positions with the eligible entity’s client positions or accounts carried by an authorized independent account controller, as defined in §151.1, except for the spot month provided in physical-delivery Referenced Contracts, provided, however, that the eligible entity has complied with the requirements of paragraph (h) of this section, and that the overall positions held or controlled by such independent account controller may not exceed the limits specified in §151.4.

(1) Additional requirements for exemption of Affiliated Entities. If the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(i) Have, and enforce, written procedures to preclude the affiliated entities from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities; provided, however, that such procedures may provide for the disclosure of information which is reasonably necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(ii) Trade such accounts pursuant to separately developed and independent trading systems;

(iii) Market such trading systems separately; and

(iv) Solicit funds for such trading by separate disclosure documents that meet the standards of §4.24 or §4.34 of this chapter, as applicable where such disclosure documents are required under part 4 of this chapter.

(g) Exemption for underwriting. Notwithstanding any of the provisions of this section, a person need not aggregate the positions or accounts of an owned entity if the ownership interest is based on the ownership of securities constituting the whole or a part of an unsold allotment to or subscription by such person as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(h) Notice filing for exemption. (1) Persons seeking an aggregation exemption under paragraph (c), (e), (f), or (i) of this section shall file a notice with the Commission, which shall be effective upon submission of the notice, and shall include:

(i) A description of the relevant circumstances that warrant disaggregation; and

(ii) A statement certifying that the conditions set forth in the applicable aggregation exemption provision has been met.

(2) Upon call by the Commission, any person claiming an aggregation exemption under this section shall provide to the Commission such information concerning the person’s claim for exemption. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person’s aggregation exemption for failure to comply with the provisions of this section.

(3) In the event of a material change to the information provided in the notice filed under this paragraph, an updated or amended notice shall promptly be filed detailing the material change.

(4) A notice shall be submitted in the form and manner provided for in §151.10.

(i) Exemption for federal law information sharing restriction. Notwithstanding any provision of this section, a person is not subject to the aggregation requirements of this section if the sharing of information associated with such aggregation would cause either person to violate Federal law or regulations adopted thereunder and provided that such a person does not have actual knowledge of information associated with such aggregation. Provided, however, that such person file a prior notice with the Commission detailing the circumstances of the exemption and an opinion of counsel that the sharing of information would cause a violation of Federal law or regulations adopted thereunder.

§ 151.8 Foreign boards of trade.

The aggregate position limits in §151.4 shall apply to a trader with positions in Referenced Contracts executed
§ 151.9 Pre-existing positions.

(a) Non-spot-month position limits. The position limits set forth in §151.4(b) of this chapter may be exceeded to the extent that positions in Referenced Contracts remain open and were entered into in good faith prior to the effective date of any rule, regulation, or order that specifies a position limit under this part.

(b) Spot-month position limits. Notwithstanding the pre-existing exemption in non-spot months, a person must comply with spot month limits.

(c) Pre-Dodd-Frank and transition period swaps. The initial position limits established under §151.4 shall not apply to any swap positions entered into in good faith prior to the effective date of such initial limits. Swap positions in Referenced Contracts entered into in good faith prior to the effective date of such initial limits may be netted with post-effective date swap and swaptions for the purpose of applying any position limit.

(d) Exemptions. Exemptions granted by the Commission under §1.47 for swap risk management shall not apply to swap positions entered into after the effective date of initial position limits established under §151.4.

§ 151.10 Form and manner of reporting and submitting information or filings.

Unless otherwise instructed by the Commission or its designees, any person submitting reports under this section shall submit the corresponding required filings and any other information required under this part to the Commission as follows:

(a) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission; and

(b) Not later than 9 a.m. Eastern Time on the next business day following the reporting or filing obligation is incurred unless:

(1) A 404A filing is submitted pursuant §151.5(d), in which case the filing must be submitted at least ten business days in advance of the date that transactions and positions would be established that would exceed a position limit set forth in §151.4;

(2) A 404 filing is submitted pursuant to §151.5(c) or a 404S is submitted pursuant to §151.5(f), the filing must be submitted not later than 9 a.m. on the third business day following a position has exceeded the level in a Referenced Contract for the first time and not later than the third business day following each calendar month in which the person exceeded such levels;

(3) The filing is submitted pursuant to §151.6, then the 401 or 404, or their respective alternatives as provided for under §151.6(d), shall be submitted within ten business days following the quarter in which the person holds a position in excess in the visibility levels provided in §151.6(a); or

(4) A notice of disaggregation is filed pursuant to §151.7(h), in which case the notice shall be submitted within five business days of when the person claims a disaggregation exemption.

(e) When the reporting entity discovers errors or omissions to past reports, the entity so notifies the Commission and files corrected information in a form and manner and at a time as may be instructed by the Commission or its designee.