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Division of
Market Oversight

CFTC Letter No. 17-45
No-Action
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Division of Market Oversight

Conditional Time-Limited No-Action Relief from Filing Certain Ownership and Control Reports (OCR) Required by Parts 17, 18 and 20 of the Commission's Regulations

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Dear Mr. Batteh and Ms. Lurton:

This letter is in response to a request from The Futures Industry Association ("FIA") dated August 15, 2017 (the "FIA Request"), and a request from the Commodity Markets Council ("CMC") dated August 28, 2017 (the "CMC Request" and, collectively with the FIA Request, the "Requests"), to the Division of Market Oversight ("DMO") of the Commodity Futures Trading Commission ("CFTC" or "Commission"), on behalf of affected reporting entities (in the case of the FIA Request) and affected carry brokers and reportable traders (in the case of the CMC Request) that are required to submit certain reports under Parts 17, 18 and 20 of the Commission's regulations. In the Requests, CMC and FIA requested no-action relief from certain data reporting requirements of Parts 17, 18 and 20 of the Commission's regulations that were implemented pursuant to the Ownership and Control Reports ("OCR") final rule.[1]

In the FIA Request, FIA stated that:

> Notwithstanding considerable effort, Reporting Parties are still unable to fully comply with certain aspects of the OCR Final Rule and will likely be unable to comply with such aspects due to some

[1] Ownership and Control Reports, Forms 102/102S, 40/40S, and 71; Final Rule, 78 FR 69178 (November 18, 2013) (hereinafter, "OCR Final Rule"). Terms not otherwise defined in this letter shall have the meaning assigned to them in the OCR Final Rule or in the Commission's regulations.

> of the rule's problematic requirements[, which] FIA has been discussing . . . with Commission staff since the release of the OCR Final Rule.

Consequently, in the FIA Request, FIA sought "an extension of the no-action relief provided in CFTC NAL 16-32 until such time as these portions of the OCR Final Rule are further considered during a formal rulemaking process" and certain additional relief.[2] Specifically, FIA requested no-action relief:

- for failure to report any Natural Person Controller information on Forms 102A and 102B;
- extending the existing relief for failure to report accounts with a trading volume below 250 contracts in a product on a given day;
- extending the existing relief with respect to swap execution facility ("SEF") volume threshold accounts and clarifying that Reporting Parties will not be required to report volume threshold accounts with respect to activity on a SEF via Form 102B until the relevant aspect of the OCR Final Rule is considered during a formal rulemaking process;
- extending the relief allowing Reporting Parties to modify the names of trading account owners and volume threshold account owners by the third business day following the date on which the respective accounts become reportable;
- extending the relief making it optional to report on Form 102S the name of omnibus account originators and all related address and contact fields, all consolidated account owner fields, and all consolidated account controller fields; and
- from the requirement to annually refresh Forms 102A, 102B and 102S, as set forth in §§ 17.02(b)(4), 17.02(c)(4) and 20.5(a)(5).

FIA also asked that version 5.1 of the OCR Technical Guidance Document be amended "to remove the semantic meaning associated with 0, 1, and 2 values of the Client Reporting Issue attribute" (or provide no-action relief clarifying that the meaning associated with such values will be disregarded), but still allow those values to be reflected in OCR submissions because Reporting Parties had programmed their systems to enter a value for the Client Reporting Issue attribute.

Similarly, in the CMC request, CMC stated that:

> despite their diligent efforts, members of CMC that are Reportable Traders have struggled to fully comply with all obligations regarding their preparation and submission of Revised Form 40s to the CFTC. Moreover complying with their obligations has proven to be very burdensome, time consuming and costly . . . because of[:] the additional information required by the revised form; the ambiguity of certain questions in the revised form; the potential obligation of Reportable Traders to update and maintain the

[2] DMO issued no-action letter 16-32 ("NAL 16-32") in response to a request from FIA on behalf of its members that are required to submit certain reports under Parts 17, 18 and 20 of the Commission's regulations and is available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-32.pdf. NAL 16-32 extended the time period for relief, which was itself previously granted and extended in several prior no-action letters, from certain reporting obligations under the OCR Final Rule.

> accuracy of information they provide on a Revised Form 40 – all without any formal guidance by Division staff; and the difficulty in submitting and amending Revised Form 40s to the CFTC electronically through its portal.[3]

Consequently, like FIA, CMC requested both an extension of the existing relief in NAL 16-32 and certain additional relief. Specifically, CMC requested no-action relief that would expressly authorize Reportable Traders:

- to file Form 40 without completing question 12; and
- to update and maintain the accuracy of any information they previously provided to the CFTC on a Form 40 only as expressly requested in a special call.

Based on the representations in the Requests, DMO believes that an additional extension of much of the time-limited no-action relief under NAL 16-32 is warranted, as is the additional relief sought in the Requests. As more fully set forth below, DMO is therefore providing such extended and additional relief from certain reporting obligations implemented by the OCR Final Rule. DMO recommends that, although this letter is organized by OCR form (i.e., 40 and 102) and—within the OCR form sections—by question on those forms, Reporting Parties (as defined below in § I) should read the entire letter.

The no-action relief provided herein shall remain in effect with respect to each obligation covered by the relief until the earlier of: (a) the later of the applicable effective date or compliance date of a Commission action addressing such obligation and (b) September 28, 2020.[4] For purposes of the foregoing sentence, the term "Commission action" may include, without limitation, a rulemaking or order addressing an obligation covered by the relief set forth in this letter. DMO staff plans to use the period of relief to consider whether to recommend that the Commission pursue changes to the OCR Final Rule.

I. Cooperation of Customers and Counterparties

The no-action relief granted in this letter may be relied upon by all parties that are obligated to report pursuant to the OCR Final Rule on Form 102A, Form 102B, Form 102S, Form 40 or Form 40S (collectively, "Reporting Parties"), as specified in the relevant relief in each section of this letter, subject to the applicable conditions set forth in this letter.

Because (1) Reporting Parties must in some cases obtain from their customers or counterparties the information necessary to submit the OCR forms described below, (2) the no-action relief granted in this letter reduces the number of OCR form questions in response to which customers and counterparties must provide information to Reporting Parties and (3) the cooperation of such customers and counterparties is essential to the implementation of the OCR Final Rule, **to the extent such customers or counterparties are otherwise covered by no-action relief provided herein with respect to Forms 40 or 40S, it is a condition of that relief that such customers**

[3] CMC defined a "Reportable Trader" as "every trader who owns, holds, or controls a reportable futures and options . . . position and every volume threshold account controller, person who owns a volume threshold account, reportable subaccount controller or person who owns a reportable subaccount[.]"
[4] At 11:59 p.m. Eastern Time.

or counterparties provide timely,[5] accurate and complete OCR data to Reporting Parties promptly after a Reporting Party's request. Reporting Parties may deem it advisable to furnish either this letter, or a previously issued DMO advisory regarding OCR reporting,[6] to their customers or counterparties as a tool to encourage such customers and counterparties to provide the timely cooperation needed for Reporting Parties to comply with the OCR Final Rule.

II. No-Action Relief

Based on the representations made by CMC and FIA in, and in connection with, the Requests, DMO believes that the additional time-limited no-action relief set forth below is warranted to address certain reporting issues identified by the Requests.

A. Form 102 Relief

1. Form 102A Relief[7]

a. Question 10(ii): Relief from Accurately Reporting Trading Account Owner's Name by the Next Business Day after Reporting is Triggered

§ 17.02(b)(2)(i) requires the names of trading account owners in question 10(ii) to be reported by 9 a.m. on the business day following the day on which the account becomes reportable ("R+1"). In NAL 16-32, DMO granted time-limited no-action relief permitting Reporting Parties to modify such names until 9 a.m. on the third business day following the day on which the account becomes reportable ("R+3"). DMO believes such relief continues to be warranted.

Thus, during the period of no-action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for modifying by R+3 the names of trading account owners reported in response to question 10(ii), provided that such Reporting Party initially reported such owners by no later than R+1. This no-action relief applies to new filings (§ 17.01(a)) and change updates (§ 17.02(b)(3)) for trading accounts.

b. Question 10(iii): Relief from Reporting Trading Account Controller Identifying Information

Form 102A requires the reporting of various contact fields related to the trading account controller in question 10(iii). In NAL 16-32, DMO granted time-limited no-action relief permitting Reporting Parties to not report the phone number, name of employer, employer NFA ID, employer legal entity identifier, job title, relationship to owner, email address, or controller NFA ID in question 10(iii). DMO believes that such time-limited no-action relief continues to be warranted. DMO also believes that time-limited no-action relief is warranted related to the

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[5] Timely, in this context, means customers or counterparties must provide information to the Reporting Parties that are requesting it in time for the Reporting Parties to meet their applicable Form 102 reporting deadlines.

[6] See CFTC Staff Advisory No. 15-14 (Mar. 23, 2015), available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/15-14.pdf.

[7] When submitting Form 102A, Reporting Parties should report special accounts pursuant to § 17.00 on Form 102A on a disaggregated basis, if the parties have been so instructed by the Commission or its designee. All Reporting Parties should provide position reporting on Form 102A based on *control* of a special account. As an example, if a special account is controlled by one Reporting Party but owned by another, such account should be reported only by the Reporting Party that controls the special account. See the discussion on page 69184 of the OCR Final Rule for further information.

name of the trading account controller in question 10(iii) and all other "Follow-On Information" requested in question 10(iii).

Thus, during the period of no-action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report any of the information called for in question 10(iii).[8] This no-action relief applies to new filings (§ 17.01(a)), change updates (§ 17.02(b)(3)) and, if a reporting Party chooses to make such a filing notwithstanding the no-action relief granted herein with respect thereto, refresh updates (§ 17.02(b)(4)).[9] This no-action relief is premised on DMO being able to determine the identity of, and contact, the trading account controller by contacting the special account controller using the contact information set forth in question 7. Thus, this no-action relief is subject to the condition that the information in question 7 is complete.

c. Question 10(iii): Relief from Detailing the Specifics of Client Reporting Issues

In NAL 16-32, DMO granted no-action relief permitting Reporting Parties whose client(s) fail to provide the name and physical address of the trading account controller and the volume threshold account controller in response to question 10(iii) on Form 102A and question 6 on Form 102B, respectively, to instead report to the Commission that a client will not provide this information, or that the Reporting Party does not believe that the information provided by a client meets the requirements of the OCR Final Rule (each, a "Client Reporting Issue"), in lieu of reporting the data. In NAL 16-32, DMO also directed Reporting Parties to review the OCR Technical Guidance Document[10] for more information on how to inform the Commission of a Client Reporting Issue. In that regard, row 143 on page 77 of the "Data Dictionary for OCR Batch Header" section of the OCR Technical Guidance Document indicates that Reporting Parties should enter one of the following:

- 0 to indicate "All trading account controller information is avail[]able and reported on [the] form";
- 1 to indicate "Client did not provide"; or
- 2 to indicate "Data supplied by client does not appear to meet the CFTC definition of trading account controller" (each, a "0, 1 and 2 102A Description").

Although the foregoing Client Reporting Issue attributes were developed at FIA's request, in the FIA Request, FIA asked DMO to "remove the semantic meaning associated with 0, 1, and 2 values of the Client Reporting Issue attribute, but still allow these values to be submitted in the 102A and 102B filings." FIA explained that Reporting Parties have set up their systems to report 0, 1 or 2 and, to avoid system issues or the expense of reprogramming their systems to not report a value for the Client Reporting Issue attribute, some Reporting Parties wish to be able to report some value for the Client Reporting Issue attribute until this issue is resolved in a rulemaking.

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[8] See also § II.A.1.c. below for helpful procedural details regarding the relationship between the Client Reporting Issue attribute and question 10(iii).

[9] As noted in § II.A.4. below, DMO also is providing no-action relief from filing refresh updates.

[10] The current (as of the date of this letter) version (i.e., 5.1) of the OCR Technical Guidance Document is available at http://www.cftc.gov/idc/groups/public/@forms/documents/generic/ocrtechguide5.1.pdf. DMO expects that, if Commission staff prepares another version of the OCR Technical Guidance Document, they would post it on the OCR home page at http://www.cftc.gov/Forms/OCR/index.htm. The OCR home page contains important information related to the implementation of the OCR Final Rule, including the OCR Technical Guidance Document.

As indicated above in § II.A.1.b., because DMO expects to be able to contact the trading account controller through the special account controller, DMO is providing time-limited no-action relief permitting Reporting Parties to not report any information required by question 10(iii) on Form 102A. DMO believes this obviates the need to require, as a condition of such relief, reporting 0, 1 or 2 in the Client Reporting Issue attribute (the "0, 1 or 2 102A Condition"). Therefore, DMO is not requiring the 0, 1 or 2 102A Condition as a condition of the relief set forth above in § II.A.1.b., even though it was previously required as a condition of the trading account controller information relief in NAL 16-32.

While DMO believes it is unnecessary to update the OCR Technical Guidance Document for this purpose alone, DMO is also granting time-limited no-action relief permitting Reporting Parties who make use of the 0, 1 or 2 102A Condition to continue to do so without regard to the accuracy of the 0, 1 and 2 102A Description used (such relief, the "0, 1 or 2 102A Relief"). While the Commission had previously set up its systems to permit submitting a Form 102A without a particular account controller field only when the 0, 1 or 2 102A Condition was satisfied, Commission staff has adjusted the Commission's systems to permit submitting a Form 102A without any account controller fields (and a Form 102B without any volume threshold account controller fields) whether or not the 0, 1 or 2 102A Condition (or the 0, 1 or 2 102B Condition, as defined below in § II.A.2.d.) is satisfied ("System Update"). Thus, as a result of the 0, 1 or 2 102A Relief and the System Update, Reporting Parties will be able to submit a Form 102A without any particular account controller field irrespective of whether they omit the Client Reporting Issue attribute or enter 0, 1 or 2 in the Client Reporting Issue attribute field.

As was the case in NAL 16-32, this no-action relief applies to new filings (§ 17.01(a)), change updates (§ 17.02(b)(3)) and, if a reporting Party chooses to make such a filing notwithstanding the no-action relief granted herein with respect thereto, refresh updates (§ 17.02(b)(4)) submitted within the period of no-action relief.

2. Form 102B Relief

a. Relief from 50 Contract Designated Contract Market ("DCM") Volume Threshold Account Reporting Trigger

§ 17.01(b) requires reporting certain data on Form 102B if the 50 contract reporting threshold in § 15.04 (Reportable trading volume level) is crossed.[11] DMO believes that time-limited no-action relief continues to be warranted for the obligation to report on Form 102B in accordance with the 50 contract level. Thus, subject to the condition below, DMO will not recommend that the Commission commence an enforcement action, during the period of no-action relief, against a Reporting Party relying on this relief for failure to report a DCM volume threshold account based on a reportable trading volume level of 50 contracts, provided that such Reporting Party reports instead based on a reportable trading volume level of 250 or more contracts per day. This no-action relief applies to new filings (§ 17.01(b)), change updates (§ 17.02(c)(3)) and, if a reporting Party chooses to make such a filing notwithstanding the no-action relief granted herein with respect thereto, refresh updates (§ 17.02(c)(4)) for DCM volume threshold accounts.

b. Relief from Reporting SEF Volume Threshold Accounts

[11] § 15.04 provides that the volume quantity for purposes of Part 17 and Part 18 reports is "50 or more contracts, during a single trading day, on a single reporting market that is a . . . [DCM] . . . or a . . . [SEF] . . ., in all instruments that such reporting market designates with the same product identifier[.]"

DMO is aware of practical limitations regarding the reportable trading volume level, as defined in § 15.04, for SEF volume threshold accounts reported via Form 102B.[12] In light of these concerns regarding § 15.04 as it applies to SEFs, DMO believes that time-limited no-action relief continues to be warranted with respect to this reporting obligation. Thus, during the period of the no-action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report SEF volume threshold accounts via Form 102B, as required by Part 17.

c. Question 6: Relief from Reporting Volume Threshold Account Controller Identifying Information

For reasons parallel to those set forth in the first paragraph of § II.A.1.b., above, DMO believes that time-limited no-action relief is warranted related to all volume threshold account controller information requested in question 6. Thus, during the period of no-action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report any of the information called for in question 6.[13] This no-action relief applies to new filings (§ 17.01(b)), change updates (§ 17.02(c)(3)) and, if a reporting Party chooses to make such a filing notwithstanding the no-action relief granted herein with respect thereto, refresh updates (§ 17.02(c)(4)) for DCM volume threshold accounts. This no-action relief is premised on DMO being able to determine the volume threshold account controller by contacting the volume threshold account owner using the contact information set forth in question 5 and/or the Reporting Firm using the Reporting Firm Contact Information set forth on the Cover Sheet. Thus, this no-action relief is subject to the condition that the information in question 5 and the Reporting Firm Contact Information each is complete.

d. Question 6: Relief from Detailing the Specifics of Client Reporting Issues

In NAL 16-32, DMO granted no-action relief described above in § II.A.1.c. and directed Reporting Parties to the OCR Technical Guidance Document for more information on how to inform the Commission that a client will not provide the required information, or that the Reporting Party does not believe that the information provided by a client meets the requirements of the OCR Final Rule. In that regard, row 62 on page 123 of the "Data Dictionary for Form 102B – Identifying and reporting a volume threshold account" section of the OCR Technical Guidance Document indicates that Reporting Parties should enter one of the following:

- 0 to indicate "all volume threshold account controller information is available and reported on form";
- 1 to indicate "Client did not provide"; or

[12] See, e.g., FIA Petition for Amendment of the Ownership and Control Reports Rule (June 26, 2015), available at https://fia.org/articles/fia-asks-cftc-amend-ocr-rule ("FIA Petition"). The FIA Petition explained that, under the OCR Final Rule, to determine whether the reportable trading volume level (i.e., 50 contracts) has been reached, "a reporting entity must aggregate instruments with the same product identifier" and although the OCR Final Rule assumes that SEFs will create swap product identifiers, the Commission's regulations do not require it and that, without such identifiers, "a clearing member cannot aggregate contracts toward the 50-contract threshold for purposes of Form 102B."

[13] See also § II.A.2.d. below for helpful procedural details regarding the relationship between the Client Reporting Issue attribute and question 6.

- 2 to indicate "Data supplied by client does not appear to meet the CFTC definition of trading [sic][14] account controller" (each, a "0, 1 and 2 102B Description").

In the FIA Request, FIA asked DMO to "remove the semantic meaning associated with 0, 1, and 2 values of the Client Reporting Issue attribute, but still allow these values to be submitted in the 102A and 102B filings[,]" for the reasons stated above in § II.A.1.c.

As stated above in § II.A.2.c., because DMO should be able to contact the volume threshold account controller through the volume threshold account owner or the Reporting Firm, DMO is providing time-limited no-action relief permitting Reporting Parties to not report, any information required by question 6 on Form 102B. DMO believes that this obviates the need to require, as a condition of such relief, reporting 0, 1 or 2 in the Client Reporting Issue attribute (the "0, 1 or 2 102B Condition"). Therefore, DMO is not requiring the 0, 1 or 2 102B Condition as a condition of the relief set forth above in § II.A.2.c., even though it was previously required as a condition of the volume threshold account controller information relief in NAL 16-32.

While DMO believes it is unnecessary to update the OCR Technical Guidance Document for this purpose alone, DMO is also granting time-limited no-action relief permitting Reporting Parties who make use of the 0, 1 or 2 102B Condition to continue to do so without regard to the accuracy of the 0, 1 and 2 102B Description used (such relief, the "0, 1 or 2 102B Relief"). While the Commission had previously set up its systems to permit submitting a Form 102B without a particular volume threshold account controller field only when the 0, 1 or 2 102B Condition was satisfied, as a result of the 0, 1 or 2 102B Relief and the System Update (defined above in § II.A.1.c.), Reporting Parties will be able to submit a Form 102B without any particular volume threshold account controller field irrespective of whether they omit the Client Reporting Issue attribute or enter 0, 1 or 2 in the Client Reporting Issue attribute field.

As was the case in NAL 16-32, this no-action relief applies to new filings (§ 17.01(b)), change updates (§ 17.02(c)(3)) and, if a reporting Party chooses to make such a filing notwithstanding the no-action relief granted herein with respect thereto, refresh updates (§ 17.02(c)(4))[15] for DCM volume threshold accounts.

e. Question 5: Relief from Accurately Reporting Volume Threshold Account Owner's Name by the Next Business Day after Reporting is Triggered

§ 17.02(c)(2)(i) requires the names of DCM volume threshold account owners in question 5 to be reported by 9 a.m. on the business day following the day on which the volume threshold account becomes reportable ("VTA R+1"). In NAL 16-32, DMO granted time-limited no-action relief permitting Reporting Parties to modify such names until 9 a.m. on the third business day following the day on which the volume threshold account becomes reportable ("VTA R+3"). DMO believes such relief continues to be warranted.

Thus, during the period of no-action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for modifying by VTA R+3 the names of DCM volume threshold account owners reported in response to question 5, provided that such Reporting Party initially reported such owners by no later than VTA R+1. This no-action relief applies to new filings (§ 17.01(b)) and change updates (§ 17.02(c)(3)) for DCM volume threshold accounts.

[14] The word "trading" is a mistake and should instead be "volume threshold".
[15] As noted below, DMO is providing no-action relief from filing refresh updates. See § II.A.4. below.

3. Relief from Submitting Certain Information via Form 102S

Form 102S requires the reporting of several new data points. In NAL 16-32, DMO granted time-limited no-action relief permitting Reporting Parties to treat the following new data points as optional to report on Form 102S (and thus not required to be reported): the name of omnibus account originators, and all related address and contact fields (see question 3(ii) on Form 102S); all consolidated account owner fields (see question 3(iii) on Form 102S); and all consolidated account controller fields (see question 3(iv) on Form 102S). Reporting Parties relying on this relief were required instead to identify the consolidated account counterparty, and also report the required 102S information via the new automated methods introduced by the OCR Final Rule. DMO continues to believe that time-limited no-action relief is warranted.

Thus, during the period of no-action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report the Form 102S information set forth in the immediately preceding paragraph. Reporting Parties should refer to the OCR Technical Guidance Document for detailed specifications regarding the data points required to be reported on Form 102S. This no-action relief applies to new filings (§ 20.5(a)), change updates (§ 20.5(a)(4)), and, if a reporting Party chooses to make such a filing notwithstanding the no-action relief granted herein with respect thereto, refresh updates (§ 20.5(a)(5)).

4. Relief from Form 102A, Form 102B and Form 102S Refresh Updates

Part 17 contains regulations requiring Reporting Parties to conduct periodic refresh updates of the applicable Form 102.[16] In the FIA Request, FIA stated that "[g]iven that Reporting Parties have an obligation to regularly submit change updates with respect to data reported on a Form 102A, Form 102B and Form 102S, the separate obligation to also submit an annual refresh with respect to a particular form is redundant" and "request[ed] that DMO provide no-action relief to Reporting Parties with respect to the annual refresh requirements set forth in CFTC Rules 17.02(b)(4), 17.02(c)(4) and 20.5(a)(5)." DMO believes that this time-limited no-action relief is warranted. Thus, during the period of no-action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to comply with a refresh update requirement set forth in any of §§ 17.02(b)(4) (Form 102A), 17.02(c)(4) (Form 102B) or 20.5(a)(5) (Form 102S), as applicable. This relief is subject to the condition that a Reporting Party relying on the relief file timely and complete change updates required by §§ 17.02(b)(3) (Form 102A), 17.02(c)(3) (Form 102B) or 20.5(a)(4) (Form 102S), except that the relief will still apply if a change update is incomplete solely due to an uncooperative customer or counterparty.[17]

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[16] See §§ 17.02(b)(4) (Form 102A), 17.02(c)(4) (Form 102B) and 20.5(a)(5) (Form 102S). The refresh frequency is annually unless the Commission sets a more frequent refresh period (which cannot be more frequently than every six months). See id.

[17] It has come to DMO's attention that multiple Reporting Parties have neglected to file change updates to various forms to reflect corporate actions that change the ownership structure of the reporting entity. DMO reminds Reporting Parties that they must file change updates to the applicable form when: (1) a corporate action occurs that changes the ownership structure of the reporting entity; and (2) § 17.02(b)(3) (with respect to Form 102A), § 17.02(c)(3) (with respect to Form 102B) or § 20.5(a)(4) (with respect to Form 102S) requires such change to be reported.

To the extent an uncooperative customer or counterparty prevents a Reporting Party from filing a timely or complete change update, the affected Reporting Party should make a note of that using the applicable Client Reporting Issue attribute or otherwise advise DMO staff. As noted above in § I, **to the extent such customers or counterparties are otherwise covered by no-action relief provided herein with respect to Forms 40 or 40S, it is a condition of that relief that such customers or counterparties provide timely, accurate and complete OCR data to Reporting Parties promptly after a Reporting Party's request.**

B. Form 40 and Form 40S Relief

1. Relief from Providing Certain Information Required by Question 8

Question 8 on Forms 40 and 40S ("Question 8") requires Reporting Parties to "[l]ist all the parents of the reporting trader (including the immediate parent and any parent(s) of its parent) and, separately, all persons that have a 10 percent or greater ownership interest in the reporting trader (commodity pool investors are deemed to have an ownership interest in the pool)." For each such parent or 10 percent or greater owner ("Identified Party"), a Reporting Party must indicate whether the Identified Party is a legal entity or a natural person and whether it is a parent company, 10% owner or both ("Indicator Obligations"). For each Identified Party, a Reporting Party must also include the following information: name; street address; city; state; country; zip/postal code; phone number; Web site; email address; NFA ID (if any); and Legal Entity Identifier ("LEI") (if any).[18]

CMC claimed in its request that gathering and entering the information necessary to complete Question 8 is burdensome for Reporting Parties that have multiple Identified Parties. Accordingly, CMC requested relief permitting Reporting Parties to provide a single set of certain contact information for Question 8 for all Identified Parties[19] ("Limited Contact Information") rather than a unique set of contact information for each Identified Party ("Unique Contact Information"). DMO believes that time-limited no-action relief is warranted. Thus, during the period of no-action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to provide Unique Contact Information in Question 8 if (1) the Reporting Party instead provides Limited Contact Information, (2) the phone number and email address provided in the Limited Contact Information are monitored regularly during the Reporting Party's business hours and (3) the person(s) who monitor(s) such phone number and email address promptly provide to any CFTC staff requesting it the contact information for a person authorized to speak to CFTC staff about OCR matters on behalf of each Identified Party. For the avoidance of doubt, Reporting Parties remain obligated to (1) list all Identified Parties by name; (2) complete the Indicator Obligations for each Identified Party; (3) list an LEI (if any) for each Identified Party; and (4) list a Web site (if any) and NFA ID (if any) for each Identified Party in the circumstances set forth in footnote 9 on Form 40 (paraphrased in note 18 of this letter).

2. Relief from Answering Question 12

[18] The Web site and NFA ID are only required to be reported to the extent the Reporting Party has that information available in its records; Reporting Parties are not required to poll customers or other parties for that information if it has not been previously collected.

[19] That contact information is street address, city, state, country, zip/postal code, phone number, and email address.

Question 12 on Forms 40 and 40S requires Reporting Parties to "[l]ist any other person(s) that directly or indirectly influence, or exercise authority over, some or all of the trading of the reporting trader, but who do not exercise "control" as defined in this Form[.]" In the CMC Request, CMC asked for relief from the requirement to answer question 12, explaining in related communications that Reporting Parties were highly uncertain as to the scope of the "indirectly influence, or exercise authority over" language in question 12. DMO believes that time-limited no-action relief is warranted. Thus, during the period of no-action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to answer question 12 on Form 40 or Form 40S.

3. Response still Required for Question 13

CMC also conveyed Reporting Parties' similar uncertainty as to the scope of the "implied agreement or understanding" language in question 13 on Forms 40 and 40S. Unlike with respect to question 12, the relevant language in question 13 (i.e., implied agreement or understanding) has been in the Commodity Exchange Act ("CEA")[20] and Commission regulations for decades[21] and is contained in DCM[22] and SEF[23] rules. Moreover, the Commission[24] and the Authority[25]

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[20] See CEA § 4a(a)(1) (stating that position limits "shall apply to positions held by, and trading done by, two or more persons acting pursuant to an express or *implied agreement or understanding*") (emphasis added). See also page 3 of the March 28, 2011 letter from Cadwalader, Wickersham & Taft LLP to the Commission commenting on aggregation of positions for position limit purposes in response to the Commission's position limits notice of proposed rulemaking (76 Fed. Reg. 4752 (Jan. 26, 2011)) (noting that "CEA Section 4a[(a)], as originally passed by Congress in 1936, requires . . . when determining whether any person has exceeded its position limits, to include . . . trading done by 'two or more persons acting pursuant to an expressed or implied agreement or understanding'").

[21] See 150.4(a)(1) (Aggregation of positions) (stating that, for purposes of determining control or a 10% or greater ownership or equity interest, "positions or ownership or equity interests held by, and trading done or controlled by, two or more persons acting pursuant to an expressed or *implied agreement or understanding* shall be treated . . . as if . . . held . . . or . . . done or controlled by, a single person"); 150.5(g) (Aggregation) (stating that "[i]n determining whether any person has exceeded the limits established under this section [(Exchange-set speculative position limits)] . . . such limits upon positions shall apply to positions held by two or more person acting pursuant to an express or *implied agreement or understanding*, the same as if the positions were held by a single person") (emphasis added). The "implied agreement or understanding" language was contained in similar rules added to the Code of Federal Regulations by one of the Commission's predecessor agencies, the Commodity Exchange Authority ("Authority"), in 1962. See Findings of Fact, Conclusions, and Order Regarding Limits on Positions and Daily Trading in Certain Regulated Commodities, 27 Fed. Reg. 12366, 12367 (Dec. 13, 1962) (adding the following text as 17 C.F.R. 150.1(f), 150.2(f), 150.3(f), 150.4(f), 150.5(f), 150.6(g), 150.7(g), and 150.8(g): "limits upon positions and . . . daily trading shall be construed to apply . . . to positions held by, and trading done by, two or more persons acting pursuant to an expressed or *implied agreement or understanding* . . . as if the positions were held by, or the trading were done by, a single individual") (emphasis added).

[22] See, e.g., ICE Futures U.S., Inc. Regulatory Requirements, Rule 6.12(a), available at https://www.theice.com/publicdocs/rulebooks/futures_us/6_Regulatory.pdf ("position limits and . . . accountability levels . . . apply[,] . . . in the case of positions held by two . . . or more Persons acting pursuant to an expressed or *implied agreement or understanding*, the same as if . . . the positions were held by or the trading of the positions were done by, a single Person") (emphasis added).

[23] See, e.g., Bloomberg SEF LLC Rulebook, Rule 525(c), available at https://data.bloomberglp.com/professional/sites/4/BSEF-Rulebook-September-20-2016.pdf ("Position

have enforced such provisions several times, including in actions where the Commission ultimately found no violation.[26] To assist Reporting Parties in accurately completing Forms 40

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limits shall apply to . . . positions held by two or more Persons acting pursuant to an expressed or *implied agreement or understanding*, as if the positions were held by, or the trading of the positions were done by, a single Person") (emphasis added).

[24] See, e.g., CFTC v. Nelson Bunker Hunt, 591 F.2d 1211, 1218-1219 (7th Cir. 1979) (concluding that "the evidence presented in the district court clearly indicates that the individual positions of the family members should be aggregated", upholding the district court's decision that the transactions in question violated position limits and reciting several relevant facts, including that: the date, timing and size of a series of purchases by brothers Nelson Hunt and William Hunt were "virtually identical"; eight transactions on the same day using the same broker resulted in "virtually identical quantities and prices"; a Hunt Energy Corporation employee prepared statements for the brothers reflecting their combined holdings and unrealized profits and losses; shortly after William Hunt reached his personal position limit, he and his wife transferred their interest in Hunt Holdings, Inc., to their sons, one of which began buying soybean futures less than a week thereafter, financed in part by money advanced by his father; and William Hunt provided advances to fund some of Nelson Hunt's soybean futures trading).

[25] See, e.g., In re Samuel E. Cohen, Alan J. Cohen, Joel Cohen, and Ivar J. Blacker, 26 Agric. Dec. 801, CEA Docket No. 139 (Aug. 28, 1967) ("In re Cohen"), available at http://www.cftc.gov/idc/groups/public/@lrceacases/documents/ceacases/cohen-aug1967-365.pdf (concluding respondents acted pursuant to an express or implied agreement or understanding and exceeded position limits, stating "[i]t is difficult to imagine more convincing evidence of a "team" operation than that presented in this record" and reciting several relevant facts, including that: "respondents were business associates and met daily to discuss the various enterprises in which they were engaged"; Samuel Cohen paid his broker his own margin and a substantial portion of the margin required for the other respondents' trades, the broker sent all respondents' trade confirmations to Samuel Cohen's address; one of the respondents prepared all respondents' transaction and position reports submitted to the Authority; respondents regularly used new accounts when their existing accounts held positions at or near the limit; in each case, the first sale made for each new account was so large that if the sale had been made for any existing accounts, the position would have exceeded the limit; and in most instances, each sale made for any account already in the market was so large that no other account holding a position could have accommodated the sale without exceeding the limit; Alan Cohen "could not remember any market factor which influenced him in his trading"; and respondents "[a]dmittedly . . . had an understanding that they would trade on the same side of the market, and the facts in evidence show that the understanding was even broader").

[26] See, e.g., In the Matter of Gary K. Bielfeldt, Carlotta Bielfeldt and Bielfeldt & Co., CFTC Docket No. 96-1 (Dec. 2, 2004) ("Bielfeldt"), available at http://www.cftc.gov/files/ogc/oporders04/ogcbielfeldt12022004.pdf. In Bielfeldt, in response to respondents' appeal from holdings by a Commission administrative law judge ("ALJ") that (1) Gary Bielfeldt ("Bielfeldt") violated positon limits because he controlled the futures trading of his wife, Carlotta Bielfeldt, and thus was required, but failed, to aggregate her positions with others he owned or controlled and (2) the Bielfeldts and Bielfeldt & Co. (a futures commission merchant) were liable for related reporting violations, the Commission reversed the ALJ. While the Division of Enforcement ("DoE"), in a cross-appeal, contended that trading by seven additional Bielfeldt family members, friends and business associates also should have been aggregated with Bielfeldt's positions, urging the Commission to focus on "the fact that the level of trading was wholly out of character for anyone other than Bielfeldt[,]" the Commission dismissed the complaint for failure of proof. With respect to the Bielfeldt's daughters and two friends, the ALJ found, and the Commission concurred, that Bielfeldt, acting as a broker, gave trading advice and that the four traders had the ability to and did execute their own plans based on that advice. The Commission distinguished this fact pattern from other factors, such

and 40S, DMO is providing some examples of previous Commission (and pre-Commission) actions involving the "implied agreement or understanding" language to illustrate what the Commission has focused on in the past in this regard. Although Reporting Parties will need to consider their individual facts and circumstances when determining how best to answer question 13 on Forms 40 and 40S, DMO believes the authority cited herein in the footnotes to this § II.B.3. should help inform Reporting Parties in making that determination.

4. Relief from Change Updates

Unlike §§ 17.02(b)(3), 17.02(c)(3) and 20.5(a)(4), each of which are titled "Change updates" and contain requirements for Forms 102A, 102B and 102S, respectively, §§ 18.04 and 20.5(b) do not as clearly contain change update requirements for Forms 40 and 40S, respectively. Instead, (1) § 18.04(b) states that a Reporting Party must update its Form 40, after receiving a special call, "in accordance with the instructions thereto, at such time and place as directed in the call" (§ 20.5(b) contains similar language) and (2) the "When to update" paragraph of the Forms 40 and 40S instructions states that a Reporting Party is "under a continuing obligation, per direction in the special call, *to update and maintain the accuracy of the information it provides*" and explains that such Reporting Parties "can update this information by either visiting the CFTC's . . . portal to review, verify, and/or update their information, or . . . via FTP" (emphasis added).

CMC advised DMO in the CMC Request that "based on a review of sample special calls received by some Reportable Traders since November 18, 2016, the CFTC's form special call request does not appear to have been amended to address Reportable Traders' potential continuing Form 40 update obligation." In light of the foregoing, CMC requested that DMO grant no-action relief to provide certainty that a Reporting Party is permitted to update and maintain the accuracy of any information it previously provided to the CFTC on a Form 40 or Form 40S "only as expressly requested per direction in a Special Call issued by [DMO]."

DMO believes that, in light of different approaches to change updates in §§ 18.04 and 20.5(b) on the one hand and in §§ 17.02(b)(3), 17.02(c)(3) and 20.5(a)(4) on the other, time-limited no-action relief is warranted while DMO considers the issue of change, refresh and special call updates to Forms 40, 40S, 102A, 102B and 102S more broadly. Thus, during the period of no-

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as those in In re Volume Investors ([1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,234 (CFTC Feb. 10, 1992)) and In re Cohen (supra note 25) involving common trading patterns (In re Volume Investors) and collective decision making (In re Cohen). The Commission also noted that: (1) there was no evidence that Bielfeldt directed the trading in the accounts of his daughters and friends; (2) each of them was an experienced or professional trader; (3) each independently financed his/her own trading, with only one insignificant exception; (4) the proper focus was on whether the customer was sufficiently financially sophisticated to independently assess the broker's recommendations; and (5) a contrary rule would require brokers to aggregate the positions of all nondiscretionary account holders who are not professional traders. With respect to Carlotta Bielfeldt, the Commission found that DoE failed to carry its burden of proof to establish Bielfeldt's control, noting that: (1) Mrs. Bielfeldt testified at length regarding her independent financial resources accumulated through a series of successful investments over the years, including futures trading; (2) she stated that she decided to risk up to $2 million of her own money based on advice from numerous other sources in addition to her husband; (3) she followed the market "avidly" after establishing her positions; (4) contrary to her husband's advice, she initially traded options and switched to futures only after determining that she could not achieve her trading objectives through options; and (5) she explained that she exited the market on her own schedule, after reaching her trading objectives and in time to enjoy the holidays.

action relief, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party if it updates a previously filed Form 40 or Form 40S solely in response to a special call pursuant to § 18.04 or § 20.5(b), as applicable.

This letter expresses a staff position with respect to enforcement only and does not purport to state any legal conclusion. This letter and the no-action position taken herein represent DMO's views, and do not necessarily represent the positions or views of the Commission or of any other Commission division or office. This letter and the no-action position taken herein also are not binding on the Commission. Except as explicitly provided in this letter, the no-action positions taken herein do not excuse persons from compliance with any applicable requirements of the CEA or Commission regulations. Further, this letter, and the no-action position contained herein, is based upon the representations made to DMO. Any different, changed, or omitted material facts or circumstances might render this letter void. As with all DMO no-action letters, DMO retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

If you have any questions concerning this correspondence, please contact Dan Bucsa, Deputy Director, DMO—Data and Reporting Branch ("DAR"), at (202) 418-5435 or dbucsa@cftc.gov, Richard Mo, Special Counsel, DMO—DAR, at (202) 418-7637 or rmo@cftc.gov, or David E. Aron, Special Counsel, DMO—DAR, at (202) 418-6621 or daron@cftc.gov.

Sincerely yours,

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Amir Zaidi
Director
Division of Market Oversight