



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

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

Dear Ms. Lurton, Mr. Batteh, and Ms. Hsu:

This letter is in response to a request from the Futures Industry Association ("FIA"), the Commodity Markets Council ("CMC"), and the International Swaps and Derivatives Association ("ISDA," and collectively with FIA and CMC, the "Associations") dated July 22, 2024 (the "Request"), to the Division of Market Oversight ("DMO") of the Commodity Futures Trading Commission ("CFTC" or "Commission") on behalf of affected reporting entities, carry brokers, and reportable traders required to submit certain reports under parts 17, 18, and 20 of the Commission's regulations. In the Request, the Associations requested an extension of the no-action position regarding certain data reporting requirements of parts 17, 18, and 20 of the Commission's regulations implemented pursuant to the Ownership and Control Reports ("OCR") final rule.¹

The OCR Final Rule requires 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").² New Form 102 is subdivided into three parts ("New Form 102A," "New Form 102B," and "New Form 102S"). New Form 102B was an entirely new form, introduced by the OCR Final Rule.

Since 2014, DMO has taken a no-action position with respect to reporting entities from certain reporting obligations under the OCR Final Rule.³ In September 2017, DMO issued no-action

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.

² 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.

³ See CFTC Letter No. 14-95, Conditional Time-Limited No-Action Relief from Certain [OCR] Data Reporting Requirements Under Parts 17, 18 and 20 of the Commission's Regulations, (July 23, 2014); CFTC Letter No. 15-03, Conditional Time-Limited No-Action Relief from Certain [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); CFTC

letter 17-45 (“NAL 17-45”) in response to requests from FIA and CMC on behalf of affected reporting entities, carry brokers, and reportable traders required to submit certain reports under parts 17, 18, and 20 of the Commission’s regulations. NAL 17-45 extended the time period for the no-action position, which was itself previously granted and extended in several prior no-action letters, from certain reporting obligations under the OCR Final Rule. In addition, NAL 17-45 took a no-action position newly relieving affected parties from a variety of OCR Final Rule reporting requirements.

Subsequent to the issuance of NAL 17-45, on June 14, 2018, FIA and CMC submitted a petition to the Commission, which requested, among other things, that the Commission codify the no-action positions provided in NAL 17-45, streamline and right-size the OCR data that reporting entities are required to submit, and sunset Part 20.⁴ As of the date of this letter, the Commission has not acted upon FIA and CMC’s petition.

On September 25, 2020, DMO issued no-action letter 20-30 (“NAL 20-30”), which extended the no-action position in NAL 17-45. On September 22, 2023, DMO issued no-action letter 23-14 (“NAL 23-14”), which extended the no-action position in NAL 20-30 with respect to each obligation covered by NAL 23-14 “until the earlier of: (a) the applicable effective date or compliance date of Commission action addressing such obligation or (b) September 30, 2024.”⁵ Therefore, without further action by the Commission, by its terms NAL 23-14 will expire on September 30, 2024.

In the Request, the Associations represent that “notwithstanding considerable effort, persons obligated under the [OCR] Final Rule to report information on any of New Form 102A, New Form 102B, New Form 102S, and New Form 40/40S ... are, and will continue to be, unable to fully comply with certain aspects of the Final Rule due to some of its problematic requirements.”⁶

Letter No. 15-52, Conditional Time-Limited No-Action Relief from Certain [OCR] Data Reporting Requirements Under Parts 17, 18 and 20 of the Commission’s Regulations: Replaces CFTC No-Action Letter No. 15-03, (September 28, 2015); CFTC Letter No. 16-32, Conditional Time-Limited No-Action Relief from Certain [OCR] Data Reporting Requirements Under Parts 17, 18 and 20 of the Commission’s Regulations: Replaces CFTC No-Action Letter No. 15-52, (April 8, 2016); CFTC Letter No. 17-45, Conditional Time-Limited No-Action Relief from Filing Certain [OCR] Required by Parts 17, 18 and 20 of the Commission’s Regulations, (September 25, 2017); CFTC Letter No. 20-30, Extension of Conditional Time-Limited No-Action Relief from Filing Certain [OCR] Required by Parts 17, 18 and 20 of the Commission’s Regulations, (September 25, 2020); and CFTC Letter No. 23-14, Extension of Conditional Time-Limited No-Action Position Regarding Filing Certain [OCR] Required by Parts 17, 18 and 20 of the Commission’s Regulations, (September 22, 2023). CFTC staff letters and letters requesting no-action positions are available on the Commission’s website at: <https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>.

⁴ See FIA and CMC, Petition for Amendment of the [OCR] Rule (June 14, 2018), available at: <https://www.fia.org/sites/default/files/2019-05/FIA-CMC-OCR-Petition-June-2018.pdf>.

⁵ At 11:59 p.m. eastern time. See NAL 23-14 at 3.

⁶ Request at 2. FIA has raised these issues in various letters to the Commission. These issues include the ones discussed in this no-action letter, such as the requirement for reporting entities to report data with respect to natural person controllers for special accounts and volume threshold accounts and the reporting deadlines for Forms 102A and 102B. See, e.g., Letter from Allison Lurton, Senior Vice President and General Counsel, FIA, to Amir Zaidi, Director, Division of Market Oversight, CFTC (Aug. 15, 2016); Letter from Allison Lurton, Senior Vice President and General Counsel, FIA, to Vincent McGonagle, Director, Division of Market Oversight, CFTC (Feb. 24, 2016).

Therefore, the Associations request that the DMO staff extend NAL 23-14 until the later of the applicable effective or compliance date of a Commission action addressing the obligations in NAL 23-14. In the alternative, the Associations request no-action positions until the earlier of (a) the applicable compliance date of a Commission action addressing the obligations in NAL 23-14; or (b) 11:59 pm eastern time on September 30, 2025.

Based on the representations in the Request, DMO believes an additional extension of no-action position under NAL 23-14 is warranted. As more fully discussed below, DMO is therefore providing an extension of its no-action position related to certain reporting obligations implemented by the OCR Final Rule.

The no-action positions provided herein shall commence on the date of issuance of this letter and remain in effect with respect to each obligation covered by this letter until the later of the applicable effective date or compliance date of a Commission action addressing such obligations. For purposes of the foregoing sentence, the term “Commission action” may include, without limitation, a rulemaking or order addressing an obligation covered by the no-action positions set forth in this letter.

I. Cooperation of Customers and Counterparties

The no-action positions taken in this letter may be relied upon by all parties 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 sections of this letter, subject to the applicable conditions set forth in this letter.

Because (i) Reporting Parties must in some cases obtain from their customers or counterparties the information necessary to submit the OCR forms described below, (ii) the no-action position taken in this letter reduces the number of OCR form questions in response to which customers and counterparties must provide information to Reporting Parties, and (iii) 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 the no-action positions provided herein with respect to Forms 40 or 40S, it is a condition of the no-action positions that such customers or counterparties provide timely,⁷ 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,⁸ 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 Position

Based on the representations made by the Associations in, and in connection with, the Request, DMO staff believes the extension of the time-limited no-action positions set forth below are warranted to continue to address certain reporting issues.

A. Form 102

⁷ Timely, in this context, means customers or counterparties must provide information to the requesting Reporting Parties in time for the Reporting Parties to meet their applicable Form 102 reporting deadlines.

⁸ See CFTC Staff Advisory No. 15-14 (Mar. 23, 2015), available at: <http://www.cftc.gov/idx/groups/public/@lrlettergeneral/documents/letter/15-14.pdf>.

*1. Form 102A*⁹

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

Section 17.02(b)(2)(i) of the Commission's regulations requires Reporting Parties to report to the CFTC the names of trading account owners in question 10(ii) by 9:00 a.m.¹⁰ on the business day following the day on which the account becomes reportable ("R+1"). In NAL 23-14, DMO staff extended the time-limited no-action position permitting Reporting Parties to modify such names until 9:00 a.m. on the third business day following the day on which the account becomes reportable ("R+3"). DMO continues to believe that this time-limited no-action position is warranted.

Thus, during the extended period defined in this letter, DMO staff 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 position applies to new filings (§ 17.01(a)) and change updates (§ 17.02(b)(3)) for trading accounts.

b. Question 10(iii): Requirement to Report Trading Account Controller Identifying Information

Question 10(iii) of Form 102A requires the reporting of various contact fields related to the trading account controller. In NAL 23-14, DMO staff extended the time-limited no-action position permitting Reporting Parties to not report in response to question 10(iii) the following: 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 NAL 23-14, DMO staff also took the position that Reporting Parties should be relieved from answering, in response to question 10(iii), the name of the trading account controller and all other "Follow-On Information" requested. DMO continues to believe that this time-limited no-action position is warranted.

Thus, during the extended period defined in this letter, DMO staff will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report the information requested in question 10(iii).¹¹ This no-action position 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 position taken herein, refresh updates (§ 17.02(b)(4)).¹² As with the no-action position taken in NAL 23-14, this no-action position is premised on DMO staff being able to determine the identity of, and contact, the trading account controller by contacting the special account controller using the contact information the Reporting Party

⁹ 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.

¹⁰ Unless otherwise indicated, all times are referenced herein are eastern time.

¹¹ *See also* section II.A.1.c below for helpful procedural details regarding the relationship between the Client Reporting Issue attribute and question 10(iii).

¹² As noted in section II.A.4 below, DMO also is providing a no-action position regarding filing refresh updates.

provided in response to question 7. Thus, this no-action position is subject to the condition that the information in question 7 is accurate and complete.

c. Question 10(iii): Requirement to Detail the Specifics of Client Reporting Issues

In NAL 23-14, DMO extended the no-action position 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 report instead 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 23-14, DMO also directed Reporting Parties to review the OCR Technical Guidance Document¹³ 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 available 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”).

As indicated above in section II.A.1.b, because DMO staff expects to be able to contact the trading account controller through the special account controller, DMO staff will continue to take a time-limited no-action position permitting Reporting Parties to not report any information required by question 10(iii) on Form 102A, as was done in NAL 23-14.

In NAL 23-14, DMO staff extended the time-limited no-action position permitting Reporting Parties who report 0, 1, or 2 in the Client Reporting Issue attribute (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. DMO explained in NAL 23-14 that 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 section II.A.2.d) is satisfied (“System Update”). Thus, as a result of the 0, 1, or 2 102A no-action position and the System Update, Reporting Parties will be able to submit a Form 102A without any particular account controller field, regardless 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 23-14, this no-action position 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

¹³ The current (as of the date of this letter) version (*i.e.*, 5.1) of the OCR Technical Guidance Document is available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@forms/documents/generic/ocrtechguide5.1.pdf>. DMO staff 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.

the no-action position taken herein with respect thereto, refresh updates (§ 17.02(b)(4)) submitted within the period of this no-action position.

2. *Form 102B*

a. 50 Contract Designated Contract Market (“DCM”) Volume Threshold Account Reporting Trigger

Section 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.¹⁴ DMO believes that its time-limited no-action position 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 extended period defined in this letter, against a Reporting Party relying on this no-action position 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 position 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 position taken herein, refresh updates (§ 17.02(c)(4)) for DCM volume threshold accounts.

b. Reporting SEF Volume Threshold Accounts

DMO continues to be aware of practical limitations regarding the reportable trading volume level, as defined in § 15.04, for SEF volume threshold accounts reported via Form 102B.¹⁵ In light of these concerns regarding § 15.04 as it applies to SEFs, DMO believes that its time-limited no-action position continues to be warranted with respect to this reporting obligation. Thus, during the extended period defined in this letter, 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: Reporting Volume Threshold Account Controller Identifying Information

For reasons parallel to those set forth in the first paragraph of section II.A.1.b (Question 10(iii): Requirement to Report Trading Account Controller Identifying Information), above, DMO continues to believe that its time-limited no-action position is warranted related to all volume threshold account controller information requested in question 6. Thus, during the extended period defined in this letter, DMO will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report any of the information called

¹⁴ Section 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[.]”

¹⁵ See, e.g., FIA Petition for Amendment of the [OCR] 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 them to do so and that, without such identifiers, “a clearing member cannot aggregate contracts toward the 50-contract threshold for purposes of Form 102B.”

for in question 6.¹⁶ This no-action position 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 position taken herein with respect thereto, refresh updates (§ 17.02(c)(4)) for DCM volume threshold accounts. This no-action position 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 position is subject to the condition that the information in question 5 and the Reporting Firm Contact Information is accurate and complete.

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

In NAL 23-14, DMO extended the no-action position described above in section II.A.1.c (Question 10(iii): Requirement to Detail the Specifics of Client Reporting Issues) 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
- 2 to indicate “Data supplied by client does not appear to meet the CFTC definition of trading [sic]¹⁷ account controller” (each, a “0, 1, and 2 102B Description”).

As stated above in section 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 continuing to take a time-limited no-action position 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, reporting 0, 1, or 2 in the Client Reporting Issue attribute (the “0, 1, or 2 102B Condition”). Therefore, as was the case in NAL 23-14, DMO is not requiring the 0, 1, or 2 102B Condition as a condition to the no-action position set forth above in section II.A.2.c.

DMO is also extending the time-limited no-action position 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. 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 no-action position and the System Update (defined above in section 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.

¹⁶ See also section II.A.2.d below for helpful procedural details regarding the relationship between the Client Reporting Issue attribute and question 6.

¹⁷ The word “trading” is a mistake and should instead be “volume threshold”.

As with NAL 23-14, this no-action position 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 position taken herein, refresh updates (§ 17.02(c)(4))¹⁸ for DCM volume threshold accounts.

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

Section 17.02(c)(2)(i) requires the names of DCM volume threshold account owners in question 5 to be reported by 9:00 a.m. on the business day following the day on which the volume threshold account becomes reportable (“VTA R+1”). In NAL 23-14, DMO extended the time-limited no-action position permitting Reporting Parties to modify such names until 9:00 a.m. on the third business day following the day on which the volume threshold account becomes reportable (“VTA R+3”). DMO believes such no-action position continues to be warranted.

Thus, during the extended period defined in this letter, 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 position applies to new filings (§ 17.01(b)) and change updates (§ 17.02(c)(3)) for DCM volume threshold accounts.

3. *Submitting Certain Information via Form 102S*

Form 102S requires the reporting of several new data points. In NAL 23-14, DMO extended the time-limited no-action position permitting Reporting Parties to treat the following new data points as optional to report on Form 102S: the name of omnibus account originators, and all related address and contact fields (question 3(ii)); all consolidated account owner fields (question 3(iii)); and all consolidated account controller fields (question 3(iv)). Reporting Parties relying on this no-action position 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 this time-limited no-action position is warranted.

Thus, during the extended period defined in this letter, 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 position 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 position taken herein with respect thereto, refresh updates (§ 20.5(a)(5)).

4. *Form 102A, Form 102B and Form 102S Refresh Update Requirements*

Part 17 contains regulations requiring Reporting Parties to conduct periodic refresh updates of the applicable Form 102.¹⁹ In NAL 23-14, DMO took a no-action position relieving Reporting

¹⁸ As noted below, DMO is taking a no-action position regarding filing refresh updates. See section II.A.4 below.

¹⁹ 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.*

Parties from the annual refresh update requirement set forth in any of §§ 17.02(b)(4), 17.02(c)(4), or 20.5(a)(5), as applicable, as such updates were superfluous in light of the requirements that Reporting Parties regularly submit change updates to forms. DMO continues to believe that this time-limited no-action position is warranted. Thus, during the extended period defined in this letter, DMO staff 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. As was the case in NAL 23-14, this no-action position is subject to the condition that a Reporting Party relying on the no-action position 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 no-action position will still apply if a change update is incomplete solely due to an uncooperative customer or counterparty.²⁰

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 circumstance using the applicable Client Reporting Issue attribute or otherwise advise DMO staff. As noted above in section I, to the extent such customers or counterparties are otherwise covered by no-action positions provided herein with respect to Forms 40 or 40S, it is a condition of that no-action position 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

1. Requirement to Provide 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 percent 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; website; email address; NFA ID (if any); and Legal Entity Identifier ("LEI") (if any).²¹

In issuing NAL 23-14, DMO staff understood that gathering and entering the information necessary to complete Question 8 is burdensome for Reporting Parties that have multiple Identified Parties. Accordingly, NAL 23-14 took a no-action position permitting Reporting Parties to provide a single set of certain contact information for Question 8 for all Identified

²⁰ It has come to DMO staff'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 staff reminds Reporting Parties that they must file change updates to the applicable form when: (i) a corporate action occurs that changes the ownership structure of the reporting entity; and (ii) § 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.

²¹ The website and NFA ID must be reported only 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 website or NFA ID information, if that information has not been previously collected.

Parties²² (“Limited Contact Information”) rather than a unique set of contact information for each Identified Party (“Unique Contact Information”). DMO staff continues to believe that an extension of this no-action position is warranted. Thus, during the extended period defined in this letter, DMO staff will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to provide Unique Contact Information in Question 8 so long as (i) the Reporting Party instead provides Limited Contact Information; (ii) the phone number and email address provided in the Limited Contact Information are monitored regularly during the Reporting Party’s business hours; and (iii) the person(s) who monitor(s) such phone number and email address promptly provide to any requesting CFTC staff 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 (i) list all Identified Parties by name; (ii) complete the Indicator Obligations for each Identified Party; (iii) list an LEI (if any) for each Identified Party; and (iv) list a website (if any) and NFA ID (if any) for each Identified Party in the circumstances set forth in footnote 9 on Form 40.

2. Requirement to Answer Question 12

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 NAL 23-14, DMO staff took a no-action position relieving Reporting Parties from the requirement to answer question 12, as DMO staff understood that Reporting Parties were uncertain as to the scope of the “indirectly influence, or exercise authority over” language in question 12. As this uncertainty still exists, DMO staff continues to believe that time-limited no-action position is warranted. Thus, during the extended period defined in this letter, DMO staff 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. Requirement for 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, (i) § 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 (ii) 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.”

In NAL 23-14, DMO staff extended the no-action position permitting a Reporting Party to update 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. DMO staff continues to believe that, in light of different approaches to change updates in §§ 18.04 and 20.5(b) compared to §§ 17.02(b)(3), 17.02(c)(3), and 20.5(a)(4), this time-limited no-action position is warranted while DMO staff considers the issue of change, refresh, and special call updates to Forms 40, 40S, 102A, 102B, and 102S more

²² That contact information is street address; city; state; country; zip/postal code; phone number; and email address.

broadly. Thus, during the extended period defined in this letter, DMO staff 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.

III. Conclusion

This letter expresses DMO staff's position with respect to enforcement only and does not purport to state any legal conclusion. This letter and the no-action positions taken herein represent DMO staff'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 positions 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 positions contained herein, are based upon the representations made to DMO staff. Any different, changed, or omitted material facts or circumstances might render this letter void. As with all DMO staff 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 positions provided herein.

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Sincerely,

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Director
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