



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of  
Market Oversight

CFTC Letter No. 15-52  
No-Action  
September 28, 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. 15-03**

September 28, 2015

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

Dear Ms. Lurton:

This letter is in response to your request dated September 21, 2015 (the "September 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 17, 18 and 20 of the Commission's regulations. In the September 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 below). You requested such relief "to ensure a smooth transition to the OCR Rule and increase the reliability and consistency of the OCR data provided to the CFTC."

In response to the September 2015 FIA Letter, the Division is providing additional time-limited no-action relief from certain reporting obligations implemented by the Ownership and Control

“OCR”) Final Rule (the “OCR Final Rule”).<sup>1</sup> This no-action letter replaces a no-action letter with respect to the OCR Final Rule issued by the Division in February 2015. The February 2015 no-action letter, CFTC Letter No. 15-03 (the “February 2015 CFTC NAL”), extended the time period for relief from certain reporting obligations under the OCR Final Rule.<sup>2</sup>

In this no-action letter, the Division is granting no-action relief from the requirement to report (a) via New Form 102A, New Form 102B (with respect to DCM volume threshold accounts)<sup>3</sup> and New Form 102S until **April 27, 2016**, (b) via New Form 40/40S and New Form 71 until **September 28, 2016**, and (c) via New Form 102B (with respect to SEF volume threshold accounts)<sup>4</sup> until **February 13, 2017**, in each case subject to certain conditions more fully described below. The additional 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. As discussed in section E below, the Division advises Reporting Parties to check the OCR testing page on a regular basis during this period of no-action relief to review updated testing requirements.

Separately, DMO staff is considering whether it is appropriate for the Division to offer additional time-limited no-action relief with respect to the OCR Final Rule in the future, such as: relief from reporting a subset of data points associated with trading account controllers; relief from reporting certain information that may be subject to foreign privacy laws; or modifications to the reportable trading volume level established in § 15.04 of the Commission’s regulations.

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

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 new and updated reporting forms.<sup>5</sup> The OCR Final Rule requires the

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<sup>1</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. The Commission adopted the OCR Final Rule in 2013 to enhance its identification of futures and swap market participants.

<sup>2</sup> See section B below for a description of the February 2015 CFTC NAL, which was issued in response to a request by the FIA on behalf of its members that are required to submit certain reports under Parts 15, 17, 18 and 20 of the Commission’s regulations.

<sup>3</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>4</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.

<sup>5</sup> Important information related to the implementation of the OCR Final Rule is available on the Commission’s website at: <http://www.cftc.gov/Forms/OCR>

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>6</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>7</sup> to impose additional recordkeeping obligations upon certain categories of persons required by the rule to submit data to the Commission.

## **B. Summary of Prior No-Action Relief<sup>8</sup>**

**January 2015 FIA Request for No-Action Relief.** By letter to the Division dated January 22, 2015, the FIA 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 “January 2015 FIA Letter”).

In the January 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 new data required for OCR reporting.

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<sup>6</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>7</sup> 17 CFR § 18.05.

<sup>8</sup> 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 response to the 2014 FIA Letter, the Division issued CFTC Letter No. 14-95 (the “2014 CFTC NAL”), granting time-limited no-action relief from certain reporting obligations under the OCR Final Rule.

You further represented that reporting parties need additional time to explain the concepts of ownership and control to customers/counterparties.<sup>9</sup>

In response to the January 2015 FIA Letter, the Division issued the February 2015 CFTC NAL, granting time-limited no-action relief from certain reporting obligations under the OCR Final Rule. More specifically, the February 2015 CFTC NAL, subject to certain terms and conditions, granted no-action relief from: (a) relief from electronically reporting via New Form 102A until September 30, 2015; (b) relief from electronically reporting via New Form 102S until September 30, 2015; (c) relief from electronically reporting DCM volume threshold accounts via New Form 102B until September 30, 2015; (d) relief from electronically reporting SEF volume threshold accounts via New Form 102B until February 13, 2017; and (e) relief from electronically reporting via New Form 40/40S and New Form 71 until February 11, 2016.

### **C. September 2015 CFTC No-Action Letter**

In the September 2015 FIA Letter, you represented that FIA and its members have taken a number of steps to come into compliance with the OCR Final Rule, including: engaging in a broad client outreach program to educate customers and counterparties about the OCR Final Rule and its enhanced reporting requirements; increasing operational support to gather and verify OCR data; and modifying internal practices to collect OCR data during the on-boarding process. The September 2015 FIA Letter stated that, “FIA requests that Staff extend and modify the Current Relief [as provided in the February 2015 CFTC NAL] to ensure a smooth transition to the OCR Rule and increase the reliability and consistency of the OCR data provided to the CFTC.”

Based on the representations provided in the September 2015 FIA Letter, and to increase the reliability and consistency of the OCR data, the Division believes that some additional extension of the time-limited no-action relief now in place under the February 2015 CFTC NAL is warranted. The Division is providing additional relief to allow Reporting Parties to come into compliance with their reporting obligations, and to enable DMO staff to consider potential additional relief, as discussed in the introductory section above. The Division is granting no-action relief from the requirement to report (a) via New Form 102A, New Form 102B (with respect to DCM volume threshold accounts) and New Form 102S until April 27, 2016, (b) via New Form 40/40S and New Form 71 until September 28, 2016, and (c) via New Form 102B (with respect to SEF volume threshold accounts) until February 13, 2017, in each case subject to certain conditions more fully described below.

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

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<sup>9</sup> The January 2015 FIA Letter also stated 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>9</sup> (See the definition of “reportable trading volume level” applicable to New Form 102B reporting in regulation § 15.04, 17 CFR §15.04.) The Letter stated that although FIA had engaged in preliminary discussions with certain SEFs regarding setting product identifiers for swaps, product identifiers were not yet available on SEFs.

This no-action letter replaces the February 2015 CFTC NAL. The Division believes that the following additional time-limited no-action relief is warranted:

**April 27, 2016:**

- **Relief from electronically reporting via New Form 102A until April 27, 2016 (see section D below);**
- **Relief from electronically reporting via New Form 102S until April 27, 2016 (see section F below); and**
- **Relief from electronically reporting DCM volume threshold accounts via New Form 102B until April 27, 2016 (see section G below).**

**September 28, 2016:**

- **Relief from electronically reporting via New Form 40/40S and New Form 71 until September 28, 2016 (see section I below).**

**February 13, 2017:**

- **Relief from electronically reporting SEF volume threshold accounts via New Form 102B until February 13, 2017 (see section H 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.

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>10</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 in more detail.

**D. Conditional No-action Relief from Submitting Information via New Form 102A Until 11:59 p.m. Eastern Time on April 27, 2016**

*Summary of Relief Granted: The Division is providing relief from electronically reporting via New Form 102A until 11:59 p.m. Eastern Time on April 27, 2016, 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 April 27, 2016, 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

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<sup>10</sup> 17 CFR §18.05.

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>11</sup> until **11:59 p.m. Eastern Time on April 27, 2016**.

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 April 27, 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 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>12</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 website.<sup>13</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-

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<sup>11</sup> See 17 CFR §§ 17.01(a), 17.01(d), 17.01(e) and 17.02(b).

<sup>12</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.

<sup>13</sup> See the link below to the Commission’s website for a copy of Legacy Form 102:

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

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 staff of the Commission’s Office of Data and Technology (“ODT”) as requested to test and implement any information technology standards or systems associated with the OCR Final Rule as contemplated in that rulemaking.<sup>14</sup> During this testing period, Reporting Parties are expected to provide “Production Grade” test data<sup>15</sup> and any other form filings requested by ODT staff,<sup>16</sup> in the form and manner described on the OCR testing page of the CFTC website.<sup>17</sup> The Division advises Reporting Parties to check the OCR testing page on a regular basis to review testing requirements.

#### **F. Conditional No-action Relief from Submitting Information via New Form 102S Until 11:59 p.m. Eastern Time on April 27, 2016**

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<sup>14</sup> OCR Final Rule at 69188-69189.

<sup>15</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>16</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>17</sup> See <http://www.cftc.gov/Forms/OCR>

*Summary of Relief Granted: The Division is providing relief from electronically reporting via New Form 102S until 11:59 p.m. Eastern Time on April 27, 2016, 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 April 27, 2016, 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 New Form 102S, as required by Part 20,<sup>18</sup> until **11:59 p.m. Eastern Time on April 27, 2016**.

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 April 27, 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 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>19</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>20</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,

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<sup>18</sup> See 17 CFR §§ 20.5(a)(1), 20.5(a)(2), 20.5(a)(4) and 20.5(a)(5).

<sup>19</sup> See § 20.1 of the Commission's regulations for the definition of "reporting entity." 17 CFR § 20.1.

<sup>20</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>



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 April 27, 2016**

*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 April 27, 2016, 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 April 27, 2016, or such earlier date that the Division may determine.<sup>21</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 April 27, 2016.**<sup>22</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 April 27, 2016, or such earlier date that the Division may determine.<sup>23</sup>

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<sup>21</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 April 27, 2016, or such earlier date that the Division may determine.

<sup>22</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>23</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 April 27, 2016, 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. 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 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>24</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>25</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>26</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 September 28, 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 September 28, 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 September 28, 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

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<sup>24</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>25</sup> OCR Final Rule at 69188-69189.

<sup>26</sup> See <http://www.cftc.gov/Forms/OCR/Testing>

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>27</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>28</sup> The no-action relief with respect to New Form 40 and New Form 71 described in this paragraph ends in each case at **11:59 p.m. Eastern Time on September 28, 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 September 28, 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>29</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 September 28, 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

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<sup>27</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.

<sup>28</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>29</sup> See the link below to the Commission’s website for a copy of Legacy Form 40:  
<http://www.cftc.gov/Forms/ssLINK/cftcform40>

rulemaking.<sup>30</sup> During this testing period leading up to the September 28, 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>31</sup>

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>32</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 April 27, 2016;**
- The no-action relief provided in section F (102S Submission) of this no-action letter ends at **11:59 p.m. Eastern Time on April 27, 2016;**
- 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 April 27, 2016;**
- 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 September 28, 2016.**

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<sup>30</sup> OCR Final Rule at 69188-69189.

<sup>31</sup> See <http://www.cftc.gov/Forms/OCR/Testing>

<sup>32</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,

A handwritten signature in cursive script, appearing to read "Vincent McGonagle", is written over a solid horizontal line.

Vincent McGonagle  
Director  
Division of Market Oversight

Detailed Instructions on Submitting Legacy Form 102<sup>34</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>33</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>34</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>35</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>35</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.