

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-80042; File No. TP 17-04)

February 14, 2017

ORDER GRANTING LIMITED CONDITIONAL EXEMPTION FROM RULE 200(c) OF REGULATION SHO TO MAGNITUDE SPECIAL INVESTMENTS PORTFOLIO FUND, LTD.

I. INTRODUCTION

By letter dated February 14, 2017 (the “Request Letter”), Magnitude Capital, LLC (“Magnitude”), an investment adviser registered under the Investment Advisers Act of 1940 (“Advisers Act”),¹ requested an exemption on behalf of Magnitude Special Investments Portfolio Fund, Ltd. (“MSIPF”) from the requirement in Rule 200(c) of Regulation SHO² to have a net long position in a security to be deemed to own such security for purposes of Rule 200(c), subject to certain conditions. The requested exemption would permit executing brokers to mark sell orders for sub-accounts of MSIPF placed by Magnitude and certain third-party asset managers (“Third-Party Managers”) that manage certain sub-accounts on behalf of MSIPF based on MSIPF’s net position at a sub-account level in the manner set forth below.

II. BACKGROUND

Substantially all of Magnitude’s assets under management are attributable to private funds of hedge funds sponsored and managed by Magnitude (the “Funds”). The Funds consist of, among other things: (1) “feeder” funds in which end investors purchase interests (the “Feeder Funds”); and (2) “master” funds in which the Feeder Funds (and in some cases other master funds) pool their capital (“Master Funds”). The Master Funds invest their capital directly or indirectly with Third-Party Managers, generally by investing in private investment funds sponsored and/or managed by such managers, or by investing with Third-Party Managers

¹ 15 U.S.C. § 80b-1 *et seq.*

² 17 CFR 242.200(c).

through separately managed accounts. MSIPF is a Cayman Islands exempted company directly and indirectly jointly owned by Master Funds. Magnitude invests a portion of the Master Funds' assets with Third-Party Managers via separately managed accounts held through MSIPF. MSIPF currently has two prime brokerage accounts, each of which has multiple sub-accounts.

Magnitude and MSIPF have entered into sub-advisory agreements with Third-Party Managers pursuant to which Magnitude, on behalf of MSIPF, has delegated full investment discretion to each Third-Party Manager with respect to assets of one or more sub-accounts of MSIPF ("Managed Sub-Accounts"). Among other things, each Third-Party Manager has the authority to select executing brokers and to place orders for securities transactions with those brokers with respect to its Managed Sub-Account(s). As an SEC-registered investment adviser, pursuant to Advisers Act Rule 204-2,³ Magnitude represents that it maintains records showing all purchases, sales, receipts, and deliveries of securities for Managed Sub-Accounts, including records as to whether each sell order was entered as long, short, or short exempt.

Magnitude represents that the Third-Party Managers for MSIPF are independent of Magnitude and each other, including in the following respects. First, no Third-Party Manager is affiliated with Magnitude or with any other Third-Party Manager. Second, each Third-Party Manager is physically separate from the other Third-Party Managers and has its own office space, facilities, and personnel. Third, each Third-Party Manager's investment strategies and objectives are developed independently. Fourth, no Third-Party Manager⁴ has access to information regarding holdings or transactions in any sub-account managed by any other Third-Party Manager. Fifth, each Third-Party Manager uses its own separate trading systems and

³ 17 CFR 275.204-2.

⁴ The reference to Third-Party Manager here and elsewhere in this Order, as appropriate, includes any natural person associated with the Third-Party Manager.

infrastructure.⁵ Sixth, except as described below, Third-Party Managers do not coordinate their trading or investment activities with Magnitude⁶ or with any other Third-Party Manager.

Seventh, Magnitude has established policies and procedures limiting persons directly supervised by Magnitude from sharing information regarding any Third-Party Manager's holdings, transactions, or investment strategy with respect to an account or sub-account of MSIPF with any other Third-Party Manager.

Magnitude may establish and from time to time modify risk management goals and investment guidelines and otherwise monitor positions and performance across MSIPF's sub-accounts, and may perform hedging activities in connection with such risk management analysis. Magnitude has access to and reviews reports containing information on the holdings of Managed Sub-Accounts on a T+1 basis.

Magnitude may direct or effect hedging activities in one or more separate sub-accounts owned by MSIPF that are managed directly and solely by Magnitude (and not by any Third-Party Manager) to reduce MSIPF's and/or the Master Funds' overall exposure to broad market risks (such sub-accounts, "Hedging Sub-Accounts"). Magnitude has access to current information on the holdings of Hedging Sub-Accounts. When evaluating hedging activities, Magnitude may analyze market exposures of an individual Managed Sub-Account, of multiple Managed Sub-Accounts, of MSIPF in the aggregate, or of the Master Funds. To date, all hedges: (1) have been designed to reduce long market exposure for individual Managed Sub-Accounts based on analysis of that Managed Sub-Account's broad market exposure; (2) have been implemented through short sales of broad-market ETFs within Hedging Sub-Accounts or

⁵ Third-Party Managers may use systems and infrastructure provided by the same service providers; however, those systems and infrastructure operate independently of each other and do not provide Third-Party Managers with information regarding account holdings or transactions of other Third-Party Managers.

⁶ The reference to Magnitude here and elsewhere in this Order, as appropriate, includes any natural person associated with Magnitude.

through index swaps; and (3) have been rebalanced on a periodic basis (typically no more frequently than monthly) based on the relevant Managed Sub-Accounts' broad market exposure. Magnitude investment personnel who participate in these activities are not involved in directing or effecting individual trades for any Managed Sub-Account.

Magnitude may have approval rights over certain individual transactions for MSIPF where a Third-Party Manager proposes a principal transaction or a cross trade between MSIPF and another client account unaffiliated with Magnitude and MSIPF for which the Third-Party Manager has investment discretion. Such approval rights are designed to require Magnitude's consent to transactions that are subject to potential conflicts of interest between the Third-Party Manager and MSIPF, and thus are for the protection of MSIPF and its indirect investors. Magnitude also may have approval rights over certain transactions proposed by a Third-Party Manager that deviate from agreed-upon investment guidelines, such as investments in privately issued securities or non-ordinary course transactions in municipal bonds.

III. MARKING REQUIREMENT UNDER RULE 200(g) OF REGULATION SHO AND REQUEST FOR RELIEF

Rule 200(g) of Regulation SHO requires a broker or dealer to mark all sell orders of any equity security as "long," "short," or "short exempt," based on, among other things, whether "the seller is deemed to own the security being sold pursuant to [Rule 200(a) through (f)] . . ." ⁷ In particular, Rule 200(c) provides that a "person shall be deemed to own securities only to the extent that he has a net long position in such securities." ⁸

Magnitude requests exemptive relief for MSIPF from the requirement in Rule 200(c) for MSIPF to have a net long position in a security in order to be deemed to own such security for

⁷ 17 CFR 242.200(g); 17 CFR 242.200(a) – (f).

⁸ 17 CFR 242.200(c).

purposes of Rule 200(c), subject to certain conditions described below. The requested exemption would permit MSIPF's executing brokers to mark sell orders placed:

- by a Third-Party Manager on behalf of MSIPF, as "long" or "short" (or "short exempt") based on the net position of the Managed Sub-Account(s) managed by that Third-Party Manager on behalf of MSIPF, and not based on the net position of all accounts and sub-accounts owned by MSIPF; or
- by Magnitude on behalf of a Hedging Sub-Account, as "long" or "short" (or "short exempt") based on the net position of the Hedging Sub-Account(s) managed by Magnitude on behalf of MSIPF, and not based on the net position of all accounts and sub-accounts owned by MSIPF.

Magnitude represents that netting the positions of all accounts and sub-accounts of MSIPF for order marking purposes is impractical because Magnitude and Third-Party Managers use separate trading systems and infrastructure and creating a system that nets for positions across Magnitude and Third-Party Managers would be cost prohibitive.⁹ In addition, for Third-Party Managers, doing so would require pre-trade sharing of sensitive confidential and proprietary information regarding Third-Party Managers' portfolios. Magnitude suggests that this would make it possible for Third-Party Managers to trade, for their other customers' or their own accounts, on information about other Third-Party Managers' pending transactions and/or established positions for MSIPF's account. Magnitude asserts that each Third-Party Manager's position and order information is central to its competitive advantage, and failing to protect that information would pose potential harm to the Third-Party Manager's other advisory clients (for example, other managers "crowding in" on pending trades may impact execution prices). In

⁹ As discussed above, Magnitude has access to, and reviews reports, containing, information on the holdings of Managed Sub-Accounts on a T+1 basis.

addition, Magnitude asserts that requiring MSIPF's Third-Party Managers to share that information with other managers would likely make those Third-Party Managers unwilling to do business with MSIPF, thus disadvantaging MSIPF's ultimate investors (*i.e.*, investors in the Feeder Funds) by making Third-Party Manager expertise unavailable to them.

IV. DISCUSSION

On the basis of the facts and representations, and in particular on the conditions set out below, the Commission finds that it is appropriate in the public interest, and is consistent with the protection of investors, to grant MSIPF¹⁰ an exemption¹¹ from the requirement in Rule 200(c) of Regulation SHO to have a net long position in a security in order to be deemed to own the security with respect to an order to sell the security submitted by a Third-Party Manager¹² to a broker-dealer for execution for a Managed Sub-Account¹³ managed by the Third-Party Manager, or submitted by Magnitude¹⁴ to a broker-dealer for execution for a Sub-Hedging Account.¹⁵

This exemption is subject to a number of conditions designed to advance the goals of

¹⁰ The Order defines "MSIPF" to mean Magnitude Special Investments Portfolio Fund, Ltd., a Cayman Islands exempted company.

¹¹ Section 36(a) of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission, by rule, regulation or order, to exempt, either conditionally or unconditionally, any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. § 78mm(a)(1).

¹² The Order defines "Third-Party Manager" to mean an unaffiliated third-party asset manager with which Magnitude and MSIPF have entered into a sub-advisory agreement pursuant to which Magnitude, on behalf of MSIPF, has delegated full investment discretion with respect to the assets of a specified sub-account or specified sub-accounts. The order also notes that, where applicable, "Third-Party Manager" shall also include natural persons associated with such Third-Party Manager.

¹³ The Order defines "Managed Sub-Account" to mean a sub-account of MSIPF managed by a Third-Party Manager.

¹⁴ The Order defines "Magnitude" to mean Magnitude Capital, LLC, an investment adviser registered with the Commission pursuant to the Advisers Act. The order also notes that, where applicable, "Magnitude" shall also include any natural person associated with Magnitude.

¹⁵ The Order defines "Sub-Hedging Account" to mean an account or sub-account of MSIPF that is managed directly and solely by Magnitude (and not by any Third-Party Manager) to reduce MSIPF's overall exposure to broad market risks or to reduce the overall exposure to broad market risks of the Master Funds that directly or indirectly own MSIPF.

Regulation SHO, including ensuring accurate marking of sale orders and reducing persistent fails to deliver. First, MSIPF will be deemed to own the security for purposes of Rules 200(c) of

Regulation SHO¹⁶ only if:

- with respect to an order to sell the security submitted by a Third-Party Manager, all Managed Sub-Accounts managed by the Third-Party Manager submitting the order to sell have, in the aggregate, a net long position in the security at the time the order to sell is submitted by the Third-Party Manager (as determined in accordance with the Order, as described below) equal to or in excess of the total number of shares to be sold in the order; or
- with respect to an order to sell the security submitted by Magnitude, all Sub-Hedging Accounts managed by Magnitude have, in the aggregate, a net long position in the security at the time such order to sell is submitted by Magnitude (as determined in accordance with the Order, as described below) equal to or in excess of the total number of shares to be sold in the order.

This condition is designed to ensure that MSIPF is deemed to own the security that is the subject of a sell order submitted by a Third-Party Manager or Magnitude, for order marking and other specified purposes, only if all of the sub-accounts managed by the Third-Party Manager or by Magnitude, on behalf of MSIPF (as applicable), have, in the aggregate, a net long position in the security equal to or in excess of the total number of shares to be sold in the order. In other words, this condition requires the “net long” determination to be performed at the level of the

¹⁶ The focus of Magnitude’s request for relief from Rule 200(c) is on order marking under Rule 200(g) of Regulation SHO. However, the exemption from Rule 200(c) is equally applicable to other provisions of Regulation SHO that also require a determination as to whether MSIPF is deemed to own a security under Rule 200(c), including the marking of an order as “short exempt” under Rule 201(d)(1), the exclusion in Rule 203(b)(2)(ii) from the prohibition on accepting short sale orders under certain circumstances in Rule 203(b)(1), and the limited exception in Rule 204(a)(2) from the close-out requirement of Rule 204(a).

relevant sub-account(s) of MSIPF.

The second and third conditions require the Third-Party Manager or Magnitude, depending on who is submitting the order to sell the security, to:

- determine the net position of all sub-accounts managed by the Third-Party Manager or by Magnitude in the security on a real-time basis for purposes of the Order by aggregating the long positions in the security that MSIPF is deemed to own pursuant to Rule 200(b) of Regulation SHO and the short positions in the security in the relevant sub-accounts at the time the order is submitted;¹⁷ and
- solely for purposes of whether the seller is deemed to own the security being sold, inform the broker-dealer to whom the order is submitted whether the order should be marked “long” or “short,” provided that the Third-Party Manager or Magnitude shall inform the broker-dealer that the order should be marked “long” only if the relevant sub-accounts have a net long position in the security, calculated in the manner described above, that is equal to or in excess of the total number of shares to be sold in the order.

Conditions two and three specify the manner in which the Third-Party Manager or Magnitude is to determine the net position of the relevant sub-accounts in the security being sold, and requires the Third-Party Manager or Magnitude to inform the executing broker-dealer whether the order should be marked “long” or “short” based on the net position of the relevant sub-accounts and the number of shares to be sold in the order.

Fourth, for transactions conducted by Magnitude involving equity securities in Sub-Hedging Accounts, Magnitude cannot have transparency into the holdings of any Managed Sub-

¹⁷ In determining the net position in such security, the Order requires the Third-Party Manager and Magnitude to follow the guidance on pending unexecuted sell orders contained in Questions 2.5, 2.5(A), 2.5(B), 2.5(C) and 2.6 of Responses to Frequently Asked Questions Concerning Regulation SHO, available at: <http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

Account during the trading day. This condition is consistent with Magnitude's representation regarding its access to holdings and transaction information of Managed Sub-Accounts on a T+1 basis, and supports limiting Magnitude's obligation to determine net position at the level of the relevant sub-account(s) of MSIPF. In other words, if Magnitude were to have transparency into the overall holdings of MSIPF during the trading day, there would be no operational reason why it would not be able to determine a net position across all accounts and sub-accounts of MSIPF in placing an order.

Fifth, Magnitude is required to establish, maintain, and enforce written policies and procedures reasonably designed to comply with the conditions under paragraphs (3) and (4) of the Order. Magnitude also is required to establish, maintain, and enforce written policies and procedures reasonably designed to ensure compliance by Third-Party Managers with the conditions under paragraph (2) of the Order, including, but not limited to, written policies and procedures requiring each Third-Party Manager to implement policies and procedures reasonably designed to comply with the conditions under paragraph (2) of the Order and requiring Magnitude to surveil, at least weekly, for compliance by Third-Party Managers, to promptly address any issues identified by such surveillance,¹⁸ and to document in its books and records the results of such surveillance, any efforts to address identified issues, and the results of any such efforts. This condition is designed to help ensure that both Magnitude and the Third-Party Managers comply with the terms of the Order. In this regard, we note that Magnitude has direct relationships with MSIPF's prime brokers as well as the Third-Party Managers, and is in the best

¹⁸ The Order makes clear that, at a minimum, Magnitude's written policies and procedures to promptly address any issues identified by such surveillance must require that: (1) if Magnitude determines that an order was not correctly marked in accordance with Regulation SHO and this Order, Magnitude will promptly provide, or cause the relevant Third-Party Manager to provide, corrected data to the relevant broker-dealers; and (2) if Magnitude determines that any short sale order was improperly marked long, Magnitude will promptly purchase, or cause the relevant Third-Party Manager or prime broker to purchase, sufficient shares to settle the transaction.

position to identify order marking issues and remediate them.¹⁹

Sixth, Magnitude is required to be registered with the Commission as an investment adviser pursuant to the Advisers Act, and, as a registered investment adviser, pursuant to Advisers Act Rule 204-2, to maintain accurate books and records in connection with its advisory business, including, but not limited to, records showing all purchases, sales, receipts, and deliveries of securities for all Managed Sub-Accounts and all Sub-Hedging Accounts and all other debits and credits to the sub-accounts, including records as to whether each sell order for the sub-accounts was entered as long, short, or short exempt, the sub-account for which each transaction was placed, and the names of executing and clearing brokers for each transaction, and records of each security in which each sub-account has a position, which show the amount and interests of such position and the location of each security. This condition ensures that the Commission has the ability to engage in regulatory oversight over Magnitude and the activities of all sub-accounts of MSIPF.

Seventh, Magnitude is required to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that each Third-Party Manager is separate and independent from Magnitude and from each other Third-Party Manager, including, but not limited to, written policies and procedures requiring: (1) that Magnitude does not direct trading of, or coordinate trading with, a Third-Party Manager on a real-time basis and that Third-Party Managers do not direct trading of, or coordinate trading with, any other Third-Party Manager or Magnitude;²⁰ (2) that each Third-Party Manager's trading strategy and trading activities are

¹⁹ Cf. *In re Oz Management, LP*, Exchange Act Rel. No. 75445 (ALJ Jul. 14, 2015) (finding that Oz Management, LP, as a registered investment adviser, caused its prime brokers to keep inaccurate books and records in violation of Section 17(a) of the Exchange Act and Rules 17a-3(a)(3) and 17a-25 thereunder by providing inaccurate trade type information regarding its net position).

²⁰ The Order makes clear that this does not include Magnitude's approval rights over certain individual transactions that are subject to conflicts of interest (as necessary to comply with Section 206(3) of the Advisers

separate from, and independent of, Magnitude²¹ and each other Third-Party Manager; (3) that no Third-Party Manager is affiliated with Magnitude or with any other Third-Party Manager; (4) that each Third-Party Manager is physically separate from the other Third-Party Managers and Magnitude and does not share office space, facilities, management, or personnel with any other Third-Party Manager or Magnitude; (5) that each Third-Party Manager pursues only its own separate and independently developed investment objective(s) and strategy(ies) as documented in an individually tailored sub-advisory agreement; (6) that each Third-Party Manager uses its own separate trading systems and infrastructure that do not share trading or position information with other Third-Party Managers; (7) that each Third-Party Manager is subject to confidentiality and non-disclosure agreements with Magnitude and/or MSIPF with respect to strategy, trading, and position information for MSIPF and does not share such information with any other Third-Party Manager; (8) that Magnitude does not share information regarding any Third-Party Manager's positions, transactions, or investment or trading strategy for MSIPF with any other Third-Party Manager; and (9) that there are no allocations or transfers of securities between or among MSIPF sub-accounts managed by different Third-Party Managers or Magnitude. This condition is designed to help ensure that each Third-Party Manager is separate and independent from Magnitude and from each other Third-Party Manager. We believe that this condition limits or prevents the potential for abuses that could arise if information is shared or trading is coordinated among Third-Party Managers or with Magnitude and helps to ensure that the net position of the relevant sub-account(s) managed by each Third-Party Manager and by Magnitude is maintained

Act or as necessary for Magnitude to carry out its fiduciary duty to MSIPF with respect to any cross-trade between a Managed Sub-Account and another client of a Third-Party Manager) or that deviate from agreed-upon investment guidelines. The Order also makes clear that this does not include Magnitude establishing and from time to time modifying the risk management goals and investment guidelines or otherwise monitoring positions and performance across MSIPF's sub-accounts, or performing hedging activities in connection with such risk management analysis.

²¹ The Order makes the same caveats with respect to this provision as the prior provision. *See id.*

independently and separately. More generally, we believe that this condition supports limiting the obligation to determine net position at the level of the relevant sub-account(s) of MSIPF. In other words, without separation and independence, there would be no operational reason why net position could not be determined across all accounts and sub-accounts of MSIPF.

Eighth, Magnitude is required annually to document in its books and records, based on an annual review by Magnitude, any deficiencies in compliance with the conditions of the Order by Magnitude or by any Third-Party Manager discovered during the annual review as well as specific efforts to address identified issues, and the results of any such efforts and the time period in which remediation is expected to occur. This condition is designed to help ensure compliance with the conditions of the Order by Magnitude and by Third-Party Managers, and to provide the Commission with information to facilitate regulatory oversight over Magnitude and the activities of all sub-accounts of MSIPF under the Order.

Finally, all books and records required under the Order are required to be maintained by Magnitude consistent with its recordkeeping obligations under Advisers Act Rule 204-2. This condition makes clear that the books and records required under the Order must be maintained by Magnitude in a manner consistent with its Advisers Act recordkeeping obligations.

V. CONCLUSION

IT IS HEREBY ORDERED, pursuant to Section 36(a) of the Exchange Act, that, with respect to any order to sell a security submitted by a Third-Party Manager (as defined below) to a broker-dealer for execution for a Managed Sub-Account (as defined below) managed by such Third-Party Manager, or submitted by Magnitude (as defined below) to a broker-dealer for execution for a Sub-Hedging Account (as defined below), MSIPF (as defined below) shall be exempt from the requirement in Rule 200(c) of Regulation SHO to have a net long position in such security in order to be deemed to own such security, subject to the following conditions:

1. MSIPF shall be deemed to own such security for purposes of Rules 200(c) of Regulation SHO only if either:
 - (a) all Managed Sub-Accounts managed by such Third-Party Manager have, in the aggregate, a net long position in such security at the time such order to sell is submitted by such Third-Party Manager (as determined in accordance with paragraph (2)(a)) equal to or in excess of the total number of shares to be sold in such order; or
 - (b) all Sub-Hedging Accounts have, in the aggregate, a net long position in such security at the time such order to sell is submitted by Magnitude (as determined in accordance with paragraph (3)(a)) equal to or in excess of the total number of shares to be sold in such order; and
2. At the time any Third-Party Manager submits any order to sell a security to a broker-dealer for execution for a Managed Sub-Account managed by such Third-Party Manager, such Third-Party Manager shall:
 - (a) determine the net position of all Managed Sub-Accounts managed by such Third-Party Manager (“Third-Party Manager’s Sub-Accounts”) in such security on a real-time basis for purposes of this Order by aggregating the long positions in such security that MSIPF is deemed to own pursuant to Rule 200(b) of Regulation SHO and the short positions in such security, each such position in the Third-Party Manager’s Sub-Accounts at the time such order is submitted;²² and
 - (b) solely for purposes of whether the seller is deemed to own the security being sold, inform such broker-dealer whether such order should be marked “long” or “short,”

²² In determining the net position in such security, the Third-Party Manager shall also follow the guidance on pending unexecuted sell orders contained in Questions 2.5, 2.5(A), 2.5(B), 2.5(C) and 2.6 of Responses to Frequently Asked Questions Concerning Regulation SHO, available at: <http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

provided that such Third-Party Manager shall inform such broker-dealer that such order should be marked “long” only if the Third-Party Manager’s Sub-Accounts have a net long position in such security, as determined under subparagraph (a), that is equal to or in excess of the total number of shares to be sold in such order; and

3. At the time Magnitude submits any order to sell a security to a broker-dealer for execution for a Sub-Hedging Account, Magnitude shall:
 - (a) determine the net position of all Sub-Hedging Accounts in such security on a real-time basis for purposes of this Order by aggregating the long positions in such security in all Sub-Hedging Accounts that MSIPF is deemed to own pursuant to Rule 200(b) of Regulation SHO and the short positions in such security in all Sub-Hedging Accounts at the time such order is submitted;²³ and
 - (b) solely for purposes of whether the seller is deemed to own the security being sold, inform such broker-dealer whether such order should be marked “long” or “short,” provided that Magnitude shall inform such broker-dealer that such order should be marked “long” only if MSIPF has a net long position in such security, as determined under subparagraph (a), that is equal to or in excess of the total number of shares to be sold in such order; and
4. Any transactions involving equity securities in Sub-Hedging Accounts shall be conducted by Magnitude without transparency into the holdings of any Managed Sub-Account during the trading day, consistent with Magnitude’s access to holdings and transaction information of Managed Sub-Accounts on a T+1 basis; and

²³ In determining the net position in such security, Magnitude shall also follow the guidance on pending unexecuted sell orders contained in Questions 2.5, 2.5(A), 2.5(B), 2.5(C) and 2.6 of Responses to Frequently Asked Questions Concerning Regulation SHO, available at: <http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

5. Magnitude shall establish, maintain, and enforce written policies and procedures reasonably designed to comply with the conditions under paragraphs (3) and (4) of this Order, as well as establish, maintain, and enforce written policies and procedures reasonably designed to ensure compliance by Third-Party Managers with the conditions under paragraph (2) of this Order, including, but not limited to, written policies and procedures requiring each Third-Party Manager to implement policies and procedures reasonably designed to comply with the conditions under paragraph (2) of this Order and requiring Magnitude to surveil, at least weekly, for compliance by Third-Party Managers, to promptly address any issues identified by such surveillance,²⁴ and to document in its books and records the results of such surveillance, any efforts to address identified issues, and the results of any such efforts; and
6. Magnitude is registered with the Commission as an investment adviser pursuant to the Advisers Act, and as a registered investment adviser, pursuant to Advisers Act Rule 204-2, Magnitude maintains accurate books and records in connection with its advisory business, including, but not limited to, records showing all purchases, sales, receipts, and deliveries of securities for all Managed Sub-Accounts and all Sub-Hedging Accounts and all other debits and credits to such sub-accounts, including records as to whether each sell order for such sub-accounts was entered as long, short, or short exempt, the sub-account for which each transaction was placed, and the names of executing and clearing brokers for each transaction, and records of each security in which each such sub-account has a

²⁴ At a minimum, Magnitude's written policies and procedures to promptly address any issues identified by such surveillance shall require that: (1) if Magnitude determines that an order was not correctly marked in accordance with Regulation SHO and this Order, Magnitude shall promptly provide, or cause the relevant Third-Party Manager to provide, corrected data to the relevant broker-dealers; and (2) if Magnitude determines that any short sale order was improperly marked long, Magnitude shall promptly purchase, or cause the relevant Third-Party Manager or prime broker to purchase, sufficient shares to settle the transaction.

position, which shall show the amount and interests of such position and the location of each security; and

7. Magnitude shall establish, maintain, and enforce written policies and procedures reasonably designed to ensure that each Third-Party Manager is separate and independent from Magnitude and from each other Third-Party Manager, including, but not limited to, written policies and procedures requiring: (i) that Magnitude does not direct trading of, or coordinate trading with, a Third-Party Manager on a real-time basis and that Third-Party Managers do not direct trading of, or coordinate trading with, any other Third-Party Manager or Magnitude;²⁵ (ii) that each Third-Party Manager's trading strategy and trading activities are separate from, and independent of, Magnitude²⁶ and each other Third-Party Manager; (iii) that no Third-Party Manager is affiliated with Magnitude or with any other Third-Party Manager; (iv) that each Third-Party Manager is physically separate from the other Third-Party Managers and Magnitude and does not share office space, facilities, management, or personnel with any other Third-Party Manager or Magnitude; (v) that each Third-Party Manager pursues only its own separate and independently developed investment objective(s) and strategy(ies) as documented in an individually tailored sub-advisory agreement; (vi) that each Third-Party Manager uses its own separate trading systems and infrastructure that do not share trading or position information with other Third-Party Managers; (vii) that each Third-Party Manager is

²⁵ Except to the extent that Magnitude may have approval rights over certain individual transactions that are subject to conflicts of interest (as necessary to comply with Section 206(3) of the Advisers Act or as necessary for Magnitude to carry out its fiduciary duty to MSIPF with respect to any cross trade between a Managed Sub-Account and another client of a Third-Party Manager) or that deviate from agreed-upon investment guidelines. Further, except to the extent that Magnitude may establish and from time to time modify the risk management goals and investment guidelines and otherwise monitor positions and performance across MSIPF's sub-accounts, and may perform hedging activities in connection with such risk management analysis.

²⁶ *Id.*

subject to confidentiality and non-disclosure agreements with Magnitude and/or MSIPF with respect to strategy, trading, and position information for MSIPF and does not share such information with any other Third-Party Manager; (viii) that Magnitude does not share information regarding any Third-Party Manager's positions, transactions, or investment or trading strategy for MSIPF with any other Third-Party Manager; and (ix) that there are no allocations or transfers of securities between or among MSIPF sub-accounts managed by different Third-Party Managers or Magnitude; and

8. Magnitude shall annually document in its books and records, based on an annual review by Magnitude, any deficiencies in compliance with the conditions of this Order by Magnitude or by any Third-Party Manager discovered during the annual review as well as specific efforts to address identified issues, and the results of any such efforts and the time period in which remediation is expected to occur; and
9. All books and records required under this Order shall be maintained by Magnitude consistent with its recordkeeping obligations under Advisers Act Rule 204-2.

For purposes of this Order:

- 1) "Magnitude" shall mean Magnitude Capital, LLC, an investment adviser registered with the Commission pursuant to the Advisers Act. Where applicable, "Magnitude" shall also include any natural person associated with Magnitude.
- 2) "Managed Sub-Account" means a sub-account of MSIPF managed by a Third-Party Manager.
- 3) "MSIPF" shall mean Magnitude Special Investments Portfolio Fund, Ltd., a Cayman Islands exempted company.
- 4) "Sub-Hedging Account" shall mean an account or sub-account of MSIPF that is managed directly and solely by Magnitude (and not by any Third-Party Manager) to reduce MSIPF's

overall exposure to broad market risks or to reduce the overall exposure to broad market risks of the master funds that directly or indirectly own MSIPF.

5) “Third-Party Manager” shall mean an unaffiliated third-party asset manager with which Magnitude and MSIPF have entered into a sub-advisory agreement pursuant to which Magnitude, on behalf of MSIPF, has delegated full investment discretion with respect to the assets of a specified sub-account or specified sub-accounts. Where applicable, “Third-Party Manager” shall also include natural persons associated with such Third-Party Manager.

* * *

In the event that any material change occurs in the facts or representations in the Request Letter, Magnitude shall promptly present the facts to staff in the Division of Trading and Markets for consideration. This exemption is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder.²⁷

²⁷ 15 U.S.C. §§ 78i(a) and 78j(b); 17 CFR 240.10b-5.

Responsibility for compliance with these and any other applicable provisions of the federal securities laws rests with the persons relying on this exemption. This Order should not be considered a view with respect to any other question that the Request Letter, or any activities undertaken pursuant to this exemption, may raise, including, but not limited to, the applicability of other federal or state securities or other laws and rules to the proposed activities.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Eduardo A. Aleman
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(11).