPOs are now required to provide information in NFA's EasyFile system

<sup>5</sup> CFTC Division of Swap Dealer and Intermediary Oversight, Response to Frequently Asked Questions on CTA and CPO Registration and Compliance (Aug. 14, 2012), *available at* [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/faq\\_cpocpa.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/faq_cpocpa.pdf) (last visited Apr. 20, 2015).

<sup>6</sup> CFTC Letter No. 14-69, Comm. Fut. L. Rep. (CCH) ¶ 33,148 (May 12, 2014).

<sup>7</sup> CFTC Letter No. 14-126, Comm. Fut. L. Rep. (CCH) ¶ 33,310 (Oct. 15, 2014).

when filing a pool's annual financial statement that indicates whether the CPO has delegated investment management authority of a particular commodity pool.<sup>8</sup> This information is publicly available in NFA's BASIC system. An NFA member generally will be deemed to have satisfied its Bylaw 1101 due diligence obligations if the pool in question is listed in NFA's BASIC system under the "Delegated Pools" heading.

## Quarterly and Annual Reports

NFA Compliance Rule 2-46 requires CPOs to electronically file NFA Form PQR within 60 days after the end of each calendar quarter and a year-end report within 90 days of the calendar year end.<sup>9</sup> CPOs also are required to file a copy of the annual report they prepare for each pool they operate within 90 days of the pool's fiscal year end.<sup>10</sup> CTAs are required to file NFA Form PR within 45 days after the end of each calendar quarter and a year-end report within 45 days of the calendar year end.<sup>11</sup> In an effort to streamline the filing process, NFA has made changes to Forms PQR and PR over the past year.<sup>12</sup>

Failure to file quarterly and annual reports in a timely manner may subject the member to disciplinary action. For example, in December 2014, NFA fined Cambridge Strategy Asset Management Limited, a registered CPO and CTA member, \$30,000 for failing to timely file three PQRs, eight annual pool financial statements and three CTA PR reports.<sup>13</sup> In addition, Roditi & Roditi LLC, a CPO member, agreed to pay a fine of \$20,000 for failing to timely file with NFA five pool quarterly reports and one annual report.<sup>14</sup>

## NFA Examination Priorities

NFA members are subject to periodic—and sometimes unannounced—on-site examinations. New CPO and CTA registrants should expect the NFA to perform an initial on-site audit within the first two years following registration.<sup>15</sup> The timing and frequency of subsequent exams depends on various risk factors, including customer complaints, assets under management, prior examination findings, referrals from other regulatory agencies and regulatory and financial statements filed with NFA. NFA's general self-examination questionnaire and its supplemental material for CTAs and CPOs are useful resources for preparing for an NFA audit.<sup>16</sup>

In addition to requesting information and documents, NFA's staff performs an on-site review of the firm's business and investment activities and its corresponding records, policies and procedures. Areas of focus for the on-site visit include

<sup>8</sup> NFA Notice to Members I-15-13, "Bylaw 1101 guidance for pools which investment management authority has been delegated pursuant to CFTC No-Action Letters 14-69 and/or 14-126 and related BASIC display changes" (Apr. 8, 2015).

<sup>9</sup> NFA Compliance Rule 2-46, "CPO and CTA Quarterly Reporting Requirements" (last revised Mar. 30, 2013).

<sup>10</sup> NFA Compliance Rule 2-13, "CPO/CTA Regulations" (last revised Oct. 18, 2010).

<sup>11</sup> NFA Compliance Rule 2-46.

<sup>12</sup> See NFA Notice to Members I-14-26, "Notice to CPOs regarding changes to the CPO Form PQR and an important compliance reminder to CPOs and CTAs to ensure that Forms PQR and PR and pool Annual Reports are filed in a timely manner" (Oct. 1, 2014); NFA Notice to Members I-14-15, "Important Notice to CPOs and CTAs summarizing the changes to the CPO Form PQR and CTA Form PR that will become effective for the period ending June 30, 2014" (June 23, 2014).

<sup>13</sup> *In re Cambridge Strategy Asset Management, Ltd.*, NFA Business Conduct Committee 14-BCC-016 (Dec. 8, 2014).

<sup>14</sup> *In re Roditi & Roditi LLC*, NFA Business Conduct Committee 14-BCC-025 (Jan. 30, 2015).

<sup>15</sup> See Matt Pendell and Lauren Golm, NFA Compliance Department, "Preparing for an NFA Audit," Audio Podcast (June 29, 2009), available at <http://www.nfa.futures.org/nfa-compliance/NFA-education-training/NFA-podcasts/index.HTML> (last visited Apr. 20, 2015).

<sup>16</sup> See NFA Self-Examination Questionnaire (updated May 2013), available at <https://www.nfa.futures.org/NFA-compliance/publication-library/self-exam-questionnaire.HTML> (last visited Apr. 20, 2015).

registrations, promotional material, disclosure and performance reporting, account opening procedures, trading practices, supervision, Bylaw 1101 due diligence, handling of pool funds and financial reporting.

Upon completion of an exam, NFA staff will issue a letter restating their findings—and in some cases, deficiencies—identified during the examination. Any potential violations of NFA rules will be referred to NFA's Business Conduct Committee.

Recent NFA announcements suggest that future examinations will be rigorous, detailed and time-consuming. As a result of an independent group's analysis of NFA's examinations of Peregrine Financial Group, Inc., NFA adopted recommendations designed to enhance its surveillance of its members.<sup>17</sup> These recommendations included more testing of members' internal controls, the qualifications of outside auditors and the sources of firm capital contributions. Furthermore, NFA staff headcount and operating resources have spiked in recent years; NFA expects this trend to continue in 2015.<sup>18</sup>

## Disruptive Trading Practices

Section 747 of the Dodd-Frank Act amended section 4c(a) of the Commodity Exchange Act (CEA) to prohibit disruptive trading practices, which includes any trading, practice or conduct that:

- (1) violates bids or offers;
- (2) demonstrates reckless disregard for the orderly execution of transactions during the closing period; or
- (3) constitutes spoofing (*i.e.*, bidding or offering with the intent to cancel the bid or offer before execution).

In 2013, the CFTC issued an interpretative guidance and policy statement regarding its disruptive trading practice authority.<sup>19</sup> The CFTC has used this expanded authority to aggressively prosecute disruptive trading activity.<sup>20</sup> For example, in *Panther*, the CFTC found that a trading firm and its principal designed an algorithm to place small orders on one side of the market and large orders on the opposing side of the market to give the impression of market interest and increase the likelihood that their small orders would be filled. The respondents settled the case for \$2.8 million, including \$1.4 million in disgorgement and a civil monetary penalty of \$1.4 million. The trading firm's principal has been indicted on criminal charges for manipulation and fraud.<sup>21</sup>

More recently, in April 2015, the CFTC charged Navinder Singh Sarao (Sarao), a London-based trader, and his trading company, Nav Sarao Futures Limited PLC, with engaging in spoofing and layering activity involving E-mini S&P 500 futures contracts for the purpose of disrupting the market in order to facilitate related trading that netted him profits in excess of \$40 million.<sup>22</sup> The alleged wrongful trading occurred between April 2010 and April 2015, and included trading

<sup>17</sup> NFA News Release, "National Futures Association adopts recommendations from an independent analysis of NFA's Peregrine Financial Group audits" (Jan. 31, 2013), available at <http://www.nfa.futures.org/news/newsRel.asp?ArticleID=4185> (last visited Apr. 20, 2015).

<sup>18</sup> *Reauthorizing the CFTC: Market Participant Views*, Commodity Exchanges, Energy and Credit Subcommittee, House Committee on Agriculture, U.S. House of Representatives, 114th Cong., 1st Sess. (Mar. 25, 2015) (testimony of Daniel J. Roth, President and CEO, NFA), available at <http://www.nfa.futures.org/news/newsTestimony.asp?ArticleID=4567> (last visited Apr. 20, 2015).

<sup>19</sup> Antidistruptive Practices Authority, Interpretative Guidance and Policy Statement, 78 Fed. Reg. 31890 (May 28, 2013).

<sup>20</sup> See *In re Panther Energy Trading LLC, et al.*, CFTC Docket 13-26, Comm. Fut. L. Rep. (CCH) ¶ 32,686 (July 22, 2013); see also *Panther Energy Trading LLC, et al.*, CME/CBOT/NYMEX/COMEX Notice of Disciplinary Actions 11-8581 (July 22, 2013); *Michael Coscia*, Financial Conduct Authority Final Notice (July 3, 2013).

<sup>21</sup> U.S. Attorney's Office, Northern District of Illinois, Press Release, *High-Frequency Trader Indicted for Manipulating Commodities Futures Markets in First Federal Prosecution for "Spoofing"* (Oct. 2, 2014), available at [http://www.justice.gov/usao/iln/pr/chicago/2014/pr1002\\_01.html](http://www.justice.gov/usao/iln/pr/chicago/2014/pr1002_01.html) (last visited Apr. 20, 2015).

<sup>22</sup> *CFTC v. Nav Sarao Futures Limited PLC, et al.*, No. 1:15-cv-03398 (N.D. Ill. filed Apr. 17, 2015).

activity that the CFTC claimed contributed to the May 2010 “Flash Crash.” Sarao also was accused of wire and commodities fraud and manipulation in a criminal complaint in connection with the same activity.<sup>23</sup> The criminal action was filed in the US District Court for the Northern District of Illinois by the US Department of Justice on February 11, 2015, and also made public in April 2015.

The exchanges—and the CME Group exchanges in particular—have historically prosecuted disruptive trading practices as violations of just and equitable principles of trade or similar high-level standards.<sup>24</sup> In *Gola*, a Chicago Board of Trade (CBOT) Business Conduct Committee panel found that an employee of a CBOT-member firm engaged in a pattern of entering large orders in multiple futures products without the intent to trade. Specifically, the employee placed a small order to sell (buy) on the CME Globex electronic trading platform (Globex) and subsequently entered multiple large-lot buy (sell) orders at or near the best bid (offer) on Globex to create the appearance of an imbalance in buy/sell pressure. When the small order began trading, the employee canceled the large orders. The employee entered the large orders for the purpose of inducing other market participants to trade against the small orders resting on the other side of the book. The panel fined the employee \$65,000 and suspended his trading privileges for 10 days.

In September 2014, the CME Group exchanges adopted a new rule and published supporting guidance prohibiting certain disruptive trading practices.<sup>25</sup> Although the new rule provides a new explicit tool for prosecution, it primarily gives insight into specific conduct that the exchange has always considered disruptive. The new rule also requires intent for all violations. In January 2015, ICE Futures U.S. also issued a new rule and supporting guidance expressly prohibiting disruptive trading practices.<sup>26</sup> In some cases, the express language of the new rule is narrower than the CME Group exchanges’ rule; in others, the rule arguably captures more activity than would otherwise satisfy the express provisions of its counterpart’s rule.

Regardless, with different tests and standards applied by different exchanges and regulators, market participants may have a difficult time determining in advance whether certain trading activity is prohibited. Purposely placing and removing bids or offers on one side of the market solely to move the market to effectuate an execution on the same or opposite side is likely problematic under any test or standard.

## Off-exchange Transactions: EFRPs and Block Trades

CFTC regulations require that all transactions in commodity futures contracts be executed openly and competitively in a public auction market, unless the applicable exchange allows market participants to execute transactions non-competitively in accordance with its rules.<sup>27</sup> EFRPs and block trades are exceptions to the requirement that all transactions be executed openly and competitively. Failure to execute, document and report EFRPs and block trades strictly in accordance with applicable exchange rules violates the competitive execution requirement set forth in the CFTC regulations.

An EFRP transaction is a privately negotiated, off-exchange execution of an exchange futures or options contract and, on the opposite side of the market, the simultaneous execution of an equivalent quantity of the cash product, by-product, related product or over-the-counter derivative instrument corresponding to the asset underlying the exchange contract.

<sup>23</sup> *U.S. v. Sarao*, No. 1:15-cr-00075 (N.D. Ill. filed Feb. 11, 2015).

<sup>24</sup> See, e.g., *Stephen Gola*, CBOT Notice of Disciplinary Action 12-8860-BC (Jan. 22, 2015).

<sup>25</sup> See CME/CBOT/NYMEX/COMEX Rule 575; Disruptive Practices Prohibited, CME Group Market Regulation Advisory Notice RA1405-5R (Sept. 15, 2014).

<sup>26</sup> See ICE Futures U.S. Rule 402(l); ICE Futures U.S., Disruptive Trading Practices FAQs (Jan. 2015).

<sup>27</sup> 17 C.F.R. § 1.38(a).

Among other things, the exchanges require EFRPs to be executed between independent parties, reported within a designated timeframe and documented consistent with commercial practice to support the actual transfer of exchange and related positions.<sup>28</sup> Contingent EFRPs, including transitory EFRPs, are prohibited.

Regulatory scrutiny on EFRPs has resulted in an increase in surveillance requests and exchange disciplinary actions.<sup>29</sup> For example, Deutsche Bank AG agreed to pay \$650,000 to ICE Futures U.S. for failing to maintain confirmation statements to support the physical legs of EFRP transactions involving foreign currency.<sup>30</sup>

In addition, a CBOT Business Conduct Committee panel fined Lakeview Energy LLC \$45,000 for engaging in multiple EFRPs in which it appeared on both sides of the transactions for the purpose of moving positions between two of its wholly owned subsidiaries.<sup>31</sup> These transactions were deemed to be improper wash trades. The panel also concluded that the transactions were not bona fide EFRPs because they lacked sufficient documentation of either the physical legs of the transactions or the corresponding cash positions.

Block trades are privately negotiated futures transactions that meet specified quantity thresholds and are permitted to be executed away from the public auction market. Exchange rules on block trades address, among other things, eligible parties to a block trade; minimum quantity thresholds; prohibitions on aggregating orders for multiple accounts, except by CTAs, investment advisors or foreign persons performing a similar role; reporting obligations; and prohibitions on pre-hedging or anticipatory hedging or otherwise taking advantage of non-public information prior to the execution of a block trade.<sup>32</sup>

Recent disciplinary actions reinforce the importance of executing block trades in strict compliance with Exchange rules. For example, in February 2014, an ICE Futures U.S. Business Conduct Committee panel found that Macquarie Bank Limited and one of its employees entered an order to take advantage of information that the firm received during pre-execution communications to a block trade in Sugar No. 11 futures and, in a separate incident, that Macquarie Bank Limited and its affiliate, Macquarie Futures USA, LLC, failed to report a block trade within the requisite timeframe.<sup>33</sup> In total, the panel fined the three respondents \$490,000.

In addition, in April 2015, Jefferies LLC was the subject of four distinct disciplinary actions by the CME Group exchanges related to alleged infractions involving block trades: (1) in all four actions, the firm was charged with failing to report block trades within the requisite time frame; (2) in two actions, the firm was charged with misreporting either the execution time or the transaction type of certain block trades; and (3) in one action, the firm was charged with aggregating block orders on one side of a transaction for different beneficial owners.<sup>34</sup> Jefferies was fined a total of \$75,000 for the four disciplinary actions.

<sup>28</sup> CME/CBOT/NYMEX/COMEX Rule 538; Exchange for Related Positions, CME Group Market Regulation Advisory Notice RA1311-5RR (Aug. 4, 2014); ICE Futures U.S. Rule 4.06; ICE Futures U.S., EFRP FAQs (Sept. 5, 2014).

<sup>29</sup> See CFTC Division of Market Oversight, Rule Enforcement Review of the Chicago Mercantile Exchange and Chicago Board of Trade (July 26, 2013) (finding that the exchanges did not review a sufficient number of EFRP transactions).

<sup>30</sup> *Deutsche Bank AG*, ICE Futures U.S. Notice of Disciplinary Action 2011-054 (Mar. 6, 2015).

<sup>31</sup> *Lakeview Energy LLC*, CBOT Notice of Disciplinary Action 14-9910 and NYMEX Notice of Disciplinary Action 14-9801 (Apr. 17, 2015).

<sup>32</sup> CME/CBOT/NYMEX/COMEX Rule 526; Block Trades, CME and CBOT Market Regulation Advisory Notice RA 1502-3 (Mar. 30, 2015); ICE Futures U.S. Rule 4.07; ICE Futures U.S., Block Trade FAQs (Nov. 14, 2014).

<sup>33</sup> *Macquarie Bank Limited, et al.*, ICE Futures U.S. Notice of Disciplinary Actions 2011-041 and 2012-084 (Feb. 28, 2014).

<sup>34</sup> *Jefferies LLC*, CBOT Notice of Disciplinary Action 12-9069, NYMEX Notice of Disciplinary Action 14-9931, COMEX Notice of Disciplinary Action 14-9932, CME Notice of Disciplinary Action 14-9941 (Apr. 17, 2015).

## Position Limits

The CFTC has proposed significant revisions to its rules and regulations on position limits.<sup>35</sup> While the date of adoption and implementation of the new rules is uncertain, the CFTC recently expressed a desire to finalize the position limit proposals by the end of 2015.<sup>36</sup> Notwithstanding the new proposals, the CFTC's existing position limit regime governs current trading activities.

Both the CFTC and exchanges have established limits on the speculative positions that may be owned or controlled by a particular trader without a hedge or other exemption.<sup>37</sup> These limits are applied on a net long or net short basis to both end-of-day and intraday positions; positions owned or controlled by a single trader or firm will generally be aggregated for purposes of applying the limits. Violations of exchange position limits also constitute violations of CFTC requirements.<sup>38</sup> Position limits must be complied with at all times—both on an intraday and an end-of-day basis.<sup>39</sup>

Positions held for bona fide hedging purposes, as defined by applicable law, rules or regulations, will not count toward the trader's speculative position; hedge exemptions may, however, be qualified, conditioned or otherwise limited.<sup>40</sup> An eligible entity—for example, a CTA or CPO—may claim the independent account controller (IAC) exemption for purposes of applying position limits.<sup>41</sup> Under such an exemption, an eligible entity that has authorized an IAC to trade client positions on its behalf is not required to aggregate positions controlled by the IAC with its own, provided that the IAC: (1) meets certain registration qualifications, such as being registered with the CFTC as a CTA; (2) acts independently of both its clients and other IACs; and (3) is authorized by an eligible entity to control trading decisions on behalf of, but without the day-to-day direction of, that entity.<sup>42</sup>

In lieu of position limits, the exchanges may impose accountability levels for certain products that have large open interest, high daily trading volumes or liquid cash markets.<sup>43</sup> Furthermore, the exchanges have consistently ordered disgorgement penalties, in addition to fines, for violations of their position limit rules.

In a recent CFTC action, a father and son agreed to pay \$525,000 for violating spot month speculative position limits in Live Cattle futures.<sup>44</sup> The violative positions were maintained in two accounts for separate feeding operations that, when aggregated, exceeded speculative position limits. Because the father and son directly or indirectly controlled the trading activity in both accounts, the CFTC concluded that the positions for such accounts must be aggregated for purposes of applying position limits.

---

<sup>35</sup> See Position Limits for Derivatives, Notice of Proposed Rulemaking, 78 Fed. Reg. 75680 (Dec. 12, 2013); Aggregation of Positions, Notice of Proposed Rulemaking, 78 Fed. Reg. 68946 (Nov. 15, 2013).

<sup>36</sup> See CFTC Energy and Environmental Markets Advisory Committee, Public Meeting (Feb. 26, 2015) (statement of Commissioner Sharon Bowen).

<sup>37</sup> 17 C.F.R. § 150.2; see, e.g., CME/CBOT/NYMEX/COMEX Rule 559.

<sup>38</sup> See 7 U.S.C. § 6a(e).

<sup>39</sup> CFTC Division of Market Oversight, Advisory Regarding Compliance with Speculative Position Limits (May 7, 2010); CME/CBOT/NYMEX/COMEX Rule 562; ICE Futures U.S. Rule 6.13.

<sup>40</sup> 17 C.F.R. § 150.3(a).

<sup>41</sup> 17 C.F.R. § 150.3(a)(4).

<sup>42</sup> 17 C.F.R. § 150.1(e).

<sup>43</sup> See, e.g., CME/CBOT/NYMEX/COMEX Rule 560.

<sup>44</sup> *In re Kenneth Wayne Thrasher, et al.*, CFTC Docket No. 14-29, Comm. Fut. L. Rep. ¶ 33,266 (Sept. 24, 2014).

The exchanges also have reinforced position limits through disciplinary actions. For example, a New York Mercantile Exchange Business Conduct Committee panel sanctioned an asset management firm \$100,000 for two separate incidents in which it: (1) maintained an intraday position in both Henry Hub Natural Gas Look-Alike Last Day Financial futures and Henry Hub Natural Gas futures during the last three trading days of an expiring contract; and (2) exceeded the position limits in Henry Hub Natural Gas Look-Alike Financial futures.<sup>45</sup> In addition, MBF Trading LLC was fined \$25,000 and ordered to disgorge \$125,000 for maintaining intraday positions on two separate occasions in excess of the appropriate exemption level in effect for such periods.<sup>46</sup>

## Conclusion

The CFTC, NFA and exchanges have continued to aggressively prosecute their rules and regulations. Importantly, market participants—Exchange members and non-members alike—that trade on an exchange expressly consent to jurisdiction of the Exchange and agree to be bound by, and to comply with, exchange rules.<sup>47</sup> To avoid regulatory exposure, CTAs and CPOs should: (1) establish, maintain, review and enforce policies and procedures reasonably designed to achieve compliance with the CEA, CFTC regulations and NFA and exchange rules; (2) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and (3) test the effectiveness of such procedures periodically to ensure ongoing compliance.

---

<sup>45</sup> *D.E. Shaw & Co., L.P.*, NYMEX Notice of Disciplinary Actions 12-9156 and 13-9632 (May 1, 2014).

<sup>46</sup> *MBF Trading LLC*, NYMEX Notice of Disciplinary Action 12-9073 (Dec. 18, 2014).

<sup>47</sup> CME/CBOT/NYMEX/COMEX Rule 418; ICE Futures U.S. Rule 4.00.

### Foreign Listed Stock Index Futures and Options Approvals

(April 2015)

Country/Exchange	Underlying	Futures Contracts	Options on Futures Contracts	Equity Options	ETF Options
Australia/ASX	1-Day Option Contract based on the CBOT Mini-Sized Dow Futures Contract	None offered	Approved for sale to U.S. Persons (August 8, 2006 No-Action Letter issued to Sydney Futures Exchange (SFE))	None offered	None offered
Australia/ASX	S&P/ASX 200	Approved for sale to U.S. Persons (July 24, 2002 No-Action Letter issued to ASX Futures Exchange)	None offered	Approved for Eligible U.S. Institutions (August 13, 2007 SEC No-Action Letter issued to ASX Limited)	Not approved
Australia/ASX	S&P/ASX 200 A-Reit	Not approved	None offered	Approved for Eligible U.S. Institutions (August 13, 2007 SEC No-Action Letter issued to ASX Limited)	None offered
Australia/ASX	S&P/ASX 200 A-Reit	None offered	None offered	Approved for Eligible U.S. Institutions (August 13, 2007 SEC No-Action Letter issued to ASX Limited)	None offered
Australia/ASX	Single name equities	None offered	None offered	Approved for Eligible U.S. Institutions (August 13, 2007 SEC No-Action Letter issued to ASX Limited)	None offered

44 Exchanges – 37 Countries – Regularly Updated

Access your complimentary copy here:  
[www.kattenlaw.com/foreignproducts](http://www.kattenlaw.com/foreignproducts)

For the definitions of "Eligible U.S. Institution" and "Eligible Option" and for other explanatory information, please see the endnotes at the end of this table.

1

## About Katten's Futures and Derivatives Group

We advise a broad spectrum of domestic and international market participants, including futures and derivatives clearing houses, exchanges, swap execution facilities, and swap data repositories. Our deep understanding of the global interplay between futures and OTC derivatives makes us uniquely qualified to help clients.

Among other matters, we assist clients with:

- regulatory requirements for exchange-traded and OTC derivatives across all asset classes and transaction types;
- collateral and margin arrangements;
- trading and sales practices;
- product structures;
- tax considerations;
- compliance procedures;
- contract termination and enforcement following insolvency and other defaults;
- preparation and negotiation of standardized and customized transaction documents; and
- regulatory inquiries, investigations, enforcement matters and other litigation.

Katten's Futures and Derivatives group is a part of the firm's Financial Services practice. Our US and UK attorneys also assist:

- investment managers and collective investment vehicles;
- banks and broker-dealers;
- swap dealers; and
- end users.

## Katten's Futures and Derivatives Team

### CHICAGO



**KEVIN M. FOLEY**  
 +1.312.902.5372  
 kevin.foley@kattenlaw.com



**ARTHUR W. HAHN**  
 +1.312.902.5241  
 arthur.hahn@kattenlaw.com



**CHRISTIAN B. HENNION**  
 +1.312.902.5521  
 christian.hennion@kattenlaw.com



**ROSS PAZZOL**  
 +1.312.902.5554  
 ross.pazzol@kattenlaw.com

### NEW YORK



**LANCE A. ZINMAN**  
 +1.312.902.5212  
 lance.zinman@kattenlaw.com



**HENRY BREGSTEIN**  
 +1.212.940.6615  
 henry.bregstein@kattenlaw.com



**WENDY COHEN**  
 +1.212.940.3846  
 wendy.cohen@kattenlaw.com



**GUY DEMPSEY**  
 +1.212.940.8593  
 guy.dempsey@kattenlaw.com

### LONDON



**GARY DEWAAL**  
 +1.212.940.6558  
 gary.dewaal@kattenlaw.com



**ALLISON C. YACKER**  
 +1.212.940.6328  
 allison.yacker@kattenlaw.com



**CAROLYN H. JACKSON**  
 +44.0.20.7776.7625  
 carolyn.jackson@kattenlaw.co.uk



**NATHANIEL LALONE**  
 +44.0.20.7776.7629  
 nathaniel.lalone@kattenlaw.co.uk