



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521

Division of  
Market Oversight

CFTC Letter No. 15-03  
No-Action  
February 10, 2015  
Division of Market Oversight

**Conditional Time-Limited No-Action Relief from  
Certain Ownership and Control (OCR) Data Reporting Requirements  
Under Parts 17, 18 and 20 of the Commission's Regulations:  
Replaces CFTC No-Action Letter No. 14-95**

February 10, 2015

Allison Lurton  
Senior Vice President and General Counsel  
The Futures Industry Association  
2001 Pennsylvania Avenue NW  
Suite 600  
Washington, DC 20006

Dear Ms. Lurton:

This letter is in response to your request dated January 22, 2015 (the "2015 FIA Letter"), to the Division of Market Oversight ("DMO" or "Division") of the Commodity Futures Trading Commission ("Commission"), on behalf of the members of the Futures Industry Association ("FIA") that are required to submit certain reports under Parts 15, 17, 18 and 20 of the Commission's regulations. In the 2015 FIA Letter, you 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 OCR Final Rule (as defined in section A below).

As discussed below, in July 2014, the Division provided time-limited no-action relief from several regulations implemented by the OCR Final Rule, in response to a previous request for no-action relief from the FIA.<sup>1</sup> This no-action letter replaces that 2014 no-action letter, CFTC Letter No. 14-95 ("2014 CFTC NAL"), to extend the time period for relief from certain reporting

---

<sup>1</sup> See CFTC Letter No. 14-95, dated July 23, 2014.

obligations under the OCR Final Rule. The no-action relief described in this letter may be relied upon by all parties that are obligated to report pursuant to the OCR Final Rule on any of New Form 102A, New Form 102B, New Form 102S, New Form 40/40S and New Form 71 (collectively, “Reporting Parties”), as such terms are defined below.

### **A. Background; OCR Final Rule**

On November 18, 2013, the Commission adopted new rules and related forms to enhance its identification of futures and swap market participants (the “OCR Final Rule”).<sup>2</sup> The OCR Final Rule expands upon the Commission’s pre-existing position and transaction reporting programs by requiring the electronic submission of trader identification and market participant data on updated Form 102 (“New Form 102”) and Form 40 (“New Form 40”), and on entirely new Form 71 (“New Form 71”). New Form 102 is subdivided into three parts (“New Form 102A,” “New Form 102B,” and “New Form 102S”).<sup>3</sup> New Form 102B is an entirely new form, introduced by the OCR Final Rule. Among other fields, the new and updated forms require the reporting of the following information:

- New Form 102A: a position-based reporting form, which requires the reporting of both special accounts and the trading accounts that comprise special accounts.
- New Form 102B: requires the reporting of trading accounts that exceed a stated volume threshold during a single trading day (“volume threshold accounts”), regardless of whether these positions remain open at the end of the day.
- New Form 102S: facilitates the electronic submission of 102S filings, and requires position-based reporting of consolidated accounts in the swaps market.
- New Form 40/40S: sent by the Commission to reporting traders via special call to collect identifying information regarding traders.
- New Form 71: sent by the Commission via special call to collect additional information on omnibus volume threshold accounts identified on New Form 102B.

The OCR Final Rule also amends Commission regulation § 18.05<sup>4</sup> to impose additional recordkeeping obligations upon certain categories of persons required by the rule to submit data to the Commission.

As discussed in the OCR Final Rule, the Commission has developed both a web-based portal and a secure FTP transmission method through which Reporting Parties will submit and update their reporting forms. The OCR Final Rule provides that Reporting Parties may submit the required

---

<sup>2</sup> Commission, 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 no-action letter shall have the meaning assigned to them in the OCR Final Rule or in the Commission’s regulations.

<sup>3</sup> Forms 102 and 40 (including 102S and 40S Filings) as they existed prior to the OCR Final Rule are referred to herein as “Legacy” forms and filings—i.e., Legacy Form 102, Legacy 102S Filing, Legacy Form 40, and Legacy 40S Filing.

<sup>4</sup> 17 CFR § 18.05.

information through either electronic submission method. The original compliance date of the OCR Final Rule was August 15, 2014.

Commission staff has undertaken a number of measures since the publication of the OCR Final Rule in November 2013 to assist reporting parties in implementing its requirements. Division staff has held bi-weekly calls with reporting parties since January 22, 2014 to discuss technical questions related to the OCR Final Rule.<sup>5</sup> Staff of the Commission's Office of Data and Technology ("ODT") began accepting OCR test files from reporting parties on May 7, 2014, and continues to work with Reporting Parties to address technical issues related to the OCR submission process. Finally, as discussed in the section below, the Division granted time-limited no-action relief from certain reporting obligations under the OCR Final Rule via the 2014 CFTC NAL.

## **B. Summary of FIA Requests**

**2014 Request for No-Action Relief.** By letter to the Division dated June 6, 2014, the FIA first requested no-action relief from certain data reporting requirements of Parts 17, 18 and 20 of the Commission's regulations implemented pursuant to the OCR Final Rule (the "2014 FIA Letter").

In the 2014 FIA Letter, the FIA represented that reporting firms were undertaking a number of tasks to build a secure, efficient and reliable technology infrastructure to house and deliver the data required by the OCR Final Rule. These undertakings by reporting firms included: (a) building a database to house the customer information resident in various systems within firms, as well as data not previously collected; and (b) expanding the data collection to include an entirely new class of reportable accounts triggered by the 102B volume threshold, among other tasks. The FIA further represented in the 2014 FIA Letter that the industry needed more time to educate clients of FIA member firms with reporting obligations and collect the new data required for OCR reporting. The FIA represented that questions raised by client representatives during the first half of 2014 indicated that the client community was not ready to supply information regarding account ownership and control required under the OCR Final Rule.

In response to the 2014 FIA Letter, the Division issued the 2014 CFTC NAL granting time-limited no-action relief from certain reporting obligations under the OCR Final Rule. More specifically, the 2014 CFTC NAL, subject to certain terms and conditions, granted no-action relief from: (a) electronically reporting via New Form 102A and New Form 102S until February 11, 2015; (b) electronically reporting via New Form 102B until March 11, 2015; and (c) electronically reporting via New Form 40/40S and New Form 71 until February 11, 2016.

**2015 Request for No-Action Relief.** In the 2015 FIA Letter, you represented that, notwithstanding the no-action relief provided by the 2014 CFTC NAL, the industry needs additional time to educate clients of FIA member firms with reporting obligations and collect the

---

<sup>5</sup> Calls with Reporting Parties are ongoing. The call schedule and other important information related to the implementation of the OCR Final Rule are available on the Commission's website at:

<http://www.cftc.gov/Forms/OCR>

new data required for OCR reporting. You further represented that reporting parties need additional time to explain the concepts of ownership and control to customers/counterparties.

In addition, you noted that New Form 102B reporting requires clearing members to aggregate instruments with the same product identifier in connection with their trading activity on both designated contract markets (DCMs) and swap execution facilities (SEFs).<sup>6</sup> You stated that although FIA has engaged in preliminary discussions with certain SEFs regarding setting product identifiers for swaps, product identifiers are not yet available on SEFs. You further represented that even after SEFs create product identifiers for swaps, a clearing member will need to expend significant time and resources to develop systems that recognize and collate each SEF product identifier.

Based on your representations in the 2015 FIA Letter, you requested that the Commission grant no-action relief permitting reporting parties to report to the Commission via Legacy Form 102 and the Legacy 102S Filing (in lieu of electronically reporting via New Form 102A and New Form 102S) until February 11, 2016, provided that parties simultaneously submit test data to the Commission according to a staggered testing schedule. You further requested no-action relief from the requirement to report DCM volume threshold accounts via New Form 102B until February 11, 2016.<sup>7</sup> Finally, you requested that clearing members should be permitted to exclude swaps traded on a SEF from the reportable trading volume in connection with New Form 102B until 120 days after SEFs, at the direction of the Commission, define product identifiers in connection with volume threshold accounts.

### **C. Division Response to 2015 FIA Letter**

Based on your representations in the 2015 FIA Letter, the Division believes that some extension of the time-limited no-action relief now in place under the 2014 CFTC NAL is warranted for certain reporting obligations under the OCR Final Rule. However, the Division does not believe it is appropriate to grant no-action relief from the requirement to report via New Form 102A, New Form 102B (with respect to DCM volume threshold accounts) and New Form 102S until February 11, 2016. Instead, the Division is granting no-action relief from the requirement to report via New Form 102A, New Form 102B (with respect to DCM volume threshold accounts) and New Form 102S until **September 30, 2015**, subject to certain conditions more fully described below.

The Division is extending no-action relief until September 30, 2015 for the reporting obligations described in the preceding paragraph, rather than February 11, 2016, for several reasons. The OCR Final Rule was first published in the Federal Register on November 18, 2013, which has given reporting parties over a year to review and implement the required electronic reporting methods. In addition, Division staff has been holding bi-weekly calls with reporting parties regarding technical implementation of the OCR Final Rule since January 22, 2014. ODT staff

---

<sup>6</sup> See the definition of “reportable trading volume level” applicable to New Form 102B reporting in regulation § 15.04, 17 CFR §15.04.

<sup>7</sup> See section C (1) below for the definition of “DCM volume threshold accounts” and “SEF volume threshold accounts.”

began accepting OCR test files from reporting parties on May 7, 2014. Finally, under the 2014 CFTC NAL the Division has already provided no-action relief from certain reporting requirements in the OCR Final Rule, and extended the reporting deadline from the original compliance date of August 15, 2014 to dates ranging between February 11, 2015 and February 11, 2016.<sup>8</sup> The Division believes that the additional time granted pursuant to this no-action letter will offer reporting parties ample time to complete the process of collecting ownership and control information from customers and other parties.

The Division is also granting no-action relief from the requirement to report via New Form 40/40S and New Form 71 until **February 11, 2016** and the requirement to report via New Form 102B (with respect to SEF volume threshold accounts) until **February 13, 2017**, subject to certain conditions more fully described below.

### **1. Summary of No-Action Relief.**

This no-action letter replaces the 2014 CFTC NAL. Based on the representations provided in the 2015 FIA Letter, the Division believes that the following time-limited no-action relief is warranted:

- **Relief from electronically reporting via New Form 102A until September 30, 2015 (see section D below);**
- **Relief from electronically reporting via New Form 102S until September 30, 2015 (see section F below);**
- **Relief from electronically reporting DCM volume threshold accounts<sup>9</sup> via New Form 102B until September 30, 2015 (see section G below); and**
- **Relief from electronically reporting SEF volume threshold accounts<sup>10</sup> via New Form 102B until February 13, 2017 (see section H below).**

This no-action letter also provides the following time-limited no-action relief with respect to the obligation to report via New Form 40/40S and New Form 71. This relief is unchanged from the 2014 CFTC NAL:

- **Relief from electronically reporting via New Form 40/40S and New Form 71 until February 11, 2016 (see section I below).**

As further described below, among other conditions, the no-action relief described above is subject to Reporting Parties continuing to report to the Commission via Legacy Form 102, the Legacy 102S Filing, Legacy Form 40 and the Legacy 40S Filing in accordance with the reporting requirements in place prior to the implementation of the OCR Final Rule.

---

<sup>8</sup> See the discussion of the 2014 CFTC NAL above.

<sup>9</sup> As used herein, “DCM volume threshold accounts” means volume threshold accounts on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Commodity Exchange Act (the “Act”).

<sup>10</sup> As used herein, “SEF volume threshold accounts” means volume threshold accounts on or subject to the rules of a reporting market that is a swap execution facility registered under section 5h of the Act.

Notwithstanding the no-action relief provided herein, the Division is not providing relief for the additional recordkeeping obligations imposed by regulation § 18.05, as amended by the OCR Final Rule.<sup>11</sup> The compliance date under the amended regulation for these obligations occurred on August 15, 2014.

The remainder of this no-action letter describes the time-limited no-action relief provided in response to the 2015 FIA Letter in more detail.

**D. Conditional No-action Relief from Submitting Information via New Form 102A  
Until 11:59 p.m. Eastern Time on September 30, 2015**

*Summary of Relief Granted:* The Division is providing relief from electronically reporting via New Form 102A until 11:59 p.m. Eastern Time on September 30, 2015, provided that Reporting Parties comply with the reporting practice that was in place prior to the implementation of the OCR Final Rule, by reporting via Legacy Form 102 (as such term is defined below) until 11:59 p.m. Eastern Time on September 30, 2015, or such earlier date that the Division may determine.

The Division believes that time-limited no-action relief is warranted for certain reporting obligations under Part 17 of the Commission's regulations that were implemented by the OCR Final Rule. Subject to the conditions below, the Division will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report via New Form 102A, as required by Part 17,<sup>12</sup> until **11:59 p.m. Eastern Time on September 30, 2015**.

The no-action relief described in this section D is subject to Reporting Parties reporting via Legacy Form 102 until 11:59 p.m. Eastern Time on September 30, 2015, or such earlier date that the Division may determine. Such reporting must be consistent in all respects with the time, form and manner of the Legacy Form 102 reporting practice. In particular, the no-action relief described in this section D is subject to Reporting Parties reporting via Legacy Form 102 in accordance with the following conditions and Appendix A hereto:<sup>13</sup>

- Report via Legacy Form 102
  - As used herein, "Legacy Form 102" refers to the Form 102 required prior to the implementation of the OCR Final Rule, which is available on the Commission's

---

<sup>11</sup> 17 CFR §18.05.

<sup>12</sup> See 17 CFR §§ 17.01(a), 17.01(d), 17.01(e) and 17.02(b).

<sup>13</sup> When submitting either Legacy Form 102 or New Form 102A, Reporting Parties should report special accounts pursuant to Commission regulation § 17.00 and on the applicable 102 form 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 the applicable 102 form 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 discussion in OCR Final Rule, 78 FR at 69184.

website.<sup>14</sup> See Appendix A hereto for additional instructions for completing Legacy Form 102 in accordance with the legacy reporting practice.

- Within three business days of the first day that a special account is reported to the Commission pursuant to § 17.00(a) by a futures commission merchant, clearing member, or foreign broker, in accordance with instructions by the Commission or its designee, such party must submit Legacy Form 102 to the Commission in accordance with instructions by the Commission or its designee, showing the information in paragraphs (a) through (f) of Appendix A hereto.
- On call by the Commission or its designee, a futures commission merchant, clearing member, or foreign broker must identify the type of special account specified by items 1(a), 1(b), or 1(c) of Legacy Form 102, and the name and location of the person to be identified in item 1(d) on Legacy Form 102, and submit such information by facsimile or telephone, in accordance with instructions by the Commission or its designee, on the same day that the special account in question is first reported to the Commission by such party.
- *Legacy Form 102 updates.* If, at the time an account is in special account status and a Legacy Form 102 filed by a futures commission merchant, clearing member, or foreign broker is then no longer accurate because there has been a change in the information required under paragraph (b) of Appendix A to this no-action letter since the previous filing, the futures commission merchant, clearing member, or foreign broker must file an updated Legacy Form 102 with the Commission within three business days after such change occurs.
- *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, reporting markets that list exclusively self-cleared contracts must submit and update Legacy Form 102, as the requirement to submit and update Legacy Form 102 applies to trading in such contracts by all clearing members, on behalf of all clearing members.
- The Legacy Form 102 reporting practice described above and on Appendix A is referred to herein as the “Legacy Form 102 reporting practice.”

The no-action relief described in this section D is also subject to the following condition in section E:

#### **E. Testing of Electronic Reporting Methods**

Prior to the implementation of electronic reporting on the dates described in this no-action letter, Reporting Parties are expected to cooperate with ODT staff as requested to test and implement any information technology standards or systems associated with the OCR Final Rule as contemplated in that rulemaking.<sup>15</sup> During this testing period, Reporting Parties are expected to

---

<sup>14</sup> See the link below to the Commission’s website for a copy of Legacy Form 102:

<http://www.cftc.gov/Forms/ssLINK/cftcform102>

<sup>15</sup> OCR Final Rule at 69188-69189.

provide “Production Grade” test data<sup>16</sup> and any other form filings requested by ODT staff,<sup>17</sup> in the form and manner described on the OCR testing page of the CFTC website.<sup>18</sup> The Division advises Reporting Parties to check the OCR testing page on a regular basis to review testing requirements.

ODT staff will divide the testing period for each form filing into several testing phases. During each phase, Reporting Parties are expected to submit an increasing number of data points on the form filings. By the end of each phase, Reporting Parties are expected to demonstrate their ability to submit all of the data points that are required for that phase. By the end of the final testing phase for a particular form, which will conclude prior to the date on which no-action relief expires for such form, Reporting Parties are expected to demonstrate their ability to submit all of the data points (using Production Grade data) that are required on the form. Finally, Reporting Parties are expected to provide status reports on their implementation efforts upon request by ODT.

#### **F. Conditional No-action Relief from Submitting Information via New Form 102S Until 11:59 p.m. Eastern Time on September 30, 2015**

*Summary of Relief Granted:* The Division is providing relief from electronically reporting via New Form 102S until 11:59 p.m. Eastern Time on September 30, 2015, provided that Reporting Parties comply with the reporting practice that was in place prior to the implementation of the OCR Final Rule, by reporting via the Legacy 102S Filing (as such term is defined below) until 11:59 p.m. Eastern Time on September 30, 2015, or such earlier date that the Division may determine.

The Division believes that time-limited no-action relief is warranted for certain reporting obligations under Part 20 of the Commission’s regulations that were implemented by the OCR Final Rule. Subject to the conditions below, the Division will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report via

---

<sup>16</sup> “Production Grade” data means (a) in the context of New Form 102A testing, data that, to the extent it overlaps, is identical to data submitted pursuant to Part 17 of the Commission’s regulations (Large Trader data and Trader Capture Report data); (b) in the context of New Form 102S testing, data that, to the extent it overlaps, is identical to data submitted pursuant to Part 20 of the Commission’s regulations (Commodity Swaps data); and (c) in the context of New Form 102B testing, data that is equivalent to the data that the Commission will receive following the implementation of electronic reporting on New Form 102B. Production Grade data will be used by the Commission only for testing purposes.

<sup>17</sup> The Commission will protect proprietary information consistent with the Freedom of Information Act, 5 U.S.C. 552, and 17 CFR part 145, “Commission Records and Information.” In addition, § 8(a)(1) of the Commodity Exchange Act, 7 U.S.C. §12(a)(1), strictly prohibits the Commission, unless specifically authorized by the Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

<sup>18</sup> See <http://www.cftc.gov/Forms/OCR>



New Form 102S, as required by Part 20,<sup>19</sup> until **11:59 p.m. Eastern Time on September 30, 2015.**

The no-action relief described in this section F is subject to Reporting Parties reporting via the Legacy 102S Filing until 11:59 p.m. Eastern Time on September 30, 2015, or such earlier date that the Division may determine. Such reporting must be consistent in all respects with the time, form and manner of the Legacy 102S reporting practice. In particular, the no-action relief described in this section F is subject to Reporting Parties reporting via the Legacy 102S Filing in accordance with the following conditions:

- Report via Legacy 102S Filings
  - Within three days following the first day that a counterparty consolidated account first becomes reportable, or at such time as instructed by the Commission upon special call, a reporting entity<sup>20</sup> must submit a 102S filing, which must consist of the name, address, and contact information of the counterparty and a brief description of the nature of such person's paired swaps and swaptions market activity (the "Legacy 102S Filing").<sup>21</sup>
  - A reporting entity may submit a Legacy 102S Filing only once for each counterparty, even if such persons at various times have multiple reportable positions in the same or different paired swaps or swaptions. However, reporting entities must update a Legacy 102S Filing if the information provided is no longer accurate.
  - The 102S reporting practice described above is referred to herein as the "Legacy 102S reporting practice."

The no-action relief described in this section F is also subject to Reporting Parties complying with the electronic reporting testing condition set out in section E above. Furthermore, Reporting Parties submitting New Form 102S during the testing period are expected to provide, in addition to the data fields required on New Form 102S, the name, address, and contact information of the reportable counterparty. ODT staff will provide additional information on the OCR testing page regarding the time and manner for reporting such counterparty information during the testing period for New Form 102S.

**G. Conditional No-action Relief from Submitting Information Regarding DCM Volume Threshold Accounts via New Form 102B Until 11:59 p.m. Eastern Time on September 30, 2015**

---

<sup>19</sup> See 17 CFR §§ 20.5(a)(1), 20.5(a)(2), 20.5(a)(4) and 20.5(a)(5).

<sup>20</sup> See § 20.1 of the Commission's regulations for the definition of "reporting entity." 17 CFR § 20.1.

<sup>21</sup> Reporting Parties should submit a Legacy 102S Filing in accordance with the specifications set forth in the Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (as amended from time to time, the "102S Guidebook"). The current version of the 102S Guidebook is available at the link below:

<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltrguidebook053112.pdf>

*Summary of Relief Granted: The Division is providing relief from electronically reporting DCM Volume Threshold Accounts via New Form 102B until 11:59 p.m. Eastern Time on September 30, 2015, provided that Reporting Parties comply with the reporting practice that was in place prior to the implementation of the OCR Final Rule, by reporting via Legacy Form 102 and the Legacy 102S Filing until 11:59 p.m. Eastern Time on September 30, 2015, or such earlier date that the Division may determine.*<sup>22</sup>

The Division believes that time-limited no-action relief is warranted for certain reporting obligations under Part 17 of the Commission's regulations that were implemented by the OCR Final Rule. Subject to the conditions in sections D (102A Submission), E (Testing Requirements) and F (102S Submission) above, the Division will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report DCM Volume Threshold Accounts via New Form 102B, as required by Part 17, until **11:59 p.m. Eastern Time on September 30, 2015.**<sup>23</sup>

#### **H. Conditional No-action Relief from Submitting Information Regarding SEF Volume Threshold Accounts via New Form 102B Until 11:59 p.m. Eastern Time on February 13, 2017**

*Summary of Relief Granted: The Division is providing relief from electronically reporting SEF Volume Threshold Accounts via New Form 102B until 11:59 p.m. Eastern Time on February 13, 2017, provided that Reporting Parties comply with the reporting practice that was in place prior to the implementation of the OCR Final Rule, by reporting via Legacy Form 102 and the Legacy 102S Filing until 11:59 p.m. Eastern Time on September 30, 2015, or such earlier date that the Division may determine.*<sup>24</sup>

The Division believes that time-limited no-action relief is warranted for certain reporting obligations under Part 17 of the Commission's regulations that were implemented by the OCR Final Rule. In particular, Division staff is aware of practical limitations regarding the reportable trading volume level, as defined in regulation § 15.04, for SEF Volume Threshold Accounts reported via New Form 102B. In light of these concerns regarding § 15.04 as it applies to SEFs, the Division believes that no-action relief extending for a period of two years is warranted with respect to this reporting obligation. Subject to the conditions in sections D (102A Submission) and F (102S Submission) above, the Division will not recommend that the Commission

---

<sup>22</sup> As noted in sections D and F above, the transition from Legacy Form 102 and the Legacy Form 102S filing to New Form 102A and New Form 102S will occur at 11:59 p.m. eastern time on September 30, 2015, or such earlier date that the Division may determine.

<sup>23</sup> The reporting requirements with respect to New Form 102B were implemented by the OCR Final Rule, and arise under regulations §§ 17.01(b), 17.01(d), 17.01(e) and 17.02(c). 17 CFR §§ 17.01(b), 17.01(d), 17.01(e) and 17.02(c). As noted above, New Form 102B is an entirely new form introduced by the OCR Final Rule, and as a result there is no legacy Form 102B reporting method.

<sup>24</sup> As noted in sections D and F above, the transition from Legacy Form 102 and the Legacy Form 102S filing to New Form 102A and New Form 102S will occur at 11:59 p.m. eastern time on September 30, 2015, or such earlier date that the Division may determine.

commence an enforcement action against a Reporting Party for failure to report SEF Volume Threshold Accounts via New Form 102B, as required by Part 17, until **11:59 p.m. Eastern Time on February 13, 2017.**<sup>25</sup>

The no-action relief described in this section H is also subject to the following condition:

- Reporting Party Cooperation with ODT Staff to Test and Implement Electronic Reporting Methods
  - Prior to the implementation of electronic reporting of SEF Volume Threshold Accounts via New Form 102B on February 13, 2017, Reporting Parties are expected to cooperate with ODT staff as requested to test and implement any information technology standards or systems associated with the OCR Final Rule as contemplated in the rulemaking.<sup>26</sup> During this testing period leading up to the February 13, 2017 implementation, Reporting Parties are expected to provide all test data or form filings requested by ODT staff, in the form and manner described on the OCR testing page of the CFTC website.<sup>27</sup>

#### **I. Conditional No-action Relief from Submitting Information via New Form 40/40S and New Form 71 Until 11:59 p.m. Eastern Time on February 11, 2016**

*Summary of Relief Granted: The Division is providing relief from electronically reporting via New Form 40/40S and New Form 71 until 11:59 p.m. Eastern Time on February 11, 2016, provided that Reporting Parties comply with the Form 40/40S reporting practice that was in place prior to the implementation of the OCR Final Rule, by reporting via Legacy Form 40 and the Legacy 40S Filing (as such terms are defined below) until 11:59 p.m. Eastern Time on February 11, 2016, or such earlier date that the Division may determine.*

The Division believes that time-limited no-action relief is warranted for certain additional reporting obligations under Parts 17 and 18 of the Commission's regulations that were implemented by the OCR Final Rule. Subject to the conditions below, the Division will not recommend that the Commission commence an enforcement action against a Reporting Trader<sup>28</sup> for failure to report via New Form 40, as required by Part 18. In addition, the Division will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report via New Form 71, as required by Part 17.<sup>29</sup> The no-action relief with respect to

---

<sup>25</sup> The reporting requirements with respect to New Form 102B were implemented by the OCR Final Rule, and arise under regulations §§ 17.01(b), 17.01(d), 17.01(e) and 17.02(c). 17 CFR §§ 17.01(b), 17.01(d), 17.01(e) and 17.02(c). As noted above, New Form 102B is an entirely new form introduced by the OCR Final Rule, and as a result there is no legacy Form 102B reporting method.

<sup>26</sup> OCR Final Rule at 69188-69189.

<sup>27</sup> See <http://www.cftc.gov/Forms/OCR/Testing>

<sup>28</sup> As used herein, "Reporting Traders" means parties that are obligated to report pursuant to the OCR Final Rule on New Form 40/40S. See regulations §§18.04 and 20.5. 17 CFR §§ 18.04 and 20.5.

New Form 40 and New Form 71 described in this paragraph ends in each case at **11:59 p.m. Eastern Time on February 11, 2016.**

The no-action relief described above with respect to New Form 40 is subject to Reporting Traders reporting via Legacy Form 40 until 11:59 p.m. Eastern Time on February 11, 2016, or such earlier date that the Division may determine. Such reporting must be consistent in all respects with the time, form and manner of the Legacy Form 40 reporting practice. In particular, this no-action relief is subject to Reporting Traders reporting via Legacy Form 40 in accordance with the following condition:

- Report via Legacy Form 40
  - As used herein, “Legacy Form 40” refers to the Form 40 required prior to the implementation of the OCR Final Rule, which is available on the Commission’s website.<sup>30</sup> See Appendix B hereto for additional instructions for completing Legacy Form 40 in accordance with the legacy reporting practice.
  - Every trader who holds or controls a reportable futures and option position must, after a special call upon such trader by the Commission or its designee, file with the Commission a “Statement of Reporting Trader” on Legacy Form 40, at such time and place as directed in the call.
  - The Legacy Form 40 reporting practice described above and on Appendix B is referred to herein as the “Legacy Form 40 reporting practice.”

The no-action relief described in this section is also subject to the following condition:

- Reporting Party Cooperation with ODT Staff to Test and Implement Electronic Reporting Methods
  - Prior to the implementation of electronic reporting via New Form 40 and New Form 71 on February 11, 2016, Reporting Parties are expected to cooperate with ODT staff as requested to test and implement any information technology standards or systems associated with the OCR Final Rule as contemplated in the rulemaking.<sup>31</sup> During this testing period leading up to the February 11, 2016 implementation, Reporting Parties are expected to provide all test data or form filings requested by ODT staff, in the form and manner described on the OCR testing page of the CFTC website.<sup>32</sup>

---

<sup>29</sup> The reporting requirements with respect to New Form 40 and New Form 71 were implemented by the OCR Final Rule, and arise under regulations §§ 18.04 (New Form 40), 17.01(c), and 17.01(e) (New Form 71). 17 CFR §§ 18.04, 17.01(c), and 17.01(e). As noted above, New Form 71 is an entirely new form introduced by the OCR Final Rule, and as a result there is no legacy Form 71 reporting method.

<sup>30</sup> See the link below to the Commission’s website for a copy of Legacy Form 40:  
<http://www.cftc.gov/Forms/ssLINK/cftcform40>

<sup>31</sup> OCR Final Rule at 69188-69189.

<sup>32</sup> See <http://www.cftc.gov/Forms/OCR/Testing>

For the avoidance of doubt, the no-action relief and conditions described in this section I with respect to New Form 40 also apply to the obligation to submit New Form 40S pursuant to regulation § 20.5(b).<sup>33</sup> As a result, all references in this section I to New Form 40 and Legacy Form 40, including the no-action relief and conditions described in this section I, shall apply equally to New Form 40S and the legacy 40S filing (the “Legacy 40S Filing”) required by regulation § 20.5(b). The reporting practice by which parties submit the Legacy 40S Filing in accordance with regulation § 20.5(b) is referred to herein as the “Legacy 40S reporting practice.”

## **J. Conclusion**

The no-action relief provided in this no-action letter is time-limited, and ends in all respects as follows:

- The no-action relief provided in section D (102A Submission) of this no-action letter ends at **11:59 p.m. Eastern Time on September 30, 2015;**
- The no-action relief provided in section F (102S Submission) of this no-action letter ends at **11:59 p.m. Eastern Time on September 30, 2015;**
- The no-action relief provided in section G (102B Submission- DCM Volume Threshold Accounts) of this no-action letter ends at **11:59 p.m. Eastern Time on September 30, 2015;**
- The no-action relief provided in section H (102B Submission- SEF Volume Threshold Accounts) of this no-action letter ends at **11:59 p.m. Eastern Time on February 13, 2017;** and
- The no-action relief provided in section I (40/40S and 71 Submission) of this no-action letter ends at **11:59 p.m. Eastern Time on February 11, 2016.**

---

<sup>33</sup> 17 CFR § 20.5(b).

This letter, and the no-action position taken herein, which is based on your representations, represents the views of the Division only, and does not necessarily represent the position or views of the Commission or of any other division or office of the Commission's staff. The no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements of the Commodity Exchange Act or the regulations thereunder. As with all no-action letters, the Division 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 Sebastian Pujol Schott, Associate Director, DMO, at (202) 418-5641, or Mark Schlegel, Special Counsel, DMO, at (202) 418-5055.

Sincerely yours,

---

Vincent McGonagle  
Director  
Division of Market Oversight

Detailed Instructions on Submitting Legacy Form 102<sup>35</sup>

## Special account designation and identification.

When a special account is reported for the first time, the futures commission merchant, clearing member, or foreign broker shall identify the account to the Commission on Legacy Form 102, in the form and manner specified in section D of this no-action letter, showing the information in paragraphs (a) through (f) of this Appendix A.

(a) Special account designator. A unique identifier for the account, provided, that the same designator is assigned for option and futures reporting, and the designator is not changed or assigned to another account without prior approval of the Commission or its designee.

(b) Special account identification. The name, address, business phone, and for individuals, the person's job title and employer for the following:

(1) The person originating the account, if the special account is a house omnibus or customer omnibus account; or

(2) The person (i.e., individual, corporation, partnership, etc.) who owns the special account, if such person (or an employee or officer) also controls the trading of the special account. And, in addition:

(i) The registration status of the person as a commodity trading advisor or a securities investment advisor;

(ii) The legal organization of the person and the person's principal business or occupation;

(iii) Account numbers and account names included in the special account, if different than supplied in paragraph (b)(2) of this Appendix A;

(iv) The name and location of all persons not identified in paragraph (b)(2) of this Appendix A having a ten percent or more financial interest in the special account, indicating those having discretionary trading over the account; and

(v) For special accounts with five or fewer persons having trading authority, the names and locations of all persons with trading authority that have not been identified in paragraphs (b)(2) or (b)(2)(iv) of this Appendix A; or

(3) The account controller, if trading of the special account is controlled by a person or legal entity who is an independent account controller for the account owners as defined in § 150.1(e) of the Commission's regulations. And, in addition:

(i) The registration status of the person as a commodity trading advisor or a securities investment advisor;

(ii) [Reserved]

---

<sup>34</sup> See the link below to the Commission's website for general information on submitting forms to the Commission:

<http://www.cftc.gov/Forms/index.htm>

<sup>35</sup> See the link below to the Commission's website for a copy of Legacy Form 102:

<http://www.cftc.gov/Forms/ssLINK/cftcform102>

(iii) If fewer than ten accounts are under control of the independent advisor, for each account the account number and the name and location of each person having a ten percent or more financial interest in the account; and

(iv) On call by the Commission or its designee, for each account controlled by the independent advisor, the account number and account name and the name and location of each person having a ten percent or more financial interest in the account.

(c) [Reserved]

(d) Commercial use. For futures or options, commodities in which positions or transactions in the account are associated with a commercial activity of the account owner in a related cash commodity or activity (i.e., those considered as hedging, risk-reducing, or otherwise off-setting with respect to the cash commodity or activity).

(e) Account executive. The name and business telephone number of the associated person of the futures commission merchant who has solicited and is responsible for the account or, in the case of an introduced account, the name and business telephone number of the introducing broker who introduced the account.

(f) Reporting firms. The name and address of the futures commission merchant, clearing member, or foreign broker carrying the account, and the name, title and business phone of the authorized representative of the firm filing the Legacy Form 102 and the date of the Legacy Form 102. The authorized representative shall sign the Legacy Form 102 or satisfy such other requirements for authenticating the report as instructed in writing by the Commission or its designee.



Detailed Instructions on Submitting Legacy Form 40<sup>36</sup>

Every trader who holds or controls a reportable futures and option position shall after a special call upon such trader by the Commission or its designee file with the Commission a “Statement of Reporting Trader” on the Legacy Form 40 at such time and place as directed in the call. All traders shall complete part A of the Legacy Form 40 and, in addition, shall complete:

Part B--If the trader is an individual, a partnership or a joint tenant.

Part C--If the trader is a corporation or type of trader other than an individual, partnership, or joint tenant.

(a) Information to be furnished by all traders in part A of the Legacy Form 40 shall include:

(1) Name and address of reporting trader.

(2) Principal business and occupation of the reporting trader and, in addition, whether transactions are made for, on behalf of, or in association with, a customer trading program of a futures commission merchant, a commodity pool, a producer cooperative, any business activities in which the trader is commercially engaged, or for personal use.

(3) Type of trader.

(4) Registration status with the Commission, if any.

(5) The name and address of each person whose option or futures trading is controlled by the reporting trader. Provided that if the reporting trader is a customer trading program, or the commodity trading advisor thereof, that is a managed or guided account program in which ten or more persons participate, the information furnished may be limited to the name of any commodity pool which participates in the program and the name and address of the CPO.

(6) The name, address and business phone of each person who controls the trading of the reporting trader.

(7) The names and locations of all futures commission merchants, clearing members, introducing brokers, and foreign brokers through whom accounts owned or controlled by the reporting trader are carried or introduced at the time of filing a Legacy Form 40, if such accounts are carried through more than one futures commission merchant, clearing member or foreign broker or carried through more than one office of the same futures commission merchant, clearing member or foreign broker, or introduced by more than one introducing broker clearing accounts through the same futures commission merchant, and the name of the reporting trader's account executive at each firm or office of the firm.

(8) The names and locations (city and state) of persons who guarantee the futures or option trading accounts of the reporting trader or who have a financial interest of 10 percent or more in the reporting trader or the accounts of the reporting trader.

(9) The following information concerning other option or futures trading accounts which the reporting trader guarantees or other futures or option traders or accounts in which the reporting trader has a financial interest of 10 percent or more:

(i) The names of traders for whom the reporting trader guarantees accounts or in which the reporting trader has a financial interest;

---

<sup>36</sup> See the link below to the Commission's website for a copy of Legacy Form 40:

<http://www.cftc.gov/Forms/ssLINK/cftcform40>

(ii) The names of the accounts that the reporting trader guarantees or in which the reporting trader has a financial interest; and

(iii) The names and locations of the brokerage firms at which the accounts are carried.

(10) Information concerning ownership or control by a foreign government, agent of a foreign government entity specially acknowledged by a statute or regulation of a foreign jurisdiction or entity financed by a foreign government either through ownership of capital assets or provision of operating expenses.

(11) Signature of the trader and date of signing the report. If the reporting trader is an organization, the signature must be that of a partner, officer or trustee authorized to sign on behalf of that organization.

(b) Information to be furnished in part B of the Legacy Form 40 shall include:

(1) Business telephone number of the reporting trader.

(2) Employer and job title if the reporting trader is an individual.

(3) The following information if a trader makes transactions or holds positions in a futures or option contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the option or futures market (such as and including production, merchandising or processing of a cash commodity, asset or liability risk management by depository institutions, or security portfolio risk management).

(ii) Physical commodities underlying use of the futures or option markets.

(iii) Futures or option markets used.

(4) The name, address, and type of any organization in which the reporting trader participates in the management if such organization holds another futures or option trading account.

(5) If the reporting trader is a partnership or joint tenant, the name and address of each partner (excluding limited partners in commodity pools) or joint tenant and the name of the partner or joint tenant who ordinarily places orders.

(c) Information to be furnished in part C of the Legacy Form 40 shall include:

(1) Whether or not the reporting trader is organized under the laws of any state (including the District of Columbia) or territory or possession of the United States or under the laws of any foreign jurisdiction. Reporting traders organized outside the jurisdiction of the United States must indicate the country of origin.

(2) The names of parent firms and whether or not they are organized under the laws of any state (including the District of Columbia) or territory or possession of the United States and the location of each headquarter's office.

(3) Names and locations of all subsidiary firms that trade in commodity futures or options and whether or not the subsidiary firms are organized under the law of any state (including the District of Columbia) or territory or possession of the United States.

(4) Name, address, and business telephone number of person(s) actually controlling the trading and, if different persons are responsible for different commodities or options, the commodities or options for which each controller has responsibility.

(5) Name, office address and business telephone number of person or persons to contact regarding trading.

(6) The following information if a trader makes transactions or holds positions in a futures or option contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the option or futures market (e.g., production, merchandising or processing of a cash commodity, asset/liability risk management by depository institutions, security portfolio risk management, etc.)

(ii) Physical commodities underlying use of the futures or option markets.

(iii) Futures or option markets used.