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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 17

RIN 3038-AC22

Large Trader Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending certain regulations setting forth large trader position reporting requirements for futures and options. The amendments, among other things, remove the 80-character submission standard in § 17.00(g) and delegate authority to the Director of the Office of Data and Technology to designate a modern submission standard for reports required to be submitted under § 17.00(a), and replace the data fields previously enumerated in § 17.00(g) with an appendix specifying and adding certain applicable data elements.

DATES:

Effective date: The effective date for this final rule is [**60 DAYS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER**].

Compliance date: Futures commission merchants ("FCMs"), clearing members, foreign brokers, and designated contract markets ("DCMs") required to submit reports under § 17.00(a) (collectively, "reporting firms"), must comply with the amendments to the rules by **[730 DAYS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

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I. Background

A. Introduction

Part 17 of the Commission's regulations governs large trader position reporting for futures and options. Section 17.00(a) requires reporting firms to report daily position information for "special accounts"[1]—accounts that represent the largest futures and options traders—to the Commission.[2] Since the 1980s, Commission regulations have

[1] 17 CFR 15.00(r).
[2] 17 CFR 17.00(a).

required reporting firms to submit § 17.00(a) large trader position reports in the highly-specified 80-character record format set out in § 17.00(g).[3] Data reporting technology has evolved since that time, and it is no longer efficient for the Commission or market participants to report and maintain large trader position data in the traditional § 17.00(g) record format. For example, the § 17.00(g) data submission format is unique to § 17.00(a) reports and not easily integrated with other datasets submitted to the Commission. Additionally, because the current § 17.00(g) record format does not support automated data quality checks from Commission staff to reporting firms, the current error correction process puts the timeliness of publication of the Commitments of Traders ("COT") report, which is built using § 17.00(a) data, in jeopardy. And, the current § 17.00(g) record format cannot accommodate reporting positions in various newer contracts, such as bounded options.

Accordingly, on June 27, 2023, the Commission published in the ***Federal Register*** a notice of proposed rulemaking (herein, the "Proposal")[4] that set out revisions to Part 17 to modernize that record format and update the data elements required to be reported in § 17.00(a) reports.[5] Specifically, the Commission proposed to remove the § 17.00(g) record format, which contains both a data submission standard and data elements to be reported. To implement a modern data submission standard, the Commission proposed to revise § 17.03(d) to delegate authority to the Director of the Office of Data and Technology to permit or require one or more particular data submission standards. Contemporaneously

[3] 17 CFR 17.00(g); *see* Final Rule, Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers, and Large Traders, 51 FR 4712 (Feb. 7, 1986).
[4] Notice of Proposed Rulemaking, Large Trader Reporting Requirements, 88 FR 41522 (June 27, 2023).
[5] *Id.*

with publication of the Proposal, the Commission also published a proposed Part 17 Guidebook (the "Proposed Part 17 Guidebook"),[6] which would designate Financial Information eXchange Markup Language ("FIXML") as the data submission standard for § 17.00(a) reports. To replace the data elements previously contained in the § 17.00(g) record format, the Commission proposed to add an appendix C to Part 17 ("Proposed Appendix C") enumerating and adding certain data elements to be reported in § 17.00(a) reports. Revised § 17.03(d) proposed to delegate authority to the Director of the Office of Data and Technology to determine the form and manner for reporting the data elements contained in the new Appendix C to Part 17. Combined, these proposed amendments to Part 17 would modernize the data submission standard for § 17.00(a) reports, bringing that data submission standard in line with the extensible-markup-language-based data submission standards used for virtually all other Commission data reporting regimes, and would enable reporting of positions in certain futures and options contracts that cannot be represented in the current § 17.00(g) record format.

The public comment period for the Proposal ended August 28, 2023,[7] and the Commission received 12 substantive public comment letters.[8] After considering the comments, the Commission has determined to largely adopt the amendments as proposed, with certain non-substantive revisions for clarity. Additionally, in response to certain comments, the Proposed Part 17 Guidebook has been revised to enable reporting firms to

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[6] *See* Proposed Part 17 Guidebook (May 30, 2023), *available at* https://www.cftc.gov/media/8701/GuidebookPart17_053123/download.

[7] 88 FR at 41522.

[8] The following entities and persons submitted substantive comment letters: Better Markets ("Better Markets"); Bloomberg L.P. ("Bloomberg"); CBOE Global Markets, Inc. ("CBOE"); CME Group ("CME"); Martha Denkevitz ("Denkevitz"); Futures Industry Association ("FIA"); Global LEI Foundation ("GLEIF"); ICE Futures U.S. ("ICE"); International Standards Organization, Standards Advisory Group ("ISO"); National Grain and Feed Association ("NGFA"); The Options Clearing Corporation ("OCC"); and William Wood ("Wood").

submit certain of the product-related data elements enumerated in Appendix C using a "Unique Instrument Code." The Commission believes the amendments it is adopting herein will improve data quality and modernize the Commission's large trader position data reporting scheme for futures and options.

B. Statutory and Regulatory Framework for Large Trader Position Reporting

Sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act ("CEA") provide the Commission with authority to promulgate large trader position reporting regulations. Section 4a of the CEA permits the Commission to set and approve exchange-set limits and enforce speculative position limits.[9] Section 4c(b) of the CEA gives the Commission plenary authority to regulate transactions that involve commodity options.[10] Section 4g of the CEA imposes reporting and recordkeeping obligations on registered entities, and requires each registered entity to file such reports as the Commission may require on proprietary and customer transactions and positions in commodities for future delivery executed on any board of trade.[11] Additionally, Section 4g of the CEA requires registered entities to maintain daily trading records as required by the Commission and permits the Commission to require that such daily trading records be made available to the Commission.[12] Section 4i of the CEA requires the filing of such reports as the Commission

[9] 7 U.S.C. 6a.
[10] 7 U.S.C. 6c(b).
[11] 7 U.S.C. 6g.
[12] *Id.*

may require when positions made or obtained on DCMs equal or exceed Commission-set levels.[13]

The Commission has set out reporting requirements for futures and options in Parts 15, 16, 17, 18, 19, and 21 of the Commission's regulations. Part 16 requires contract markets to submit certain information to the Commission; Parts 17 and 21 require reporting firms to submit certain information to the Commission; and Parts 18 and 19 require individual traders to submit certain data to the Commission.

Within this framework, Part 17 requires the submission of large trader position reports and certain account identifying information for accounts of large traders. Section 17.00(a) requires reporting firms to submit daily reports to the Commission providing positions in open contracts for "special accounts"—that is, futures and options trader accounts that exceed Commission-set reporting levels.[14] More specifically, § 17.00(a) requires reporting firms to submit a § 17.00(a) large trader position report—historically referred to as a "series '01 report" —that itemizes by special account certain positions, deliveries of futures, and exchanges of futures for related positions associated with each account that carries a reportable position.[15]

Section 17.00(g) provides the data submission standard and data elements for the reportable positions by special accounts in the form of an 80-character record format.[16]

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[13] 7 U.S.C. 6i.
[14] 17 CFR 17.00(a); 17 CFR 15.00(r).
[15] Section 17.01 requires, separately, that reporting firms submit information, via Form 102, identifying the traders behind special accounts by name, address, and occupation, once an account accrues a reportable position. 17 CFR 17.01. Reporting firms, as appropriate, submit Form 102 to the Commission for each account when that account becomes reportable as a special account. By aggregating information from § 17.00(a) large trader reports and Form 102, the Commission can determine the size of each reportable trader's overall positions across special accounts held with multiple FCMs, clearing members, or foreign brokers.
[16] 17 CFR 17.00(g).

Section 17.02(a) provides the time of filing of § 17.00(a) reports.[17] Section 17.03(a) delegates the authority to the Director of the Office of Data and Technology to determine whether reporting firms may submit § 17.00(a) reports using some other format than the required format, upon a determination that such person is unable to report the information using the format, coding structure, or electronic data transmission procedures otherwise required.[18] Section 17.03(d) delegates authority to the Director of the Office of Data and Technology to approve a format and coding structure other than that set forth in § 17.00(g).[19]

II. Amendments to Part 17

A. Submission Standard—§§ 17.00(g), 17.00(h), 17.03(d)

1. Background and Summary of the Final Rule

Currently, the § 17.00(g) record format contains an 80-character, Cobol-based[20] data submission standard.[21] The Proposal discussed several disadvantages of that data submission standard.[22] First, the data submission standard contained in the current § 17.00(g) record format is outdated and inconsistent with data submission standards required by other Commission reporting regulations.[23] Second, the current § 17.00(g)

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[17] 17 CFR 17.02(a).
[18] 17 CFR 17.03(a).
[19] 17 CFR 17.03(d).
[20] "Cobol" refers to Common Business Oriented Language, a programming language.
[21] *See* 17 CFR 17.00(g); 88 FR at 41532.
[22] *See* 88 FR at 41524-25.
[23] *See, e.g.*, Final Rule, Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 78 FR 69178, 69188 (Nov. 18, 2013) (establishing a "web-based portal" and "an XML-based, secure FTP data feed" for reporting ownership and control information under § 17.01); Advanced Notice of Proposed Rulemaking, Account Ownership and Control Report, 74 FR 31642, 31644 (July 2, 2009) (section 16.02 data to be reported in FIXML); Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (June 22, 2015), *available at* https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/ltrguidebook062215.pdf (incorporating FpML and FIXML data standards for Part 20 reporting); CFTC Technical Specification, Parts 43 and 45 swap data reporting and public dissemination requirements, Version 3.2 (March 1, 2023), *available at*

record format is also error-prone, and the manual error correction process currently employed puts the timeliness of the weekly COT report in jeopardy. Third, data received in the current § 17.00(g) record format is difficult to query outside of the Integrated Surveillance System ("ISS")[24] and therefore difficult to integrate with other Commission datasets. Fourth, certain contract features, such as multiple strike prices, cannot be represented in the current § 17.00(g) record format.

To address these shortcomings, the Commission proposed amendments to §§ 17.00(g), 17.00(h), and 17.03(d). The Commission proposed to remove the 80-character record format from § 17.00(g), and to instead provide in that regulation that § 17.00(a) reports be submitted in the form and manner published by the Commission or its designee pursuant to § 17.03. Section 17.03 addresses, among other things, the delegation of certain authority to the Director of the Office of Data and Technology. The Commission proposed to revise § 17.03(d), which currently delegates the authority to the Director of the Office of Data and Technology to approve a format and coding structure other than that set forth in § 17.00(g), to provide instead that authority be delegated to the Director of the Office of Data and Technology to determine the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in Appendix C to Part 17 and to determine whether to permit or require one or more particular data standards. These amendments would delegate authority to the Director of the Office of Data and Technology to designate a data submission standard for § 17.00(a) reports in a Guidebook.

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https://www.cftc.gov/media/8261/Part43_45TechnicalSpecification03012023CLEAN/download (incorporating FIXML data standard for Parts 43 and 45 reporting).

[24] The Commission's Integrated Surveillance System receives and stores end-of-day position reports submitted to the Commission, and allows the Commission's divisions and offices to monitor daily activities of large traders. *See, e.g.*, 78 FR at 69180.

Contemporaneously with the publication of the Proposal, the Commission published the Proposed Part 17 Guidebook, which designated FIXML as the data submission standard for § 17.00(a) reports. The Proposed Part 17 Guidebook would permit reporting firms to either submit § 17.00(a) reports in FIXML through a secure file transfer protocol ("FTP") data feed, or through the CFTC Portal, which would in turn convert those reports into FIXML. The Commission believes that providing those two methods for submitting § 17.00(a) reports will accommodate varied technological capabilities of reporting firms.[25] Whereas it may be more efficient for a more sophisticated reporting firm with a large volume of reports to submit such reports in FIXML by secure FTP, it may be more efficient for a less sophisticated firm or a firm with a smaller volume of reports to manually submit such reports through the CFTC Portal.

The Commission also proposed non-substantive edits to § 17.00(h), concerning correction of errors and omissions. Current § 17.00(h) provides that corrections of errors or omissions in § 17.00(a) reports be filed "on series '01 forms" or "in the format, coding structure and data transmission procedures approved in writing by the Commission or its designee."[26] The Commission proposed to delete the reference to "series '01 forms" and to specify that the form and manner for submitting corrections of errors and omissions shall be published by the Commission or its designee pursuant to the delegation of authority in § 17.03. Pursuant to this provision, the form and manner for submitting corrections of

[25] *See* 88 FR at 41532 (addressing reporting firms that would automate submitting § 17.00(a) reports and firms that would manually submit § 17.00(a) reports through the CFTC Portal); *see also* 78 FR at 69188 (Nov. 18, 2013) ("The Commission is offering two filing methods [for ownership and control reports] for each form because it anticipates a wide range of technological capabilities among reporting parties (varying based on the relative size and experience of a given reporting party).").
[26] 17 CFR 17.00(h).

errors and omissions would be set out in the Part 17 Guidebook published by the Office of Data and Technology.

In this final rule, the Commission is adopting the amendments to §§ 17.00(g), 17.00(h), and 17.03(d) as proposed.

2. Comments on the Proposed Rule

The Commission solicited comment concerning the advantages and disadvantages of designating a FIXML data submission standard for § 17.00(a) reports, the proposal to permit reporting firms to submit § 17.00(a) reports through the CFTC Portal in addition to submission by secure FTP, and the advantages and disadvantages of correcting errors in § 17.00(a) reports in the manner set forth in the Part 17 Guidebook. The Commission also requested comments on all aspects of the changes to the data submission standard described in the Proposal.

The Commission received ten comments that related to changes to the data submission standard for § 17.00(a) reports. Those comments generally concerned the appropriateness of a FIXML data submission standard, the scope of the delegation of authority in § 17.03(d), the process for updating the Part 17 Guidebook, and the process for correcting errors in § 17.00(a) data.

a. Comments Concerning the Part 17 Guidebook Designating a FIXML Data Submission Standard for § 17.00(a) Reports

The Proposal sought comment on whether the Part 17 Guidebook should designate FIXML as the data submission standard for § 17.00(a) large trader position reports. Commenters were generally supportive of, and did not oppose, a FIXML data submission standard, with the option to submit § 17.00(a) reports manually through the CFTC Portal.

FIA stated that it supported the Commission's efforts to modernize the large trader reporting process and transition from the current § 17.00(g) record format to a FIXML data submission standard.[27] CME stated that it "wholeheartedly" supported the Commission's efforts to modernize and enhance large trader position reporting and that "the conversion from an 80-byte file to FIXML is warranted."[28] Similarly, ICE was "generally supportive" of the Commission's efforts to modernize large trader reporting requirements, although ICE did not specifically reference the proposed transition to an XML-based data submission standard.[29]

The Commission also received several comments concerning the proposed revisions to § 17.03(d) to delegate authority to the Director of the Office of Data and Technology to designate a data submission standard and the process by which Commission staff might update the designated data submission standard in the Part 17 Guidebook in the future. FIA stated that it supported delegating authority to the Director of the Office of Data and Technology to set out data submission standards in the Part 17 Guidebook,[30] and ICE stated that it appreciated the rationale for delegating authority to designate a data submission standard and that it generally supported FIA's comments related to the proposed delegation of authority.[31] No commenters opposed delegating authority to designate a data submission standard for § 17.00(a) reports to the Director of the Office of Data and Technology. However, some commenters requested clarification as to the scope

[27] FIA Letter at 1.
[28] CME Letter at 1-2.
[29] ICE Letter at 1.
[30] FIA Letter at 7.
[31] ICE Letter at 2.

of the delegation and proposed modifications related to the implementation of that delegated authority.[32]

Certain commenters suggested revisions to the Proposal providing that if, in the future, the Director of the Office of Data and Technology changed the designated data submission standard in some way, reporting firms be consulted or given advance notice.[33] For example, FIA suggested the Commission modify the Proposal or the Proposed Part 17 Guidebook to provide that, before changing the designated data submission standard, Commission staff consult with reporting firms, provide reasonable notice of changes, and provide a reasonable implementation period.[34] ICE suggested that the Commission modify the Proposal and Proposed Part 17 Guidebook to require that the Commission consult with reporting firms regarding any changes to the designated data submission standard.[35] OCC suggested the Commission modify the Proposal to provide that reasonable notice and implementation time be provided if at some point the Director of the Office of Data and Technology changes the designated data submission standard.[36]

The Commission has determined to adopt the changes to § 17.03(d) as proposed. The Commission believes the revisions described in the comments may unduly constrain the Commission's ability to adjust the process by which it receives information. The Commission has considered similar comments in other reporting contexts and declined to

[32] *See* FIA Letter at 7; ICE Letter at 2; OCC Letter at 4.
[33] The same commenters also expressed concerns about potential costs associated with hypothetical future changes in the designated data submission standard for § 17.00(a) reports. Specifically, FIA, ICE, and OCC each stated that future changes to the data submission standard set out in the Part 17 Guidebook could require costly technology and infrastructure changes for reporting firms. *See, e.g.*, FIA Letter at 7; ICE Letter at 2; OCC Letter at 4.
[34] FIA Letter at 7.
[35] ICE Letter at 2.
[36] OCC Letter at 4.

specify in regulations particular implementation timelines applicable to possible future changes in exercises of delegated authority.[37]

The Commission intends for staff to consult with reporting firms with respect to appropriate data submission standards in order to ensure that any changes in the designated data submission standards or standards for § 17.00(a) reports will be effective and suitable. As explained in the Proposal, the purpose of delegating the authority to designate a data submission standard or standards is to enable the Commission and Commission staff to quickly respond to changing market and technological conditions and to remain consistent with industry best practices.[38] Typically, updates to technical specifications and guidebooks issued pursuant to delegated authority are accompanied by implementation periods.[39] The Commission expects that when publishing any updates to the Part 17 Guidebook, staff will provide reasonable notice and an adequate implementation period.

b. Comments Concerning Submitting § 17.00(a) Reports Through the CFTC Portal

As discussed, the Proposal requested comments on allowing reporting firms to submit § 17.00(a) reports either in the FIXML data submission standard designated in the

[37] *See, e.g.*, Final Rule, Certain Swap Data Repository and Data Reporting Requirements, 85 FR 75601, 75625 (Nov. 25, 2020) (declining to revise proposed regulation to include provision that would state that compliance with changes in technical specifications need only be achieved "as soon as practicable").
[38] 88 FR at 41526.
[39] *See, e.g.*, CFTC Press Release, CFTC Staff Announces Modifications to the Technical Specification for Parts 43 and 45, Release No. 8673-23 (Mar. 10, 2023), https://www.cftc.gov/PressRoom/PressReleases/8673-23 (announcing in March 2023 modifications to the Technical Specifications for Parts 43 and 45 to be implemented in January 2024); CFTC Press Release, CFTC's Division of Market Oversight Issues Updated Guidebook and Appendices for Part 20 Reports, Release No. 7189-15 (June 22, 2015), https://www.cftc.gov/PressRoom/PressReleases/7189-15 ("Commission staff will implement the improved validation rules in a test environment on July 6, 2015. Commission staff expects that the improved validation rules will go live in the production environment on August 31, 2015.").

Part 17 Guidebook, or through the CFTC Portal.[40] In its comment letter, FIA stated that it supported the continued operation of the CFTC Portal as a means of reporting. FIA also stated that it believed the Commission should (1) implement changes to the CFTC Portal simultaneously with the implementation of the final rule; (2) consult with industry concerning changes to the CFTC Portal; (3) provide a three-month testing period for the revised CFTC Portal; and (4) include certain specific features in the CFTC Portal, including automatic creation of a Report ID, search functionality for prior submissions by Report ID, a correction process, and a process to export filed reports from the CFTC Portal.

As discussed below, in the final rule, the Commission is extending the compliance date to a date two years following publication of a final rule in the **Federal Register**. The Commission expects the updated CFTC Portal to become available for testing approximately six months after publication of the final rule. The Commission believes this should provide reporting firms with adequate time to test the new CFTC Portal prior to the final rule's compliance date.

With respect to the features FIA has described, the Commission expects that some of these features will be available in the CFTC Portal. For example, the Commission expects the CFTC Portal will include functionality for identifying specific reports,[41] a process for submitting changes or corrections to previously filed reports, and a process for exporting reports in FIXML format. The updated CFTC Portal may in the future include time-limited search functionality to query previously-filed reports.

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[40] The CFTC Portal is also referred to as the "PERT Portal," which abbreviates "Position Entry for Reportable Traders." *See* Large Trader Reporting Program, https://www.cftc.gov/IndustryOversight/MarketSurveillance/LargeTraderReportingProgram/index.htm (last visited April 23, 2024).

[41] *See, e.g.*, Part 17 Guidebook § 3.10.1 (discussing Reference IDs).

c. Comments Concerning Error Corrections

Currently, § 17.00(h) provides that, unless otherwise approved by the Commission or its designee, corrections of errors and omissions in data required to be reported under § 17.00(a) shall be filed "on series '01 forms or in the format, coding structure and data transmission procedures approved in writing by the Commission or its designee."[42] Given alterations to the § 17.00(g) record format—which provides the format for the "series '01 form"[43]—the Commission proposed to revise the data submission standard and form and manner for error corrections to be consistent with the new data submission standard and the form and manner for submitting § 17.00(a) reports. Significantly, the Proposal explained that implementing a modern data submission standard will allow Commission staff to use an automated process for notifying reporting firms of errors identified in reports during the ingest process on the same day those reports are submitted.[44] Currently, staff manually notifies reporting firms when it identifies errors in § 17.00(a) reports submitted by those firms. The Commission expects automating the process for sending notice of errors will facilitate more rapid corrections to reported data, which will improve the quality of the Commission's data.

The Commission received several comments concerning error corrections. First, NGFA voiced support for automating the process for notifying reporting firms of errors.[45] Second, Wood and Denkevitz speculated that reporting firms could "game" the error correction process[46] by submitting intentionally inaccurate reports and subsequently

[42] 17 CFR 17.00(h).
[43] As noted previously, these final rules remove this reference to the "series '01 form" as well.
[44] *See* 88 FR at 41526.
[45] *See, e.g.*, NGFA Letter at 1.
[46] Wood speculates about several other forms of "gaming" related to Part 17 large trader position reporting,

correcting those reports, and expressed a concern that the Commission might "delete records" following submission of error corrections, thereby making it difficult to detect such "gaming."[47] Both respectively suggested that "[n]o deletions should ever be allowed" and "[d]eletions should not be allowed."[48] The Proposal did not discuss "deleting records" and did not propose to delete any records. As discussed in the Proposal, the "Record Type" data element—both in the current § 17.00(g) record format and Appendix C—identifies submissions that correct errors or omissions.[49]

d. Comments Concerning Certain Late Claimed Give-ups and Transfers

The Commission also received comments from FIA concerning the filing of change updates to account for "certain late claimed give-ups and transfers."[50] CBOE echoed these comments.[51]

Specifically, FIA requested the Commission provide "guidance" that "change updates, corrections, or amendments to reports would not be required to account for certain "late claimed give-up" or certain transfer activity."[52] FIA states that filing change updates to account for "certain late claimed give-ups and transfers" would increase reporting firms'

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including the prospect that a trader might conceal ownership of accounts and submit optional § 17.00(a) reports that are anonymous and at the same time contain "misleading" data. *See* Wood Letter. These concerns speak more to the reporting of information pertaining to ownership and control under § 17.01 than to reporting of positions of special accounts under § 17.00(a). In any event, Wood does not propose any changes to the Proposal on the basis of these concerns.

[47] *See* Wood Letter, Denkevitz Letter.

[48] *Id.*

[49] *See* 88 FR at 41526 n.60.

[50] FIA Letter at 6. To the extent CME and ICE's comment letters should be read to support or reiterate FIA's comment letter, those letters can be construed to raise this issue as well. *See* CME Letter at 2; ICE Letter at 1.

[51] CBOE Letter at 2.

[52] FIA Letter at 6.

filings and increase complexity, and states that "recreating positions from a prior day in order to accurately file the change update" would be challenging for reporting firms.[53] FIA also included an appendix to its comment letter containing reporting hypotheticals drafted by FIA members.[54]

The Commission did not propose to revise regulations that govern the time by which a position must be reported under § 17.00(a) or to revise the requirement that a reporting firm correct any errors in a position report. With respect to the activity to which FIA refers, the Commission would not expect the Proposal to affect whether reporting of positions impacted by give-up and transfer activity complies with the Commission's regulations. Therefore, FIA's request for guidance concerning "change updates, corrections, or amendments" relating to "certain late claimed give-ups and transfers" is outside the scope of this rulemaking.

The hypotheticals in FIA's letter do address a scenario where trades have been executed on a given day, but "have not been claimed yet in clearing" as of the close of market on that same day.[55] For purposes of populating the "Contracts Bought" and "Contracts Sold" data elements, which include contracts bought and sold via give-up transactions, a reporting firm should generally count contracts that have been claimed for clearing and therefore are in a special account as of the close of market on the day covered by the report. To clarify the definitions of "Contracts Bought" and "Contracts Sold," the Commission has removed the reference to "give-ups processed beyond T+1" and replaced it with "contracts claimed for clearing as a result of trade allocations such as give-ups."

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[53] *Id.*
[54] *See id.* at 17-19.
[55] *Id.* at 18-19.

The "Contracts Bought" and "Contracts Sold" data elements, respectively, capture the gross number of contracts bought by a special account as of the close of the market for a covered day and the gross number of contracts sold from a special account as of the close of the market for a covered day, excluding contracts bought or sold from a special account in connection with exchanges of derivatives for related positions ("EDRPs"), transfers, option exercises, or deliveries.

3. Final Rule

As discussed, with respect to the Proposal's changes related to the data submission standard for § 17.00(a) reports, the Commission is adopting the Proposal as proposed.

B. Data Elements—Appendix C to Part 17 and § 17.03(d)

1. Background and Summary of the Proposed Rule

Because the current § 17.00(g) record format contained the data elements for § 17.00(a) reports and provided the form and manner for reporting those data elements, removal of that record format necessitates replacing those data elements in the regulations. The Proposal relocated the data elements for § 17.00(a) reports to Appendix C to Part 17, and delegated authority to the Director of the Office of Data and Technology to publish the form and manner for submitting those data elements in a Part 17 Guidebook. The Proposal also included several data elements not previously incorporated into the § 17.00(g) record format.

Organizing the data elements applicable to § 17.00(a) reports in an appendix to Part 17 is consistent with the treatment of data elements required to be reported in other

Commission reporting regimes.[56] Similarly, delegating authority to determine the form and manner for reporting a particular data element to the Director of the Office of Data and Technology should enable the Commission to address changing market and technological conditions, and to provide clarification on reporting of particular data elements as necessary.

The Proposal organized the data elements in Appendix C into four categories. First, Proposed Appendix C retained certain data elements that have been required to be reported under the current § 17.00(g) record format—for example, under the Proposal, a § 17.00(a) report would continue to require reporting long positions and short positions in options and futures contracts, delivery notices stopped and issued, and other information fundamental to a position report.[57] Second, Proposed Appendix C called for certain new data elements used to facilitate processing of data, including data elements typically used in FIXML reporting[58]—for example, for files submitted in FIXML, reporting firms would include a message count, a "Sender ID," and information identifying the time of submission.[59] Third, Proposed Appendix C included new product-related data elements that, where

[56] *See, e.g.*, 17 CFR Part 45, App'x 1 (data elements for swap data required to be reported under Part 45); 17 CFR Part 43, App'x A (data elements for swap transaction and pricing data required to be reported under Part 43); 17 CFR Part 39, App'x C ("Daily Reporting Data Fields" for reporting required under Part 39).

[57] These data elements include (1) Data Element #7 Record Type (Action), (2) Data Element #8 Report Date, (3) Data Element #9 (Reporting Firm ID), (4) Data Element #11 Account ID, (5) Data Element #12 Exchange Indicator, (6) Data Element #15 Ticker Symbol, (7) Data Element #16 Maturity Month Year, (8) Data Element #20 Strike Level, (9) Data Element #26 Put or Call Indicator, (10) Data Element #27 Exercise Style, (11) Data Element #30 Underlying Contract ID, (12) Data Element #31 Underlying Maturity Month Year, (13) Data Element #32 Long Position, (14) Data Element #33 Short Position, (15) Data Element #38 Delivery Notices Stopped, and (16) Data Element #39 Delivery Notices Issued. The Part 17 Guidebook provides a mapping of data elements in the current § 17.00(g) record format to the data elements in Appendix C.

[58] These data elements include (1) Data Element #1 Total Message Count, (2) Data Element #2 Message Type, (3) Data Element #3 Sender ID, (4) Data Element #4 To ID, (5) Data Element #5 Message Transmit Datetime, (6) Data Element #6 Report ID, and (7) Data Element #10 Special Account Controller LEI.

[59] The Commission notes that for reporting firms submitting § 17.00(a) reports through the CFTC Portal, certain of these data elements may be populated by the CFTC Portal software.

applicable, would enable the Commission to identify and distinguish the futures or option contract pertaining to the reported position.[60] In some instances these data elements would allow the Commission to draw more granular distinctions between certain contracts for reportable positions, and in other instances, these data elements will enable reporting firms to accurately represent terms of particular contracts, such as bounded or barrier contracts, contracts with non-price or non-numeric strikes, and other innovative contracts, that are held in special accounts. Fourth, Proposed Appendix C included new data elements that concern the nature and quantity of day-to-day changes in positions.[61] That information would provide Commission staff with additional information to support the Commission's Surveillance Program,[62] and would assist Commission staff in linking position data reported at the special account level pursuant to § 17.00(a) with transaction data reported at the trading account level under § 16.02.

In this final rule, the Commission is adopting the amendments to §§ 17.00(g) and 17.03(d) as proposed. The Commission is also adopting Appendix C to Part 17 (the final Appendix C to Part 17 is referred to, herein, as "Appendix C"), largely as proposed, but

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[60] These data elements include (1) Data Element #14 Product Type, (2) Data Element #13 Commodity Clearing Code, (3) Data Element #17 Maturity Time, (4) Data Element #18 Listing Date, (5) Data Element #19 First Exercise Date, (6) Data Element #20 Strike Level, (7) Data Element #21 Alpha Strike, (8) Data Element #22 Cap Level, (9) Data Element #23 Floor Level, (10) Data Element #24 Bound or Barrier Type, (11) Data Element #25 Bound or Barrier Level, (12) Data Element #28 Payout Amount, (13) Data Element #29 Payout Type, and (14) Data Element #50 Product-Specific Terms.

[61] These data elements include (1) Data Element #34 Contracts Bought, (2) Data Element #35 Contracts Sold, (3) Data Element #36 EDRPs Bought, (4) Data Element #37 EDRPs Sold, (5) Data Element #38 Delivery Notices Stopped, (6) Data Element #39 Delivery Notices Issued, (7) Data Element #40 Long Options Expired, (8) Data Element #41 Short Options Expired, (9) Data Element #42 Long Options Exercised, (10) Data Element #43 Short Options Exercised, (11) Data Element #44 Long Futures Assigned, (12) Data Element #45 Short Futures Assigned, (13) Data Element # 46 Long Transfers Sent, (14) Data Element #47 Long Transfers Received, (15) Data Element #48 Short Transfers Sent, and (16) Data Element #49 Short Transfers Received.

[62] The Commission's Market Surveillance Program is responsible for collecting market data and position information from registrants and large traders, and for monitoring the daily activities of large traders, key price relationships, and relevant supply and demand factors in a continuous review for potential market problems. *See* Final Rule, Position Limits, 86 FR 3236, 3381 n.1134 (Jan. 14, 2021).

with non-substantive changes to the descriptions of certain data elements for clarity. In addition, the Office of Data and Technology has made corresponding non-substantive changes to the Proposed Part 17 Guidebook for clarity, and corresponding changes to the Part 17 Guidebook to remove certain data elements. And, the Part 17 Guidebook now has been revised to enable reporting firms to submit certain of the product-related data elements enumerated in Appendix C using a "Unique Instrument Code." A revised Part 17 Guidebook (the "Part 17 Guidebook") has been published contemporaneously with this final rule.

2. Comments Received

The Commission solicited comment concerning any additional data elements not included in Appendix C that may be necessary to obtain a complete and accurate picture of positions held by large traders, any transactions that would effect changes in positions that are not accounted for by the data elements in Appendix C, and any data elements in Appendix C that may not be necessary to obtain a complete and accurate picture of positions held by large traders. The Commission also requested comments on all aspects of the changes to data elements described in the Proposal.

The Commission received nine comments concerning changes to the data elements for § 17.00(a) reports. Those comments generally consisted of requests for clarification regarding certain data elements, comments stating that certain product-related data elements should be obtained from DCMs, comments concerning the special account legal entity identifier ("LEI") data element, and comments concerning use of certain data submission standards for certain data elements. In particular, FIA provided an appendix to

their comment letter containing comments on 23 of the data elements in Appendix C.[63] ICE stated that it generally supported FIA's comments;[64] CME stated that "compliance . . . is dependent on how the CFTC defines some of the new data elements," citing the FIA appendix;[65] CBOE stated that it was "supportive" of FIA's comments;[66] and OCC stated that it "associates itself with the contents of the FIA Comment Letter."[67]

a. Comments Concerning Currently Reported Data Elements ("Category 1")[68]

As discussed above, Appendix C incorporates the data elements included in the current § 17.00(g) record format. That 80-character record format contains data elements that capture information necessary to process data,[69] information concerning the reporting firm and special account,[70] product-identifying information,[71] and information concerning the direction or nature of the trades underlying the position.[72] In some instances, Appendix C calls for this information in a different format than that set out in current § 17.00(g). For

[63] FIA Letter at 13-16.
[64] ICE Letter at 1.
[65] CME Letter at 2.
[66] CBOE Letter at 2.
[67] OCC at 2.
[68] These data elements include (1) Data Element #7 Record Type (Action), (2) Data Element #8 Report Date, (3) Data Element #9 (Reporting Firm ID), (4) Data Element #11 Account ID, (5) Data Element #12 Exchange Indicator, (6) Data Element #15 Ticker Symbol, (7) Data Element #16 Maturity Month Year, (8) Data Element #20 Strike Level, (9) Data Element #26 Put or Call Indicator, (10) Data Element #27 Exercise Style, (11) Data Element #30 Underlying Contract ID, (12) Data Element #31 Underlying Maturity Month Year, (13) Data Element #32 Long Position, (14) Data Element #33 Short Position, (15) Data Element #38 Delivery Notices Stopped, and (16) Data Element #39 Delivery Notices Issued.
[69] For example, the "Record Type" data element indicates whether a report contains a new record, corrects a previously provided record, or deletes a previously provided record. 17 CFR 17.00(g)(2)(xiv).
[70] For example, the "Reporting firm" data element identifies the reporting firm using a three-character alphanumeric identifier assigned by a DCM or Derivatives Clearing Organization, 17 CFR 17.00(g)(2)(ii), and the "Account Number" data element identifies the special account using a unique identifier assigned by the reporting firm, 17 CFR 17.00(g)(2)(iii).
[71] For example, the "Commodity" data element is populated with an exchange-assigned commodity code for the futures or options contract. 17 CFR 17.00(g)(2)(vii).
[72] For example, the "Report Type" data element indicates whether a report contains positions, delivery notices, or exchanges of futures for a commodity or for a derivatives position. 17 CFR 17.00(g)(2)(i).

example, whereas the current § 17.00(g) record format uses a single data element to identify whether a position is long or short,[73] Appendix C captures long and short positions using separate data elements.[74] Similarly, whereas the current § 17.00(g) record format identifies EDRPs using a single "Report Type" field, Appendix C captures more granular information concerning such exchanges through multiple data elements.[75]

No commenter objected to continuing to report the data elements contained in the current § 17.00(g) record format. The appendix to FIA's comment letter does provide comment on several of these data elements. The Commission discusses those comments and data elements below in connection with new data elements to which those data elements correspond.

b. Comments Concerning Data Elements Related to FIXML Implementation and Data Processing ("Category 2")

Appendix C contains certain new data elements to facilitate processing of data.[76] These include data elements concerning the submission of messages to the Commission, data elements identifying the sender and special account controller,[77] and data elements identifying the date and time of the report. This information is necessary to enable the Commission to track and manage reports received using a FIXML data submission standard. No commenter objected to the inclusion of any of these data elements in

[73] Specifically, the "Long-Buy-Stopped (Short-Sell-Issued)" data element. *See* 17 CFR 17.00(g)(xi).
[74] Specifically, Data Element #32 Long Position and Data Element #33 Short Position.
[75] Specifically, Data Element #36 EDRPs Bought and Data Element #37 EDRPs Sold.
[76] These fields include (1) Data Element #1 Total Message Count, (2) Data Element #2 Message Type, (3) Data Element #3 Sender ID, (4) Data Element #4 To ID, (5) Data Element #5 Message Transmit Datetime, (6) Data Element #6 Report ID, and (7) Data Element #7 Record Type (Action).
[77] The Commission separately discusses Data Element #10 Special Account Controller LEI below.

Appendix C. FIA, however, requested clarification concerning some of these data elements.

First, FIA requested clarification concerning the "Total Message Count," "Report ID," and "Record Type (Action)" data elements.[78] Specifically, FIA asked whether "Report ID" identifies "a position report on a given day as opposed to lines within a position report."[79] The source of FIA's confusion appears to be the meaning of the term "position report" in Appendix C. As used in Appendix C, the terms "position report," "record," or "message" refer to a daily record of a position in a particular contract on a particular reporting market. As used in Appendix C, a "file" represents a compilation of one or more "records" or "messages" submitted for a given day. Thus, "Total Message Count" refers to a count of all records or messages in a given file, "Report ID" refers to a unique identifier assigned to each record or message in a given file, and "Record Type (Action)" refers to the action that triggered each record or message in a given file. The Commission has made non-substantive, clarifying revisions to Data Elements # 1, #5, and #7 to use the term "position report" consistently. The Commission believes these changes will provide clarity to reporting firms.

Second, FIA requested clarification concerning the "Sender ID" data element.[80] Specifically, it asked the Commission to clarify the difference between "Sender ID" and "Reporting Firm ID."[81] As FIA suggests in their comment, "Sender ID" is intended to identify the entity responsible for submitting a position report, whether or not that entity is also the "reporting firm," as that term is used herein. "Reporting Firm ID" refers to the

[78] FIA Letter at 13.
[79] *Id.*
[80] *Id.*
[81] *See id.*

reporting firm, regardless of whether the reporting firm is also the submitter of the position report. The Commission has made non-substantive, clarifying revisions to Data Element #3 to specify that "Sender ID" should be populated with a unique identifier assigned to the "firm submitting the position report." The Commission believes this change will provide clarity to reporting firms.

c. Comments Concerning Data Elements Related to Product Identification ("Category 3")

Appendix C also contains certain new data elements to identify and characterize the product in which the special account holds a position. The current § 17.00(g) record format requires reporting an "Exchange Code," an exchange-assigned "Commodity Code" for the contract, an exchange-assigned "Commodity Code" for the instrument that the contract exercises into, the "Expiration Date" for the contract and for the instrument that the contract exercises into, and a "Strike Price," where applicable.[82] That narrowly-prescribed format cannot readily accommodate reporting of positions in contracts with bounds or barriers, contracts with non-price or non-numeric strikes, or other innovative contracts. Accordingly, Appendix C includes data elements to capture such information, which will allow the Commission to distinguish among these positions in large trader data maintained in ISS.

FIA's comments concerning data elements related to product identification fall into two categories. First, FIA seeks clarification regarding certain data elements. Second, FIA proposes that the Commission eliminate certain data elements from Appendix C that it deems to contain "static" product information—that is, data elements that seek information

[82] 17 CFR 17.00(g).

for which the value of the data element will not vary across position reports submitted to the Commission—on the grounds that it would be more efficient for the Commission to obtain such information directly from the DCMs that list such products.[83]

FIA seeks clarification concerning the "Commodity Clearing Code," "Product Type," "Ticker Symbol," and "Underlying Contract ID" data elements.

With respect to "Commodity Clearing Code," FIA requests that the Commission use different terminology—simply, "Clearing Code"—as this is "industry standard terminology."[84] The "Commodity Clearing Code" data element captures a clearinghouse-assigned commodity code for the futures or options contract. Although certain clearinghouses use the "Clearing Code" terminology, some specifications use other terminology for this data, such as "Clearing Symbol." The Commission believes that the definition of "Commodity Clearing Code" set out in Appendix C, and the description in the Part 17 Guidebook, provide sufficient clarity for the term "Commodity Clearing Code" to be understood by reporting firms regardless of the naming convention used by a particular clearinghouse.

With respect to "Product Type," FIA seeks "further specificity" regarding the terms "Commodity Swap" and "Options on Combos," which are included as valid values in the Part 17 Guidebook.[85] The term "Commodity Swap" refers to a contract, based on a

[83] FIA Letter at 4-6. CME and CBOE also stated that they, as DCMs listing contracts, would provide so-called "static" data elements to the Commission in lieu of requiring reporting firms to include this data in § 17.00(a) reports. *See* CME Letter at 3; CBOE Letter at 2.
[84] FIA Letter at 13. Alternatively, Denkevitz suggests instead that the Commission use "Commodity Code" on the basis that "Commodity Code" is "more clear." *See* Denkevitz.
[85] FIA Letter at 14.

commodity, that meets the swap definition.[86] The term "Options on Combos," or Options Combinations, refers to a multi-legged instrument made up of calls, puts, and/or futures.

With respect to "Ticker Symbol," FIA stated that "Ticker Symbol" is "not self-explanatory."[87] The Part 17 Guidebook indicates that "Ticker Symbol" maps to the "Commodity Code (1)" data element in the current § 17.00(g) record format. The Commission believes that because reporting firms currently report this data element, the description in the Part 17 Guidebook, including the mapping to the current data element, is sufficiently clear.

With respect to "Underlying Contract ID," FIA commented a 20-character limitation set out in the Part 17 Guidebook could limit the ability of this data element to accommodate options that exercise into multiple futures contracts, such as a "crush option."[88] FIA does not, however, indicate what alternative character limitation would be appropriate for the "Underlying Contract ID" data element or specify any crush option contract currently listed on a DCM that could not be reported due to the 20-character limitation for this data element in the Part 17 Guidebook. The Guidebook published contemporaneously with this final rule replaces the 20-character limitation with a 50-character limitation. If, in the future, a 50-character limitation becomes insufficient to capture complete and accurate data for certain contracts, the Commission expects that the form and manner for reporting the "Underlying Contract ID" data element would be

[86] *See* 7 U.S.C. 1a(47)(A); 17 CFR 1.3; Final Rule, Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 77 FR 30596 (May 23, 2012).
[87] FIA Letter at 14.
[88] *Id.* at 15.

adjusted as necessary by the Office of Data and Technology pursuant to the delegation of authority in § 17.03.

As discussed above, in addition to comments requesting clarification with respect to specific data elements, FIA also commented concerning the reporting of product-related data elements for which the value of the data element generally does not vary across § 17.00(a) reports.[89] According to FIA, these so-called "static" data elements include "Product Type," "Listing Date," "Exercise Style," "Payout Amount," "Payout Type," "Underlying Contract ID," and "Underlying Maturity Month Year."

FIA requests that the Commission not require reporting firms to submit these data elements, but instead obtain this information from the DCMs listing products to which the data elements are applicable.[90] FIA argues that this static data should be obtained from one centralized source—the exchange that originates the data—and not multiple reporting firms because "the data should not vary from firm-to-firm" and "[i]mposing an obligation on reporting firms to submit this data increases the risk of error."[91] As an alternative, FIA suggests that the CFTC "should impose an obligation on the exchanges to provide this information directly to each reporting firm in a readily digestible format."[92]

Certain entities which operate DCMs, specifically, CME and CBOE, also commented that "static" data elements would be best obtained from the DCMs that are the original source of the data.[93] CME stated that it publishes this information on its website

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[89] *Id.* at 4-6.
[90] FIA Letter at 2.
[91] *Id.* at 4.
[92] *Id.* at 6.
[93] CME Letter at 3; CBOE Letter at 2. CBOE categorized the following as "static" data elements: Data Element #14 Product Type, Data Element #18 Listing Date, Data Element #27 Exercise Style, Data Element #28 Payout Amount, Data Element #29 Payout Type, Data Element #30 Underlying Contract ID, and Data Element #31 Underlying Maturity Month Year).

and "provides this information in FIXML format to the CFTC pursuant to Part 16 regulations." [94] CME proposed the CFTC "abandon" seeking product reference information in § 17.00(a) reports and instead seek that information directly from DCMs via a standardized product reference file submitted pursuant to Part 16.[95]

As noted by CME,[96] Commission staff has developed a Product Reference File Guidebook ("PRF Guidebook"), which sets out a standardized format for DCMs to submit product reference information to the Commission pursuant to § 16.02.[97] The Commission believes that receiving product reference information from DCMs in a standardized format will improve data quality.

In addition to improving the quality of futures and options transaction data reported by DCMs under § 16.02, the Commission believes that the PRF Guidebook may also facilitate a simplified means of reporting product-related data in § 17.00(a) reports. If the Commission receives product reference data from a DCM and such data can be adequately linked to a § 17.00(a) report for a position in the relevant contract, then it would only be necessary for the reporting firm to include in that § 17.00(a) report information sufficient to link that position report to the relevant product reference data.

In order for the Commission to link product-related data in a product reference file to a § 17.00(a) report for a particular contract, reporting firms will need to provide, as part of each § 17.00(a) report, a code identifying the relevant product entry in a DCM's product reference file. The PRF Guidebook allows for DCMs to identify product references files with such codes, called "Unique Instrument Codes," to particular futures and options

[94] CME Letter at 3.
[95] *Id.*
[96] *Id.*
[97] 17 CFR 16.02.

contracts.

In light of the above, the Commission has revised the final Part 17 Guidebook to provide flexibility in the form and manner for submitting product-specific data elements. As provided in the Proposed Part 17 Guidebook, reporting firms may submit all of the data elements enumerated in Appendix C. But, the Part 17 Guidebook also provides that reporting firms may submit certain product-specific data elements in Appendix C by providing a "Unique Instrument Code" associated with a DCM's product reference file. Receiving a "Unique Instrument Code" will allow the Commission to obtain the related product-specific data from a DCM's product reference file. To effectuate this option, the Commission has revised the Part 17 Guidebook to indicate that certain data elements are not required to be populated in a § 17.00(a) report if a "Unique Instrument Code" is provided.[98] Conversely, if a reporting firm reports each of the product-related data elements enumerated in Appendix C, they need not provide the relevant "Unique Instrument Code" from the DCM's product reference file.

Based on the comments received, the Commission expects that providing a "Unique Instrument Code" rather than certain product-related data elements required by Appendix C will reduce the burden on reporting firms, reduce the risk of error in reporting, and simplify the reconciliation or error correction process for reporting firms and the Commission.[99] Providing this option to reporting firms will not increase the burden or complexity beyond that contemplated in the Proposal, as reporting firms retain the

[98] The Part 17 Guidebook now includes a "Unique Instrument Code" data field, defined as "An exchange-assigned code [that] serves as a primary key for the product reference file and uniquely identifies the derivative contract at the instrument level."
[99] *See* FIA Letter at 4.

alternative to report the Appendix C data elements as enumerated in the Proposal.[100]

Certain commenters identified several specific data elements that they believe are "static" and best obtained directly from DCMs.[101] The Part 17 Guidebook indicates these data elements need not be included in a § 17.00(a) report if a "Unique Instrument Code" is provided—"Product Type," "Listing Date," "Exercise Style," "Payout Amount," "Payout Type," "Underlying Contract ID," and "Underlying Maturity Month Year."

d. Comments Concerning the "Special Account Controller LEI" Data Element

Appendix C includes a "Special Account Controller" data element. As discussed in the Proposal, an LEI is a unique code assigned to an entity in accordance with the standards set by the Global Legal Identifier System.[102] Among other things, the "Special Account Controller LEI" data element will allow the Commission to link data reports submitted under §17.00(a) with other data reports concerning the same entity. The Commission notes that some special account controllers, such as natural persons, may be

[100] FIA proposes that a "less optimal alternative" to wholesale deletion of their so-called "static" data elements would be "to impose an obligation on the exchanges to provide this information directly to each reporting firm in a readily digestible format." FIA Letter at 6. The Commission believes that permitting reporting firms to submit a "Unique Instrument Code" to satisfy their obligation to provide the relevant data elements from Appendix C is consistent with FIA's proposal. The Commission believes that submitting a single "Unique Instrument Code" rather than a set of data elements will be more efficient for reporting firms and for the Commission.

[101] *See* FIA Letter at 4-6 ("Data Element #14 Product Type," "Data Element #18 Listing Date," "Data Element #27 Exercise Style," "Data Element #28 Payout Amount," "Data Element #29 Payout Type," "Data Element #30 Underlying Contract ID," and "Data Element #31 Underlying Maturity Month Year"); CBOE Letter at 2 (same).

[102] The Global Legal Identifier System was established by the finance ministers and the central bank governors of the Group of Twenty nations and the Financial Stability Board. *See* Charter of the Regulatory Oversight Committee For the Global Legal Entity Identifier System, available at https://www.leiroc.org/publications/gls/roc_20190130-1.pdf.

ineligible to receive an LEI.[103] Accordingly, the Part 17 Guidebook, as initially proposed, labelled the "Special Account Controller LEI" as conditional, and the Proposal explained that the data element must be reported for special accounts for which the special account controller is eligible to receive an LEI, but an LEI need not be reported for special accounts for which the special account controller is ineligible for an LEI.[104] For such accounts, the Commission will receive identifying information via Form 102A.

The Commission received comments from FIA, ICE, GLEIF, and ISO concerning the "Special Account Controller LEI" data element. No commenters opposed including "Special Account Controller LEI" as a data element, but some commenters opposed requiring LEI where a special account controller has not provided an LEI to the reporting firm, regardless of whether that special account controller is eligible to receive an LEI.

GLEIF and ISO each support using LEI to identify Special Account Controllers. GLEIF notes that other regulators have recently discussed or proposed rules to include LEI for different reporting regimes, and LEI adoption creates "a comprehensive and consistent identification scheme" across regulators.[105] ICE commented that it has "found LEIs to be a valuable data point for use in tracking the accuracy of data reporting and encourages the Commission to implement additional requirements regarding this data element, including the requirement that LEI must be reported in large trader submissions wherever possible."[106]

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[103] The Commission has elsewhere discussed this issue in regulations concerning reporting of swap data. *See, e.g.*, Final Rule, Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503, 75520 (Nov. 25, 2020).
[104] 88 FR at 41528.
[105] GLEIF Letter at 2.
[106] ICE Letter at 2.

FIA, however, does not believe that special account controller "eligibility" for an LEI is "the appropriate standard."[107] FIA asserts that no other Commission regulations explicitly require eligible special account controllers to obtain LEIs, and suggests that absent a separate, independent requirement to provide an LEI, the "Special Account Controller LEI" data element should instead be conditioned on special account controllers "providing" an LEI to the reporting firm.[108]

The Commission has determined to adopt the "Special Account Controller LEI" data element and to clarify that reporting the "Special Account Controller LEI" data element is conditional on the special account controller obtaining an LEI. Therefore, under the final rule, reporting firms must report an LEI if the special account controller is eligible to receive and has obtained an LEI. Reporting firms will not need to request that their LEI-eligible customers who have not obtained LEIs do so. But, reporting firms may need to request that customers who have obtained LEIs provide those LEIs, just as those customers provide various other identifying information that is required in regulatory reporting, such as their names and addresses. A reporting firm satisfies its obligation to report the Special Account Controller LEI data element by asking a customer if it has obtained an LEI and, if so, to provide that LEI to the reporting firm. If an LEI is provided by the customer, the reporting firm then reports the provided LEI.

However, receiving § 17.00(a) reports that do not identify eligible special account controllers with an LEI hinders the Commission's fulfillment of its regulatory mandates. The Commission understands FIA's concern that, in the absence of an express requirement that eligible special account controllers obtain an LEI, reporting firms might be faced with

[107] FIA Letter at 8.
[108] *Id*.

a choice between requiring their LEI-eligible customers to provide LEIs and declining to carry futures and options positions for such customers. The Commission will continue to evaluate whether to adopt an express requirement that certain special accounts eligible for an LEI be required to obtain an LEI. To the extent future Commission action introduces such a requirement, the Commission expects that reporting firms responsible for large trader reporting will report an LEI for all special account controllers.

e. Comments Concerning Data Elements Concerning Changes in Positions ("Category 4")

Appendix C includes data elements[109] incorporating the current § 17.00(g) record format's requirement that reporting firms identify EDRPs[110] and identify delivery notices issued and stopped.[111] In addition, Appendix C introduces data elements to capture information concerning the nature of changes in positions that is not fully-captured by the current § 17.00(g) record format.[112] Specifically, Appendix C requires identification of

[109] Specifically, Data Element #36 EDRPs Bought, Data Element #37 EDRPs Sold, Data Element #38 Delivery Notices Stopped, and Data Element #39 Delivery Notices Issued.

[110] The Commission understands that, in practice, such transactions are often referred to as "exchanges of futures for related positions" or "EFRPs," or sometimes simply "exchanges for related positions." The Commission has used the terminology "exchanges of derivatives for related positions," or "EDRPs," because it believes this is a more accurate and descriptive term given it "include[s] transactions not limited to futures, such as swaps." Notice of Proposed Rulemaking, Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572, 80593 (Dec. 22, 2010).

[111] *See* 17 CFR 17.00(g)(i), (xi).

[112] These fields would include (1) Data Element #34 Contracts Bought, (2) Data Element #35 Contracts Sold, (3) Data Element #36 EDRPs Bought, (4) Data Element #37 EDRPs Sold, (5) Data Element #38 Delivery Notices Stopped, (6) Data Element #39 Delivery Notices Issued, (7) Data Element #40 Long Options Expired, (8) Data Element #41 Short Options Expired, (9) Data Element #42 Long Options Exercised, (10) Data Element #43 Short Options Exercised, (11) Data Element #44 Long Futures Assigned, (12) Data Element #45 Short Futures Assigned, (13) Data Element # 46 Long Transfers Sent, (14) Data Element #47 Long Transfers Received, (15) Data Element #48 Short Transfers Sent, and (16) Data Element #49 Short Transfers Received.

changes in position due to contracts bought and sold[113]; due to option expirations, exercises, and assignments; and due to long and short transfers sent and received.

Understanding the nature and quantity of transactions that resulted in day-to-day changes in positions of special accounts will provide Commission staff with additional information for surveillance purposes, and will allow Commission staff to link position data reported at the special account level pursuant to § 17.00(a) with transaction data reported at the trading account level under § 16.02.[114]

The Commission did not receive any comments objecting to the addition of these data elements. FIA, however, sought clarification with respect to the "Long Transfers Sent," "Long Transfers Received," "Short Transfers Sent," and "Short Transfers Received" data elements.[115] FIA commented that the Part 17 Guidebook "does not provide guidance for a reporting firm to distinguish between a transfer and a give-up."[116] FIA states that this distinction may affect the accuracy of reporting the "Transfers" data elements, as well as "Contracts Bought" and "Contracts Sold," as those data elements include changes in positions resulting from give-up transactions but exclude changes in positions resulting from transfers.[117] The Commission notes that the inclusion of changes in positions

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[113] Appendix C indicates that changes in position resulting from give-up transactions and allocations will be included in the totals of "Contracts Bought" and "Contracts Sold," as such contracts would be treated as positions in the carrying accounts through which they are ultimately cleared rather than positions in the accounts that execute the transactions, if such accounts differ from the accounts through which such transactions are cleared.

[114] DCMs identify traders by account numbers, but certain DCMs do not routinely collect detailed trader-identifying data. *See, e.g.*, Final Rule, Significant Price Discovery Contracts on Exempt Commercial Markets, 74 FR 12178, 12185 (Mar. 23, 2009). The Commission instead generally obtains such trader-identifying data from FCMs, clearing members, and foreign brokers through § 17.01. 17 CFR 17.01.

[115] For several data elements, FIA provided comments that appear to simply provide context to the Commission regarding certain industry practices that may affect reporting. *See* FIA Letter at 15.

[116] FIA Letter at 15.

[117] *Id.*

resulting from give-up transactions in "Contracts Bought" and "Contracts Sold" reflects an intent to distinguish this activity from changes in position that merely move an existing position from one account to another, which may occur via transfers.[118] The Commission believes that the distinction between give-up transactions and transfers is sufficiently clear, and is adopting the regulations as proposed.

f. Comments Concerning Use of Alternative Identifiers

The Commission sought comment on all aspects of the proposed Part 17 Guidebook.[119] Bloomberg requested that the Commission "consider the use of alternate identifiers based on open data licenses, such as the Financial Instrument Global Identifier ("FIGI") where appropriate, in large trader position reporting and in the submission standards outlined in the Part 17 Guidebook."[120]

The Commission will adopt this proposal and "FIGI" has been added to the Part 17 Guidebook as an alternative identifier for underlying contracts, alongside CUSIP, SEDOL, QUIK, ISIN, and Bloomberg Symbol. FIGI is a free, open source identifier available to all market participants and accepted as a U.S. national standard by the Accredited Standards Committee X9 Inc.[121] Allowing FIGI as an alternative underlier identifier is consistent with its adoption as an alternative identifier for other reporting schemes. For example, FIGI is allowed as an alternative identifier in Form 13F reporting required by the

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[118] Denkevitz also commented on the data elements concerning changes in positions. *See* Denkevitz. Denkevitz suggested that changes in position due to allocations and give-up transactions be reported in new, separate data elements rather than aggregated with changes in position due to other trading activity. The Commission takes Denkevitz's point to be definitional—that is, that a contract acquired due to an allocation may not literally be a contract "bought." The Commission's objective is to capture the information necessary for surveillance purposes in the least burdensome way, and views this change as unnecessary.
[119] 88 FR at 41527.
[120] Bloomberg Letter at 2.
[121] *Id.* at 2-3.

Securities and Exchange Commission.[122] FIGI is also accepted by the Derivatives Services Bureau as an alternative underlier identifier for the creation of a Unique Product Identifier ("UPI") for swap data repository reporting purposes.[123] The Commission supports providing reporting firms the option to choose among financial identifiers and believes it appropriate to allow FIGI as a value to be reported for the underlying contract data in the Part 17 Guidebook.

g. Comments Concerning Data Elements Applicable to Certain Contracts

As explained in the Proposal, certain of the product-related data elements in Appendix C will only apply to reporting positions in certain types of contracts.[124] For example, a reporting firm would not report an "Alpha Strike" for a contract with a strike level that was a monetary value. Consistent with this principle, the Part 17 Guidebook identifies which data elements are "mandatory" and which data elements are "conditional."

FIA requested that the Part 17 Guidebook contain "written guidance . . . that certain fields only apply to specific markets."[125] FIA stated that such guidance would "prevent inconsistent interpretations across reporting firms" and that "the CFTC should assume that smaller reporting firms and foreign brokers will struggle interpreting the instructions" in the Part 17 Guidebook.[126]

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[122] *See* Form 13F, Information Required of Institutional Investment Managers Pursuant to Section 13(f) of the Securities Exchange Act of 1934 and Rules Thereunder, *available at* https://www.sec.gov/files/form13f.pdf.

[123] *See* Derivatives Services Bureau, Alternative Identifiers for the UPI Service, *available at* https://www.anna-dsb.com/alternative-identifiers-as-an-underlier-for-the-upi/.

[124] *See, e.g.*, 88 FR at 41529 (discussing the fact reporting certain product-specific data elements would only be required to be reported for contracts to which those data elements pertain, such that reporting firms that are not involved in trading such products need not report those data elements).

[125] FIA Letter at 3.

[126] *Id.*

The Commission declines to enumerate in the Part 17 Guidebook the applicability of data elements by "specific market." Given FIA's reference to "event markets," the Commission believes that FIA is using the term "market" to refer to a DCM, rather than to refer to the market for a particular contract. The Commission does not believe that it would be appropriate to categorically enumerate in the Part 17 Guidebook those exchanges to which certain conditional data elements apply. DCMs may list a variety of contracts, and some DCMs may list some contracts to which conditional Appendix C data elements apply and some contracts to which conditional Appendix C data elements do not apply. Alternatively, if FIA's reference to "market" is a reference to particular contracts, it is not practical for Commission staff to enumerate in the Part 17 Guidebook every contract to which each conditional Appendix C data element applies. Among other things, such a practice could require constant updates of the Part 17 Guidebook to reflect the listing of new contracts.

h. Comments Concerning Delegation of Authority to the Director of the Office of Data and Technology to Determine the Form and Manner for Reporting the Data Elements in Appendix C

In connection with establishing Appendix C, the Commission proposed revising § 17.00(g) to state that § 17.00(a) reports "shall be submitted in the form and manner published by the Commission or its designee pursuant to § 17.03" and revised § 17.03(d) to state that "authority shall be designated to the Director of the Office of Data and Technology to determine the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in appendix C. . . ." Thus, rather than specifying the form and manner for reporting the § 17.00(a) data elements in the

regulation, as done in current § 17.00(g)(2), the form and manner for reporting a particular data element will be set out in the Part 17 Guidebook.

As discussed in the Proposal, specifying the form and manner for reporting through a Part 17 Guidebook will bring the § 17.00(a) reports in line with various other Commission reporting streams, for which, rather than embedding technical reporting details into regulation text, the Commission has delegated authority to staff to set the form and manner for reporting through a published technical specification or guidebook.[127] Implementing form and manner requirements through a Part 17 Guidebook will facilitate the Commission's ability to respond to changing market conventions and technological advances,[128] to harmonize the form and manner for reporting data elements in § 17.00(a) reports with other reporting streams as necessary,[129] and to accommodate the introduction of innovative products.

The Commission received two comments that relate to the delegation of authority to determine the form and manner for reporting data elements in Appendix C.[130] First, FIA

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[127] *See, e.g.*, 17 CFR 16.07(c), (d) (delegating authority to staff to "approve the format, coding structure and electronic data transmission procedures used by reporting markets" and "to determine the specific content of any daily trade and supporting data report"); 17 CFR 20.8(d) (delegating authority to staff "for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part"); 17 CFR 43.7(a) (delegating authority to staff "[t]o publish the technical specification providing the form and manner for reporting and publicly disseminating the swap transaction and pricing data elements in appendix A of [Part 43]"); 17 CFR 45.15(b)(1) (delegating authority to staff "to publish the technical specifications providing the form and manner for reporting the swap data elements in appendix 1 to [Part 45] to swap data repositories").

[128] *See, e.g.*, Final Rule, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851, 43857 (Jul. 22, 2011) (the purpose of delegating authority to staff to provide "instructions for determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under [Part 20] . . . is to facilitate the ability of the Commission to respond to changing market and technological conditions for the purpose of ensuring timely and accurate data reporting").

[129] Final Rule, Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503, 75535 (Nov. 25, 2020) ("The Commission . . . believes delegation to [the Division of Market Oversight] will benefit data element harmonization.").

[130] Comments concerning the delegation of authority to designate a data submission standard or standards are discussed separately above. *See supra* Section II(A)(2)(a).

requested "confirm[ation]" "that the delegation of authority does not permit the Office of Data and Technology to change the data elements to be reported, as listed in Appendix C to the Proposed Rule, or to modify the definitions or descriptions of the data elements to be reported as listed in the Proposed Rule or Proposed Guidebook."[131] Second, ICE stated that "this delegation may allow the imposition of substantive changes . . . to required data elements" without an additional opportunity for notice and comment.[132] ICE appears to be concerned about in scenario in which the Office of Data and Technology might make "substantive changes" to the data elements for § 17.00(a) reports "that are difficult and/or costly for reporting firms to implement" without sufficient notice or an opportunity to comment.[133]

The Commission believes that § 17.03(d) is clear as proposed. That provision delegates to the Office of Data and Technology the authority to "determine the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in appendix C." Section 17.03(d) does not set forth substantive reporting requirements or delegate authority to the Director of the Office of Data and Technology to set forth substantive reporting requirements. Rather, § 17.00(a) and Appendix C set out the substantive reporting requirement, including specifying the data elements to be reported. The Part 17 Guidebook, in turn, sets out the form, manner, coding structure, and electronic data transmission procedures for reporting those data elements enumerated in Appendix C. The basis for FIA and ICE's concern that the Office of Data and Technology

[131] FIA Letter at 7.
[132] ICE Letter at 2.
[133] *Id.*

might "change the data elements to be reported" is not clear from their comments.[134] The Commission has specified the data elements for § 17.00(a) reports in Appendix C to provide notice to reporting firms of those data elements. As discussed in the Proposal,[135] this structure is similar to the approach taken by the Commission in Part 39, Part 43, and Part 45.[136]

3. Final Rule

As discussed, the Commission is adopting the Proposal largely as proposed, with non-substantive revisions to descriptions of certain data elements in Appendix C. The Commission has incorporated into the Part 17 Guidebook instructions to enable reporting firms to submit certain of the product-related data elements enumerated in Appendix C using a "Unique Instrument Code." The Commission has also made certain conforming changes to the Part 17 Guidebook, which has been published on the Commission's website contemporaneously with this final rule.

III. Compliance Period

In the Proposal, the Commission included a compliance date 365 days following

[134] FIA Letter at 7; ICE Letter at 2.

[135] *See, e.g.*, 88 FR at 41527 ("Enumerating required data elements in an appendix is consistent with the approach taken for certain other Commission data reporting regulations.").

[136] Separately, Wood's comment letter could be construed to suggest that § 17.00(d) should delegate authority concerning Part 17 data generally to either an individual in the Market Surveillance Branch of the Division of Enforcement or to the Director of the Division of Enforcement, rather than to the Director of the Office of Data and Technology. *See* Wood Letter ("Can you address why Market Surveillance leadership does not have delegated authority with respect to Part 17 data?"). As discussed in the Proposal, staff across several Divisions, including the Division of Enforcement, rely on position data loaded into ISS. The Office of Data and Technology is generally responsible for the ingest of data from registered entities pursuant to the CEA and Commission regulations, as well as integration of that data with other data sources. *See, e.g.*, CFTC Organization, *available at* https://www.cftc.gov/About/CFTCOrganization/index.htm (discussing certain responsibilities of the Commission's Division of Data). The Office of Data and Technology typically maintains and manages technical specifications, guidebooks, and other staff guidance concerning data reporting, and at the same time collaborates with the other Divisions and Offices within the Commission concerning that data. Accordingly, the Commission has determined that the Office of Data and Technology should continue in that role with respect to § 17.00(a) data.

publication of a final rule in the ***Federal Register***. The Proposal explained that the 365-day compliance date was intended to provide reporting firms with sufficient time to revise or build infrastructure to submit § 17.00(a) reports using the FIXML data submission standard or the CFTC Portal, and with sufficient time to incorporate reporting of new data elements. The Proposal also noted that the Commission expected to enable reporting firms to begin submitting § 17.00(a) reports using the FIXML data submission standard or via the CFTC Portal, in parallel with submitting § 17.00(a) reports in the § 17.00(g) record format, in advance of that compliance date. This would allow reporting firms to test the new reporting requirements, and would allow early adopters to report using a modern data submission standard.

The Commission sought comment on whether 365 days after publication of this final rule is a sufficient implementation period. The Commission received five comments concerning the proposed 365-day compliance date.[137] All commenters expressed concern that 365 days was insufficient given the large number of firms that would be affected by the Proposal and recommended at least a 24-month compliance period. FIA stated that it believes that any compliance date should be at least 365 days following finalization of the CFTC Portal, and stated that it believes that the reporting firms should have three months to test the CFTC Portal before it is finalized.[138] Alternatively, FIA requested a 24-month compliance period from the date of publication of the final rule.[139] FIA did not tie these timelines to specific bases, but did list factors that it believes will inform how much time reporting firms need, including whether the Commission "provides clarity" concerning

[137] *See* FIA letter at 9-10, CBOE Letter at 1-2, CME Letter at 1-2, ICE Letter at 2, OCC Letter at 3-4.
[138] FIA Letter at 9, 9 n.23.
[139] *Id.* at 9.

certain data elements, whether the CFTC removes so-called "static" data elements from the Proposal, when the CFTC Portal becomes available for testing, the timing of testing, and "whether imperceptible issues arise" during testing.[140] ICE stated that it supported the FIA's proposed timeline.[141] CME advocated for a compliance period of "at least 24 months," stating that in its experience as a recipient of large trader position data, a 365-day compliance period is insufficient, as typically many reporting firms face unique scenarios and challenges that require one-on-one support when implementing reporting changes.[142] CME also observed that in undergoing "other significant reporting rule changes," the time necessary to come into compliance is often underestimated.[143] CBOE stated that it believes a 24-month implementation period "would be more appropriate," as additional time would provide reporting firms with "time to troubleshoot questions and complications that may arise."[144] OCC stated that it believed "at least a 2-year compliance period would be appropriate" "in light of the extent of the proposed changes, the need to test the changes . . . , and registrants' need to balance competing priorities stemming from the Commission's recent rulemaking."[145]

The Commission recognizes that reporting firms will require significant time to implement the changes set out in the Proposal. After considering the comments received, the Commission believes that a compliance date of **[730 DAYS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER]** is appropriate. Specifically, the Commission believes that providing a lengthy testing period will accommodate potential

[140] FIA Letter at 9.
[141] ICE Letter at 2.
[142] CME Letter at 2.
[143] *Id.*
[144] CBOE Letter at 1.
[145] OCC Letter at 3.

difficult-to-anticipate issues that several commentators stated would likely arise. This should also ensure higher quality data and a reduced error rate at the time of implementation.

In recognition of the importance of providing reporting firms with sufficient opportunity to test their reporting systems in advance of the compliance date, the Commission expects the updated CFTC Portal to become available for testing approximately six months after publication of this final rule. After the CFTC Portal becomes available, reporting firms should therefore have approximately 18 months to test submitting files in the format required by the final rule. After 24 months, all reporting firms will be required to submit files in compliance with the requirements of this final rule. For reporting firms that demonstrate the ability to submit § 17.00(a) reports compliant with the final rule before the compliance date, the Director of the Office of Data and Technology may approve the use of that revised format and permit such reporting firms to cease submitting files in the current § 17.00(g) record format.[146]

IV. Frequency of Publication of COT Report

Although the Proposal did not discuss timing of the COT Report, the NGFA requested that the Commission publish the COT report on a daily basis.[147] This topic is outside the scope of the Proposal and is not addressed by this final rule.

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[146] *See* 17 CFR 17.03(d) ("Pursuant to § 17.00(a), the authority shall be designated to the Director of the Office of Data and Technology to approve a format and coding structure other than that set forth in § 17.00(g).").
[147] NGFA Letter at 2.

V. Related Matters

A. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA.[148] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively, the "section 15(a) factors"). In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA. Although the Commission believes these rules will create meaningful benefits for market participants and the public, the Commission also recognizes associated costs. The Commission has endeavored to enumerate these costs and, when possible, assign a quantitative value to the costs reporting firms might face given the changes. Where it is not possible to reasonably quantify costs and benefits, those costs and benefits are discussed qualitatively.

2. Background

The data required to be reported under § 17.00(a) comprise core data used by many divisions within the Commission, including the Division of Market Oversight ("DMO"),

[148] 7 U.S.C. 19(a).

the Office of the Chief Economist ("OCE"), and the Division of Enforcement ("DOE"). In addition, § 17.00(a) submissions are collated to produce the database from which public COT reports are created. COT reports are used by news media, researchers, academics, and industry professionals to describe current trends in futures trading, conduct analysis of past trading patterns, and inform current market strategies. The current § 17.00(g) record format, which instructs reporting firms to submit data in an 80-character, Cobol-based format, has been in effect since 1986 and was last revised in 2004. This current format limits the amount of descriptive data that can be included in any given field. This limits the Commission's ability to capture the economic characteristics of certain products in § 17.00(a) reports and, in some instances, prevents the Commission from distinguishing a position in one contract from a position in another contract. In addition, the current reporting fields do not allow for the granular reporting of EDRPs, of certain futures and options contracts, and for complete information reflecting day-to-day changes in position.

3. Request for Comment

The Commission requested comment on a variety of cost and benefit metrics in the Proposal. As a general matter, the Commission requested that commenters provide data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion.[149] The Commission also requested comment, including specific quantitative estimates, on the expected costs related to upgrading or obtaining systems to implement and comply with the Proposal, as well as

[149] 88 FR at 41534.

the impact of the proposed rules on the section 15(a) factors. As noted above in Section II(A)(2)(a), commenters were broadly supportive of amendments to transition to a FIXML data submission standard, and several emphasized the benefits to switching to a FIXML reporting format from the current 80-character reporting format.[150] Although several commenters asserted that the Proposal understated the total cost to the industry, certain commenters provided generalized estimates but did not provide specific quantitative estimates differing from the Commission's estimates.[151] Consequently, the Commission performed its own analysis in updating the Proposal's cost-benefit considerations for these final rules. However, the Commission recognizes that commenters, who have the benefit of implementing similar rules in recent years, may incur costs above what was estimated in the Proposal. For instance, one comment letter claimed that actual costs would be several times what was estimated.[152] Additionally, the Commission has extended the implementation period from one year to two years, which may increase costs. For purposes of these final rules, the Commission has updated the cost estimates that appeared in the Proposal based on commenters' feedback and the most recent data and statistics available to the Commission.

4. Baselines

The costs and benefits considered herein use as a baseline the reporting provided by reporting firms under current Part 17 regulations. In particular, reporting firms are

[150] *See, e.g.*, FIA Letter at 1; CME Letter at 1; ICE Letter at 1.
[151] *See* FIA Letter at 11; OCC Letter at 3.
[152] FIA submitted comments on behalf of a working group of reporting firm members and vendors. The FIA projected that "actual costs to implement changes…[would] be approximately 3 to 5 times the CFTC's estimated one-time implementation cost, and that ongoing annual costs should reflect approximately 15% of the one-time cost." FIA Letter at 11.

currently required to report positions for special accounts by 9 a.m. on the business day following the trading day[153] and to correct errors[154] as they are found by either the Commission or the reporting firm. These elements of the rules do not change under the new reporting requirements.

The Commission also notes that the discussion of cost-benefit considerations set forth herein is based on its understanding that the derivatives market regulated by the Commission functions internationally with: (1) transactions that involve U.S. entities occurring across different international jurisdictions; (2) some entities organized outside of the United States that are registered with the Commission; and (3) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the regulations on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, U.S. commerce.

5. Amendments to Part 17

The Commission is promulgating two categories of amendments to Part 17. First, the Commission is removing current § 17.00(g)'s 80-character record format and amending § 17.03(d) to delegate authority to the Director of the Office of Data and Technology to designate a data submission standard for reports required under § 17.00(a). That data submission standard will be published in a Part 17 Guidebook, to be published on the Commission's website. The Part 17 Guidebook designates a modern XML submission

[153] 17 CFR 17.00(a)(1).
[154] 17 CFR 17.00(h).

standard for submitting reports required under § 17.00(a). Second, the Commission is adding an Appendix C to Part 17 enumerating data elements to be included in § 17.00(a) reports. The data elements consist of (1) certain data elements currently required to be reported under § 17.00(g), (2) certain data elements to facilitate processing files submitted in XML, (3) certain data elements necessary to represent innovative contracts that cannot currently be represented using the § 17.00(g) format, and (4) data elements necessary to understand the transactions that resulted in day-to-day changes in positions of large traders. The form and manner for reporting these data elements in Appendix C will be provided in the Part 17 Guidebook.

a. Change in Submission Standard From Current § 17.00(g) Record Format to a Modern Data Standard Designated in a Part 17 Guidebook

Currently, reporting firms submit § 17.00(a) reports using § 17.00(g)'s 80-character record format. These amendments require such reports to be submitted using a new submission standard, which will be designated in a Part 17 Guidebook published by the Office of Data and Technology on the Commission's website. The Part 17 Guidebook requires such submissions to be made using an XML format similar to that used in other reporting required by the Commission, including Trade Capture Reports submitted pursuant to § 16.02 and swap data reports submitted to swap data repositories pursuant to Part 43 and Part 45. In order to collect and transmit these reports to the Commission, reporting firms must modify the systems they currently use to report Part 17 data. The Commission estimates there are currently over 300 reporting firms submitting § 17.00(a) reports. Reporting firms are divided between DCMs, FCMs, clearing members, and foreign brokers, including some firms that are registered under multiple categories. Over

a 30-day period in early 2023 there were 310 reporting firms submitting § 17.00(a) reports. The Commission estimates that approximately 74 of these reporting firms automate the creation of § 17.00(a) reports and 236 of these firms create and submit § 17.00(a) reports manually. The Commission believes that reporting firms that currently automate the creation of § 17.00(a) reports will continue to do so and will submit such reports formatted pursuant to FIXML standards in the Part 17 Guidebook by secure FTP, and that reporting firms that currently manually create § 17.00(a) reports will continue these practices rather than modifying their systems to facilitate reporting by secure FTP. Firms that currently manually create § 17.00(a) reports may need to update systems used to manually generate those reports. In addition, the Commission estimates that there are nine Derivatives Clearing Organizations ("DCOs") that will need to update their systems to receive Part 17 reporting data.

1. Benefits

The amendments concerning the data submission standard will facilitate more rapid data ingestion for the Commission and increased automation in ingesting data required to be reported under § 17.00(a), which will reduce staff time devoted to data ingestion. The amendments concerning the data submission standard should also enhance data quality. First, a modern data submission standard should be less error-prone than the current § 17.00(g) record format. Second, a modern data submission standard should facilitate automated, real-time error correction notifications, which will reduce the amount of manual staff intervention in the error correction process and should provide reporting firms with more efficient timelines for correcting errors. By improving data quality and enabling more rapid corrections of errors, the amendments concerning the data submission standard

should ensure the timeliness of COT reports. The amendments concerning the data submission standard should simplify the error correction process for reporting firms by automating and accelerating feedback concerning errors. The amendments concerning the data submission standard should additionally enhance DMO's ability to monitor the markets, support the Commission's Surveillance Program, and facilitate OCE research projects.

2. Costs

The Commission believes that the changes to Part 17 necessitate reporting firms modifying their systems to collect and submit data using the new data submission standard. The cost of such modifications is likely to vary from entity to entity. Under the Part 17 Guidebook, reporting firms will submit reports required under § 17.00(a) using an XML submission standard. The Commission expects more sophisticated reporting firms that submit a substantial number of daily reports, such as FCMs, will build systems to report using the XML submission standard designated in the Part 17 Guidebook, and will arrange to automate daily submissions using a secure FTP data feed. The Commission estimates that 74 entities will submit reports in in this manner. The Commission estimates those entities would incur a one-time initial cost of approximately $65,200 for each entity (400 hours × $163/hour) to modify and test their systems, or an estimated aggregate dollar cost of $4,824,800 (74 entities × $65,200).[155] The Commission understands that some reporting firms today submit reports required under § 17.00(a) manually through the CFTC Portal,

[155] For costs associated with upgrading reporting systems for secure FTP filers, the Commission estimates that modifications and testing will be undertaken by computer and information research scientists, database architects, software developers, programmers, and testers. The associated costs are taken from the U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, available at https://www.bls.gov/oes/2022/may/oes_nat.htm, and adjusted with a multiple of 2.5 to account for benefits and overhead costs.

and believes that many of those firms would continue to do so under the new submission standard. The Commission estimates that 236 entities would continue to manually report through the CFTC Portal and would incur a one-time initial cost of approximately $2,780 to update their systems (20 hours × $139/hour) for each entity, or an estimated aggregate dollar cost of $656,080 (236 entities × $2,780).[156] On an ongoing basis, the Commission believes that the 310 estimated reporting firms would incur modest additional costs above the baseline once setup is complete. However, the Commission estimates that approximately 74 entities filing using secure FTP may incur an ongoing operation and maintenance cost of $7,824 per year (4 hours per month × $163 per hour) per entity to maintain their systems, or an estimated aggregate annual cost of $578,976 (74 entities × $7,824). In addition, the Commission estimates that 236 entities filing manually would incur ongoing additional costs of $3,336 per year (2 hours per month × $139 per hour) per entity to maintain their systems, or an estimated aggregate annual cost of $787,296 (236 entities × $3,336). However, the Commission believes that costs associated with correcting errors would be reduced due to improved data validation at the time of ingest. These cost estimates are based on a number of assumptions and cover a number of tasks required by reporting firms to design, test, and implement an updated data system based on an XML submission standard.[157] These tasks include defining requirements, developing an

[156] For costs associated with upgrading reporting systems for CFTC Portal filers, the Commission estimates that the necessary modifications will be undertaken by data scientists. The associated costs are taken from the U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at* https://www.bls.gov/oes/2022/may/oes_nat.htm, and adjusted with a multiple of 2.5 to account for benefits and overhead costs.

[157] The OCC noted that in its role as an aggregator and submitter of information on behalf of a DCM and reporting firms, it needs to "design, maintain, and operate systems" to comply with this rule. OCC Letter at 3. Although the Commission believes that these costs are outside the scope of the cost benefit consideration, we can nevertheless provide an estimate based on their comment. The OCC estimated that changes to their system would include 5,000 hours of work for design, programming, project management and verification.

extraction query, developing an interim extraction format (such as a CSV, or "comma-separated values," file), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing.

In addition to information collection-related costs incurred by reporting firms, one commenter noted that DCOs will also need to update their systems in order to receive reports, and conduct daily surveillance.[158] The Commission recognizes this potential new compliance cost and estimates that nine DCOs may need to update their systems accordingly. The commenter provided no cost analyses or estimates. In the absence of any particular hours or cost estimates by market participants, the Commission has conducted its own analysis of the likely costs incurred by these entities. To update their systems and work with reporting firms to receive the data, the Commission estimates that DCOs would incur one-time costs of $51,200, with an investment of 320 hours of time split between software developers, database architects, and computer network architects. Across 9 DCOs, these investments sum to a total cost of $460,800. Although there may be ongoing costs with maintaining these systems, the Commission believes that entities will not incur additional costs, relative to the baseline.

b. Changes in Data Elements Reported

As detailed above, the current 80-character § 17.00(g) format does not allow for flexibility in the reporting of certain types of futures, such as bounded futures, and certain types of options, such as capped or barrier options. The amendments will enable these

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At the hourly rate used in this analysis for FCMs ($163/hour), this totals $815,000. The OCC further noted that this may understate the true investment needed to work with reporting firms for testing, but did not include the anticipated additional hours needed.

[158] *See* CME Letter at 2 n.2.

products to be identified in § 17.00(a) reports, and therefore capture additional information reflecting changes in position, including reporting concerning numbers of transfers, reporting of numbers of expirations of contracts, and more granular reporting of EDRPs, including specifying the type of related product (physical, swap, or option). Additionally, the expanded reporting regime instills flexibility such that the Part 17 Guidebook can facilitate reporting of positions in products with innovative features.

1. Benefits

The additional fields necessary to identify certain contracts will facilitate collection of more robust market information for the Commission, including allowing the Commission to distinguish between positions in different contracts that may not currently be distinguishable. The additional fields necessary to identify changes in positions, including more granular information concerning types of EDRPs, will also allow the Commission to collect better market information. Additionally, obtaining accurate, granular information concerning daily changes in position should improve data quality. These data elements will enable reporting firms to perform an internal consistency check to confirm the accuracy of data, which should reduce reporting errors.[159] Obtaining accurate, granular information concerning daily changes in positions will also support the Commission's surveillance and monitoring programs. This data will provide the Commission with a more comprehensive understanding concerning the nature of changes in positions—as opposed to merely understanding the scope of positions—and should further facilitate linking position data reported under § 17.00(a) with transaction data

[159] The inclusion in § 17.00(a) position reports of data elements reflecting counts of transactions that resulted in day-to-day changes in positions enables reporting firms to perform an internal consistency check on position reports by comparing the size of a reported position with the net value of contracts bought and sold, EDRPs bought and sold, expirations and assignments of contracts, and transfers.

reporting under § 16.02.

2. Costs

The amendments will require reporting firms to report certain additional data elements to the Commission beyond those elements required by the current § 17.00(g) record format. CFTC staff experienced in designing data reporting, ingestion, and validation systems, estimate that for the 74 reporting firms that automate reporting through a secure file transfer protocol, the process of upgrading and testing systems to collect and report new fields will require them to incur on average 800 hours to update, test, and implement the additional data elements required by Appendix C, for a total of 59,200 hours across all FTP filers at an hourly wage rate of $163. This would amount to total capital and start-up costs of $9,649,600 across all FTP filers (800 hours × 74 FTP filers × $163 = $9,649,600). In addition, the Commission estimates that these firms may each incur one-time costs of up to $1,000 for equipment modifications associated with these changes. The Commission estimates that the 236 reporting firms that manually input data required to be reported under § 17.00(a) into the CFTC Portal will incur on average 40 hours to implement additional data elements required by Appendix C, or 9,440 total hours across all manual filers, at an hourly wage rate of $139 per hour (236 entities × 40 hours). The Commission estimates that in the aggregate manual filers will incur total capital and start-up costs associated with updating, testing and implementing new data elements of $1,312,160 (9,440 hours × $139/hour). On an ongoing basis, there would be minimal additional costs related to the addition of new data elements, since reporting firms would not be required to submit substantially more information than the baseline. For example, the Commission does not believe that the amendments are likely to affect the overall number of reports

submitted annually under § 17.00(a). However, given the additional data elements required by the amendments, the Commission estimates that 74 entities who automate their reporting systems may each incur an ongoing operation and maintenance cost of $7,824 per year (4 hours per month × $163 per hour) per entity, or an estimated aggregate annual cost of $578,976 (74 entities × $7,824) related to implementation of the new data elements. In addition, the Commission estimates that 236 firms that manually file reports may incur ongoing operation and maintenance costs of $3,336 per year (2 hours per month × $139 per hour) per entity as a result of implementing the amendments implementing new data elements, or an estimated aggregate annual cost of $787,296 (236 entities × $3,336). These cost estimates are based on a number of assumptions and cover a number of tasks required by the reporting firms to design, test, and implement an updated data system based on an XML format. These tasks include defining requirements, developing an extraction query, developing an interim extraction format (such as a CSV, or "comma-separated values," file), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing. Additionally, these costs may be mitigated because certain of the data elements are conditional and will only be applicable to a subset of the reporting firms. For example, if a particular FCM is not a participant on an exchange that lists "bounded" or "barrier" contracts, that FCM will not be required to report data elements that are conditional and only applicable to positions in "bounded" or "barrier" contracts.

6. Section 15(a) Considerations

CEA Section 15(a) requires the Commission to consider the costs and benefits of the amendments to Part 17 with respect to the following factors: (1) Protection of market

participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. A discussion of these amendments in light of the CEA Section 15(a) factors is set out immediately below.

a. Protection of Market Participants and the Public

The Commission expects that the changes to Part 17 reporting will lead to improvements in the Commission's ability to collect data on large traders. The Commission expects better validation of data at ingest, leading to more efficient error corrections compared to the old reporting format. The Commission expects these enhancements will occur without sacrificing the Commission's ability to perform comprehensive oversight of the market.

Additionally, reducing the risk of errors and delays in the publication of the COT report will benefit the public by providing more accurate data on positions held by large traders. Furthermore, higher-quality and more granular position data from large traders will improve the Commission's oversight and surveillance capabilities and, in turn, will aid the Commission in protecting markets, participants, and the public in general.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission believes the amendments will improve the accuracy and completeness of futures and options position data available to the Commission by improving data quality and providing Commission staff with a more complete understanding of the products comprising certain positions. In particular, the rules will allow for more complete reporting of EDRPs and complex futures and options positions.

Access to more accurate and complete data will in turn assist the Commission with, among other things, evaluating if certain traders are in violation of position limits, monitoring concentrations of risk exposures, and preventing fraud and market manipulation. In addition, as described above, the amendments are expected to improve the efficiency of data reporting and analysis by reducing the number of reporting errors and automating data validation and error corrections processes.

c. Price Discovery

The Commission does not believe the rules will have a significant impact on price discovery.

d. Sound Risk Management Practices.

The Commission believes the rule changes will improve the data quality associated with futures and options position reporting required under § 17.00(a). The additional data elements will capture more complete product information for certain positions and more complete information concerning changes in position will provide the Commission with an expanded view of the marketplace that will enable the Commission to more effectively identify disruptive or manipulative trading activity. These improvements in the reporting will allow the Commission to evaluate risk throughout the futures and related markets. The Commission does not believe that the costs arising from the rules will threaten the ability of market participants to manage risks.

e. Other Public Interest Considerations.

The Commission believes that the increased reliability and detail resulting from improvements to data reporting will further other public interest considerations, including transparency in the futures market to the public and detection of fraud or manipulation.

Additionally, the reporting structure will provide additional flexibility to collect information on new products developed by exchanges, thereby allowing for those exchanges to innovate and respond to the demands of the marketplace while still providing traders' positions to the Commission.

7. Consideration of Alternatives

Certain commenters suggested alternatives to rule changes proposed in the Proposal for purposes of minimizing costs to market participants. In particular, as discussed above in Section II(B)(2)(c), several commenters suggested that the Commission remove from Appendix C data elements requiring certain product-specific data—so-called "static" data elements for which the values will not vary across § 17.00(a) reports reflecting positions for the same product—and obtain this information directly from DCMs rather than from reporting firms.[160] The final rules incorporate these alternative proposals in a manner that could reduce costs for some participants without sacrificing benefits.[161]

To remove data elements from § 17.00(a) reports—and thus potentially reduce costs to reporting firms—without diminishing or compromising the dataset as set out in the Proposal, the Commission requires a method for linking each § 17.00(a) report to a product reference file for the contract in which the reportable position is held. The product reference file contains data elements for each contract that do not vary by reporting firm. Such a link can be achieved through a Unique Instrument Code—an exchange-assigned code that serves as a primary key to a product reference file for a particular instrument or

[160] *See* FIA Letter at 4-6; CME Letter at 3; CBOE Letter at 2.
[161] Note that, although the Commission has updated cost estimates that appeared in the Proposal to reflect comments and other data, the Commission has not reduced the cost estimates in the final rules to account for the incorporation of the potential cost-saving proposal described below. As a result, total reporting costs to the industry may be lower than the sum of the costs provided above.

contract. The Part 17 Guidebook published concurrently with the final rules permits reporting firms to provide the relevant Unique Instrument Code as an alternative to providing certain product-related data elements. Those product-related data elements are required to be included in a § 17.00(a) report if a Unique Instrument Code is not reported. However, if a reporting firm provides a Unique Instrument Code, it need not provide these product-related data elements in a § 17.00(a) report.

In providing this alternative method for reporting certain product-related data elements, the Commission intends to enable reporting firms to select the most efficient method for preparing their § 17.00(a) reports. As noted in the Proposal and discussed previously, one of the reasons the Commission has introduced additional data elements to § 17.00(a) reports is that the current § 17.00(g) format is incapable of distinguishing between certain products.[162] The Commission expects that providing this alternative approach will allow the Commission to obtain more comprehensive product data necessary to distinguish between products, but may also reduce costs to reporting firms by permitting firms to populate fewer data elements per report.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies, in proposing rules, consider the impact of those rules on small business or, in the statute's parlance, "small entities."[163] If a rule will have a significant economic impact on a substantial number of small entities, the agency must provide a regulatory flexibility analysis.

The final rules modify the data submission standard and content of daily large trader position reports for futures and options required to be submitted to the Commission by

[162] *See, e.g.*, 88 FR at 41528-29.
[163] 5 U.S.C. 601 *et seq*.

FCMs, clearing members, foreign brokers, and certain reporting markets. The Commission has previously determined that FCMs, clearing members, foreign brokers, and reporting markets are not considered small entities for purposes of the RFA.[164] The Commission did not receive any comment stating that these rules would have a significant economic impact on the operations of a small entity. Accordingly, pursuant to 5 U.S.C 605(b), the Chairman, on behalf of the Commission, certifies that these final rules will not have a significant economic impact on a substantial number of small entities.[165]

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any "collection of information," as defined by the PRA.[166] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget ("OMB"). The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the federal government. The PRA applies to all information, regardless of form or format, whenever the federal government is obtaining, causing to be obtained, or soliciting

[164] *See* Policy Statement and Establishment of Definition of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (April 30, 1982) (reporting markets, FCMs, and large traders); Final Rule, Special Calls, 72 FR 34417, 34418 (June 22, 2007) (foreign brokers); Final Rule and Interim Final Rule, Position Limits for Futures and Swaps, 76 FR 71626, 71680 (November 18, 2011) (clearing members); Final Rule, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851, 43860 (July 22, 2011) (clearing members).
[165] *See* 88 FR at 41535.
[166] 44 U.S.C. 3501 *et seq*.

information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.

This final rulemaking modifies a collection of information previously approved by the OMB for which the Commission has received a control number: OMB control number 3038-0009, Large Trader Reports ("OMB Collection 3038-0009).[167] The Commission does not believe the final rule as adopted imposes any other new collections of information that require approval of OMB under the PRA. The Commission requests that OMB approve and revise OMB control number 3038–0009 in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

The Commission did not receive any comments regarding the PRA burden analysis contained in the Proposal. The Commission did, however, receive comments on certain aspects of the Cost-Benefit Considerations analysis. Certain of those comments relate to potential capital and start-up costs that may be incurred as a result of the changes proposed in the Proposal. Based on these comments, the Commission has modified its estimates of the capital and start-up and operations and maintenance costs reporting firms may incur as a result of the changes adopted in these final rules. These comments and the Commission's response are discussed in further detail in the analysis of Cost-Benefit Considerations above.

This final rulemaking modifies the existing annual burden estimates for complying with certain requirements of Part 17. Specifically, the Commission is amending §§ 17.00(a), 17.00(g), 17.00(h), and 17.03(d), which set out (1) the data submission standard

[167] For the previously approved estimates, *see* ICR Reference No: 202303-3038-002, available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-002.

and (2) the data elements for large trader reports required to be filed under § 17.00(a), among other things.[168]

As discussed in the Proposal, the Commission has previously estimated that the reporting requirements associated with § 17.00 of the Commission's regulations entail an estimated 17,160 burden hours for all reporting firms.[169] The Commission is revising its total burden estimates for this clearance to reflect updated estimates of the number of respondents to the collection. The Commission is also estimating the total capital and start-up costs and ongoing operation and maintenance costs associated with the amendments to the Part 17 regulations described herein. In this final rulemaking, the Commission has revised its estimates of total capital and start-up costs and ongoing operation and maintenance costs upward in response to public comment as described in the Cost-Benefit Considerations analysis.

The Commission expects that requiring reporting pursuant to a modern data standard will not require reporting firms to submit substantially more information than is

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[168] These final rules adopts two categories of amendments to Part 17. First, the final rules remove current § 17.00(g)'s 80-character record format and amends § 17.03(d) to delegate authority to the Director of the Office of Data and Technology to determine the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in Appendix C to Part 17 and to determine whether to permit or require one or more particular data standards for reports required under § 17.00(a). That submission standard will be published in a Part 17 Guidebook. A Part 17 Guidebook has been published on the Commission's website concurrently with publication of the final rules. The Part 17 Guidebook designates a modern XML submission standard for submitting reports required under §17.00(a). Second, the Commission is adding an Appendix C to Part 17 enumerating data elements to be included in § 17.00(a) reports. The data elements consist of (1) certain data elements currently required to be reported under § 17.00(g), (2) certain data elements to facilitate processing files submitted in XML, (3) certain data elements necessary to represent innovative contracts that cannot currently be represented using the § 17.00(g) format, and (4) data elements necessary to understand the transactions that resulted in day-to-day changes in positions of large traders. The form and manner for reporting these data elements in Appendix C is provided in the Part 17 Guidebook. The burden estimates provided in this section take into account the burden associated with reporting using a modern XML submission standard and reporting the data elements as set out in Appendix C, in compliance with the Part 17 Guidebook.

[169] *See* ICR Reference No: 202303-3038-002, available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-002.

currently required. Accordingly, as discussed in the Proposal, the Commission is retaining its previous estimated numbers of reports, burden hours per report, and average burden hour cost. Based on review of recent data from 2023, the Commission is reducing its estimate of the number of respondents from 330 to 310. Accordingly, the Commission is reducing its estimate from the previous 17,160 burden hours for all reporting firms[170] to 16,120 burden hours. In addition, the Commission anticipates that implementation of a modern submission standard in the final rules should reduce or eliminate manual corrections and resubmissions that occur under the current regulations.[171]

The aggregate annual estimate for the reporting burden associated with Part 17, as amended by the final rules,[172] is as follows:

Estimated number of respondents: 310.

Estimated Average Burden Hours per Respondent: 52 hours.

Estimated total annual burden on Respondents: 16,120 hours.

Frequency of collection: Periodically.

In addition, the Commission anticipates that the final rules will result in annual capital and start-up costs as well as operating and maintenance costs, consisting of (1) start-up costs to implement the rule changes, (2) operating and maintenance costs to implement the rule changes, and (3) costs to modify equipment as necessary to comply with the rule

[170] *See* ICR Reference No: 202303-3038-002, available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-002.

[171] As discussed previously, the Commission has also revised the Part 17 Guidebook to allow a reporting firm to submit a "Unique Instrument Code" from a DCM's product reference file in lieu of certain product-specific data elements. If a reporting firm includes a "Unique Instrument Code" from a DCM's product reference file in a § 17.00(a) report, then that reporting firm need not include certain product-related data elements identified in the Part 17 Guidebook. As noted previously, the Commission believes this alternative manner of reporting may reduce costs for reporting firms.

[172] The previous burden estimates for 17 CFR 17.00 are available at Notice, Agency Information Collection Activities Under OMB Review, 88 FR 18127 (Mar. 27, 2023).

changes. As previously discussed, the Commission estimates that some respondents may report by secure FTP ("FTP filers") and some firms may report manually ("manual filers"), and that the total capital and start-up costs will vary based on whether a respondent is an FTP filer or a manual filer.

The Commission estimates that FTP filers would comprise 74 respondents. The Commission estimates that these respondents would incur one-time initial costs associated with (1) modifying systems to adopt a new data standard, (2) updating and testing systems to implement new data elements, and (3) modifying equipment to implement new data elements. First, the Commission estimates that such firms would incur a one-time initial burden of 400 hours per entity to modify their systems to adopt changes to the data submission standard described in this final rulemaking, for a total estimated 29,600 total hours. Second, the Commission estimates that FTP filers will incur total capital and start-up costs associated with updating, testing, and implementing new data elements of 800 hours, for a total estimated 59,200 hours. Third, the Commission also estimates that FTP filers would incur one-time costs of $1,000 to modify equipment to implement new data elements. This would amount to $14,548,400 (((400 + 800 hours) × 74 FTP filers × $163[173])) + (74 FTP filers × $1,000) = $14,548,400).

[173] For the cost calculations for FTP filers, the Commission has used a composite (blended) wage rate by averaging the hour wages for (1) Computer Research Scientists, (2) Database Architects, (3) Software Developers, and (4) Developers, Programmers, and Testers. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates from May 2022, the mean hourly wage for a computer research scientist is $74.94, database architect is $65.65, software developer is $63.91, and developers, programmers, and testers is $150.18. *See* U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at* https://www.bls.gov/oes/2022/may/oes_nat.htm. The average of those wages is $65.31. The Commission has applied a multiplier of 2.5 times to account for benefits and overhead. The Commission is therefore using an hourly wage rate of $163 for FTP filers.

In addition, the Commission estimates that as a result of implementing that new data submission standard, these 74 FTP filers may incur additional operating and maintenance costs of 48 hours per year, for 3,552 total hours, resulting in costs of $578,976 (48 hours × 74 FTP filers × $163[174] = $578,976), and, as a result of implementing new data elements, these 74 FTP filers may incur additional operating and maintenance costs of 48 hours per year, for 3,552 total hours, resulting in costs of $578,976 (48 hours × 74 FTP filers × $163[175] = $578,976). This yields additional annual operating and maintenance costs of $1,157,952 for FTP filers.

The Commission estimates that manual filers would comprise 236 reporting firms. The Commission estimates that these respondents would incur one-time initial costs associated with (1) modifying systems to adopt a new data standard and (2) updating and testing systems to implement new data elements. First, the Commission estimates such respondents would incur a one-time initial burden of 20 hours to modify their systems to implement a new data standard, for a total estimated 4,720 total hours. Second, the Commission estimates that manual filers will incur an average one-time cost of 40 hours to implement additional data elements required by new Appendix C, for a total estimated 9,440 total hours. This would amount to aggregate one-time initial costs of $1,968,240 ((20 hours + 40 hours) × 236 manual filers × $139[176] = $1,968,240).

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[174] *See id.*

[175] *See id.*

[176] For the cost calculations for manual filers, the Commission used the wage rate for Data Scientists. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates from May 2021, the mean hourly wage for a data scientist is $55.40. *See* U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at* https://www.bls.gov/oes/2022/may/oes_nat.htm. The Commission has applied a multiplier of 2.5 times to account for benefits and overhead. The Commission is therefore using an hourly wage rate of $139 for manual filers.

In addition, the Commission estimates that as a result of implementing that new data submission standard, these 236 manual filers may incur additional operating and maintenance costs of 24 hours per year, for 5,664 total hours, for an associated cost of $787,296 (24 hours × 236 manual filers × $139[177] = $787,296), and, as a result of implementing new data elements, these 236 manual filers may incur additional operating and maintenance costs of 24 hours per year, for 5,664 total hours, for an associated cost of $787,296 (24 hours × 236 manual filers × $139[178] = $787,296). This yields additional annual operating and maintenance costs of $1,574,592 for manual filers.

Accordingly, the total estimated capital and start-up costs across all 310 reporting firms is $16,516,640 ($14,548,400 + $1,968,240 = $16,516,640). Based on five-year, straight line depreciation, this amounts to annualized total capital and start-up costs for all reporting firms of $3,303,328. Based on five-year, straight line depreciation, the total estimated annual operating and maintenance costs across all entities is $2,732,544 ($1,157,952 for FTP filers + $1,574,592 for manual filers = $2,732,544). The Commission estimates that total annual capital and start-up costs and operation and maintenance costs for all reporting firms would be $6,035,872 ($3,303,328 + $2,732,544 = $6,035,872).

D. Antitrust Considerations

CEA section 15(b) requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA in issuing any order or adopting any Commission rule or regulation.[179]

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[177] *See id.*
[178] *See id.*
[179] 7 U.S.C. 19(b).

The Commission does not anticipate that the changes to Part 17 contained in these final rules would result in anticompetitive behavior. The Commission did not receive any comments on antitrust considerations.

List of Subjects

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

PART 17—REPORTS BY REPORTING MARKETS, FUTURES COMMISSION MERCHANTS, CLEARING MEMBERS, AND FOREIGN BROKERS

- 1. The authority citation for part 17 continues to read as follows:

  Authority: 7 U.S.C. 2, 6a, 6c, 6d, 6f, 6g, 6i, 6t, 7, 7a, and 12a.

- 2. In § 17.00(a), revise paragraphs (a)(1), (g), and (h) to read as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members, and foreign brokers.

* * * * *

(a) * * *

(1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant or clearing member on a fully-disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made pursuant to paragraph (g) of this section. The report

shall show each futures position, separately for each reporting market and for each future, and each put and call options position separately for each reporting market, expiration and strike price in each special account as of the close of market on the day covered by the report and, in addition, the number of futures and options contracts bought and sold, the quantity of exchanges of futures or options for commodities or for derivatives positions, the number of delivery notices issued for each such account by the clearing organization of a reporting market and the number stopped by the account, the number of long and short options expired and exercised, the number of long and short futures assigned, and the number of long and short transfers sent and received. The report shall also show all positions in all contract months and option expirations of that same commodity on the same reporting market for which the special account is reportable.

* * * * *

(g) ***Media and file characteristics.*** Except as otherwise approved by the Commission or its designee, all of the applicable data elements set forth in appendix C to this Part shall be included in a report required by § 17.00(a), and shall be submitted together in a single file. The report shall be submitted in the form and manner published by the Commission or its designee pursuant to § 17.03.

(h) ***Correction of errors and omissions.*** Except as otherwise approved by the Commission or its designee, corrections to errors and omissions in data provided pursuant to § 17.00(a) shall be submitted in the form and manner published by the Commission or its designee pursuant to § 17.03.

* * * * *

- 3. In § 17.03 revise paragraphs (a) and (d) to read as follows:

§ 17.03 Delegation of authority to the Director of the Office of Data and Technology or the Director of the Division of Market Oversight

* * * * *

(a) Pursuant to §§ 17.00(a) and (h), the authority shall be designated to the Director of the Office of Data and Technology to determine whether futures commission merchants, clearing members, and foreign brokers may report the information required under §§ 17.00(a) and (h) using some format other than that required under § 17.00(g) upon a determination that such person is unable to report the information using the format, coding structure, or electronic data transmission procedures otherwise required.

* * * * *

(d) Pursuant to §§ 17.00(a), (g), and (h), the authority shall be designated to the Director of the Office of Data and Technology to determine the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in appendix C to this part and to determine whether to permit or require one or more particular data standards.

* * * * *

- 4. Add appendix C to part 17 to read as follows:

Appendix C to Part 17 – Data Elements

	Data Element Name	Definition for Data Element
1	Total Message Count	The total number of position reports included in the file.
2	Message Type	Message report type.
3	Sender ID	The CFTC-issued reporting firm identifier assigned to the firm submitting the position report.
4	To ID	Indicates the position report was submitted to the CFTC.
5	Message	The date and time the file was created.

	Transmit Datetime	
6	Report ID	A unique identifier assigned to each position report.
7	Record Type (Action)	Indicates the action that triggered the position report.
8	Report Date	The date of the information being reported.
9	Reporting Firm ID	CFTC-assigned identifier for the reporting firm.
10	Special Account Controller LEI	The Legal Entity Identifier ("LEI") issued to the special account controller.
11	Account ID	A unique account identifier, assigned by the reporting firm to each special account. Assignment of the account number is subject to the provisions of § 17.00(b) and Appendix A of this part (Form 102).
12	Exchange Indicator	The exchange where the contract is traded.
13	Commodity Clearing Code	The clearinghouse-assigned commodity code for the futures or options contract.
14	Product Type	Type of product.
15	Ticker Symbol	Ticker symbol of the product traded.
16	Maturity Month Year	Month and year of the delivery or maturity of the contract, as applicable. Day must be provided when necessary to characterize a contract.
17	Maturity Time	The expiration time of an option or last trading time of a future.
18	Listing Date	Product listing date.
19	First Exercise Date	The earliest time at which notice of exercise can be given.
20	Strike Level	Numeric option moneyness criterion.
21	Alpha Strike	Non-numeric option moneyness criterion.
22	Cap Level	Ceiling value of a capped option or bounded future.
23	Floor Level	Floor value of a capped option or bounded future.
24	Bound or Barrier Type	Behavior of the product when it hits the bound or barrier.
25	Bound or Barrier Level	Bound or barrier level of a contingent option.
26	Put or Call Indicator	Nature of the option exercise.
27	Exercise Style	Type of exercise of an option.
28	Payout Amount	Cash amount indicating the payout associated with the contract.
29	Payout Type	The type of valuation method or payout trigger.
30	Underlying Contract ID	The instrument that forms the basis of an option.

31	Underlying Maturity Month Year	Underlying delivery year and month (and day where applicable).
32	Long Position	The total of long open contracts carried at the end of the day.
33	Short Position	The total of short open contracts carried at the end of the day.
34	Contracts Bought	The total quantity of contracts bought (gross) during the day associated with a special account, including all block trades and contracts claimed for clearing as a result of trade allocations such as give-ups. Do not include exchanges of derivatives for related positions EDRPs (EFP, EFS or EFR, EOO) or transfers.
35	Contracts Sold	The total quantity of contracts sold (gross) during the day associated with a special account, including all block trades and contracts claimed for clearing as a result of trade allocations such as give-ups. Do not include exchanges of derivatives for related positions EDRPs (EFP, EFS or EFR, EOO) or transfers.
36	EDRPs Bought	The quantity of purchases of futures or options in connection with exchanges of futures or options for related positions ("EDRPs") done pursuant to a DCM's rules, disaggregated into quantity of purchases of futures or options in connection with EDRPs by type of EDRP, including exchanges of futures for physical, exchanges of futures for risk, exchanges of options for options, and any other EDRP offered pursuant to a DCM's rules.
37	EDRPs Sold	The quantity of sales of futures or options in connection with EDRPs done pursuant to a DCM's rules, disaggregated into quantity of sales of futures or options in connection with EDRPs by type of EDRP, including exchanges of futures for physical, exchanges of futures for risk, exchanges of options for options, and any other EDRP offered pursuant to a DCM's rules.
38	Delivery Notices Stopped	The number of futures contracts for which delivery notices have been stopped during a day.
39	Delivery Notices Issued	The number of futures contracts for which delivery notices have been issued during a day.
40	Long Options Expired	Long options positions expired without being exercised.
41	Short Options Expired	Short options positions expired without being exercised.
42	Long Options Exercised	Long options positions exercised during the day.

43	Short Options Exercised	Short options positions exercised during the day.
44	Long Futures Assigned	Long futures assigned as the result of an option exercise.
45	Short Futures Assigned	Short futures assigned as the result of an option exercise.
46	Long Transfers Sent	Long positions sent through other transfers during the day. (Do not include give-ups.)
47	Long Transfers Received	Long positions received through other transfers during the day. (Do not include give-ups.)
48	Short Transfers Sent	Short positions sent through other transfers during the day. (Do not include give-ups.)
49	Short Transfers Received	Short positions received through other transfers during the day. (Do not include give-ups.)
50	Product-Specific Terms	Terms of the contract that are economically material to the contract, maintained in the ordinary course of business by the reporting market listing the contract, and not otherwise reported under the data elements in this Appendix.

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Christopher J. Kirkpatrick

Secretary of the Commission