COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 16

RIN 3038–AC63

Account Ownership and Control Report; Withdrawal

AGENCY: Commodity Futures Trading Commission (''Commission'').

ACTION: Proposed rule; withdrawal.

SUMMARY: On July 19, 2010, the Commission published for public comment a Notice of Proposed Rulemaking that proposed to collect certain account ownership and control information for all trading accounts active on U.S. futures exchanges and other reporting entities (''OCR NPRM''). After considering all comments received in response to the OCR NPRM, the Commission is withdrawing the OCR NPRM and instead pursuing the collection of account ownership and control information through a separate proposed rulemaking published today elsewhere in the notice section of the **Federal Register**.

DATES: Effective July 26, 2012, the proposed rule published July 19, 2010, at 75 FR 41775, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Sebastian Pujol Schott, Associate Director, at 202–418–5641 or *sps@cftc.gov;* or Cody J. Alvarez, Attorney Advisor, at 202–418–5404 or *calvarez@cftc.gov;* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On July 19, 2010, the Commission published the OCR NPRM,[1] which provided for the collection of trading account information via an account ownership and control report (''OCR'').[2] In addition, the OCR NPRM sought public comment and provided for a public roundtable meeting during the 60-day comment period.[3] The staff-led public roundtable was held September 16, 2010.[4]

The Commission received eight comment letters from fourteen interested parties in response to the OCR NPRM and the public roundtable.[5] A number of commenters raised concerns regarding the costs they were likely to incur as a result of the OCR. For example, designated contract market group stated in its comment letter that ''the Commission's proposed OCR will result in very substantial capital and human resource costs being incurred by all [r]eporting [e]ntities on a one-time and on-going basis.''[6] Many commenters argued that certain OCR data points would be difficult to collect. For example, an industry association representing numerous large futures commission merchants (''FCMs'') stated that FCMs would have difficulty providing date of birth information because ''[a]n FCM generally does not record the date of birth of a customer or account controller.''[7] Many comment letters also included alternative recommendations for proceeding with the development of the OCR.[8]

In light of the comments received and the Commission's intention to collect trading account ownership and control information through a separate proposed rulemaking, the Commission has determined to withdraw the OCR NPRM. Concurrent with this withdrawal, the Commission is publishing elsewhere in this issue of the **Federal Register** a separate proposed rule that incorporates many of the OCR NPRM comments.

Issued in Washington, DC, on June 27, 2012 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–16178 Filed 7–25–12; 8:45 am]

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[1] 75 FR 41775 (July 19, 2010).

[2] On July 2, 2009, prior to the publication of the OCR NPRM, the Commission published an Advanced Notice of Proposed Rulemaking (''Advanced Notice''). In the Advanced Notice the Commission proposed to collect certain ownership, control, and related information for all trading accounts active on U.S. futures exchanges. *See* 74 FR 31642 (July 2, 2009).

[3] The comment period deadline was extended from September 17, 2010 to October 7, 2010 in order to give interested parties time to prepare comments on matters discussed at the roundtable meeting. *See* 75 FR 54801 (September 9, 2010).

[4] 75 FR 54802 (September 9, 2010).

[5] On December 23, 2010 and March 22, 2011, the Commission received supplemental comment letters from the Futures Industry Association (''FIA''). All OCR NPRM comment letters, supplemental comment letters, *ex parte* communications summaries, and a transcript of the public roundtable are available at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=755.*

[6] CME Group Inc. comment letter on behalf of the Chicago Mercantile Exchange, Inc., the Board of Trade of the City of Chicago, Inc., the New York Mercantile Exchange, Inc., and the Commodity Exchange, Inc. (collectively ''CME'') dated October 7, 2010 at 3.

[7] FIA Comment Letter dated October 7, 2010 at 15.

[8] *See* CME Comment Letter dated October 7, 2010 at 4 and FIA Comment Letter dated October 7, 2010 at 7. *See* generally FIA Supplemental Comment Letter dated December 23, 2010 and FIA Supplemental Comment Letter dated March 22, 2011.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 17, 18, and 20

RIN 3038–AD31

Ownership and Control Reports, Forms 102/102S, 40/40S, and 71

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking (''Notice'').

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing new rules and related forms to enhance its identification of futures and swap market participants. The proposed rules would leverage the Commission's existing position and transaction reporting programs by requiring the electronic submission of trader identification and market participant data on amended Forms 102 and 40, and on new Form 71. The proposed rules also incorporate a revised approach to the Commission's previous initiative to collect ownership and control information, through a dedicated ownership and control report (''OCR''), for trading accounts active on reporting markets that are designated contract markets or swap execution facilities. The Commission welcomes public comment on all aspects of its proposal.

DATES: Comments must be received on or before September 24, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD31, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition

for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC's regulations.[1]

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this Notice will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Sebastian Pujol Schott, Associate Director, Division of Market Oversight (''DMO''), at 202–418–5641 or *sps@cftc.gov*; Cody J. Alvarez, Attorney Advisor, DMO, at 202–418–5404 or *calvarez@cftc.gov*; Mark Schlegel, Attorney Advisor, DMO, at 202–418–5055 or *mschlegel@cftc.gov*; or James Outen, Industry Economist, DMO, at 202–418–5710 or *jouten@cftc.gov*; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

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I. Introduction

A. Background

The CFTC's large trader reporting rules (also referred to herein as the ''reporting rules'') are contained in parts 15 through 21 of the Commission's regulations.[2] The reporting rules are currently structured to collect information with respect to positions in ''open contracts,''[3] including: (1) Information necessary to identify persons who hold or control ''reportable positions''[4] in open contracts (via existing Form 40); and (2) information necessary to identify ''special accounts''[5] (via existing Form 102). In this Notice, the Commission is proposing certain amendments to the existing reporting rules and forms as they pertain to positions in open contracts. In addition, the Commission is proposing a revised approach to the OCR, which previously had been proposed[6] as a separate data collection.[7] Specifically, the Commission proposes to expand the reporting rules and forms so that they may also be used to identify ''volume threshold accounts,'' defined as individual trading accounts that trigger volume-based reporting thresholds on a reporting market[8] that is a registered entity under §§ 1a(40)(A) or 1a(40)(D) of the Commodity Exchange Act (''CEA'' or ''Act'') (*i.e.,* a designated contract market (''DCM'') or a swap execution facility (''SEF'')), regardless of whether such activity results in reportable positions. Volume threshold accounts associated with DCMs and SEFs would be required to be reported by clearing members, as indicated in section IX below. The Commission notes that volume threshold accounts could reflect, without limitation, trading in futures, options on futures, swaps, and any other products traded on or subject to the rules of a DCM or SEF. However, the Commission also notes that the proposed rules generally reflect the Commission's knowledge and experience with trading practices and structures on DCMs. As a result, the Commission specifically requests public comment throughout this Notice on any revisions to the proposed rules that may be required to adequately address the identification and reporting of volume threshold accounts associated with SEFs.[9]

The proposed amendments to the reporting rules and forms would achieve three primary purposes. First, they would broaden the utility of existing Form 102 through a new, expanded Form 102 (''New Form 102''), partitioned into three sections: section 102A for the identification of position-based special accounts (''102A,'' ''Form 102A,'' or ''New Form 102A''); section 102B—the former OCR component—for the collection of ownership and control information from clearing members on volume threshold accounts associated with DCMs or SEFs (''102B,'' ''Form 102B,'' or ''New Form 102B'');[10] and section 102S for the submission of 102S filings for swap counterparty and customer consolidated accounts with

[1] 17 CFR 145.9.

[2] 17 CFR parts 15 through 21. The rule proposals contained in this Notice generally relate to parts 15, 17, 18 and 20 of the Commission's regulations.

[3] ''Open contract'' means any commodity or commodity option position ''held by any person on or subject to the rules of a board of trade which have not expired, been exercised, or offset.'' *See* §§ 1.3(t) and 15.00(n).

[4] A ''reportable position'' is defined in § 15.00(p) as ''any open contract position that at the close of the market on any business day equals or exceeds the [Commission's reporting levels specified in § 15.03].''

[5] A ''special account'' is defined in § 15.00(r) as ''any commodity futures or option account in which there is a reportable position.''

[6] *See* Commission, Notice of Proposed Rulemaking: Ownership and Control Report, 75 FR 41775 (July 19, 2010) (''OCR NPRM'').

[7] As discussed in further detail below, the Commission is withdrawing the OCR NPRM contemporaneously with the publication of this Notice in the **Federal Register**.

[8] ''Reporting market'' is defined in existing § 15.00(q) as ''a designated contract market, registered entity under § 1a(29) of the Act, and unless determined otherwise by the Commission [a derivatives transaction execution facility].'' By way of this Notice, the Commission proposes to revise § 15.00(q) to define reporting market as a ''designated contract market or a registered entity under § 1a(40) of the Act.'' This revision is technical in nature, and serves to conform § 15.00(q) with recent amendments to the Act. *See infra* sections VI(A) and IX.

[9] *See* section VII, below.

[10] As explained below, Form 102B incorporates the previously proposed OCR.

reportable positions (''102S,'' ''Form 102S,'' or ''102S filings''). Second, the proposed amendments would enhance the Commission's surveillance and large trader reporting programs for futures, options on futures, and swaps by clarifying which accounts are required to be reported on Form 102A; requiring the reporting on Form 102A of the trading accounts that comprise each special account; requiring the reporting of certain omnibus account information on Form 71 (''Form 71'' or ''New Form 71''); [11] updating Form 40 (''New Form 40''); and integrating the submission of 102S and 40S filings into the general Form 102 and Form 40 reporting program. Finally, the proposed amendments would provide for the electronic submission of Forms 102, 40, and 71.

B. Benefits Derived From the Proposed Rules

The proposed rules would enhance the Commission's existing trade practice and market surveillance programs for futures and options on futures, and facilitate surveillance programs for swaps, by expanding the information presently collected on existing Forms 102 and 40, and introducing a new information collection for omnibus volume threshold accounts in New Form 71. The rules would also help implement the 102S and 40S filing requirements recently adopted in connection with the Commission's part 20 rules addressing large trader reporting for physical commodity swaps (discussed below).[12] In the aggregate, the proposed rules would help the Commission to better deter and prevent market manipulation; deter and detect abusive or disruptive trading practices; and better perform risk-based monitoring and surveillance between related accounts. Ultimately, the proposed rules would significantly enhance the Commission's ability to identify participants in the derivatives markets and to understand relationships between trading accounts, special accounts, reportable positions, and market activity.

The proposed rules respond, in part, to the increased dispersion and opacity of trading in U.S. futures markets as they continue to transition from localized, open-outcry venues to global electronic platforms. While electronic trading has conferred important informational benefits upon regulators, the concomitant increases in trading volumes, products offered, and trader dispersion have created equally important regulatory challenges. Effective market surveillance now requires automated analysis and pattern and anomaly detection involving millions of daily trade records [13] and hundreds of thousands of position records [14] present in the surveillance data sets received daily by the Commission.[15]

Commission staff utilizes two distinct data platforms to conduct market surveillance: the Trade Surveillance System (''TSS'') and the Integrated Surveillance System (''ISS''). Broadly speaking, TSS captures transaction-level details of trade data, while ISS facilitates the storage, analysis, and mining of large trader data from a position perspective. One important component of TSS is the Trade Capture Report (''TCR''). Trade Capture Reports contain trade and related order data for every matched trade facilitated by an exchange, whether executed via open-outcry, electronically, or non-competitively. Among the data included in the TCR are trade date, product, contract month, trade time, price, quantity, trade type (*e.g.,* open outcry outright future, electronic outright option, give-up, spread, block, etc.), executing broker, clearing member, opposite broker and clearing member, customer type indicator, trading account numbers, and numerous other data points.

Effective market surveillance requires that surveillance data sets received by the Commission be sufficiently comprehensive and contain sufficient identified reference points to uncover relationships where none appear to exist and to analyze information based on flexible criteria. The collection of additional trader identification and market participant data on the forms proposed in this Notice would help the Commission to better satisfy these data requirements. For example, elements of the proposed data collection would enable the Commission to link ISS data (which includes large traders' names, but not their trading account numbers) to TSS data (which includes trading account numbers but not names).

The information proposed to be collected would also help the Commission to better identify and categorize individual trading accounts and market participants that triggered position or volume-based reporting thresholds. For example, New Form 102A would, among other changes, require reporting firms to identify the constituent trading accounts of each reported special account. In this manner, New Form 102A would ensure a new level of interoperability between the Commission's large trader data and its trade data, and would permit Commission surveillance staff to quickly reconstruct trading for any special account. New Form 102B would, for the first time, require identification of trading accounts based solely on their gross trading volume. This new information collection would enhance the Commission's trade practice surveillance program by revealing connections of ownership or control between trading accounts that otherwise appear unrelated in the TCR. More generally, it would facilitate Commission efforts to deter and detect attempted market disruptions that may occur even in the absence of large open positions. Finally, the automated collection of such information via electronic forms, rather than through ad-hoc, manual processes, would permit both the Commission and market participants to administer the reporting programs and related work more efficiently and effectively. Additional information on the forms addressed by this Notice is provided below.

II. Statutory Framework for Position Reporting and Trader and Account Identification

The Commission's existing reporting rules, and those proposed herein, are primarily implemented and/or proposed by the Commission pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Act.[16] Section 4a of the Act

[11] As explained below, information regarding the owners and controllers of volume threshold accounts reported on Form 102B and that are identified as omnibus accounts (''omnibus volume threshold accounts'') would be collected by the Commission (via Form 71) directly from originating firms.

[12] *See* 17 CFR 20.5(a) and (b), the 102S and 40S filing requirements, discussed in greater detail below. Final part 20 was published in the **Federal Register** on July 22, 2011. *See* Commission, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851 (July 22, 2011) (''Large Trader Reporting for Physical Commodity Swaps'').

[13] For example, in November 2011, the Commission received an average of 7.4 million trade records per day from electronic trading on DCMs.

[14] For example, in November 2011, the Commission received an average of 617,000 position records per day from reporting firms and exchanges.

[15] Daily trade and position records are provided to the Commission pursuant to §§ 16.02 and 17.00, respectively. For further discussion of the Commission's large trader reporting program, see sections III(A) and (B), below.

[16] 7 U.S.C. 1 *et seq.* In addition, CEA § 8a(5) authorizes the Commission to promulgate such regulations as, in its judgment, are reasonably necessary to effectuate any provision of the Act or to accomplish any of the purposes of the Act. 7 U.S.C. 12a(5). Also, pursuant to the purposes enumerated in CEA § 3(b), the Act seeks to ensure the financial integrity of regulated transactions and to prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b).

permits the Commission to set and enforce speculative position limits, and to approve exchange-set position limits.[17] Section 4c(b) gives the Commission plenary authority to regulate transactions that involve commodity options.[18] Section 4g(a) of the Act requires, among other things, each futures commission merchant (''FCM''), introducing broker, floor broker, and floor trader to file such reports as the Commission may require on its proprietary and customer transactions and positions in commodities for future delivery on any board of trade in the United States or elsewhere.[19] In addition, section 4g(b) requires registered entities to maintain daily trading records as required by the Commission, and section 4g(c) requires floor brokers, introducing brokers, and FCMs to maintain their own daily trading records for each customer in such manner and form as to be identifiable with the daily trading records maintained by registered entities. Section 4g(d) permits the Commission to require that such daily trading records be made available to the Commission.[20] Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions taken or obtained on designated contract markets equal or exceed Commission-set levels.[21] Collectively, these CEA provisions warrant the maintenance of an effective and rigorous system of market and financial surveillance.

In addition to the CEA sections described above, on July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[22] Title VII of the Dodd-Frank Act[23] amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authority with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

As part of the Commission's rulemaking program implementing the Dodd-Frank Act,[24] the rule changes proposed herein also include swaps-related considerations in connection with the Commission's new large trader reporting rules for swaps.[25] New CEA section 4t authorized the Commission to establish a large trader reporting system for significant price discovery function swaps; accordingly, the swaps-related considerations in the rules proposed herein also rely in part on the Commission's authority in CEA section 4t.

III. Existing and Previously Proposed Trader and Account Identification Programs

A. Futures Large Trader Reporting—Existing Forms 102 and 40

Existing § 17.00, in part 17 of the Commission's regulations, forms the basis of the Commission's large trader reporting program.[26] It requires each FCM, clearing member, and foreign broker to submit a daily report to the Commission for each commodity futures or option account it carries that has a reportable position (called a ''special account''). Such ''§ 17.00 position reports'' must show the futures and option positions of traders with positions at or above specific reporting levels set by the Commission. Current reporting position trigger levels are located in § 15.03(b).[27] The daily report is sent to the Commission as a single data file from each reporting FCM, clearing member, and foreign broker pursuant to technical specifications identified in § 17.00(g).[28] The Commission's surveillance staff uses this report to, among other things, assess individual traders' activities and potential market power; enforce speculative position limits; monitor for disruptions to market integrity; and calculate statistics that the Commission publishes to enhance market transparency (*e.g.,* in the Commitments of Traders reports).

i. Identification of Special Accounts—Existing Form 102

For each special account identified by an FCM, clearing member, or foreign broker and reported to the Commission in a § 17.00 position report, existing § 17.01[29] requires the FCM, clearing member, or foreign broker to separately identify such special accounts to the Commission on Form 102 and provide certain information with respect to each special account.[30] Pursuant to existing § 17.02(b),[31] Form 102 must be submitted by such parties within three days of an account becoming a special account; a Form 102 submission may also be required by the Commission or its designee via a special call. The text of existing § 17.01[32] includes both the requirement to submit the form as well as the specific data fields that are required to be completed on Form 102. Currently, Form 102 requires the filing of a separate ''paper'' form for each special account. Forms are generally transmitted to the Commission via email, facsimile, or regular mail.

As noted above, Form 102 identifies and provides information with respect to special accounts carried by FCMs, clearing members, and foreign brokers. The form provides the Commission with contact information for the trader(s) who owns and/or controls trading in each special account included in the daily § 17.00 position reports. The Form 102 questions, as currently detailed in § 17.01(a) through (f),[33] require the reporting firm to provide the following: a special account number; the name, address, and other identification information for the owner (if also the controller), controller, or originator (if an omnibus account) of the account; an indication whether trades and positions in the special account are usually associated with commercial activity of the account owner in a related cash commodity or activity; information regarding an FCM's relationship to the account; and name and address information for the firm submitting the Form 102.

Based on the Commission's experience in receiving, processing, and reviewing Form 102 submissions, and as discussed below in the context of the rules proposed herein, the Commission

[17] 7 U.S.C. 6a.

[18] 7 U.S.C. 6c(b).

[19] 7 U.S.C. 6g(a).

[20] *See supra* section I(B) for a discussion of the trade data transmitted daily to the Commission by registered entities.

[21] 7 U.S.C. 6i.

[22] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[23] Pursuant to § 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[24] *See generally, http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm.*

[25] As noted *supra* in note 12, 17 CFR 20.5(a) and (b) contain the 102S and 40S filing requirements, discussed in greater detail below. Final part 20 was published in the **Federal Register** on July 22, 2011. *See supra* note 12.

[26] 17 CFR 17.00.

[27] 17 CFR 15.03(b).

[28] 17 CFR 17.00(g).

[29] 17 CFR 17.01.

[30] Current Form 102 is titled *Identification of Special Accounts.* 17 CFR 15.02.

[31] 17 CFR 17.02(b).

[32] 17 CFR 17.01.

[33] 17 CFR 17.01(a) through (f).

has determined that the existing Form 102 questions would benefit from revisions designed to: (1) Provide more meaningful information to the Commission and (2) clarify for reporting firms the traders, accounts, and information required to be provided on Form 102. In addition, the Commission is also proposing (as discussed below) that the New Form 102 submission process be modernized to facilitate electronic submission so that both the Commission and market participants may benefit from the efficiencies of automation.

ii. Statement of Reporting Trader—Existing Form 40

For each trader holding or controlling a reportable position (generally, persons identified on Form 102), § 18.04 requires that, after a special call of the Commission, such trader file with the Commission a ''Statement of Reporting Trader'' on existing Form 40 at such time and place as directed in the call.[34] The Form 40 is most commonly submitted to the Commission via paper submission, email submission, or facsimile. When submitted in a timely and accurate manner, Form 40 submissions provide the Commission with basic information about each reportable trader in its markets.

As with existing § 17.01 and Form 102, existing § 18.04 also specifically identifies the data fields required in a Form 40 filing. Generally, § 18.04 and Form 40 require every reporting trader to provide or indicate the following: Name and address; principal business and occupation; type of trader; registration status with the Commission; name and address of other persons whose trading the trader controls; name, address, and phone number for each controller of the reporting trader's trading; name and location of other reporting firms through which the reporting trader has accounts; name and locations of persons guaranteeing the trading accounts of the reporting trader or persons having a 10 percent or greater financial interest in the reporting trader or its accounts; other identification information regarding accounts which the reporting trader guarantees or in which the reporting trader has a financial interest of 10 percent or more; and whether the reporting trader has certain relationships with or owners that are foreign governments.

Individuals completing existing Form 40 must also provide or indicate the following, as applicable: A business telephone number; employer and job title; description of trading activity related to physical activity in or commercial use of a commodity; name and address of any organization of which the reporting trader participates in the management, if such organization holds a trading account; the name and address of a partner and/or joint tenant on the account; and the name and address of the partner and/or joint tenant that places orders.

Corporations and other non-individuals/non-partnerships/non-joint tenants completing existing Form 40 must also provide or indicate the following, as applicable: A U.S. entity indication, and if not a U.S. entity, an indication of where organized; names and locations of parent firms and their respective U.S. entity indication; names and locations of all subsidiary firms that trade in commodity futures and options and their respective U.S. entity indication; name and address of person(s) controlling trading, by commodity and transaction type; contact information for a contact person regarding trading; and description of trading activity related to physical activity in, or the commercial use of, a commodity.

As with Form 102, and based on the Commission's experience in calling for, receiving, processing, and reviewing Form 40 submissions, the Commission has determined that the existing Form 40 questions could benefit from revisions designed to: (1) Provide more meaningful information to the Commission and (2) clarify for reporting traders the specific information required to be provided on Form 40. In addition, the Commission is also proposing, as discussed below, that the New Form 40 submission process be modernized to facilitate Web-based electronic form submission and achieve the efficiencies (for both the Commission and market participants) associated with using a single Web-based submission format.

B. Large Trader Reporting for Physical Commodity Swaps—102S and 40S Filings

As noted above, the Commission recently adopted rules pertaining to swaps large trader reporting as new part 20 of the Commission's regulations.[35] In addition to establishing a position-based reporting scheme for swaps,[36] the rules also require two trader identification filings—102S and 40S. For swap counterparties with reportable positions (as set forth in part 20), the 102S and 40S filings generally serve an analogous function to that served by the existing Form 102 and Form 40 for futures and option traders.

Specifically, pursuant to § 20.5(a), 102S filings must be filed by a part 20 reporting entity (a clearing firm or a swap dealer) for each reportable counterparty consolidated account and ''shall consist of the name, address, and contact information of the counterparty and a brief description of the nature of such person's paired swaps and swaptions market activity.'' [37] In addition, pursuant to § 20.5(b), and in conjunction with § 20.6, all clearing organizations, swap dealers, clearing members, and counterparties with reportable positions must, after a special call of the Commission, complete a Form 40 ''as if any references to futures or options contracts were references to paired swaps or swaptions as defined in § 20.1'' and submit the same to the Commission as a 40S filing.[38]

Building on the approach of this Notice to modernizing Form 102 and Form 40 submissions, the rules proposed herein would also provide for the electronic submission of both 102S and 40S filings. In order to provide clarity for market participants submitting these filings, the proposed rules also include provisions indicating the specific information required to be provided in each of these filings. In addition, the information requested in proposed Form 102S reflects considerations developed in the Swaps Large Trader Guidebook for compliance with part 20.[39] For example, in addition to requiring information on counterparty consolidated accounts, as described above, proposed 102S would also collect information on ''customer'' consolidated accounts.[40] Form 102S would also ask reporting firms to distinguish between ''house'' and ''customer'' consolidated accounts.

C. Proposed OCR

In addition to existing trader and account identification filings summarized above, the Commission recently proposed to collect ownership

[34] 17 CFR 18.04.

[35] *See supra* note 12.

[36] *See generally:* Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for part 20 Reports, available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltrguidebook120711.pdf* (hereafter, ''Swaps Large Trader Guidebook'').

[37] 17 CFR 20.5(a).

[38] 17 CFR 20.5(b) and 20.6.

[39] *See supra* note 36.

[40] As explained in the Swaps Large Trader Guidebook, acceptable part 20 data records include ''customer,'' ''agent,'' ''principal,'' and ''counterparty'' records. Clearing firms and swap dealers submitting 102S filings would be expected to classify principal and counterparty consolidated accounts as counterparty accounts on Form 102S, and to classify customer consolidated accounts as customer accounts. Agent data records would not require a 102S filing.

and control information for all trading accounts active on U.S. futures exchanges and other trading venues. The Commission proposed to collect such information via an account ownership and control report (''OCR'') submitted periodically by reporting entities that would primarily be DCMs. The Commission published an Advanced Notice of Proposed Rulemaking (''OCR Advanced Notice'' or ''Advanced Notice'')[41] soliciting public comment on the OCR in 2009, and a Notice of Proposed Rulemaking (''OCR NPRM'') in 2010.[42] Both notices are described in greater detail below.

i. OCR Advanced Notice

In the OCR Advanced Notice, the Commission sought public comment on the concept of an OCR submitted periodically to the Commission by DCMs and other trading-venue reporting entities.[43] As the Commission explained in the Advanced Notice, the OCR was designed to enhance market transparency, leverage the Commission's existing surveillance systems, and foster synergies between its market surveillance, trade practice, enforcement, and economic research programs. The OCR Advanced Notice provided a detailed explanation of the Commission's need and intended uses for ownership and control information. The Commission invited all interested parties to submit general comments regarding the Advanced Notice within a 45-day comment window. The Commission received a total of twelve comment letters from sixteen interested parties.

ii. OCR NPRM

After carefully considering comments received in response to the OCR Advanced Notice, the Commission published its OCR NPRM, which was substantively similar to the Advanced Notice. Like the Advanced Notice, the OCR NPRM also provided for the collection of information through an OCR submitted to the Commission by trading-venue reporting entities.[44] For each trading account, reporting entities were to collect and transmit specific OCR data points, including: the trading account number; the names and addresses of the account's owners and controllers; the owners' and controllers' date of birth; the special account number, if one had been assigned; an indication of whether the account was a reportable account pursuant to large trader thresholds; and other relevant information. The Commission understood that, to compile their OCRs, reporting entities would need to collect information from FCMs and introducing brokers (''IBs'') in possession of the underlying data required by the OCR. Consequently, much of the OCR's burden would have fallen on FCMs, IBs, and any other market participants providing data to the reporting entities. The OCR NPRM also proposed the form, manner, and frequency of OCR transmission by reporting entities.[45]

The OCR NPRM sought public comment and provided for a 60-day comment period. Commission staff also led a public roundtable to facilitate in-person discussion between Commission staff and interested parties.[46] The staff-led public roundtable was held on September 16, 2010, and consisted of fifteen panelists.[47] By the close of the OCR NPRM comment period, the Commission received eight comment letters from fourteen interested parties.[48] Many of the comments presented by roundtable panelists raised the same issues as those raised by the comment letters responding to the Advanced Notice and the OCR NPRM.

iii. OCR NPRM Comment Summary

A number of commenters found merit in the proposed OCR. For example, IntercontinentalExchange, ICE Futures Europe, and ICE Futures U.S. collectively stated that they ''recognize[d] the value in collecting information regarding the identity of the owners and controllers of accounts that actively trade on reporting entities, and therefore suppor[t] the Commission's initiative to collect certain OCR information.''[49] Similarly, the Futures Industry Association (''FIA'') commented that it ''supports the underlying purposes of the proposed OCR.''[50] The Air Transport Association of America (''ATA'') ''agree[d] that the proposed [OCR] will provide information the Commission needs to ensure that the U.S. futures markets accurately reflect supply and demand forces for products traded, and to ensure that the futures markets are not tainted by fraud, abuse or excessive speculation.''[51] The ATA further stated that, ''the OCR is critical to the Commission's ability to fulfill these responsibilities in a dynamic and evolving marketplace that has embraced new technologies.''[52] Finally, the Kansas City Board of Trade commented that ''Exchange Compliance staffs will benefit greatly from the wealth of information at their disposal regarding the identity of market participants and the relationships that exist among them.''[53]

Commenters also suggested possible modifications to the OCR as described in the OCR NPRM. Commenters recommended that the Commission utilize an updated and automated Form

[41] *See* Commission, Advanced Notice of Proposed Rulemaking: Ownership and Control Report, 74 FR 31642 (July 2, 2009).

[42] *See* OCR NPRM *supra* note 6.

[43] The OCR Advanced Notice noted that ''most reporting entities will be designated contract markets, but they could be any registered entity that provides trade data to the Commission on a regular basis.'' *See* OCR Advanced Notice *supra* note 41 at 31642.

[44] The OCR NPRM provided that reporting entities would include DCMs, derivatives transaction execution facilities, and exempt commercial markets with significant price discovery contracts. In addition, the OCR NPRM provided that should the Commission adopt the proposed rule, it would also collect ownership and control information from foreign boards of trade operating in the U.S. pursuant to staff direct access no-action letters, if such letters are conditioned on the regular reporting of trade data to the Commission. In the OCR NPRM, the Commission also noted that if given appropriate authority it would consider collecting OCR data for over-the-counter and exchange-traded swap transactions. *See* OCR NPRM *supra* note 6 at 41782.

[45] The OCR NPRM provided that the OCR be submitted weekly, in Financial Information eXchange Markup Language (''FIXML'') via secure file transfer protocol (''SFTP''). *See* OCR NPRM *supra* note 6 at 41784.

[46] The comment period deadline was extended from September 17, 2010 to October 7, 2010 in order to give interested parties time to prepare comments on matters discussed at the public roundtable. *See* 75 FR 54801 (September 9, 2010).

[47] Panelists included representatives from: CME Group Inc.; ICE Futures U.S.; Kansas City Board of Trade; Katten Muchin Rosenman LLP; Millburn Ridgefield Corporation; National Introducing Brokers Association; NYSE Liffe U.S.; State Street Global Markets; Woodfield Fund Administration LLC; and an industry consultant.

[48] All OCR NPRM comment letters (''CL''), supplemental comment letters (''supplemental CL''), *ex parte* communications summaries, and a transcript of the public roundtable are available through the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=755.* OCR NPRM comment letters were received from: (1) Air Transport Association of America, Inc. on September 17, 2010 (''CL–ATA''); (2) CME Group Inc. on behalf of the Chicago Mercantile Exchange, Inc.; the Board of Trade of the City of Chicago, Inc.; the New York Mercantile Exchange, Inc.; and the Commodity Exchange, Inc. (collectively ''CME'') on October 7, 2010 (''CL–CME''); (3) Darrell Cutshaw on September 13, 2010 (''CL–DCT''); (4) Futures Industry Association on October 7, 2010 (''CL–FIA''); (5) IntercontinentalExchange, Inc., ICE Futures Europe, and ICE Futures U.S., Inc. (collectively, ''ICE'') on October 7, 2010 (''CL–ICE''); (6) International Assets Holding Corporation and FCStone, LLC on October 7, 2010 (''CL–FCS''); (7) Kansas City Board of Trade on October 7, 2010 (''CL–KCBT''); and (8) OneChicago, LLC on September 27, 2010 (''CL–OCX''). OCR NPRM supplemental comment letters were received from: (1) FIA on December 23, 2010 (''Supplemental CL–FIA I''); and (2) FIA on March 22, 2011 (''Supplemental CL–FIA II'').

[49] CL–ICE *supra* note 48 at 1.

[50] CL–FIA *supra* note 48 at 2.

[51] CL–ATA *supra* note 48 at 1.

[52] *Id.*

[53] CL–KCBT *supra* note 48 at 1.

102 to collect OCR data[54]; collaborate with industry representatives to design the OCR[55]; require the reporting of only those accounts that exceed certain volume thresholds[56]; and require that the Commission receive OCRs directly from clearing FCMs rather than from DCMs and other trading venues.[57] In a series of supplemental comment letters, the FIA (working with a group of FCMs, U.S. exchanges and other experts (''Working Group'')) provided a ''Proposed OCR Alternative'' that expanded upon comments made by FIA and its members in response to the Advanced Notice, the OCR NPRM, and the public roundtable.[58] The Working Group's Proposed OCR Alternative addressed, among other things, the OCR data points to be collected, the sources and flow of OCR data, and industry costs arising from the Commission's proposed OCR versus the costs associated with the Working Group's Proposed OCR Alternative.[59] Specifically, the Working Group estimated that the Proposed OCR Alternative ''would result in an average first-year cost saving of approximately $18.8 million'' when compared with the Commission's proposed OCR.[60] The Commission found merit in many of the commenters' recommendations and has incorporated several of these recommendations in the proposed rules. For example, as further described below, the proposed rules would require OCR data submissions directly from clearing FCMs, and OCR data would only be required for those trading accounts that exceed a specified volume threshold. Also, in concurrence with the suggestions of commenters and as more fully described below, the Commission anticipates collaborating with reporting entities and other interested participants to develop the data format and submission process.

Concurrent with the publication of this Notice, the Commission is issuing a separate notice that serves to formally withdraw the OCR NPRM and to alert the public to the rulemaking proposed herein.

[54] *See* CL–CME *supra* note 48 at 6, CL–OCX *supra* note 49 at 2, and Supplemental CL–FIA I *supra* note 49 at 2 of Appendix A.

[55] *See* CL–CME *supra* note 48 at 5, CL–FIA *supra* note 49 at 8, CL–ICE *supra* note 49 at 2, and CL–KCBT *supra* note 49 at 4.

[56] *See* CL–ICE *supra* note 48 at 4, CL–FIA *supra* note 49 at 7, and Supplemental CL–FIA I *supra* note 49 at 2 of Appendix A.

[57] *See* CL–KCBT *supra* note 48 at 2.

[58] *See* generally Supplemental CL–FIA I *supra* note 48 and Supplemental CL–FIA II *supra* note 48.

[59] *Id.*

[60] Supplemental CL–FIA I *supra* note 48 at 5 of Appendix A.

IV. Forms

As noted above, this proposed rulemaking addresses three forms—New Form 102, New Form 71, and New Form 40. New Form 102 is proposed as a multi-function form, since the requirement to submit New Form 102 can arise from one of three separate triggers. The data required to be submitted on a New Form 102 is determined by the underlying triggering mechanism. A discussion of the three New Form 102 triggering mechanisms, the related sections of the form, and the information required to be provided in each section, follows. New Form 71 is proposed as a tool to be used, at the Commission's discretion, to learn more about certain volume threshold accounts identified as omnibus accounts on New Form 102B. New Form 40 would continue to serve its traditional purpose as a tool to be used, at the Commission's discretion, to learn more about traders and market participants identified on New Form 102, as well as on New Form 71. New Form 71 and New Form 40 are also described in detail below.

A. Position Triggered 102

i. Special Accounts and Reportable Positions

New Form 102A is the section of New Form 102 that would serve a function most analogous to existing Form 102. New Form 102A requires an FCM, clearing member, or foreign broker to identify and report its special accounts. As discussed above, a special account is defined in existing § 15.00(r), and means any commodity futures or option account in which there is a reportable position.[61] For the purposes of part 17, reportable position is defined in existing § 15.00(p)(1), and generally includes any open contract position that at the close of the market on any given business day equals or exceeds the levels in existing § 15.03.[62] These proposed rules would not amend the definition of either special account or reportable position. The Commission notes that under existing regulations (*e.g.,* § 17.00(b), citing § 150.4),[63] reporting firms are required to separately aggregate the positions of common owners and those of common controllers for the purpose of identifying special accounts on a Form 102. By way of this proposed rulemaking, the Commission reiterates that its regulations require reporting firms to separately aggregate positions by common ownership and by common control for the purpose of identifying and reporting special accounts.

ii. 102A Form Requirements

As compared to existing Form 102, the data fields in 102A would include new ownership and control information fields (or, in the case of special accounts that are omnibus accounts, omnibus account originator information fields) for position-based special accounts. Form 102A, as proposed, would also require reporting firms that are clearing members to identify the trading accounts that comprise a position-based special account and to provide ownership and control information, as well as TCR trading account numbers, for those trading accounts.[64] To clarify, ''trading accounts that comprise a position-based special account'' would include all of those trading accounts that: (1) Are used to execute trades cleared by the clearing member submitting the 102A; (2) are owned or controlled by the entity identified as owning or controlling the special account reported on a 102A; and (3) execute transactions in the same commodity or commodities in which the special account has a reportable position. The Commission's objective in requiring reporting firms that are clearing members to identify the trading accounts that comprise a special account is to facilitate trade-level monitoring of the means by which special account owners or controllers establish and unwind their reportable positions. The Commission specifically requests comment on this definition of ''trading accounts that comprise the special account.'' The Commission welcomes proposals for alternative definitions that would still permit it to achieve the objective identified above. The Commission also requests public comment regarding whether Form 102S filings, discussed below, should require the identification of trading accounts that comprise a consolidated account in the same manner that Form 102A would require the identification of trading accounts that comprise a special account.

The Commission notes that the requirement in 102A to identify a trading account number for trading

[61] 17 CFR 15.00(r).

[62] 17 CFR 15.00(p)(1) and 15.03.

[63] 17 CFR 17.00(b) and 150.4. In this regard, the Commission notes that upon the compliance date for part 151 of the Commission's regulations, the aggregation rules in § 150.4 will be superseded by those in § 151.7. The compliance date for part 151 is 60 days after the term ''swap'' is further defined pursuant to § 721 of the Dodd-Frank Act (*i.e.,* 60 days after the further definition of ''swap'' as adopted by the Commission and the Securities Exchange Commission is published in the **Federal Register**). *See* Commission, Position Limits for Futures and Swaps, 76 FR 71626, 71632 (November 18, 2011).

[64] *See supra* section I(B).

accounts that comprise a special account would only be a relevant/applicable data field for clearing members identifying trading accounts that comprise a special account. Based on comments received in response to the OCR NPRM, it is the Commission's understanding that non-clearing FCMs, foreign brokers, and omnibus account originators (collectively, ''non-clearing entities'') would generally not have the ability to match/identify a trading account number for their customers or sub-accounts (hereafter, ''sub-accounts'') on the TCR.[65]

Notwithstanding these limitations, under this proposed rulemaking non-clearing entities would continue to be required to submit a 102A for their customers/sub-accounts that, if carried directly with a clearing member, would otherwise be required to be reported as a position-based special account. Existing Form 102 requires the reporting of such special accounts, and New Form 102A would not change that requirement.

Form 102A would also require reporting firms to indicate whether a special account reported based on ownership or control of a reportable position is a house or customer account of the reporting firm. This indicator would allow the Commission to perform certain financial risk surveillance functions in a more automated and efficient manner by quickly identifying house positions that potentially create risk for the reporting firm. Form 102A also requires that reporting firms indicate whether any trading account identified on 102A has been granted direct market access (''DMA'') to the trade matching system of the relevant reporting market. The proposed definition of ''DMA'' appears in section IX below. Finally, 102A requires any reporting firm that indicates on 102A that it is a foreign broker to identify its U.S. FCM.

iii. Timing of 102A Reporting

Pursuant to the proposed regulatory revisions discussed below, this rulemaking would require 102A submissions no later than the submission of the corresponding § 17.00(a) position report for a special account. That is, the 102A for any particular special account would be due at the same time as the special account's reportable position is first sent to the Commission. The proposed rule text also includes an ''on-call'' provision, which would require a 102A to be submitted on such other date as directed by special call of the Commission.

iv. 102A Change Updates and Refresh Updates

The proposed rules provide that if any change causes the information filed on a 102A for a special account to no longer be accurate, that an updated 102A shall be filed with the Commission no later than 9:00 a.m. eastern time on the business day after such change occurs, or on such other date as directed by special call of the Commission (''change updates'').

In addition to change updates, proposed § 17.02(b) requires that, starting on a date specified by the Commission or its designee and at the end of each six month increment thereafter (or such later date specified by the Commission or its designee), each FCM, clearing member, or foreign broker resubmit every 102A that it has submitted to the Commission for each of its special accounts (''refresh updates''). As with the 102B, discussed below, the goal of the refresh update provision is to establish discreet points in time where all 102A data is considered accurate and reliable. The Commission is proposing the refresh update provision in an effort to maintain accurate 102A data, and to avoid the data drift which is often associated with long-term data collection efforts.

Both the change update and refresh update provisions of § 17.02(b) include the following sunset provision: an FCM, clearing member, or foreign broker may stop providing change updates or refresh updates for a Form 102A that it has submitted to the Commission for any special account upon notifying the Commission that the account in question is no longer reportable as a special account.

B. Volume Triggered 102

New Form 102B of New Form 102 provides a new volume-based reporting structure not found in existing 102. As background, the Commission received several comments in response to the OCR NPRM that suggested the Commission should only require the reporting of those trading accounts whose trading activity exceeded a volume threshold, thereby limiting the total number of reportable accounts, reducing reporting costs, and preventing the reporting of non-significant accounts. The Commission considered the comments it received regarding the establishment of volume thresholds for the OCR, and has modified its approach accordingly in this Notice. While existing Form 102 reporting requirements arise when an account (or collection of related accounts) has a reportable position, 102B reporting is triggered when an individual trading account meets a specified trading volume level in an individual product and, as a result, becomes a ''volume threshold account.'' Volume threshold accounts, as defined below in proposed § 15.00(y), are trading accounts that execute, or receive via allocation or give-up, reportable trading volume on or subject to the rules of a reporting market, that is a DCM or an SEF.[66] The reportable trading volume level (''RTVL'') is defined in proposed § 15.04 as 50 or more contracts in all instruments that a DCM or SEF designates with the same product identifier (including purchases and sales, and inclusive of all expiration months).[67] As noted above, volume threshold accounts could reflect, without limitation, trading in futures, options on futures, swaps, and any other product traded on or subject to the rules of a DCM or SEF. The Commission requests public comment as to whether any final rule adopted by the Commission should raise, lower or maintain the proposed RTVL. The Commission also requests public comment regarding the suitability of the proposed RTVL, as defined in proposed § 15.04, to volume threshold accounts associated with SEFs, and whether any changes are required to make the proposed RTVL suitable for volume threshold accounts associated with SEFs. Additional requests for public

[65] *See supra* section I(B) for a discussion of the TCR.

[66] *See supra* section I(A) for an explanation of the reporting markets relevant to 102B filings, and *infra* sections VI(A) and IX and note 82 for proposed amendments to the definition of ''reporting market.''

[67] The proposed RTVL is based on the Commission's analysis of DCM trade data received through the TCR from a sample of DCMs during a recent six month period. It is calibrated to yield information with respect to those trading accounts that are responsible for a substantial majority of trading volume, while minimizing the proposed regulations' impact on low-volume accounts whose trading activity does not warrant inclusion in the proposed reporting and identification regime. Based on the sample data set used in the Commission's analysis, the proposed RTVL would result in the reporting and identification of approximately one-third of the trading accounts reported in the sample data set. However, due to the concentration of trading activity among a minority of accounts and some accounts' tendency to be active in more than one product, the proposed RTVL would nonetheless result in the identification of at least 85% of the trading volume in approximately 90% of the products in the sample data set, as measured at the conclusion of the six-month period sampled by the Commission. The Commission notes that any amendments it may make to the RTVL as it pertains to SEFs may be designed to ensure that the RTVL for SEFs achieves a similar level of identification as the RTVL for DCMs, *i.e.,* identifying a substantial majority of the volume in a substantial majority of products while minimizing the impact on SEF accounts whose trading activity is too low to merit inclusion in the reporting and identification regime.

comment with respect to the RTVL as currently proposed are in section VII, below.

i. 102B Form Requirements

As a threshold question, 102B requires that clearing members provide, in response to question 2, the trading account number of any trading account that meets the criteria for a volume threshold account; any related short code(s) for such account; and the name of the reporting market (i.e., the DCM or SEF) at which the volume threshold account had reportable trading volume. These data points are necessary to report and identify volume threshold accounts in TCRs received from DCMs or similar transaction-based reports that may be received by the Commission from SEFs, and to link the volume threshold account to transaction records in the Commission's surveillance databases.[68] The data points will also assist the Commission in fulfilling its surveillance responsibilities.

Second, and as with 102A, 102B requires that clearing members indicate, in response to question 3, whether the volume threshold account has been granted DMA to the trade matching system of the relevant reporting market.

Third, 102B requires that clearing members provide, in response to question 4, the volume threshold account's associated special account number, if applicable. In the case of DCMs, this information will permit the Commission to more effectively and efficiently connect position data received via the large trader reporting system and trade data received via the TCR.

Fourth, 102B requires that clearing members indicate, in response to question 5, whether the volume threshold account is an omnibus account, or used to execute trades for an omnibus account. If the account is an omnibus account or used to execute trades for an omnibus account, question 5 requires clearing members to indicate whether the account is a house or customer omnibus account, and to provide information sufficient to uniquely identify and contact the originator of the account (*e.g.,* the originator's name, address and phone number, among other information). More detailed information regarding ownership and control with respect to a volume threshold account that is a customer omnibus account will be collected separately at the Commission's request, from the omnibus account's originating firm, via a New Form 71, also proposed in this Notice and described below.

Fifth, 102B requires clearing members to provide information, in response to question 6, sufficient to uniquely identify and contact each owner of a volume threshold account that is not an omnibus account (*e.g.,* the owner's name, address and phone number, among other information). For each account owner that is not a natural person, question 6 also requests, among other identifying information, a contact name, contact job title, and the relationship of the contact to the account owner.

Finally, the Commission requests that clearing members provide information, in response to question 7, sufficient to uniquely identify and contact each volume threshold account controller of an account that is not an omnibus account. Pursuant to proposed § 15.00(dd), a volume threshold account controller must be a natural person. The requested information includes the account controller's name, address, phone number and job title, together with the name of the controller's employer and other identifying information.

The Commission requests public comment regarding the suitability of Form 102B to volume threshold accounts associated with SEFs. The Commission also requests comment regarding how Form 102B should be amended, if at all, to heighten its suitability with respect to SEFs.

ii. Timing of 102B Reporting

In order to identify its volume threshold accounts and make a timely submission of 102B, a clearing firm must tabulate the gross trading activity of each account on its books. Once a volume threshold account is identified, proposed § 17.02(c) requires that the clearing firm submit 102B to the Commission no later than 9:00 a.m. eastern time on the business day following the day on which the account in question became a volume threshold account.[69]

iii. 102B Change Updates and Refresh Updates

Once a clearing firm has identified a volume threshold account on 102B, that clearing firm has an ongoing responsibility (under § 17.02(c)) to ensure the information reported on 102B remains accurate. If the clearing firm becomes aware of any changes that cause the information reported on 102B to no longer be accurate, then an updated 102B must be filed no later than 9:00 a.m. on the business day after the clearing firm becomes aware of such change (''change updates'').

In addition to change updates, proposed § 17.02(c) requires that, starting on a date specified by the Commission or its designee and at the end of each six month increment thereafter (or such later date specified by the Commission or its designee), each clearing member shall resubmit every Form 102B that it has submitted to the Commission for each of its volume threshold accounts (''refresh updates''). As with Form 102A, the Commission is proposing the refresh update provision in § 17.02(c) in an effort to maintain accurate 102B data and avoid the data drift which is often associated with long-term data collection efforts. The goal of the refresh update provision is to establish discrete points in time where all 102B data is considered accurate and reliable.

Both the change update and refresh update provisions of § 17.02(c) include the following sunset provision: If, during the course of a six-month period, the subject volume threshold account executes no trades in any product on the reporting market at which the volume threshold account reached the reportable trading volume level, then the relevant clearing firm is no longer required to provide either change updates or refresh updates following the end of this six-month period.

C. 102S

i. 102S Form Requirements

Section 102S of New Form 102 is proposed to formalize and facilitate the electronic submission of 102S filings as required in 17 CFR 20.5(a). As noted above, pursuant to § 20.5(a), 102S filings must be filed by a part 20 reporting entity (a clearing firm or a swap dealer) for each reportable counterparty consolidated account when such account first becomes reportable, and ''shall consist of the name, address, and contact information of the counterparty and a brief description of the nature of such person's paired swaps and swaptions market activity.''[70] By including 102S in New Form 102, the proposed rules would enable the submission of futures and swaps large trade reporting via a single electronic submission, enable the Commission to integrate its analysis of the information provided on 102S filings with that

[68] *See supra* section I(B).

[69] Business days are Monday through Friday calendar days that are not Federal holidays. For example, if an account becomes a volume threshold account on a Friday, it must be reported to the Commission by 9:00 on Monday (the next business day).

[70] 17 CFR 20.5(a).

provided on New Form 102A and New Form 102B submissions, and clarify for market participants the specific information and data fields that should be submitted in a 102S filing. As explained above, 102S would also incorporate considerations developed in the Swaps Large Trader Guidebook for compliance with part 20. The Commission is proposing that these rules replace the 102S submission procedure and guidance in the Swaps Large Trader Guidebook.[71]

The timing for submitting 102S filings would continue to be subject to existing § 20.5(a)(3).[72] The Commission specifically requests comment on its proposal to retain § 20.5(a)(3) as the timing requirement for submitting 102S filings on New Form 102.

ii. 102S Change Updates and Refresh Updates

Section 20.5(a)(4) of the proposed rules provide that, if any change causes the information filed on a 102S for a consolidated account to no longer be accurate, an updated 102S shall be filed with the Commission no later than 9:00 a.m. eastern time on the business day after such change occurs, or on such other date as directed by special call of the Commission (''change updates'').

In addition to change updates, proposed § 20.5(a)(5) requires that, starting on a date specified by the Commission or its designee and at the end of each six month increment thereafter (or such later date specified by the Commission or its designee), each clearing member or swap dealer resubmit every 102S that it has submitted to the Commission for each of its consolidated accounts (''refresh updates''). As with the 102A and 102B, discussed above, the goal of the refresh update provision is to establish discrete points in time where all 102S data is considered accurate and reliable. The Commission is proposing the refresh update provision in an effort to maintain accurate 102S data, and to avoid the data drift which is often associated with long-term data collection efforts.

Both the change update and refresh update provisions of § 20.5(a) include the following sunset provision: A clearing member or swap dealer may stop providing change updates or refresh updates for a Form 102S that it has submitted to the Commission for any consolidated account upon notifying the Commission that the account in question is no longer reportable as a consolidated account.

D. Form 71

Proposed, New Form 71 (''Identification of Omnibus Accounts and Sub-Accounts'') would be sent to omnibus account originating firms, at the discretion of Commission staff, in the event that a volume threshold account is identified as a customer omnibus account on Form 102B. The relevant account number and reporting market listed on the 102B will be provided on Form 71. Recipients of a Form 71 would be required to provide information regarding any account to which the customer omnibus account allocated trades that resulted in reportable trading volume for the account receiving such allocations (a ''reportable sub-account'') on a specified trading date.[73] Form 71 is designed to permit originating firms to report the required information directly to the Commission without requiring such firms to disclose information regarding customers to potential competitors. If a reportable sub-account is itself an omnibus account (an ''omnibus reportable sub-account''), then the originating firm would be required to (a) indicate whether the omnibus reportable sub-account is a house or customer omnibus account and (b) identify the originator of the omnibus reportable sub-account. Another Form 71 (and a New Form 40) would be sent, at the discretion of Commission staff, to the originator of a customer omnibus reportable sub-account identified on Form 71. At its discretion, the Commission will continue to reach through layered customer omnibus reportable sub-accounts via successive Form 71s until reaching all reportable sub-accounts, if any, that are not omnibus sub-accounts.

If a reportable sub-account identified on Form 71 is not an omnibus sub-account, then the originating firm will be required to identify the owner(s) and controller(s) of the non-omnibus reportable sub-account. A New Form 40 will be sent at the discretion of Commission staff to such owner(s) and controller(s). Form 71 will therefore enable the Commission to collect the same level of information regarding owners and controllers (via a subsequent New Form 40) that the Commission would collect with respect to a non-omnibus volume threshold account identified on 102B. The key data points proposed to be collected in Form 71 are summarized below.

As a threshold question, section A of Form 71 requires the originator of an omnibus volume threshold account or a reportable sub-account to confirm certain identifying information regarding the originator. Such information would have been reported to the Commission by an omnibus account carrying firm on Form 102B or on a preceding Form 71 (*e.g.,* the originator's name, address and phone number), and used to auto-populate the present Form 71. The originator is prompted to update any incorrect information provided in Section A.

Second, section B of Form 71 requires the originator to provide certain information regarding the allocation of trades from a specified account number, and on a specified date and reporting market, to another account (called a ''recipient account''). Specifically, the originator is required to indicate whether: (1) It allocated trades from the specified account number on the specified date and reporting market that resulted in reportable trading volume for a recipient account; (2) it allocated trades from the specified account number on the specified date and reporting market, but the allocations did not sum to reportable trading volume for a recipient account on such date; or (3) it did not allocate any trades from the specified account number on the specified date and reporting market.

If condition (1) is met, the originator is required to indicate in section B whether the reportable sub-account is an omnibus reportable sub-account. If so, the originator is required to indicate whether the omnibus reportable sub-account is a house or customer omnibus account, and to provide information sufficient to identify and contact the originator of the sub-account (*e.g.,* the originator's name, address and phone number, and a contact name, contact job title, and the relationship of the contact to the originator). As noted above, another Form 71 will be sent at the discretion of Commission staff to the originator of a customer omnibus reportable sub-account identified in response to section B of Form 71. Therefore, Form 71 may be sent to a chain of such originators if each originator allocated trades to another customer omnibus reportable sub-account.

If the reportable sub-account is not an omnibus sub-account, the originator is required to provide information sufficient to identify and contact the owner(s) and controller(s) of such non-omnibus reportable sub-account (*e.g.,*

[71] *See* Swaps Large Trader Guidebook at p. 21–23 and p. 88, Appendix D. *See also supra* note 25.

[72] 17 CFR 20.5(a)(3) provides: ''Reporting entities shall submit a 102S filing within three days following the first day a consolidated account first becomes reportable or at such time as instructed by the Commission upon special call.''

[73] The relevant trading date would be specified by Commission staff on Form 71 at the time the special call is made.

the name, address and phone number of the owner(s) and controller(s)). This information will enable the Commission, in its discretion, to send a New Form 40 to such owner(s) and controller(s).

The Commission requests public comment regarding the suitability of Form 71 to omnibus volume threshold accounts and omnibus reportable sub-accounts associated with SEFs. The Commission also requests comment regarding how Form 71 should be amended, if at all, to heighten its utility with respect to SEFs.

E. New Form 40

This Notice proposes a revised Form 40 that would be required to be completed, on special call of the Commission, by individuals, persons, and other entities identified on any of 102A, 102B, 102S, and Form 71. As proposed herein, New Form 40, still referred to as the ''Statement of Reporting Trader,'' would continue to serve the function traditionally met by existing Form 40 by providing the Commission with basic contact and trading activity information about those persons and entities identified in the Commission's New Form 102 program. New Form 40 would also be the vehicle through which market participants subject to 17 CFR 20.5(b) submit their 40S filings. As part of its implementation plan related to this proposal, and described in more detail below, the Commission is proposing to develop a Web-based portal through which market participates would complete, submit, and (when necessary) update their New Form 40—thereby curing much of the inefficiency, inaccuracy, and uncertainty associated with the current paper or facsimile based submission process.

Specifically, as proposed herein, New Form 40 (whether completed as a New Form 40 or as a 40S filing) would be required to be completed on call, as directed by Commission staff. Because the proposal anticipates a Web-based portal and user profile system, those entities required to complete a New Form 40 would also be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of their profile information by periodically visiting the online New Form 40 portal to review, verify, and/or update their information.

Generally, New Form 40 would request basic information regarding the reporting trader; contact information for the individual(s) responsible for the reporting trader's trading activities, risk management operations, and the information on the New Form 40; if applicable, omnibus account information, foreign government affiliation information, and an indication regarding the reporting trader's status as a domestic or non-domestic entity; information regarding the reporting entity's ownership structure in connection with its parents and subsidiaries; information regarding the reporting trader's control relationships with other entities; information regarding other relationships with persons that influence or exercise authority over the trading of the reporting trader; an indication regarding swap dealer status and major swap participant status; and various indications regarding the nature of the reporting trader's derivatives trading activity. The form includes definitions of certain terms, including parent, subsidiary, and control, to be used for the purpose of completing New Form 40. The Commission specifically requests comment on the appropriateness of these definitions and whether the definitions should be changed in any way.

New Form 40 would also require reporting traders who engage in commodity index trading (''CIT''), as defined in the new form, to identify themselves to the Commission. New Form 40 defines CIT as: (a) an investment strategy that consists of investing in an instrument (e.g., a commodity index fund, exchange-traded fund for commodities, or exchange-traded note for commodities) that enters into one or more derivative contracts to track the performance of a published index that is based on the price of one or more commodities, or commodities in combination with other securities; or (b) an investment strategy that consists of entering into one or more derivative contracts to track the performance of a published index that is based on the price of one or more commodities, or commodities in combination with other securities.

An example of CIT described in clause (a) is the strategy of purchasing shares in an exchange-traded fund (ETF) that purchases futures contracts based on the amount of funds contributed by investors. It is typical for an ETF for commodities to track the performance of a widely cited commodity benchmark. An example of CIT described in clause (b) is the strategy of an investor entering into a total-return swap with a counterparty. The counterparty would agree to pay the investor the total return on (e.g.) a commodity index, and would hedge the swap by buying futures contracts. Reporting traders engaged in CIT as defined in (b) are required to indicate whether they are, in the aggregate, pursuing long exposure or short exposure with respect to the relevant commodities or commodity groups listed on the Form (see question 14ii(a) in New Form 40).

The Commission requests public comment regarding the definition of CIT in New Form 40. The Commission also requests comment on whether the definition captures all forms of CIT present in the market, or if not, how the definition should be modified. Finally, the Commission requests comment regarding question 14ii(a) in New Form 40, and whether it will adequately capture reporting traders' exposure in the commodities in which they engage in CIT.

V. Data Submission Standards and Procedures

During the comment period, the Commission anticipates that its data and technology staff will work with market participants and potential reporting entities to address potential information technology standards to be associated with the proposed rules. The Commission encourages interested parties to share information directly or through any industry working groups wishing to provide technical input pertaining to relevant data fields, formats, and submission requirements. The Commission may receive information through comment letters submitted according to the instructions above or through on-the-record meetings with industry participants, including staff-led public roundtables.[74] The Commission anticipates that this process may also include staff visits to market participant facilities in order to observe onsite demonstrations of existing and potential technology capabilities, operation processes, and, more generally, to gain more direct knowledge and understanding of what an implementation effort will require. Based on information gathered during the comment period, the Commission will direct its data and technology staff to develop data requirements so that the Commission can identify and define a data submission standard for each submission type (*e.g.,* an XML data feed) in preparation for the implementation of any final rules that follow from this Notice.

Specifically, the Commission anticipates creating a secure internet portal with the proposed electronic New Form 102, New Form 40, and New Form

[74] Staff-led public roundtables are included here only as a possible means by which the Commission may choose to receive public comments. The Commission has not yet determined whether any such roundtable(s) will be held in connection with this Notice.

71 for beta testing in the event that this Notice ultimately results in final rules. Industry participants would be encouraged to review, test, and comment on the portal and online form capabilities. Where appropriate, the Commission may direct its staff to work with international data standards authorities to officiate the defined standards. As part of the completion of the data standards and online forms, the Commission plans on publishing a data compliance guidebook with detailed submission instructions.[75]

It is envisioned that once the rule is effective and all technology at the CFTC is in place, the following capabilities will be available:

FCMs (including clearing members), foreign brokers, or swap dealers that trigger a position or volume based reporting obligation will generate the appropriate 102A, 102B, or 102S standard file and send it to the Commission via secure file transfer protocol (''FTP''). The Commission will provide the necessary FTP IP address, login, and password and will coordinate with the reporting entity to set up the secure FTP protocol handlers. Additionally, the Commission may provide file converters (such as CSV-to-XML) to simplify the data standard compliance requirements for the industry. Alternatively, the 102A, 102B and 102S data may be submitted through an electronic version of the form which would be available on the Commission's secure Web site portal.

New accounts identified on the New Form 102 by the reporting entity will be evaluated by Commission staff to determine next step actions (*i.e.,* requesting a New Form 40 or New Form 71). If it is determined that a New Form 40 or New Form 71 should be sent to an account identified on a New Form 102 submission, the Commission would contact the named account (generally via email, using the email address provided on the New Form 102) to request and provide instructions for the appropriate CFTC form. The instructions would include a Web site address, login, and password to access the specific form needed. The named account may be required to submit a completed online form upon receiving the request.

Depending on the information provided in the Form 71, additional reportable sub-accounts named in the form may be asked to complete a New Form 40 or Form 71 using the same process described above.

Finally, the Commission proposes that any final rules resulting from this Notice include separate ''effective'' and ''compliance'' dates. The effective date of any final rule would begin 60 days after such rule's publication in the **Federal Register**. The Commission proposes that any compliance date, however, would be delayed by an additional 90 days (for a total of 150 days after a final rule's publication in the **Federal Register**). Upon reaching the effective date of any final rule, market participants and reporting entities should be prepared to begin working with the Commission's data and technology staff to test and implement any information technology standards or systems associated with the final rules. Such cooperation would include providing all test data or form filings requested by the Commission's data and technology staff, in the form and manner requested by staff. In the absence of any further relief by the Commission, all market participants and reporting entities subject to final rules would be expected to be in full compliance by the compliance date, including having submitted complete and accurate filings using one of the two submission methods specified above. The Commission seeks public comment on the proposed schedule and procedures for the effective date and compliance date of any final rule resulting from this Notice.

VI. Review and Summary of Regulatory Changes To Implement New and Amended Forms

To implement the new and amended forms described above, the Commission proposes to revise parts 15, 17, 18, and 20 of its regulations as follows.

A. Part 15

Existing part 15 enumerates certain defined terms and other provisions applicable to parts 15 through 19 and 21 of the Commission's regulations. The Commission proposes to amend part 15 to effectuate the enhanced market participant and account identification regime proposed in this Notice, including new Forms 102B and 71. Specifically, the Commission proposes to do the following: Codify twelve new defined terms in § 15.00; update the list of ''persons required to report'' in § 15.01 to include persons identified on New Forms 102B and 71; revise § 15.04 to provide the ''reportable trading volume level'' for volume threshold accounts and other new account types; and make conforming changes in §§ 15.00(q) and 15.02.[76] The proposed amendments to part 15 are summarized below.

New Forms 102 and 71 would require the identification of a number of account types not currently addressed in the Commission's regulations. Accordingly, the Commission proposes to introduce the following new defined terms in § 15.00:

- § 15.00(w). *Omnibus account,* meaning any trading account that one FCM, clearing member or foreign broker carries for another and in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm;
- § 15.00(x). *Omnibus account originator,* meaning any FCM, clearing member or foreign broker that executes trades for one or more customers via one or more accounts that are part of an omnibus account carried by another FCM, clearing member or foreign broker;
- § 15.00(y). *Volume threshold account,* meaning any trading account that executes, or receives via allocation or give-up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act;
- § 15.00(z). *Omnibus volume threshold account,* meaning any trading account that, on an omnibus basis, executes or receives via allocation or give-up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act;
- § 15.00(aa). *Omnibus reportable sub-account,* meaning any trading sub-account of an omnibus volume threshold account, which sub-account executes reportable trading volume on an omnibus basis. Omnibus reportable sub-account also means any trading account that is itself an omnibus account, executes reportable trading volume, and is a sub-account of another omnibus reportable sub-account; and
- § 15.00(bb). *Reportable sub-account,* meaning any trading sub-account of an omnibus volume threshold account or omnibus reportable sub-account, which sub-account executes reportable trading volume.

Volume threshold accounts, omnibus volume threshold accounts, omnibus reportable sub-accounts, and reportable sub-accounts all reflect accounts that execute (or receives via allocation or give-up) ''reportable trading volume.'' Accordingly, the Commission proposes

[75] For a recent example of a similar undertaking, *see* the Swaps Large Trader Guidebook, linked *supra* at note 36.

[76] 17 CFR 15.00, 15.01, 15.04, 15.00(q) and 15.02.

to codify a new § 15.00(u) that defines reportable trading volume as contract trading volume that meets or exceeds the level specified in proposed § 15.04. Section 15.04, in turn, would provide that reportable trading volume for a trading account is trading volume of 50 or more contracts, during a single trading day, on a single reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act, in all instruments that such reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months).[77]

Notably, § 15.04 addresses trading volume, not open positions, and would require that purchases and sales by a trading account be summed to determine whether such account has reached the reportable trading volume. Section 15.04 also stipulates that reportable trading volume should encompass all instruments that the reporting market designates with the same product identifier. In this regard, the Commission observes that if a reporting market utilizes the same identifier to designate both the open-outcry and electronically-traded variants of a product, then a clearing firm reporting on Form 102B should sum a trading account's activity in both the open-outcry and electronic venues to determine whether such trading account has reached the reportable trading volume. Similarly, if a reporting market uses the same identifier to designate the futures, options and swaps variants of a product, then a trading account's activity in futures, options and swaps in such product should be summed to determine whether the trading account has reached the reportable trading volume. Conversely, if a reporting market utilizes different product identifiers in these circumstances, then a clearing firm reporting on Form 102B should not sum a trading account's activity across venues or across futures, options and swaps. The Commission anticipates that its proposed approach, which relies on reporting markets' existing product identification practices, would be less burdensome than an approach which requires aggregation of the same product when traded under different identifiers. The Commission specifically requests public comment on its proposed account-type definitions in § 15.00, and on its definition of reportable trading volume in § 15.04.

The Commission also proposes to add ''control'' to the list of defined terms in § 15.00.[78] The Commission's proposed definition, which would apply only to special accounts (New Form 102A) and consolidated accounts (Form 102S), would be codified in § 15.00(t), and would define control as ''to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account.'' The proposed definition specifies that special accounts and consolidated accounts may have more than one controller. The Commission notes that the proposed definition of ''control'' would apply solely for the purpose of satisfying the reporting obligations under parts 15 through 19 and 21 of this chapter. The proposed definition would not limit or alter existing law with respect to the meaning of the term control for the purpose of enforcing other requirements under the Act and the Commission's regulations, including those relating to position limits or manipulation. Similarly, existing requirements regarding the aggregation of positions in separate accounts for reporting or other purposes under the Act and Commission regulations (*e.g.,* §§ 17.00(b) and 150.4) would not be altered by the definition of ''control'' proposed in § 15.00(t).

The Commission also proposes to separately define the concept of control in the context of trading accounts, volume threshold accounts, and reportable sub-accounts. For these accounts, ''control'' may only be exercised by natural persons. Accordingly, the proposed definitions in § 15.00(cc), 15.00(dd), and 15.00(ee) define trading account controllers, volume threshold account controllers, and reportable sub-account controllers, respectively, as ''a natural person who by power of attorney or otherwise actually directs the trading of a [trading account, volume threshold account, or reportable sub-account].'' Each account type may have more than one controller. The proposed definitions in § 15.00(cc), 15.00(dd), and 15.00(ee) would be relevant to the submission of New Forms 102A (trading accounts), 102B (volume threshold accounts), and 71 (reportable sub-accounts), respectively.[79] The Commission specifically requests public comment on its proposed definition of control in § 15.00(t), and on its proposed definitions of ''trading account controller,'' ''volume threshold account controller'' and ''reportable sub-account controller'' in § 15.00(cc), (dd) and (ee).

Finally, the Commission proposes to define direct market access (''DMA'') in a new § 15.00(v). The Commission proposes to define DMA as ''a connection method that enables a market participant to transmit orders to a DCM's electronic trade matching system without re-entry by another person or entity, or similar access to the trade execution platform of a SEF.'' Pursuant to the proposed definition, such access could be provided directly by a DCM or SEF, or by a 3rd-party platform.

The introduction of new account and controller types in New Forms 102A, 102B, and 71 would result in a corresponding expansion in the categories of persons required to provide New Form 40 reports. Accordingly, the Commission proposes to amend § 15.01(c), which currently requires Form 40 reports only from persons who hold or control reportable positions.[80] The proposed rules would expand § 15.01(c) to require New Form 40 reports from traders who own, hold, or control reportable positions (identified via New Form 102A); volume threshold account controllers (identified via New Form 102B); persons who own volume threshold accounts (identified via New Form 102B); reportable sub-account controllers (identified via New Form 71); and persons who own reportable sub-accounts (identified via New Form 71).

Other proposed amendments to part 15 include: A revision to the definition of ''reporting market'' in existing § 15.00(q) to replace the provision's cross-reference to § 1a(29) of the Act with a cross-reference to § 1a(40); a further revision to existing § 15.00(q) to remove the provision's reference to derivatives transaction execution facilities (''DTEFs''); and the amendment of existing § 15.02, which contains a list of the forms contained in parts 15 through 19, and 21.[81] Section 15.02 would be revised to reflect the proposed introduction of new Form 71, the renaming of Form 102, and the new OMB control number that would be created by this rulemaking.

[77] Section 15.04 of part 15 is currently reserved.

[78] The proposed definition of ''control'' in § 15.00 is based upon the definition of ''controlled account'' in § 1.3(j) of part 1.

[79] The proposed definitions also specify that volume threshold accounts and reportable sub-accounts may have more than one controller.

[80] 17 CFR 15.01(c).

[81] 17 CFR 15.00(q) and 15.02. The Dodd-Frank Act modified § 1a of the CEA. As a result, the definition of ''registered entity'' previously found in § 1a(29) of the CEA is now in § 1a(40). The Commission proposes to revise existing § 15.00(q) so that it cites to § 1a(40) for the definition of registered entity. The Commission proposes to also revise existing § 15.00(q) by removing the provision's reference to DTEFs, a category of regulated markets that was eliminated by § 734 of the Dodd-Frank Act.

B. Part 17

The Commission is proposing a number of substantive, conforming and administrative amendments to §§ 17.01, 17.02, and 17.03 of part 17,[82] and is also proposing new §§ 17.02(c), 17.03(e), 17.03(f), and 17.03(g). The proposed amendments and new provisions address: the identification of special accounts, volume threshold accounts, and omnibus volume threshold accounts (§ 17.01); the form, manner, and time of New Form 102A and 102B filings (§ 17.02(b) and 17.02(c), respectively); and the delegation of related authorities from the Commission to the Director of the Division of Market Oversight (''DMO'') or the Director of the Office of Data and Technology (''ODT'') (§ 17.03).

i. Substantive Proposed Amendments to § 17.01

Existing § 17.01[83] requires reporting entities (*i.e.,* FCMs, clearing members, foreign brokers, and contract markets that list exclusively self-cleared contracts) to identify special accounts on existing Form 102, to provide for each special account the information required by paragraphs (a)–(f), and to comply with other requirements in paragraphs (g)–(h). The Commission proposes to amend § 17.01 by replacing all of its existing provisions with the provisions described below.

First, the Commission proposes to codify a new § 17.01(a) that would require reporting entities to identify special accounts on New Form 102A (''§ 17.01(a) reports''), and would also refer reporting entities directly to the new form for the required data points. Second, the Commission proposes to introduce a new § 17.01(b) that would subject volume threshold accounts to an account identification regime comparable to the position-based regime already existing for special accounts.[84] Proposed Section 17.01(b) would specifically require clearing firms to identify volume threshold accounts on New Form 102B (''§ 17.01(b) reports''). Similarly, the Commission proposes to introduce a new § 17.01(c) that would subject omnibus accounts to their own volume-based account identification regime.[85] Proposed § 17.01(c) would require the originator of an omnibus volume threshold account (or the originator of an omnibus reportable sub-account within such account) to file New Form 71 ''Identification of Omnibus Accounts and Sub-Accounts'' upon special call by the Commission or its designee.

The fourth substantive amendment proposed for § 17.01 would codify a new § 17.01(d). Proposed § 17.01(d) would require reporting markets that list exclusively self-cleared contracts to file § 17.01(a) and § 17.01(b) reports as if they were clearing members. Proposed § 17.01(d) reflects the requirements of existing § 17.01(g)[86] with respect to special accounts, but also incorporates the new volume threshold accounts proposed herein. Finally, the Commission proposes to introduce a new § 17.01(e) that would extend the Commission's special call authority—currently applicable to special accounts—to also include volume threshold accounts, omnibus volume threshold accounts and reportable sub-accounts.[87] Responses to special calls would be due within 24 hours.

ii. Substantive Proposed Amendments to § 17.02(b); New §§ 17.02(c), 17.03(e), 17.03(f) and 17.03(g)

Section 17.02(b)[88] currently addresses the form, manner, and completion date requirements of existing 102 filings. Specifically, § 17.02(b)(1) requires reporting entities to submit existing Form 102 upon special call by the Commission; in the absence of a special call, § 17.02(b)(2) requires reporting entities to submit existing Form 102 within three business days of the first day that a special account is reported to the Commission. The Commission proposes to replace both provisions as described below.

First, as explained above, the Commission proposes to strike existing § 17.02(b)(1) and to shift its special call requirements to proposed § 17.01(e). Second, the Commission proposes to strike existing § 17.02(b)(2) and to replace its Form 102 submission requirements with a new § 17.02(b)(1)–(4) to address the form and manner of New Form 102A filings for special accounts. Proposed § 17.02(b)(1) would direct reporting entities to the Commission's Web site (*www.cftc.gov*) for detailed instructions on the Form 102A filing process. Proposed § 17.02(b)(2)–(4) would address the completion date requirements of initial Form 102A submissions, 102A change updates, and 102A refresh updates, respectively. The proposed timing requirements appurtenant to initial 102A filings and the change and refresh updates are discussed in detail in section IV(A), above.

To address New Form 102B filings for volume threshold accounts, the Commission proposes to codify a new § 17.02(c). Proposed § 17.02(c) would follow a structure similar to that of proposed § 17.02(b), with § 17.02(c)(1) directing reporting entities to *www.cftc.gov* for detailed instructions on the Form 102B filing process, and proposed § 17.02(c)(2) through (4) addressing the timing of initial Form 102B filings, 102B change updates, and 102B refresh updates, respectively. The proposed timing requirements appurtenant to initial 102B filings and change and refresh updates are discussed in detail in section IV(B), above.

Finally, the Commission also proposes to codify a new § 17.03(e) that would provide the Director of ODT with delegated authority to make special calls to solicit information from omnibus volume threshold account originators and omnibus reportable sub-account originators on New Form 71. The Commission also proposes to codify (a) a new § 17.03(f) that would provide the Director of DMO with delegated authority to determine the date on which each FCM, clearing member, or foreign broker shall update or otherwise resubmit every Form 102 that it has submitted to the Commission for each of its special accounts and (b) a new § 17.03(g) that would provide the Director of DMO with delegated authority to determine the date on which each clearing member shall update or otherwise resubmit every Form 102 that it has submitted to the Commission for each of its volume threshold accounts.

iii. Conforming and Administrative Amendments to Part 17

The Commission is proposing a number of conforming and administrative amendments to part 17. First, the Commission proposes to revise § 17.00(g)(2)(iii), which defines the ''account number'' field for position reports.[89] The proposed revisions would eliminate the provision's cross-references to § 17.00(c), which is reserved, and to existing § 17.01(a), which the Commission proposes to strike.[90] Section 17.00(g)(2)(iii) would incorporate a new cross-reference to New Form 102.

Second, the Commission proposes to revise existing § 17.03(a), which grants the Director of DMO the authority to determine whether FCMs, clearing

[82] 17 CFR 17.01, 17.02 and 17.03.

[83] 17 CFR 17.01.

[84] *See supra* section IV(B) and *infra* section IX.

[85] *See supra* section IV(D) and *infra* section IX.

[86] 17 CFR 17.01(g).

[87] The Commission's special call authority with respect to special accounts is currently found in § 17.02(b)(1), which the Commission proposes to strike, as explained below.

[88] 17 CFR 17.02(b).

[89] 17 CFR 17.00(g)(2)(iii).

[90] 17 CFR 17.00(c) and 17.01(a).

members and foreign brokers can report certain information on series '01 forms, or can use some other format upon a determination that such person is unable to report the information using the standard transmission format.[91] More specifically, § 17.03(a) would be revised to grant such authority to the Director of ODT, rather than the Director of DMO.

Third, the Commission proposes to revise existing § 17.03(b), which grants the Director of DMO the authority to approve the late submission of position reports and Form 102.[92] Section § 17.03(b) would be revised to grant such authority to the Director of ODT, rather than the Director of DMO. Section 17.03(b) would be further revised to: (i) Replace the provision's cross-reference to § 17.01,[93] which the Commission proposes to strike, with cross-references to proposed § 17.01(a) and 17.01(b); and (ii) eliminate the provision's cross-reference to existing § 17.01(g),[94] which the Commission also proposes to strike.

Fourth, the Commission proposes to revise existing § 17.03(c), which grants the Director of DMO the authority to permit reporting entities filing Form 102 to authenticate it through a means other than signing the form.[95] Section 17.03(c) would be revised to grant such authority to the Director of ODT, rather than the Director of DMO. Section 17.03(c) would be further revised to replace the provision's existing cross-reference to § 17.01(f),[96] which the Commission proposes to strike, with a cross-reference to proposed § 17.01, and to address New Form 71.

Finally, the Commission proposes to revise existing § 17.03(d), which grants the Director of DMO the authority to approve a format and coding structure other than that set forth in § 17.00(g).[97] Section 17.03(d) would be revised to grant such authority to the Director of ODT, rather than the Director of DMO.

C. Part 18

Existing § 18.04 (the ''Statement of Reporting Trader'') requires every trader who holds or controls a reportable position to file a Form 40 upon special call by the Commission or its designee and to provide on Form 40 information required by existing § 18.04(a) thorugh (c).[98] The Commission proposes to amend § 18.04 by striking all of its existing provisions and replacing them as described below.

First, and consistent with its approach to New Form 102, the Commission proposes to transition existing § 18.04(a) through (c)'s detailed form content requirements from the regulatory text to New Form 40. Second, the Commission proposes to codify a new § 18.04(a) that, as with existing § 18.04, would require every trader who holds or controls a reportable position to file a New Form 40 upon special call by the Commission or its designee. Finally, to accommodate volume threshold accounts and reportable sub-accounts identified on New Forms 102 and 71, the Commission proposes to codify a new § 18.04(b) that would require volume threshold account controllers, persons who own a volume threshold account, reportable sub-account controllers, and persons who own a reportable sub-account to file New Form 40 upon special call by the Commission or its designee.

Existing § 18.05 requires traders who hold or control reportable positions to maintain books and records regarding all positions and transactions in the commodity in which they have reportable positions.[99] In addition, existing § 18.05 requires that the trader furnish the Commission with information concerning such positions upon request. The Commission proposes to expand § 18.05 to also impose books and records requirements upon (a) volume threshold account controllers and owners of volume threshold accounts reported on New Form 102B and (b) reportable sub-account controllers and persons who own a reportable sub-account reported on New Form 71.

D. Part 20

As with Forms 102 and 40, the Commission proposes to transfer the list of data points required in Form 102S data point from the relevant regulatory text (*i.e.,* § 20.5) [100] to the form itself. More specifically, the Commission proposes to eliminate the data points specified in § 20.5(a)(1), and to revise § 20.5(a)(1) to provide that when a counterparty consolidated account first becomes reportable, the reporting entity shall submit a 102S filing (''initial 102S filing''). The timing for submitting initial 102S filings would continue to be subject to existing § 20.5(a)(3).[101] Finally, the Commission proposes to codify new § 20.5(a)(4) and 20.5(a)(5) to require change and refresh updates for Form 102S in the same manner as they are required for Form 102A. The Commission is also proposing a conforming amendment to § 20.5(a)(2) to eliminate the existing instructions with respect to updating 102S filings.

VII. Questions and Request for Comment

The Commission requests public comment on the proposed forms and regulations described in this Notice, and welcomes specific alternatives to the regulatory text proposed to be implemented and the data points proposed to be collected herein. In addition to this general request for comments, the Commission specifically requests public comment on the questions below.

1. With respect to DCMs, the Commission requests public comment regarding the RTVL proposed in § 15.04, which is: 50 or more contracts, during a single trading day, on a single reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act, in all instruments that such reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months). If the RTVL or parameters proposed in § 15.04 (*e.g.,* a RTVL measured in ''contracts'' and set at 50 contracts; a reliance on ''product identifiers;'' or the reference to ''expiration months'') are inadequate with respect to DCMs, then the Commission requests public comment regarding how the RTVL or such parameters should be revised in any final rule arising from this Notice. *See* section IV(B), above, and section IX, below.

2. The Commission requests public comment as to whether it should retain § 20.5(a)(3) as the timing requirement for submitting initial 102S filings on New Form 102. *See* section IV(C), above.

3. The Commission requests public comment on the proposed change and refresh updates for 102A, 102B, and 102S filings, including comments with respect to the timing, frequency, and contents of such updates. *See* section IX, below.

4. The Commission requests public comment as to the appropriateness of the definitions of ''parent'' and ''subsidiary'' in New Form 40, and whether these definitions should be changed in any way. *See* section IV(E), above.

5. The Commission requests public comment regarding the definition of ''commodity index trading'' (CIT) in New Form 40. The Commission also requests comment on whether the

[91] 17 CFR 17.03(a).
[92] 17 CFR 17.03(b).
[93] 17 CFR 17.01.
[94] 17 CFR 17.01(g).
[95] 17 CFR 17.03(c).
[96] 17 CFR 17.01(f).
[97] 17 CFR 17.03(d) and 17.00(g).
[98] 17 CFR 18.04(a) through (c).
[99] 17 CFR 18.05.
[100] 17 CFR 20.5.
[101] 17 CFR 20.5(a)(3). *See supra* section III(B).

definition captures all forms of CIT present in the market, or if not, how the definition should be modified. Finally, the Commission requests comment regarding question 14ii(a) in New Form 40, and whether it will adequately capture reporting traders' exposure in the commodities in which they engage in CIT. *See* section IV(E), above.

6. The Commission requests public comment on the schedule and procedures proposed in section V above for the effective date and compliance date of any final rule resulting from this Notice.

a. With respect to trading accounts associated with a DCM or a SEF that is not yet registered on the effective date or the compliance date proposed in section V, should the effective date or the compliance date for the reporting of such trading accounts be delayed for a certain period? If so, how long should the effective date or compliance date be delayed?

7. The Commission requests public comment on whether it should codify a definition of ''trading account'' in § 15.00 of the Commission's regulations. ''Trading accounts'' refers to accounts identified by a reporting market in daily transaction-level TCRs submitted to the Commission pursuant to § 16.02 or any similar reports received from a SEF.[102] If commenters recommend that the Commission codify a definition of ''trading account'' in § 15.00, then the Commission requests that commenters offer a proposed definition, provided that such definition does not reference tags, Party Roles, or other specific data fields in the TCR. The Commission also requests public comment regarding the applicability of the proposed trading account concept to SEFs, including any alternatives to trading account that should be used with respect to SEFs.

8. The Commission requests public comment on its proposal to require that reporting firms that are clearing members identify, on Form 102A, the trading accounts that comprise a special account, and provide ownership and control information and TCR trading account numbers for such trading accounts. The Commission also requests public comment on the three factors offered in this Notice to determine whether a trading account comprises part of a special account. *See* section IV(A)(ii), above.

9. The Commission requests public comment on whether ''trading account(s) that comprise a special account'' should be a defined term in § 15.00 of the Commission's regulations, and how such definition should differ from the three factors discussed in this preamble, if at all. *See* section IV(A)(ii), above.

10. The Commission intends that the definition of ''volume threshold account'' captures all possible categories of accounts with reportable trading volume, including give-ups and other instances in which trades do not 'execute' on a DCM or SEF (e.g., block trades). The Commission requests public comment regarding whether the proposed definition of ''volume threshold account'' achieves this purpose, and if not, how the definition should be revised. *See* section IX, below.

11. The definition of ''omnibus reportable sub-account'' captures ''any trading sub-account, which sub-account *executes* reportable trading volume on an omnibus basis,'' while the definition of ''reportable sub-account'' captures ''any trading sub-account, which sub-account *executes* reportable trading volume'' (emphasis added). *See* section IX, below. Is the reference to 'executing' reportable trading volume the appropriate terminology in this context? Would it be preferable to refer instead to a sub-account that ''receives via allocation or give-up'' reportable trading volume? Is another terminology more appropriate?

12. With respect to SEFs, the Commission requests public comment regarding whether proposed § 15.04 contains the appropriate parameters for defining a RTVL for volume threshold accounts associated with a SEF (*e.g.,* a RTVL measured in ''contracts'' and set at 50 contracts; a reliance on ''product identifiers;'' or the reference to ''expiration months''). If the RTVL or parameters proposed in § 15.04 are inadequate for SEFs, then the Commission requests public comment regarding how the RTVL or such parameters should be revised in any final rule arising from this Notice. If commenters propose alternative parameters for defining a RTVL for volume threshold accounts associated with SEFs (*e.g.,* a parameter based on a notional value), please describe the proposed parameters in detail and indicate which products the parameters should apply to, in addition to other relevant criteria. The Commission also requests comment on the benchmarks that should be used to determine the RTVL for SEFs, including the percentage of trading accounts that should be identified and the percentage of products in which a given percentage of volume should be identified. In this regard, the Commission refers commenters to the proposed RTVL in the context of DCM trading accounts, products, and volume: an RTVL of 50 would identify approximately 33 percent of trading accounts, and at least 85 percent of volume in approximately 90 percent of products. The Commission may determine that any alternative RTVL for SEFs should achieve similar coverage. If commenters propose alternative parameters for defining a RTVL for volume threshold accounts associated with a SEF, please also describe any alternative benchmarks that are relevant to such parameters (e.g., what the reportable notional value for a particular product should be). *See* section IV(B) and note 68, above, and section IX, below.

13. The Commission requests public comment regarding proposed §§ 17.01(b), 17.01(d), and 17.02(c)(2)–(4), which place certain 102B reporting obligations on clearing members. Do the proposed regulations require any revision to adequately address 102B filings with respect to volume threshold accounts associated with SEFs? If so, how should proposed §§ 17.01(b), 17.01(d), and 17.02(c)(2)–(4) be amended? Should other reporting entities be considered, and if so, which ones?

14. The Commission requests public comment regarding whether the proposed constructs of ''trading account,'' ''volume threshold account,'' ''omnibus volume threshold account,'' and ''omnibus reportable sub-account'' are as applicable to SEFs as they are to trading on DCMs. *See* section IX, below.

b. If these constructs are not applicable, then the Commission requests specific comments on the differences between trading practices and/or account structures at DCMs versus SEFs that would preclude their use with respect to SEFs. The Commission also requests specific comments on how these constructs should be amended or substituted so that they are usable with SEFs. For example, in the context of SEFs, should the construct of volume threshold accounts be modified to refer to reportable trading volume associated with a particular legal entity identifier, rather than reportable trading volume associated with a particular trading account?

15. The Commission requests public comments on any defined terms or other provisions of the proposed rules that would require revision to accommodate the identification and reporting of volume threshold accounts, omnibus volume threshold accounts, and omnibus reportable sub-accounts associated with SEFs.

a. For example, the Commission requests public comment regarding

[102] 17 CFR 16.02.

whether the omnibus account structure, as proposed, is relevant and appropriate to SEFs. More specifically, the Commission requests public comment with respect to proposed § 15.00(w) and 15.00(x), which define omnibus account and omnibus account originator, respectively. The proposed definitions are based on market participants known to carry or originate omnibus accounts on DCMs. The Commission requests comment regarding whether other market participants should be included in proposed § 15.00(w) and 15.00(x) to account for market participants that may carry or originate omnibus accounts on SEFs.

16. The Commission requests public comment as to whether Form 102S should require the reporting of trading accounts that comprise a consolidated account in the same manner that proposed 102A requires the reporting of trading accounts that comprise a special account. If not, why not? The Commission also requests public comment regarding: (1) Whether the three factors used to determine whether a trading account comprises a special account are equally applicable to consolidated accounts; (2) whether ''trading account(s) that comprise a consolidated account'' should be a defined term in the Commission's regulations; and (3) the appropriate definition of ''trading account(s) that comprise a consolidated account.'' *See* section IV(A)(ii), above.

17. The Commission requests public comment as to whether New Forms 102 (including, in particular, Form 102S), 71, or 40 should be provided to swap data repositories (''SDR'') registered pursuant to part 49 of the Commission's regulations to assist such SDRs in fulfilling any swaps data aggregation responsibilities assigned by the Commission. If not, then the Commission requests specific public comment regarding any reasons why the forms should not be provided to SDRs.

a. If new Forms 102, 71, or 40 are provided to SDRs, should they be provided directly by reporting entities or by the Commission? The Commission specifically requests public comment regarding any reasons why the forms should not be provided to SDRs directly by reporting entities.

b. The Commission requests public comment regarding any additional considerations relevant to the provision of New Forms 102, 71, or 40 to SDRs directly by reporting entities, including:

i. the time, manner and format of submission to SDRs, including any necessary divergence from the time, manner, and format proposed herein for submission of the forms to the Commission;

ii. additional data points that should be contained in the forms to heighten their utility in any data aggregation performed by SDRs; and

iii. appropriate limitations on SDRs' use of any information received in Forms 102, 71, or 40, other than for data aggregation purposes specified by the Commission.

VIII. Related Matters

A. Cost Benefit Considerations

Section 15(a) [103] of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing an order. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following 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. To the extent that these proposed regulations reflect the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those resulting from Congress's statutory mandates in the Dodd-Frank Act. However, to the extent that the proposed regulations reflect the Commission's own determinations regarding implementation of the Dodd-Frank Act's provisions, such Commission determinations may result in other costs and benefits. It is these other costs and benefits resulting from the Commission's own determinations pursuant to and in accordance with the Dodd-Frank Act that the Commission considers with respect to the Section 15(a) factors.

The Commission requests comment on the costs and benefits associated with the Notice. As discussed below, the Commission has identified certain costs and benefits associated with the Notice and requests comment on all aspects of its proposed consideration of costs and benefits, including identification and assessment of any costs and benefits not discussed herein. In addition, the Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on the Commission's proposed consideration of costs and benefits.

[103] 7 U.S.C. 19(a).

The Commission notes that the cost estimates provided herein for New Forms 102A, 102B, 102S, 71, and 40 reflect estimates of: (i) The costs associated with the reporting and identification of special and consolidated accounts for positions reported under parts 17 and 20, respectively, of the Commission's regulations; and (ii) the costs associated with the reporting and identification of volume threshold accounts associated with DCMs and SEFs. Cost estimates for these forms are based on extrapolations from current forms and reports received from FCMs, IBs, and foreign brokers; reporting entities pursuant to part 20; and DCMs pursuant to § 16.02.

The Commission understands that the costs and benefits of the proposed reporting regime for trading accounts, volume threshold accounts, omnibus volume threshold accounts, and omnibus reportable sub-accounts associated with SEFs may differ, possibly substantially, from the reporting regime for such accounts associated with DCMs. The Commission therefore requests specific quantitative estimates on the costs and benefits of Form 102B and 71 filings for volume threshold accounts, omnibus volume threshold accounts, omnibus reportable sub-accounts, and market participants associated with SEFs.

More generally, the Commission has requested public comment, in section VII above, regarding the applicability of volume threshold accounts, omnibus volume threshold accounts, and omnibus reportable sub-accounts to SEFs. The Commission has also requested comment on the appropriate design of a reportable trading volume level for volume threshold accounts associated with SEFs, and on the appropriate reporting entities for volume threshold accounts associated with SEFs.

Finally, the Commission requests comment, including specific quantitative estimates, on the costs and benefits of associated with the identification of trading accounts associated with consolidated accounts.

i. Background

a. Description of the Statutory Authority

Pursuant to the authority of sections 4a, 4c(b), 4g, 4i, and 4t of the CEA, the Commission is proposing these revisions and updates to its large trader reporting rules and forms.[104] These CEA

[104] 7 U.S.C. 1 *et seq.* In addition, CEA § 8a(5) authorizes the Commission to promulgate such regulations that in its judgment are reasonably necessary to effectuate any provision of the Act or to accomplish any of the purposes of the Act. 7

provisions, described more fully above,[105] authorize the Commission to require reporting and recordkeeping from a wide range of market participants, including registered entities, FCMs, brokers, clearing members, swap dealers, and traders, engaging in transactions subject to the Commission's jurisdiction. Collectively, these CEA provisions warrant the maintenance of an effective and vigorous system of market and financial surveillance.

b. Prior Rules; Existing Forms 102 and 40

The existing rules and forms, described more fully above,[106] require FCMs, clearing members, and foreign brokers to identify special account traders to the Commission on a Form 102. On special call of the Commission, a Form 40 is then sent to each trader identified on a Form 102 submission, requiring the trader to provide the Commission with detailed contact information and to answer other questions designed to inquire into the nature of the trader's market activity. In both instances, the Form 102 and Form 40 are generally submitted on paper, via email, or via facsimile (*i.e.,* via some manual submission process). The questions and data points on both existing forms only relate to the Commission's existing position-based reporting rules.

c. The Proposed Rules

As described in the preamble above, the Commission is proposing amendments to the existing reporting rules and forms as they pertain to reportable positions in Commission regulated contracts. In addition, the Commission is proposing to expand the reporting rules and forms so that they may also be used to identify traders and trading accounts exceeding a volume-based reporting threshold, regardless of the resulting positions (*i.e.,* ''volume threshold accounts''). Finally, the proposed amendments would provide for the electronic submission of New Forms 102, 40, and 71.

ii. Costs and Benefits of the Proposed Rules

The Commission's consideration of costs and benefits begins with certain general considerations applicable to all forms, followed by specific discussions of the costs and benefits of: (1) New Form 102A, (2) New Form 102B, (3) 102S filings, (4) New Form 71, (5) New Form 40, and (6) 40S filings.

As a general matter, the Commission considers the incremental costs and benefits of the proposed regulations and forms, those costs that are above the baseline that is the Commission's existing regulations. As described in detail above, the proposed rule and form amendments would broaden the utility of existing forms.[107] The proposed amendments would also enhance the Commission's surveillance and large trader reporting programs for futures, options on futures, and swaps by clarifying which accounts are required to be reported on Form 102A; requiring the reporting on Form 102A of the trading accounts that comprise each special account; requiring the reporting of certain omnibus account information on Form 71 in connection with omnibus volume threshold accounts reported on Form 102B, together with the reporting of certain reportable sub-accounts within such omnibus volume threshold accounts; updating Form 40; and integrating the submission of 102S and 40S filings into the general Form 102 and Form 40 reporting program.

The Commission proposes that the costs the Notice would impose on market participants will vary depending on various factors, including the size and/or experience of the market participant; the scope (whether measured by position or volume) of the market participant's trading activity; and the number of distinct customer or proprietary special accounts, volume threshold accounts, and other account types required to be reported by each market participant. Given the range of factors relative to the potential costs of the proposed rules, reporting parties may face costs associated with one, more than one, or, in some instances, all of the revised rules and forms. For purposes of the Paperwork Reduction Act, the Commission has estimated the number of hours the average market participant would spend in connection with the information collection required by the Notice.[108] Based on those burden hour estimates, and as further explained in the Paperwork Reduction Act discussion below, the Commission estimates that affected participants would incur the following approximate costs in (i) completing Forms 102A and 102S and any resulting Form 40s, (ii) completing Forms 102B and 71 for volume threshold accounts associated with DCMs and SEFs and any resulting Form 40s, and (iii) complying with the books and records obligations arising from proposed § 18.05:

Regulation	Associated Report	Estimated Total Cost[109]
17.01(a)	New Form 102A	$ 2,083,165
17.01(b)	New Form 102B	$ 1,458,216
17.01(c)	New Form 71	$ 446,505
18.04(a)	New Form 40	$ 1,238,108
18.04(b)	New Form 40	$ 3,195,497
18.05	Books and Records	$ 214,605
20.5(a)	102S Filing	$ 393,050
20.5(b)	40S Filing	$ 117,915
Total Reporting and Recordkeeping Costs		$9,147,061

U.S.C. 12a(5). Also, pursuant to CEA § 3(b), the Act seeks to ensure the financial integrity of regulated transactions and to prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b).

[105] *See supra* section II.

[106] *See supra* section IV.

[107] New Form 102 is partitioned into: section 102A for the identification of position-based special accounts; section 102B for the collection of ownership and control information on individual trading accounts exceeding a volume-based reporting threshold; and section 102S for the submission of 102S filings for swap counterparty consolidated accounts with reportable positions.

[108] *See infra* the detailed discussion of costs and burdens in section VIII(C), which has been prepared for the purpose of the Commission's responsibilities under the Paperwork Reduction Act.

The Commission's CEA § 15(a) assessment of costs and benefits includes consideration of these estimated Paperwork Reduction Act information collection costs, as well as the range of factors that may increase or decrease these estimates.

In anticipation of a wide range of technological capabilities among reporting entities (again, varying based on the relative size and experience of a given reporting entity), the Commission is proposing an implementation program that would permit multiple submission methods for each form. By allowing reporting entities to select the submission method most suited to their existing capabilities and business model, reporting entities will be able to mitigate their own reporting costs.

While the Commission expects that an entity with a relatively larger number of reporting obligations (whether for the reportable accounts of its customers, or its own reportable accounts), would incur larger total costs in complying with the proposed reporting rules and submitting the related forms than a smaller firm, the Commission anticipates that these larger absolute costs will be mitigated by lower unit costs, and the marginal expense of reporting each additional reportable account would likely diminish once the entity established its data collection and reporting infrastructure. For high-volume reporting entities, the Commission is proposing an implementation program, to be conducted in conjunction with input from commenters, which will permit electronic submission of the forms to the Commission via a defined data submission standard. This transition from manual to automated form submission should reduce costs for high-volume reporters on a per-account basis.

In addition to evaluating these proposed rules based on the Commission's experience and expertise in the derivatives markets, this Notice took into account comment letters by industry participants received in response to the OCR NPRM.[110] In one such letter, the FIA offered a modified approach to the OCR reporting scheme proposed in the OCR NPRM, and offered cost estimates and projections for both the proposal contained in the OCR NPRM and the FIA alternative. FIA specifically expressed concerns about the implementation costs of the Commission's proposal in the OCR NPRM, stating that it would require firms to, among other things, re-negotiate all active customer agreements to require customers to provide and routinely update the necessary data points, build systems to enter the data, manually enter the data for each active account, put in place resources and processes to maintain the data, provide it to the reporting entity on a weekly basis, and monitor changes daily in order to update the database. In FIA's quantification of costs, gathered from interviews with member institutions, FIA provided the following estimates in relation to the proposal in the OCR NPRM:

> Our sample of 12 firms represents approximately 16 percent of the approximately 70 FCMs that execute and clear customer accounts. These firms handle in excess of $83.8 billion of customer funds, or approximately 62 percent of customers' segregated funds (as of July 31, 2010, according to monthly financial reports filed with the Commission). We found that the median firm would face total costs of roughly $18.8 million per firm, including implementation costs of roughly $13.4 million, and ongoing costs of $2.6 million annually. On a per account basis, the median cost would be $623 per account.

In comparison, FIA estimated that its alternative would result in significant first year cost savings, with additional, incremental savings following initial implementation. Accordingly, and in order to realize potential cost savings identified by FIA, the Commission has incorporated elements of the FIA's alternative approach into this proposal. For example, this proposal incorporates FIA suggestions regarding setting a threshold for determining when a volume threshold account is reportable and integrating OCR reporting into the existing Form 102 process. As noted in the FIA letter, and as substantiated by a sample of their members, by incorporating these elements into this proposal, the Commission anticipates that the relative cost impact of these proposed rules should be significantly mitigated as compared to the relative cost impact of the proposal in the OCR NPRM.

As stated above, the Commission anticipates potential additional cost savings (as compared to both the existing reporting program, as well as the OCR NRPM) will come through the proposed automated submission of Forms 102, 40, and 71;[111] and, to the extent practicable, the auto-population of previously gathered information. As noted in the FIA comment letter, ''The end result of developing the alternative system could ultimately save the firms (and the Commission) significant time and money by automating the current manual process for filing out and submitting Form 102 information. * * * Once implemented, the average cost savings associated with automating the Form 102 was estimated to be $33,300 per firm on an annual basis.'' That is, electronic submission will allow for increased efficiency for both reporting firms and for the Commission. In addition, the proposed requirement that New Form 102 submissions be updated/refreshed on a regular basis (as proposed, on a semi-annual schedule) would use the previous submission as a template, meaning that for the majority of accounts there should be little or no change to prior reported information, reducing both the update burden on firms and the risk of potential errors in the reporting process.

The Commission proposes that infrastructure requirements for the revised Forms 40 and 102 and the additional Form 71 could be significant,[112] but may be reduced in relationship to the ability of many firms to leverage existing systems to meet the requirements proposed herein. For example, reporting parties for New Form 102, which includes new sections 102A, 102B, and 102S, can be FCMs, foreign brokers, clearing members, and swap dealers. Many of these entities will already have standard data maintenance systems (based on either their own internal recordkeeping process or current reporting obligations other than those proposed herein), and these current systems could be leveraged for reporting purposes. However, because some entities may not have current systems, or only a portion of the necessary infrastructure, the Commission is proposing a phase-in period for compliance with these proposed rules. This period is designed to give entities a window of time for

[109] The estimated total cost includes annual reporting and recordkeeping costs, as well as annualized start-up costs and ongoing operating and maintenance costs. The estimated total costs for each form included in this chart are subject to the limitations described earlier in this section. The estimated total cost for each of New Form 102B, New Form 71 and New Form 40 in this chart represents the estimated total cost of completing Forms 102B and 71 for volume threshold accounts associated with DCMs and SEFs and any resulting Form 40s.

[110] *See supra* section III(C)(ii)–(iii).

[111] The Commission acknowledges that Form 71 is a completely new form, and so it is not meaningful to contrast the costs of this new Form 71 with the ''existing reporting program.'' However, Form 71 would, in effect, replace a portion of the Commission's manual special call process. In that manner, providing for the automated submission of Form 71 does provide a much more efficient information gathering process for both the Commission and market participants, as compared the current efforts required to request and receive analogous information.

[112] *See infra* section VIII(C) for a detailed review of burden and cost estimates been prepared for the purpose of the Commission's responsibilities under the Paperwork Reduction Act.

systems development and to mitigate the cost burdens otherwise associated with a short-run implementation and compliance schedule.

a. New Form 102A

(1) Costs

New Form 102A is directly analogous to the existing Form 102 currently in use, identifying owners and controllers of special accounts with reportable positions (the other sections of the New Form 102 extend the Form to new categories of reportable traders). The requirement to submit a 102A remains the same as that for the current Form 102: a special account can be a position at a reporting entity that is under common control, common ownership, or some combination of common control and common ownership. Because reportable special accounts would not be materially different under the proposed forms and regulations from special accounts as they now exist, the Commission believes the incremental cost of reporting due to account status should be minimal. However, by re-emphasizing that entities must separately identify special accounts under common ownership and those under common control, the Commission may observe an increase in the number of special accounts to be identified at any given reporting entity.

Although the definition of a special account will not change, the level of requested information per account will increase. Proposed Form 102A requests (as applicable) information not currently collected, such as owner and controller NFA ID, LEI, trading account numbers for trading accounts comprising the special account, and DMA status. The commission expects that (as noted by comment letters on the OCR NPRM) the majority of these data points already reside with reporting entities. Depending on the availability of this information, costs may be higher or lower than the estimated average burden of 102A submission.[113]

As noted above, the Commission anticipates that reporting for New Form 102, including Form 102A, will be made primarily through XML data submissions. Form 102A reporting will be triggered once an account becomes a special account (an account ''event'') and updates will be required on at least a semi-annual basis. Standards for the data submission will be flexible, developed in conjunction with market participants' and potential reporting entities' input, and will take into consideration the diversity of reporting entities' systems. Should this Notice lead to a final rule, the Commission will endeavor to provide flexibility in the required information technology systems and to avoid undue burdens for reporting entities, including those with relatively large or relatively small numbers of special accounts.[114] The Commission specifically requests comment on the expected costs related to upgrading or obtaining systems to implement and comply with the reporting requirement under the 102A aspect of the proposal in this Notice.

(2) Benefits

As with costs associated with Form 102A, the reporting benefit is mainly coincident with the benefits of the current reporting regime. However, additions to the form have been made to strengthen the robustness of the Commission's regulatory surveillance capabilities. By collecting information like the trading account numbers comprising a special account, the Commission will be able to compare intra-day account activity with position data held over longer periods of time. This will enable further market transparency and enhanced market review over both macro and micro scales. Micro-structure analysis, the economic analysis of account activity on a highly disaggregated level (such as via individual transactions), was shown to be uniquely helpful in event studies such as the Flash Crash of 2010.[115]

System robustness is also strengthened with the regular update schedule required for all special accounts. Updates provide additional data verification, improving the accuracy of account information on a standard, and sufficiently frequent, schedule. As discussed, automated submission should mean that regular updates come at relatively minimal cost to those reporting.

b. New Form 102B

(1) Costs

As noted above, the Commission has attempted to mitigate the cost to the ultimate reporting entities that provide OCR data for trading accounts (as compared to the proposal in the OCR NPRM), while retaining similar reporting benefits. One significant revision relevant to Form 102B is the introduction of a minimum reporting threshold of 50 contracts in a given product, for any given trading day on any given reporting market that is a DCM or a SEF, as the trigger for required reporting (as compared to no minimum threshold in the OCR NPRM). The Commission believes that this approach would provide sufficient data coverage and benefits, but at a noticeably reduced cost (again, as compared the proposal in the OCR NPRM). In this regard, the FIA comment letter in response to the OCR NPRM noted that:

> Most FCMs found that adopting a volume threshold of 250 contracts per week would decrease significantly the costs of implementing the alternative, by reducing the amount of data required to be processed and the associated cost of transmitting large amounts of data to the exchanges and the Commission. The average estimated cost of populating the OCR database using a volume threshold of 250 contracts per week is $1,783,750. In contrast, the estimated total cost for initially populating the OCR file based on a volume threshold that includes all accounts (referred to in our survey as option 1) is $2,134,375.

Even with this revision, proposed Form 102B does cover a market category not covered under the existing reporting program and so should be considered as an additional cost on any baseline. As with Form 102A, since reporting entities will likely have existing data feed capabilities, a subset of reporting firms will likely not require significant infrastructure development. In particular, the Commission notes that Form 102B reporting firms are limited to clearing member firms, typically among the more technologically-sophisticated participants in the derivatives industry. As with Form 102A, low-volume reporters may choose to submit forms semi-manually through a web-based portal, which will reduce start-up costs but increase costs of individual submissions. Also, as discussed below, the incremental number of additional accounts due to volume reporting may be large. This may translate to significant costs for those who choose a manual submission method. The Commission specifically requests comment on the expected costs related to upgrading or obtaining systems to implement and comply with the reporting requirement under the 102B aspect of the proposal in this Notice.

(2) Benefits

The addition of volume threshold accounts to the reporting structure will provide much needed information about a rapidly growing market segment, that of high volume but low end-of-day position traders. Many of these participants enter and exit a given

[113] *See infra* section VIII(C), which provides burden and costs estimates in the context of a range of underlying factors.

[114] *See infra* section VIII(C), which provides burden and costs estimates related to two distinct submission methods.

[115] See ''Findings Regarding the Market Events of May 6, 2010,'' available at: *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

market position intraday, and so are not identified under the current position-reporting regime. The current reporting regime, though it captures over 90 percent of open interest in many markets, is not specifically designed to capture high-volume traders. The Commission anticipates that, with the introduction of volume threshold account reporting, New Form 102B would help provide trader identification for over 90 percent of market activity in many significant products, mirroring the current levels of position identification in the futures market.

In addition to increasing the set of reporting entities on an absolute level, 102B reporting is likely to increase the types of market participants identified to the Commission. For example, it is expected that volume threshold accounts would identify trade ownership and control for market participants such as high-frequency traders (HFTs) and other algorithmic systems; in highly-liquid markets, participants of this type can make up a meaningful percentage of market activity. However, due to the current structure of the reporting system, many participants in these categories do not qualify as reportable special accounts. The 102B would expand the Commission's reporting program to include participant groups of this nature, and would also expand the reporting program to include trading accounts associated with SEFs.

c. New Form 71

(1) Costs

Because the concept behind Form 71 is being introduced for the first time in this Notice, all costs associated with Form 71 reporting are incremental. The form identifies the ownership and control structure of omnibus accounts, from the level of originator to that of sub-account owners and controllers, for volume threshold accounts that are omnibus accounts. The Commission plans to provide a web-based portal for submission and, potentially, an XML submission standard like New Form 102.

Because the structure of omnibus accounts is currently not known by the Commission, it cannot accurately quantify how many additional reports will be necessary due to the introduction of Form 71. However, the Commission has attempted to mitigate the cost of reporting, especially for larger institutions that may have a greater number of relevant accounts. Many of the data fields in Form 71 will be auto-populated with data provided to the Commission on an associated Form 102B or Form 71. This auto-population will be included in the web-based system for the benefit of the reporting party, and is intended to help mitigate, as much as possible, the submission burden. The Commission specifically requests comment on the expected costs related to upgrading or obtaining systems to implement and comply with the reporting requirement under the Form 71 aspect of the proposal in this Notice.

(2) Benefits

Form 71 provides further granularity regarding the ownership hierarchy of omnibus accounts that are volume threshold accounts. Broad collection of omnibus account information can be used to aggregate and analyze all trading by an individual or trading entity, whether through a single account or through a number of accounts held with one or more intermediaries. In the absence of Form 71 information in connection with omnibus volume threshold accounts, the Commission would lose meaningful ownership and control information (and, therefore, usefulness of the 102B reports), including the structure of and dependence on intermediaries within a given market.

d. 102S filings

(1) Costs

The increased relative cost of the 102S filings required in this proposal, as compared to existing 102S filing requirements, should be minimal. This proposal does not amend or change the subset of traders for which swap dealers and clearing members will be required to submit 102S filings. However, by updating existing Form 102 to include 102S filings and by creating a new submission framework for New Form 102, entities submitting 102S filings may encounter costs similar to those encountered by entities filing New Form 102 for other purposes (whether under 102A or 102B). The Commission anticipates that many 102S filing entities will also be submitting New Form 102 in connection with their futures trading business. In addition, the Commission is proposing to work with potential filing entities during the comment period in order to achieve a 102S filing submission process that leverages as much as possible off of the existing infrastructure and practice at reporting entities, including the resources that will be used for analogous futures filings. The Commission specifically requests comment on the expected costs related to upgrading or obtaining systems to implement and comply with the reporting requirement under the 102S aspect of the proposal in this Notice.

(2) Benefits

Form 102S, like 102B, is designed to expand the set of reporting entities beyond those of the current Form 102. The identification of accounts via 102S will provide trader information for participants in swaps. For the purposes of tracking aggregated position exposure in a product or commodity, or market activity of a specific trader, swap reporting significantly extends the Commission's market surveillance capabilities. The inclusion of swap activity aligns with the recently finalized rules on real-time public and regulatory reporting of swap trades, and provides further transparency in what are currently often opaque and/or over-the-counter markets. As further changes arise in the commodity swap market, such as the introduction of SEFs, special account identification will allow universal market monitoring of activity across traditional futures exchanges and SEFs. This can provide quantifications of the balance of activity in a given product across different execution platforms and changes in this balance over time. In addition, disruptive market activity transferred across multiple trading facilities could now be more easily, and more quickly, identified with the information requested in 102S filings.

e. New Form 40

(1) Costs

The proposed changes to Form 40 extend the level of information collected about account ownership and the business practices of reporting traders. Given the new subsections of New Form 102 (*i.e.,* 102A, 102B, and 102S, as well as Form 71), the number of traders required to submit a Form 40 is likely to increase. As with existing Form 40, New Form 40 will be required from a wide range of market participants (from individual traders up to large financial institutions). Because of this wide range of form respondents, New Form 40, like Form 71, will be offered in a web-based format, and will be auto-populated with the related account information provided on the associated New Form 102 or Form 71, as applicable. Because of the more detailed questions in New Form 40, as compared to existing Form 40, the initial reporting burden per form is likely to increase beyond the estimate for the current form.[116] However, necessary updates may occasion a

[116] *See infra* section VIII(C).

reduced incremental burden, given the introduction of an electronic submission format through a portal that stores prior form submissions. The Commission specifically requests comment on the expected costs related to implementing and complying with the reporting requirement under the New Form 40 aspect of the proposal in this Notice.

(2) Benefits

Through the expansion of Form 40, the Commission will have more detailed data on reporting traders, including information regarding reporting trader's control relationships with other entities and other relationships with persons that influence or exercise authority over the trading of a reporting trader. This data set will include an expansion of the list of business purposes for futures and swaps activity and requests for detailed information about the business sector and physical commodity market participation of a given trader. Responses to these questions can provide a broader view concerning relationships and relative interest in related markets by business sector, and overlaps in activity across different product groups. It can also provide the Commission a check, or confirmation, to assess whether market activity matches the self-reported trading goals of a reporting trader.

f. 40S filings

(1) Costs

The increased relative cost of the 40S filings in this proposal, as compared to existing 40S filing requirements, should be minimal. This proposal does not amend or change the subset of traders who will be required to submit 40S filings, and the existing 40S filings must be completed using existing Form 40. By updating existing Form 40 questions and providing for web-based form submission, the Commission does not anticipate any significant increase or change in costs related to the 40S filing provisions of this Notice. The Commission specifically requests comment on the expected costs related to implementing and complying with the reporting requirement under the 40S filing aspect of the proposal in this Notice.

(2) Benefits

Similar to the New Form 40 benefits discussion above, 40S filings under this proposal would provide the Commission with a broader view (as compared to existing Form 40 and 40S filings) concerning relative interest in related markets by business sector, and overlaps in activity across different product groups. It can also provide the agency a means to check that observed market activity matches the self-reported trading goals of the entity.

iii. Section 15(a) Factors

a. Protection of Market Participants and the Public

Although potentially costly, the Commission proposes that the data collection under these rules and forms are necessary to assist the Commission in protecting market participants and the public by, inter alia: identifying as many accounts as feasible that are under common ownership or control; identifying trading accounts whose owners or controllers are also included in the Commission's large trader reporting program or that demonstrate independently significant trading activity; and identifying the entities or persons which the Commission should contact if additional information is required, including the owner and controller, and related contact persons, for reported accounts and traders.

The Commission proposes that revised Form 102 will protect market participants and the public by expanding data collection in three major areas: (1) By providing additional information regarding special accounts reported on 102A, including the trading accounts that comprise a special account; (2) by increasing the number of identified futures, options, and swaps accounts through the new volume threshold trigger in 102B; and (3) by identifying ownership and control information for a new market sector, that of swaps.

The proposed rule will protect market participants and the public by permitting the Commission to integrate transactions (and associated trading accounts) identified on daily trade capture reports with special accounts holding reportable positions; identifying traders of all sizes whose open interest does not reach reportable levels, but whose intra-day trading reaches significant levels and may adversely affect markets during concentrated periods of intra-day trading; reducing the time-consuming process of requesting and awaiting information from outside the Commission to identify the entity associated with a given trading account number on a trade capture report and aggregating all identified entities that relate to a common owner; linking traders' intra-day transactions with their end-of-day special account positions; calculating how different categories of traders contribute to market-wide open interest; and categorizing market participants based on their actual trading behavior on a contract-by-contract basis, supplementing the self-reported classifications on Form 40.

The proposed forms will be submitted in either an XML-based data feed or via a web-based submission. This modifies the process of form submission from the current manual systems at both the Commission and reporting entities. As compared to manual entry, automated systems should decrease the possibility of transcription error or errors in cross identification and reduce labor costs, aiding the accuracy and efficiency of agency market monitoring and enforcement.

Additional identifiers, such as those requested in New Form 102, will also allow for data integrity checks within and between the Commission's databases. For example, requests for NFA and LEI numbers provide independently assigned identifiers for ownership hierarchy verification. Also, New Form 40 information will be a direct check on much of the ownership and control information provided on New Form 102. In sum, the proposed rules would greatly increase the ability of the Commission to carry out its regulatory function and its protection of the public in an efficient manner. By leveraging available technology, these revisions should ultimately mitigate the long term cost to market participants of providing the requested information.

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

Collecting ownership and control information for the identified market participants allows the Commission to aggregate positions for a specific underlying trader across multiple products and markets and to identify aggregate activity levels. This identification provides additional market transparency for regulators and a clearer quantification of risk within and across firms, aiding the surveillance and monitoring functions of the Commission. Thus, while done at a cost, as described above, it aids in monitoring, over longer periods of time, risk exposure by institution, market class, or asset class. The proposed forms also allow for easy identification of the individual, or individuals, to be contacted if additional transaction information is needed for further review. As noted in a comment letter from the Petroleum Marketers Association of America (PMAA) on the OCR NRPM, ''Efficient integration of large trader and trade register data from DCMs, ECMS, and [other markets] will improve market transparency and ensure that no one trader, investment fund or other entity controls a large

percentage of the interest on commodity futures exchanges. Increased reporting requirements will help to identify those who possibly attempt to corner the market by taking huge positions in the futures markets which can move futures prices beyond what supply and demand fundamentals dictate.'' Similarly, the Air Transport Association (ATA) included a list of market and regulatory benefits of the ownership and control report, including allowing staff to aggregate trading accounts under common ownership or control, allowing large trader reports and exchange trade registers to be linked, allowing expanded oversight of trading by widely dispersed individuals and accounts, helping staff link traders' intra-day transactions with end-of-day positions, assisting investigations into intra-day manipulation and other trade practice abuses, and, bridging gaps in current data reporting systems.

Under the proposed rules, strengthened ties between end-of-day position and trade execution account registers received by the Commission can allow for a more accurate and timely accounting of market position by account. In addition, the increased depth of trader information allows for more robust research and analytics, encompassing a much greater segment of market volume traded on exchange platforms. The additional information could also aid in anticipating and/or monitoring market disruptions that can come at high costs to the investing and general public.

c. Price Discovery

The Commission does not anticipate that the proposed rules will have an impact on price discovery in markets regulated by the Commission.

d. Sound Risk Management Procedures

The expansion of both requested information and reportable accounts in the proposed forms requires firms to collect more information on each threshold account for appropriate risk monitoring. While the technology and personnel required for this collection will come at some cost to both market participants and the Commission, as described above, this collection of information is of benefit not just for regulatory oversight but for effective internal risk management at the level of the firm. Identification of account control and related contact information can provide timely responses to market disruptive events from multiple parties. It can also allow for prophylactic classification of market categories which could provide unique risks to market systems.

One specific area for which enhanced monitoring may be of benefit is that of direct market access (DMA). Briefly, DMA allows a trading entity to submit orders directly to an exchange matching engine. It is anticipated that this decreased distance between trade entry and ultimate execution on the exchange may carry additional transaction risk. A recent IOSCO report [117] notes that direct market access could implicitly contain any of the following market risks: (1) A user may access markets outside of the infrastructure and/or control of market intermediaries, (2) there may be an incentive for intermediaries/customers to gain execution advantages based on the type and geographic location of their connectivity arrangements, and (3) algorithmic trading through automated systems may imply issues of capacity and the potential need for rationing bandwidth. Similarly, a CSA Report outlined the risks associated with dealers/exchanges providing DMA to clients/customers, including risks to market integrity and to related technological systems.[118] The Commission feels it is useful, from both a market monitoring and analysis standpoint, to identify those accounts which have been provided with this enhanced trading capability. Highlighting potential concerns with market integrity, both at the firm and at the exchange level, will be aided by knowledge of non-intermediated access.

e. Other Public Interest Considerations

Form 40 now contains the relevant North American Industry Classification System (NAICS) categories to aid in business sector identification. The form includes two other selection lists: (1) Commodity groups and individual commodities (a classification defined by the CFTC) and (2) trading purposes that further detail the business practices of a reporting firm. These identifications can aid in analytical studies (developing categories of trading activity beyond those currently used by the agency), in cross-validation of trading intent, and in analysis of risk exposure across business sectors.

In addition, and as discussed throughout this document, the move to electronic submission of the forms addressed by these proposed rules will increase efficiencies for both market participants and the Commission. Specifically, data will be more reliable, will be received and reviewed faster, and will be capable of being updated faster than in the current paper based submission process. By embracing available technology to carry out its surveillance and market monitoring functions in this manner, market participants and the public will benefit from a more efficient and effective Commission.

The Commission specifically requests comment on its cost and benefit considerations of the proposed rules, as discussed above, and the proposed rule's impact (or the relative impact of any alternative rules) on: (1) The protection of market participants and the public; (2) the efficiency, competitiveness, and financial integrity of the futures markets; (3) the market's price discovery functions; (4) sound risk management practices; and (5) other public interest considerations.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis regarding the impact.[119] A regulatory flexibility analysis or certification is typically required for ''any rule for which the agency publishes a general notice of proposed rulemaking'' pursuant to the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).[120]

The rules proposed in this Notice would require FCMs, clearing members, foreign brokers, swap dealers and other reporting traders (including natural persons) to complete New Forms 102 or 71, and to submit them to the Commission as specified in the proposes rules or upon special call by the Commission. The Commission has previously determined that FCMs, clearing members, foreign brokers, swap dealers, and natural persons are not small entities for purposes of the RFA.[121] Accordingly, the rules proposed in this Notice with respect to Forms 102 and 71 would not have a significant economic impact on a substantial number of small entities.

The proposed rules would also require certain reporting traders to complete and submit New Form 40

[117] *See http://www.iosco.org/library/pubdocs/pdf/IOSCOPD332.pdf.*

[118] *See http://www.osc.gov.on.ca/documents/en/Securities-Category2/ni_20110408_23–103_pro-electronic-trading.pdf.*

[119] 5 U.S.C. 601 *et seq.*

[120] 5 U.S.C. 601(2), 603, 604 and 605.

[121] *See* respectively and as indicated: 47 FR 18618 (April 30, 1982) (FCMs and large traders); 72 FR 34417 at 34418 (June 22, 2007) (foreign brokers); 76 FR 71626 at 71680 (November 18, 2011) (swap dealers); and 76 FR 71626 at 71680 (November 18, 2011) and 76 FR 43851 at 43860 (July 22, 2011) (clearing members). *See also* 5 U.S.C. 601(6) (natural persons are not entities for purposes of the RFA).

upon special call by the Commission. Some of these reporting traders may be ''small entities'' under the RFA. In 2010, the Commission required approximately 3,320 reporting traders to complete a Form 40, from a total population of approximately 10,000 reporting traders. Of these 3,320 Form 40s, approximately 2,500 were completed by institutions, a portion of which could potentially be small entities under the RFA. For example, the Commission has received comments on its Dodd-Frank Act rulemakings indicating that certain entities that may be required to comply with the reporting and recordkeeping requirements in this Notice have been determined by the Small Business Administration to be small entities. In particular, the Commission understands that some not-for-profit electric generators, transmitters, and distributors that may be required to comply with the proposed rules have been determined to be small entities by the SBA, because they are ''primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and [their] total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' [122]

The Commission believes that, due to the limited number of institutions likely to receive a New Form 40 request in any given year, as well as the limited nature of the New Form 40 reporting burden, the rules proposed in this Notice with respect to New Form 40 would not have a significant economic impact on a substantial number of small entities. New Form 40 would not be required on a routine and ongoing basis, but rather would be sent by the Commission on a discretionary basis in response to the reporting of an account that reaches a minimum position or volume threshold. As summarized above, in 2010 the Commission made Form 40 requests to only 25% of all reporting traders that could potentially be small entities; furthermore, some of these reporting traders were not in fact small entities. As a result, New Form 40 would be expected to affect only a small subset of the entities that may be small entities under the RFA. In addition, New Form 40 is not lengthy or complex, and would require reporting traders to provide only limited information to the Commission. The Commission estimates that a reporting trader would require only 3 hours to complete a New Form 40.

The rules proposed in this Notice regarding revised § 18.05 would also impose books and records obligations upon a new category of market participants—specifically, certain owners (but not controllers) of a volume threshold account or a reportable sub-account. Such owners may be small entities under the RFA. The Commission does not believe that the obligation to maintain books and records under revised § 18.05 would impose significant costs on the additional small entities subject to the recordkeeping requirements of such section. The Commission expects that such account owners may largely rely on the books and records that they maintain in the ordinary course of business to fulfill the requirements of revised § 18.05. The Commission also expects that a portion of the account owners subject to revised § 18.05 are subject to the position-based recordkeeping requirements of current § 18.05,[123] and would not incur significant costs expanding their recordkeeping practices to comply with revised § 18.05. To the extent that certain small entities are required to modify their practices to comply with the volume-based recordkeeping requirements of revised § 18.05, the Commission believes that this will not impose a significant economic burden, because this requirement would: (a) Ensure that (i) owners of volume threshold accounts and reportable sub-accounts and (ii) owners of reportable positions are subject to equivalent recordkeeping obligations under § 18.05, and therefore maintain books and records in a consistent format; and (b) promote the Commission's market surveillance and investigatory functions to better deter price manipulation and other disruptions of market integrity.

Accordingly, for the reasons set forth above, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules proposed in this Notice would not have a significant economic impact on a substantial number of small entities. The Commission invites public comment on this determination.

C. Paperwork Reduction Act

i. Overview

The Paperwork Reduction Act (''PRA'') [124] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by 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. This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission is therefore submitting this proposal to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is ''Trader and Account Identification Reports'' (OMB control number 3038–NEW). If adopted, responses to this collection of information would be mandatory. The Commission would protect proprietary information in accordance with the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, § 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' [125] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

The proposed rulemaking would create new information collection requirements via proposed §§ 17.01, 18.04, 18.05, and 20.5. Currently, OMB control number 3038–0009 covers, among other things, the collection requirements arising from existing §§ 17.01, 18.04, and 18.05.[126] Also, OMB control number 3038–0095 covers, among other things, the collection requirements arising from existing § 20.5.[127] Accordingly, the Commission is requesting a new OMB control number for the purpose of consolidating the collections into a common control number. Collection requirements arising from proposed §§ 17.01, 18.04, 18.05, and 20.5 would be covered by 3038–NEW. Once the collections covered by control number 3038–NEW become operational, OMB control number 3038–0009 would no longer cover collection requirements arising from §§ 17.01, 18.04, and 18.05. In addition, OMB control number 3038–0095 would no longer cover collection requirements arising from § 20.5. The remaining collection requirements covered by

[122] Small Business Administration, *Table of Small Business Size Standards* (Nov. 5, 2010). *See also* the regulatory flexibility analysis regarding such entities in 77 FR 1182 at 1240 (January 9, 2012), 77 FR 2136 at 2170 (January 13, 2012), and 77 FR 2613 at 2620 (January 19, 2012).

[123] 17 CFR 18.05.

[124] 44 U.S.C. 3501 *et seq.*

[125] 7 U.S.C. 12(a)(1).

[126] 17 CFR 17.01, 18.04 and 18.05.

[127] 17 CFR 20.5.

3038–0009 and 3038–0095 would not be affected.

ii. Information To Be Provided

Proposed § 17.01 would result in the collection of information regarding the following types of accounts: (a) Special accounts (as defined in existing § 15.00(r)); [128] and (b) volume threshold accounts, omnibus volume threshold accounts, and omnibus reportable sub-accounts (each as defined in proposed § 15.00). Specifically, proposed § 17.01 would provide for the filing of New Form 102A, New Form 102B and New Form 71, as follows:

1. Pursuant to proposed § 17.01(a), FCMs, clearing members, and foreign brokers would identify new special accounts to the Commission on New Form 102A; [129]

2. Pursuant to proposed § 17.01(b), clearing members would identify volume threshold accounts to the Commission on New Form 102B; [130] and

3. Pursuant to proposed § 17.01(c), omnibus volume threshold account originators and omnibus reportable sub-account originators would identify reportable sub-accounts to the Commission on New Form 71 when requested via a special call by the Commission or its designee.[131]

Additional reporting requirements would arise from proposed § 18.04, which would result in the collection of information from and regarding traders who own, hold, or control reportable positions; volume threshold account controllers; persons who own volume threshold accounts; reportable sub-account controllers; and persons who own reportable sub-accounts. Specifically, proposed § 18.04 would provide for the filing of New Form 40, as follows:

1. Pursuant to proposed § 18.04(a), a trader who owns, holds, or controls a reportable position would file New Form 40, when requested via a special call by the Commission or its designee; and

2. Pursuant to proposed § 18.04(b), a volume threshold account controller, person who owns a volume threshold account, reportable sub-account controller, and person who owns a reportable sub-account would file New Form 40 when requested via a special call by the Commission or its designee.[132]

Reporting requirements would also arise from proposed § 20.5(a), which would require all reporting entities to submit 102S filings for swap counterparty or customer consolidated accounts with reportable positions.[133] In addition, existing § 20.5(b) requires every person subject to books or records under existing § 20.6 to complete a 40S filing after a special call upon such person by the Commission.[134] However, existing § 20.5(b) also provides that a 40S filing shall consist of the submission of Form 40. As discussed above, the proposed rules provide for the creation of New Form 40, which would expand and replace existing Form 40. Accordingly, the proposed rules would require additional information from 40S filers.

In addition to the reporting requirements summarized above, proposed § 18.05 would impose recordkeeping requirements for: (1) Traders who own, hold, or control a reportable futures or option position; (2) volume threshold account controllers; (3) persons who own volume threshold accounts; (4) reportable sub-account controllers; and (5) persons who own reportable sub-accounts. These provisions extend the recordkeeping requirements of current § 18.05, which are applicable to traders who hold or control reportable positions in futures contracts, to owners and controllers of accounts with reportable trading volume.[135]

iii. Reporting and Recordkeeping Burdens

Set forth below is the estimated total annual industry cost for affected participants to (i) complete Forms 102A and 102S and any resulting Form 40s, (ii) complete Forms 102B and 71 for volume threshold accounts associated with DCMs and SEFs and any resulting Form 40s, and (iii) comply with the books and records obligations arising from proposed § 18.05:

Regulation	Associated Report	Estimated Total Cost[136]
17.01(a)	New Form 102A	$ 2,083,165
17.01(b)	New Form 102B	$ 1,458,216
17.01(c)	New Form 71	$ 446,505
18.04(a)	New Form 40	$ 1,238,108
18.04(b)	New Form 40	$ 3,195,497
18.05	Books and Records	$ 214,605
20.5(a)	102S Filing	$ 393,050
20.5(b)	40S Filing	$ 117,915
Total Reporting and Recordkeeping Costs		$ 9,147,061

[128] 17 CFR 15.00(r).

[129] *See supra* sections III(A) and IV(A) for a description of existing Form 102 and a comparison to New Form 102A.

[130] *See supra* section IV(B) for a description of New Form 102B.

[131] *See supra* section IV(D) for a description of New Form 71.

[132] *See supra* sections III(A) and IV(E) for a description of existing Form 40 and a comparison to New Form 40.

[133] ''Reporting entity,'' ''counterparty,'' and ''consolidated account'' are each defined in § 20.1 of the Commission's regulations. *See supra* sections III(B) and IV(C) for a description of 102S.

[134] 17 CFR 20.5(b) and 20.6. *See supra* sections III(B) and IV(E) for a description of 40S.

[135] 17 CFR 18.05.

[136] The estimated total cost includes annual reporting and recordkeeping costs, as well as annualized start-up costs and ongoing operating and maintenance costs. The estimated total costs for each form included in this chart are subject to the limitations described in section VIII(A), above. The estimated total cost for each of New Form 102B, New Form 71 and New Form 40 in this chart represents the estimated total cost of completing Forms 102B and 71 for volume threshold accounts associated with DCMs and SEFs and any resulting Form 40s.

Total reporting and recordkeeping costs for the proposed rules reflect the sum of estimated burdens, multiplied by the wage rate provided below, for: (1) New Form 102A; (2) New Form 102B; (3) New Form 71; (4) New Form 40 (pursuant to 18.04(a)); [137] (5) New Form 40 (pursuant to 18.04(b)); [138] (6) the reporting and recordkeeping requirements of proposed § 18.05; (7) 102S filings; and (8) 40S filings. However, the Commission notes that reporting and recordkeeping burdens arising from each regulation and associated form were estimated independently of the requirements of the other regulations and associated forms, and that substantial synergies are likely to exist across the systems and data necessary to meet the reporting requirements. As a result, the total reporting and recordkeeping costs for the proposed rules are likely to be substantially lower than estimated. For example, many reporting firms filing New Form 102A would also file New Form 102B, and would be able to leverage systems and information necessary for filing one form to meet the requirements of the other. Accordingly, total reporting and recordkeeping costs are likely to be lower than the sum of the costs associated with each form individually, as the Commission has calculated herein.

All burden estimates assume that information required by each form is generally available within the reporting entity; however, in preparing its estimates, the Commission did make an effort to account for the added burden associated with assembling data distributed among multiple systems and/or databases within a reporting entity.

a. Reporting Burdens

Proposed § 17.01(a)—New Form 102A: The Commission estimated the reporting burden associated with this proposed regulation by considering the two distinct filing methods that it will accommodate should a final rule be adopted. With two methods of submission, reporting entities (*i.e.,* FCMs, clearing members, and foreign brokers) would have the flexibility to select the submission method that works best with their existing data and technology infrastructure and the number of filings they expect to make. In general, the Commission believes that Method 1 would be more cost effective for reporting entities with a large number of filings, while Method 2 would be more cost effective for reporting entities with a small number of filings.

Method 1: This method assumes that each reporting entity would use an automated program to submit its New Form 102As via secure FTP. Each Method 1 submission would likely contain numerous 102A records. The Commission estimates that the total initial development burden would average 264 hours per reporting entity. The Commission also estimates that the highly automated nature of this option would virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. Accordingly, the Commission estimates that 102A change and refresh updates would not increase a reporting entity's burden when using Method 1. The Commission further estimates that ongoing operation and maintenance costs would average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized development burden and the ongoing operation and maintenance cost burden (total yearly costs) would equal approximately 106 hours per reporting entity.[139]

A recent assessment of Commission data collection efforts demonstrated that the Commission receives Form 102 submissions from approximately 250 reporting entities annually. The Commission anticipates that it would receive New Form 102A submissions from a similar number of reporting entities. Assuming all New Form 102A reporting entities utilize Method 1, the Commission estimates that the total annual industry burden for New Form 102A would equal 26,500 hours. Using an estimated wage rate of $78.61 per hour,[140] annual costs for 102A filings made pursuant to Method 1 are estimated at $2,083,165.[141]

Method 2: This method assumes that each reporting entity would complete and submit each New Form 102A online via a secure portal provided by the Commission. The Commission estimates that the total initial development burden would average 20 hours per New Form 102A record. The Commission also estimates that annual ongoing costs, which include change and refresh filings, would average 7 hours per year for each New Form 102A record. The estimated Method 2 total annualized development burden and the ongoing operation and maintenance cost burden (total yearly cost) equals approximately 11 hours per New Form 102A record.[142]

A recent assessment of Commission data collection efforts demonstrated that the Commission receives approximately 4,700 Form 102 records annually. However, by reiterating that Commission regulations require reporting firms to separately aggregate positions by common ownership and by common control for the purpose of identifying and reporting special accounts, the Commission may observe an increase in the number of 102A filings. The Commission anticipates that the number of annual New Form 102A records may increase by 75% to 8,225.[143] Assuming each of the 8,225 New Form 102A records are provided via Method 2, the Commission estimates that the total annual industry burden for New Form 102A would equal 90,475 hours. Using an estimated wage rate of $78.61 per hour, annual costs for 102A filings made pursuant to Method 2 are estimated at $7,112,240.[144]

The Commission understands that providing filing options to the industry should lower costs relative to failing to provide such options. Because of this, estimated total costs to the industry for 102A filings should be lower than any cost associated with mandating either Method 1 or Method 2. Given the cost estimates for the two individual

[137] 17 CFR 18.04(a).

[138] 17 CFR 18.04(b).

[139] All annualized development burden estimates are based on 5 year, straight line depreciation. The 106 hour figure is arrived at by dividing 264 hours (initial development burden per reporting entity) by 5 years, which results in an estimated annualized initial development burden of 52.8 hours per reporting entity. 52.8 hours plus 53 hours (annualized ongoing operation and maintenance costs per reporting entity) equals 106 hours per reporting entity.

[140] The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $78.61 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2010, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): ''programmer (senior)'' (30% weight); ''programmer'' (30% weight); ''compliance advisor (intermediate)'' (20%), ''systems analyst'' (10%), and ''assistant/associate general counsel'' (10%).

[141] The $2,083,165 figure is arrived at by multiplying 106 hours by 250 reporting entities (equals 26,500 hours) by $78.61 (equals $2,083,165).

[142] All annualized development burden estimates are based on 5 year, straight line depreciation.

[143] The Commission believes that about 25% of special accounts reported on Form 102 have the same owner and controller. In such case, the reporting entity need only submit one New Form 102. Accordingly, the annual number of New Form 102A records would increase, as compared to current annual Form 102 submissions, only to the extent that the owner and the controller of a special account are different.

[144] The $7,112,240 figure is arrived at by multiplying 11 hours by 8,225 records (equals 90,475 hours) by $78.61 (equals $7,112,240).

methods discussed above, the Commission anticipates 102A filing costs to be no more than approximately $2,083,165 (Method 1), the lower of the two estimated filing methods. In developing this estimate, the Commission does not make any assumptions about the behavior of an individual reporting entity. Reporting entities, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be any one of the two methods.

Proposed § 17.01(b)—New Form 102B: The Commission estimated the reporting burden associated with this proposed regulation by considering the two distinct filing methods that it will accommodate should a final rule be adopted. With two methods of submission, reporting entities (*i.e.,* clearing members) will have the flexibility to select the submission method that works best with their existing data and technology infrastructure and the number of filings they expect to make. In general, the Commission believes that Method 1 would be more cost effective for reporting entities with a large number of filings, while Method 2 would be more cost effective for reporting entities with a small number of filings.

Method 1: This method assumes that each reporting entity would use an automated program to submit its 102B filings via secure FTP. Each Method 1 submission would likely contain numerous 102B records. The Commission estimates that the total initial development burden should average 264 hours per reporting entity. The Commission also estimates that the highly automated nature of this option would virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. Accordingly, the Commission estimates that 102B change and refresh updates will not increase a reporting entity's burden when using Method 1. The Commission further estimates that ongoing operation and maintenance costs would average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized development burden and the ongoing operation and maintenance cost burden (total yearly costs) equals approximately 106 hours per reporting entity.[145]

Because New Form 102B provides a new volume-based reporting structure not found in existing Form 102, the Commission is unable to refer to historical reporting statistics. Instead, the Commission estimated the number of New Form 102B reporting entities by estimating the number of clearing members associated with trading accounts that the Commission projects will qualify as volume threshold accounts. For volume threshold accounts associated with DCMs, the Commission anticipates that it would receive New Form 102B submissions from approximately 100 reporting entities annually. For volume threshold accounts associated with SEFs, the Commission anticipates that it would receive New Form 102B submissions from approximately 75 reporting entities annually. Assuming that all Form 102B reporting entities for volume threshold accounts associated with DCMs utilize Method 1, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B would equal 10,600 hours.[146] Assuming that all Form 102B reporting entities for volume threshold accounts associated with SEFs utilize Method 1, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B would equal 7,950 hours.[147] Using an estimated wage rate of $78.61 per hour, annual costs for DCM-related 102B filings made pursuant to Method 1 are estimated at $833,266, while annual costs for SEF-related 102B filings made pursuant to Method 1 are estimated at $624,950.[148] Collectively, annual costs for 102B filings made pursuant to Method 1 are estimated at $1,458,216.

Method 2: This method assumes that each reporting entity would complete and submit each New Form 102B online via a secure portal provided by the Commission. The Commission estimates that the total initial development burden would average 20 hours per New Form 102B record. The Commission also estimates that annual ongoing costs, which include both change and refresh updates, would average 7 hours per year for each New Form 102B record. The estimated Method 2 total annualized development burden and the ongoing operation and maintenance cost burden (total yearly cost) equals approximately 11 hours per New Form 102B record.[149]

Because New Form 102B provides a new volume-based reporting structure not found in existing Form 102, the Commission is unable to refer to historical reporting statistics to directly estimate the number of New Form 102B records it might receive. Instead, the Commission estimated the number of distinct volume threshold accounts across a sample of several contract markets, and then extrapolated the total number of volume threshold accounts across all markets. For volume threshold accounts associated with DCMs, the Commission anticipates that it would receive approximately 126,000 New Form 102B records annually. For volume threshold accounts associated with SEFs, the Commission anticipates that it would receive approximately 62,015 New Form 102B records annually. Assuming each New Form 102B record for a volume threshold account associated with a DCM is provided via Method 2, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B would equal 1,386,000 hours. Assuming each New Form 102B record for a volume threshold account associated with a SEF is provided via Method 2, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B would equal 682,165 hours. Using an estimated wage rate of $78.61 per hour, annual costs for DCM-related 102B filings made pursuant to Method 2 are estimated at $ 108,953,460,[150] while annual costs for SEF-related 102B filings made pursuant to Method 2 are estimated at $53,624,991.[151] Collectively, annual costs for 102B filings made pursuant to Method 2 are estimated at $162,578,451.

The Commission understands that providing filing options to the industry should lower costs relative to failing to provide such options. Because of this, estimated total costs to the industry for 102B filings should be lower than any cost associated with mandating either Method 1 or Method 2. Given the cost estimates for the two individual methods discussed above, the Commission anticipates DCM and SEF-related 102B filing costs to be no more than approximately $1,458,216 (Method 1), the lower of the two estimated filing

[145] All annualized development burden estimates are based on 5 year, straight line depreciation.

[146] The 10,600 hour figure is arrived at by multiplying 106 hours (annualized development burden and ongoing operation and maintenance cost burden per reporting entity) by 100 reporting entities.

[147] The 7,950 hour figure is arrived at by multiplying 106 hours (annualized development burden and ongoing operation and maintenance cost burden per reporting entity) by 75 reporting entities.

[148] The $833,266 figure is arrived at by multiplying 10,600 by $78.61, while the $624,950 figure is arrived at by multiplying 7,950 by $78.61.

[149] *Id.*

[150] The $108,953,460 figure is arrived at by multiplying 11 hours by 126,000 records (equals 1,386,000 records) by $78.61 (equals $108,953,460).

[151] The $53,624,991figure is arrived at by multiplying 11 hours by 62,015 records (equals 682,165 records) by $78.61 (equals $53,624,991).

methods. In developing this estimate, the Commission does not make any assumptions about the behavior of an individual reporting entity. Reporting entities, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be any one of the two methods.

Proposed § 17.01(c)—New Form 71: New Form 71 reporting entities (*i.e.,* originators of omnibus volume threshold accounts or omnibus reportable sub-accounts) would, upon special call by the Commission or its designee, complete and submit New Form 71 online via a secure portal provided by the Commission. The Commission estimates that, on average, New Form 71 would create an annual reporting burden of 8 hours per filing. The Commission notes that New Form 71 filings do not require change or refresh updates. Accordingly, the burdens and costs associated with such updates in the case of other forms proposed herein are not relevant to the calculation of burdens and costs for New Form 71 filings. The Commission also notes that it is likely to request the resubmission of New Form 71 filings annually.

The number of New Form 71 filings per year would vary according to the number of special calls for the form made by the Commission. In order to estimate the annual number of New Form 71 filings (*i.e.,* the number of special calls made), the Commission considered the number of existing Form 102 omnibus special accounts and estimated that New Form 102B would capture a similar number of DCM-related omnibus volume threshold accounts.[152] Further, the Commission estimated that it would require a New Form 71 for every such omnibus volume threshold account. Commission records indicate 526 omnibus special accounts in 2010, and the Commission anticipates an equal number of DCM-related omnibus volume threshold accounts. Because the Commission does not presently receive filings pertaining to SEF-related omnibus volume threshold accounts, the Commission is unable to refer to historical reporting statistics to directly estimate the number New Form 71 filings it might require. To estimate the number of SEF-related omnibus volume threshold accounts, the Commission assumed that SEF transactions will likely be intermediated to a lesser extent than DCM transactions. The Commission estimates that there may be 35 percent as many SEF-related omnibus volume threshold accounts as DCM-related omnibus volume threshold accounts. Accordingly, the Commission estimates that there will be 184 SEF-related omnibus volume threshold accounts. Based on an estimated 526 DCM-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 4,208 hours annually for such filings. Based on an estimated 184 SEF-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 1,472 hours annually for such filings. Using an estimated wage rate of $78.61 per hour, annual costs for DCM-related New Form 71 filings are estimated at $330,791, while annual costs for SEF-related New Form 71 filings are estimated at $115,714. Collectively, annual costs for New Form 71 filings are estimated at $446,505.

Proposed § 18.04(a)—New Form 40: New Form 40 reporting entities arising from New Form 102A filings (*i.e.,* special account owners and controllers) would, upon special call by the Commission, complete and submit New Form 40 online via a secure portal provided by the Commission. The Commission's special call would typically be in the form of an email request that would contain a URL for the portal, and a unique login and password for access to the portal.

The number of New Form 40 filings arising from New Form 102A filings would vary according to the number of special calls made by the Commission. An analysis of the Commission's existing Form 40 practices demonstrates that the Commission makes approximately 3,000 special calls annually. However, as explained above, the Commission is reiterating that its regulations require reporting firms to separately aggregate positions by common ownership and by common control for the purpose of identifying and reporting special accounts. The Commission anticipates that the number of special calls made annually as a result of New Form 102A filings may increase by 75 percent. The Commission estimates that New Form 40 would result in annual filings from 5,250 reporting entities.

The Commission estimates that each filing estimated above would require 3 hours to complete,[153] resulting in an estimated total annual reporting burden of 15,750 hours. Using an estimated wage rate of $78.61 per hour, annual costs for New Form 40 filings arising from New Form 102A filings are estimated at $1,238,108.[154] Because the proposed rules anticipate a web-based portal and user profile system, those entities required to complete a New Form 40 would also be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of their profile information by periodically visiting the online New Form 40 portal to review, verify, and/or update their information. However, the Commission believes that the time required to update information contained in New Form 40 using the online portal would be *de minimis.*

Proposed § 18.04(b)—New Form 40: New Form 40 reporting entities arising from New Form 102B and New Form 71 filings (*i.e.,* volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts) would, upon special call by the Commission, file New Form 40 online via a secure portal provided by the Commission. The Commission's special call would typically be in the form of an email request that would contain a URL for the portal, and a unique login and password for access to the portal.

The number of New Form 40 filings arising from volume threshold accounts and reportable sub-accounts would vary according to the number of special calls made by the Commission. An analysis of the Commission's existing Form 40 practices demonstrates that the Commission makes approximately 3,000 special calls annually; however, such calls were made to special account owners and controllers identified via existing DCM-related Form 102. The Commission estimates there could be a much greater number of New Form 102B and New Form 71 filings. As a result, the Commission estimates that the number of potential New Form 40 reporting entities (arising from New Form 102B and New Form 71 filings) would increase as well. The Commission anticipates that it would

[152] The Commission is estimating the number of New Form 71 filings in this manner because New Form 71 provides for an omnibus account reporting structure that does not currently exist, making direct estimates unfeasible.

[153] The Commission's estimate of 3 hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

[154] As discussed in the introduction to this section, the Commission is evaluating the burden associated with each regulation and associated form separately. It should be noted that the burdens estimated for New Form 40 filings, arising from proposed § 18.04(a) and § 18.04(b), are especially duplicative. For example, many of the traders that complete New Form 40 pursuant to 18.04(a) may also be volume threshold account controllers that could receive New Form 40 pursuant to 18.04(b). In practice, if the Commission possesses a recent Form 40 filing from a reporting entity, it may elect not to request a second Form 40 filing from that same entity if the entity becomes reportable under an additional provision of the proposed regulations and there is no additional information to be gained.

receive approximately 12,000 DCM-related New Form 40 filings annually arising from New Form 102B and approximately 1,550 SEF-related New Form 40 filings annually arising from New Form 102B, including filings arising from control of volume threshold accounts and filings arising from ownership of such accounts.[155] Each filing is estimated to require 3 hours,[156] resulting in an estimated total annual reporting burden of 36,000 hours for DCM-related New Form 40 filings and 4,650 hours for SEF-related New Form 40 filings. The Commission estimates that the time required to update information contained in New Form 40 would be *de minimis.* Using an estimated wage rate of $78.61 per hour, annual costs for DCM-related New Form 40 filings arising from volume threshold accounts and reportable sub-accounts are estimated at $2,829,960, while annual costs for SEF-related New Form 40 filings arising from volume threshold accounts and reportable sub-accounts are estimated at $365,537. Collectively, annual costs for New Form 40 filings are estimated at $3,195,497.

Proposed § 18.05: Existing § 18.05 requires traders who hold or control reportable positions to maintain books and records regarding all positions and transactions in the commodity in which they have reportable positions.[157] In addition, existing § 18.05 requires that the trader furnish the Commission with information concerning such positions upon request. The Commission proposes to expand § 18.05 to also impose books and records requirements upon volume threshold account controllers and owners of volume threshold accounts, and upon reportable sub-account controllers and persons who own reportable sub-accounts. Proposed § 18.05 would likely result in an increased reporting burden, as compared to existing § 18.05. An analysis of the Commission's special call practices demonstrates that, in connection with existing § 18.05, the Commission typically makes 12 special calls a month to approximately 45 traders, resulting in a total of 540 special calls.[158] The Commission estimates that proposed § 18.05 would result in an additional six special calls to six different traders.[159] In total, the Commission anticipates that it would make 546 special calls a year to 51 respondents under § 18.05 and that each response would take approximately 5 hours for a total aggregate annual reporting burden of 2,730 hours. Using an estimated wage rate of $78.61 per hour, annual reporting costs are estimated at $214,605.

Proposed § 20.5(a)—102S Filing: The Commission estimated the reporting burden associated with proposed § 20.5(a) by considering the two distinct filing methods that it will accommodate should a final rule be adopted. With two methods of submission, reporting entities (*i.e.,* clearing members and swap dealers) will have the flexibility to select the submission method that works best with their existing data and technology infrastructure and the number of filings they expect to make.

Method 1: This method assumes that each reporting entity would use an automated program to submit its 102Ss via secure FTP. Each Method 1 submission would likely contain numerous 102S records. The Commission estimates that the total initial development burden would average 264 hours per reporting entity. The Commission also estimates that the highly automated nature of this option would virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. The Commission believes that the timing requirements for 102S filings in existing § 20.5(a)(3),[160] or any new submission procedures arising from the Swaps Large Trader Guidebook (*i.e.,* frequency of 102S filing submission), would not increase a reporting entity's burden when using Method 1. The Commission further estimates that ongoing operation and maintenance costs would average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized development burden and the ongoing operation and maintenance cost burden (total yearly costs) would equal approximately 106 hours per reporting entity.[161]

The 102S filing requirements in existing § 20.5 [162] are nearly identical to the filing requirements proposed herein for 102S; accordingly, the Commission used its experience to date with 102S filings to estimate the number of 102S reporting entities. The Commission anticipates that it would receive 102S filings from approximately 75 [163] reporting entities annually. Assuming 102S reporting entities utilize Method 1, the Commission estimates that the total annual industry burden for 102S filing would equal 7,950 hours. Using an estimated wage rate of $78.61 per hour, annual costs for 102S filings are estimated at $624,950.

Method 2: This method assumes that each reporting entity would complete and submit each New Form 102S online via a secure portal provided by the Commission. The Commission estimates that the total initial development burden would average 17 hours per 102S record. The Commission also estimates that annual ongoing costs, including change and refresh updates, would average 7 hours per year for each 102S record. The sum of the Method 2 annualized development burden and the ongoing operation and maintenance cost burden (total yearly cost) equals approximately 10 hours per 102S record.[164]

Based on a recent assessment of expected 102S filings, the Commission anticipates that it would receive approximately 500 102S records annually. Assuming each of the estimated 500 102S records are provided via Method 2, the Commission estimates that the total annual industry burden for 102S filings would equal 5,000 hours. Using an estimated wage rate of $78.61 per hour, annual costs for 102S filings made pursuant to Method 2 are estimated at $393,050.

The Commission understands that providing options to the industry should lower costs relative to failing to provide these options. Because of this, estimated total costs to the industry for 102S filing should be lower than any cost associated with mandating either Method 1 or Method 2. Given the cost estimates for the two individual

[155] As with 102A records, the Commission estimates that in approximately 25 percent of filings, the owner and the controller of a volume threshold account reported on New Form 102B will be the same, and that accordingly, only one New Form 40 would be required. Similarly, a number of potential New Form 40 reporting entities are likely to own or control both DCM-related and SEF-related volume threshold accounts, but only one New Form 40 would be required.

[156] The Commission's estimate of 3 hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

[157] 17 CFR 18.05.

[158] The Commission estimates that each response takes approximately 5 hours. Existing § 18.05 therefore results in an annual reporting burden of approximately 2,700 hours. Using an estimated wage rate of $78.61 per hour, annual reporting costs in connection with existing § 18.05 are approximately $212,247.

[159] Proposed § 18.05 would result in an additional annual reporting burden of approximately 30 hours. Using an estimated wage rate of $78.61 per hour, proposed § 18.05 would result in additional annual reporting costs of approximately $2,358.

[160] 17 CFR 20.5(a)(3).

[161] All annualized development burden estimates are based on 5 year, straight line depreciation.

[162] 17 CFR 20.5.

[163] The Commission notes that this estimate for the number of 102S reporting entities is lower than the estimate provided in the Commission's final rules for part 20. The lower estimate is based on the Commission's experience with position reports pursuant to part 20 since the rules were made final.

[164] All annualized development burden estimates are based on 5 year, straight line depreciation.

methods discussed above, the Commission anticipates 102S filing costs to be no more than $393,050 (Method 2), the lower of the two estimated submission costs. In developing this estimate, the Commission does not make any assumptions about the behavior of an individual reporting entity. Reporting entities, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

40S Filings:[165] Persons that are subject to books and records requirements under existing § 20.6[166] and receive a special call from the Commission, would file New Form 40 via an online portal. The Commission's special call would likely be in the form of an email request that would contain a URL for the portal, and a unique login and password for access to the portal. Existing § 20.5(b),[167] which requires the 40S filing, would not be altered by this proposed rulemaking; as a result, the Commission estimates that a similar number of persons would be required to submit a 40S filing. Accordingly, the Commission anticipates that it would receive 40S submissions from approximately 500 filers annually. Each response is estimated to require 3 hours,[168] resulting in an estimated total annual reporting burden of 1,500 hours. Time required to update information contained in 40S filings would be *de minimis* on average. Using an estimated wage rate of $78.61 per hour, annual costs are estimated at $117,915.

b. *Recordkeeping burdens:*

As discussed above, the Commission proposes to expand § 18.05[169] to also impose books and records requirements upon volume threshold account controllers and owners of volume threshold accounts reported on New Form 102B, and on reportable sub-account controllers and persons who own a reportable sub-account reported on New Form 71 (in addition to traders who hold or control reportable positions). As a result, proposed § 18.05 would likely impose a recordkeeping burden on a larger number of persons than existing § 18.05. However, any additional persons subject to proposed § 18.05 may be able to rely on books and records already kept in the ordinary course of business to meet the requirements of the proposed regulation. Accordingly, the Commission believes that proposed § 18.05 would not meaningfully increase recordkeeping burdens on persons brought under its scope.

iv. Comments on Information Collection

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) mitigate the burden of the collection of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by email at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final regulation preamble. Refer to the **ADDRESSES** section of this Notice for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this Notice. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this Notice.

Proposed Rules

List of Subjects

17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 20

Physical commodity swaps, Swap dealers, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Act, as indicated herein, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. In § 15.00, revise paragraph (q) and add paragraphs (t) through (ee) to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 19, and 21 of this chapter.

* * * * *

(q) *Reporting market* means a designated contract market or a registered entity under § 1a(40) of the Act.

* * * * *

(t) *Control* means to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account. A special account or a consolidated account may have more than one controller.

(u) *Reportable trading volume* means contract trading volume that meets or exceeds the level specified in § 15.04 of this part.

(v) *Direct Market Access (''DMA'')* means a connection method that enables a market participant to transmit orders to a DCM's electronic trade matching system without re-entry by another person or entity, or similar access to the trade execution platform of a SEF. DMA can be provided directly by a DCM or SEF, or by a 3rd-party platform.

[165] The proposed rulemaking does not include provisions to revise § 20.5(b); however, current § 20.5(b) requires a person, after special call by the Commission, to submit a 40S filing which shall consist of the submission of Form 40. The proposed rulemaking does include changes to Form 40. Accordingly, the reporting burden associated with § 20.5(b) and the 40S filing is being recalculated to account for variations between current and New Form 40.

[166] 17 CFR 20.6.

[167] 17 CFR 20.5(b).

[168] The Commission's estimate of 3 hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

[169] 17 CFR 18.05.

(w) *Omnibus account* means any trading account that one futures commission merchant, clearing member or foreign broker carries for another and in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

(x) *Omnibus account originator* means any futures commission merchant, clearing member or foreign broker that executes trades for one or more customers via one or more accounts that are part of an omnibus account carried by another futures commission merchant, clearing member or foreign broker.

(y) *Volume threshold account* means any trading account that executes, or receives via allocation or give-up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act.

(z) *Omnibus volume threshold account* means any trading account that, on an omnibus basis, executes or receives via allocation or give-up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act.

(aa) *Omnibus reportable sub-account* means any trading sub-account of an omnibus volume threshold account, which sub-account executes reportable trading volume on an omnibus basis. Omnibus reportable sub-account also means any trading account that is itself an omnibus account, executes reportable trading volume, and is a sub-account of another omnibus reportable sub-account.

(bb) *Reportable sub-account* means any trading sub-account of an omnibus volume threshold account or omnibus reportable sub-account, which sub-account executes reportable trading volume.

(cc) *Trading account controller* means, for reports specified in § 17.01(a) of this chapter, a natural person who by power of attorney or otherwise actually directs the trading of a trading account. A trading account may have more than one controller.

(dd) *Volume threshold account controller* means a natural person who by power of attorney or otherwise actually directs the trading of a volume threshold account. A volume threshold account may have more than one controller.

(ee) *Reportable sub-account controller* means a natural person who by power of attorney or otherwise actually directs the trading of a reportable sub-account. A reportable sub-account may have more than one controller.

3. Revise § 15.01 (c) to read as follows:

§ 15.01 Persons required to report.

* * * * *

(c) As specified in part 18 of this chapter:

(1) Traders who own, hold, or control reportable positions;

(2) Volume threshold account controllers;

(3) Persons who own volume threshold accounts;

(4) Reportable sub-account controllers; and

(5) Persons who own reportable sub-accounts.

* * * * *

4. Revise § 15.02 to read as follows:

§ 15.02 Reporting forms.

Forms on which to report may be obtained from any office of the Commission or via the Internet (*http://www.cftc.gov*). Forms to be used for the filing of reports follow, and persons required to file these forms may be determined by referring to the rule listed in the column opposite the form number.

Form No.	Title	Rule
40	Statement of Reporting Trader	18.04
101	Positions of Special Accounts	17.00
102	Identification of Special Accounts, Volume Threshold Accounts, and Consolidated Accounts	17.01
204	Cash Positions of Grain Traders (including Oilseeds and Products)	19.00
304	Cash Positions of Cotton Traders	19.00
71	Identification of Omnibus Accounts and Sub-accounts	17.01

(Approved by the Office of Management and Budget under control numbers 3038–0007, 3038–0009, and 3038–[NEW])

5. Add § 15.04 to read as follows:

§ 15.04 Reportable trading volume level.

The volume quantity for the purpose of reports filed under parts 17 and 18 of this chapter is trading volume of 50 or more contracts, during a single trading day, on a single reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act, in all instruments that such reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months).

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

6. The authority citation for part 17 is revised to read as follows:

Authority: 7 U.S.C. 2, 6a, 6c, 6d, 6f, 6g, 6i, 6t, 7, 7a, and 12a, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

7. Revise § 17.00(g)(2)(iii) to read as follows:

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

* * * * *

(g) * * *

(2) * * *

(iii) Account Number. A unique identifier assigned by the reporting firm to each special account. The field is zero

filled with the account number right-justified. Assignment of the account number is subject to the provisions of § 17.00(b) and Form 102.

* * * * *

8. Revise § 17.01 to read as follows:

§ 17.01 Identification of special accounts, volume threshold accounts, and omnibus accounts.

(a) *Identification of special accounts.* When a special account is reported for the first time, the futures commission merchant, clearing member, or foreign broker shall identify the special account to the Commission on Form 102, in accordance with the form instructions and as specified in § 17.02(b).

(b) *Identification of volume threshold accounts.* Each clearing member shall identify and report its volume threshold accounts to the Commission on Form 102, in accordance with the form instructions and as specified in § 17.02(c).

(c) *Identification of omnibus accounts and sub-accounts.* Each originator of an omnibus volume threshold account identified in Form 102 or an omnibus reportable sub-account identified in Form 71 shall, after a special call upon such originator by the Commission or its designee, file with the Commission an ''Identification of Omnibus Accounts and Sub-Accounts'' on Form 71, to be completed in accordance with the instructions thereto, at such time and place as directed in the call.

(d) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, reporting markets that list exclusively self-cleared contracts shall meet the requirements of paragraphs (a) and (b) of this section, as they apply to trading in such contracts by all clearing members, on behalf of all clearing members.

(e) *Special call provision.* Upon a call by the Commission or its designee, the reports required to be filed by futures commission merchants, clearing members, foreign brokers, and reporting markets under paragraphs (a), (b), (c), and (d) of this section shall be submitted within 24 hours of the Commission or its designee's request in accordance with the instructions accompanying the request.

9. In § 17.02, revise the introductory text and paragraph (b) and add paragraph (c) to read as follows:

§ 17.02 Form, manner and time of filing reports.

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by reporting markets, futures commission merchants, clearing members, and foreign brokers under §§ 17.00 and 17.01 shall be filed as specified in paragraphs (a), (b), and (c) of this section.

* * * * *

(b) *Section 17.01(a) reports.* For data submitted pursuant to § 17.01(a) on Form 102:

(1) *Form of submission.* Form 102 must be submitted to the Commission in the form and manner provided on *www.cftc.gov.*

(2) *Time of submission.* For each account that is a special account, the futures commission merchant, clearing member, or foreign broker, as appropriate, shall submit a completed Form 102 to the Commission, in accordance with the instructions thereto, and in the manner specified by the Commission or its designee. Such form shall be submitted no later than the corresponding § 17.00(a) report filed pursuant to instructions in § 17.02(a), or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by § 17.02(b)(3) and (4).

(3) *Change updates.* If any change causes the information filed by a futures commission merchant, clearing member, or foreign broker on a Form 102 for a special account to no longer be accurate, then such futures commission merchant, clearing member, or foreign broker shall file an updated Form 102 with the Commission no later than 9 a.m. eastern time on the business day after such change occurs, or on such other date as directed by special call of the Commission, *provided that,* a futures commission merchant, clearing member, or foreign broker may stop providing change updates for a Form 102 that it has submitted to the Commission for any special account upon notifying the Commission that the account in question is no longer reportable as a special account.

(4) *Refresh updates.* For Special Accounts—Starting on a date specified by the Commission or its designee and at the end of each six month increment thereafter (or such later date specified by the Commission or its designee), each futures commission merchant, clearing member, or foreign broker shall resubmit every Form 102 that it has submitted to the Commission for each of its special accounts, *provided that,* a futures commission merchant, clearing member, or foreign broker may stop providing refresh updates for a Form 102 that it has submitted to the Commission for any special account upon notifying the Commission that the account in question is no longer reportable as a special account.

(c) *Section 17.01(b) reports.* For data submitted pursuant to § 17.01(b) on Form 102:

(1) *Form of submission.* Form 102 must be submitted to the Commission in the form and manner provided on *www.cftc.gov.*

(2) *Time of submission.* For each account that is a volume threshold account, the clearing member shall submit a completed Form 102 to the Commission, in accordance with the instructions thereto, and in the manner specified by the Commission or its designee, no later than 9 a.m. eastern time on the business day following the day in which the account in question becomes a volume threshold account, or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by § 17.02(c)(3) and (4).

(3) *Change updates.* If any change causes the information filed by a clearing member on a Form 102 for a volume threshold account to no longer be accurate, then such clearing member shall file an updated Form 102 with the Commission no later than 9 a.m. eastern time on the business day after such clearing member is aware of such change, or on such other date as directed by special call of the Commission, *provided that,* a clearing member may stop providing Form 102 change updates for a volume threshold account upon notifying the Commission that the volume threshold account executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level.

(4) *Refresh updates.* For Volume Threshold Accounts—Starting on a date specified by the Commission or its designee and at the end of each six month increment thereafter (or such later date specified by the Commission or its designee), each clearing member shall resubmit every Form 102 that it has submitted to the Commission for each of its volume threshold accounts, *provided that,* a clearing member may stop providing refresh updates for a Form 102 that it has submitted to the Commission for any volume threshold account upon notifying the Commission that the volume threshold account executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level.

10. Revise section 17.03 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.

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in the paragraphs below to either the Director of the Office of Data and Technology or the Director of the Division of Market Oversight, as indicated below, to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by such Director. The Director of the Office of Data and Technology or the Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated to such Director in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(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 can report the information required under § 17.00(a) and (h) on series '01 forms or using some other 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.

(b) Pursuant to § 17.02, the authority shall be designated to the Director of the Office of Data and Technology to instruct or approve the time at which the information required under §§ 17.00 and 17.01(a) and (b) must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in § 17.02.

(c) Pursuant to § 17.01, the authority shall be designated to the Director of the Office of Data and Technology to determine whether to permit an authorized representative of a firm filing the Form 102 or person filing the Form 71 to use a means of authenticating the report other than by signing the Form 102 or Form 71 and, if so, to determine the alternative means of authentication that shall be used.

(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).

(e) Pursuant to § 17.01(c), the authority shall be designated to the Director of the Office of Data and Technology to make special calls on omnibus volume threshold account originators and omnibus reportable sub-account originators for information as set forth in § 17.01(c).

(f) Pursuant to § 17.02(b)(4), the authority shall be designated to the Director of the Division of Market Oversight to determine the date on which each futures commission merchant, clearing member, or foreign broker shall update or otherwise resubmit every Form 102 that it has submitted to the Commission for each of its special accounts.

(g) Pursuant to § 17.02(c)(4), the authority shall be designated to the Director of the Division of Market Oversight to determine the date on which each clearing member shall update or otherwise resubmit every Form 102 that it has submitted to the Commission for each of its volume threshold accounts.

PART 18—REPORTS BY TRADERS

11. The authority citation for part 18 is revised to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 6t, 12a, and 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

12. Revise § 18.04 to read as follows:

§ 18.04 Statement of reporting trader.

(a) Every trader who owns, holds, or controls a reportable futures and option position shall after a special call upon such trader by the Commission or its designee file with the Commission a ''Statement of Reporting Trader'' on the Form 40, to be completed in accordance with the instructions thereto, at such time and place as directed in the call.

(b) Every volume threshold account controller, person who owns a volume threshold account, reportable sub-account controller, and person who owns a reportable sub-account shall after a special call upon such person by the Commission or its designee file with the Commission a ''Statement of Reporting Trader'' on the Form 40, to be completed in accordance with the instructions thereto, at such time and place as directed in the call.

13. In § 18.05 revise paragraph (a) introductory text and paragraphs (b) and (c), to read as follows:

§ 18.05 Maintenance of books and records.

(a) Every volume threshold account controller, person who owns a volume threshold account, reportable sub-account controller, person who owns a reportable sub-account, and trader who owns, holds, or controls a reportable futures or option position, shall keep books and records showing all details concerning all positions and transaction in the commodity:

* * * * *

(b) Every such volume threshold account controller, person who owns a volume threshold account, reportable sub-account controller, person who owns a reportable sub-account, and trader who owns, holds, or controls a reportable futures or option position shall also keep books and records showing all details concerning all positions and transactions in the cash commodity, its products and byproducts, and all commercial activities that it hedges in the futures or option contract in which it is reportable.

(c) Every volume threshold account controller, person who owns a volume threshold account, reportable sub-account controller, person who owns a reportable sub-account, and trader who owns, holds, or controls a reportable futures or option position shall upon request furnish to the Commission any pertinent information concerning such positions, transactions, or activities in a form acceptable to the Commission.

PART 20—LARGE TRADER REPORTING FOR PHYSICAL COMMODITY SWAPS

14. The authority citation for part 20 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

15. In § 20.5, revise paragraphs (a)(1) and (2) and add paragraphs (a)(4) and (5) to read as follows:

§ 20.5 Series S filings.

(a) * * *

(1) When a counterparty consolidated account first becomes reportable, the reporting entity shall submit a 102S filing, as set forth in Appendix A to part 17, in accordance with the form instructions and as specified in this section, including § 20.5.

(2) A reporting entity may submit a 102S filing only once for each counterparty, even if such persons at various times have multiple reportable positions in the same or different paired swaps or swaptions.

* * * * *

(4) *Change updates.* If any change causes the information filed by a clearing member or swap dealer on a Form 102 for a consolidated account to no longer be accurate, then such clearing member or swap dealer shall file an updated Form 102 with the

Commission no later than 9 a.m. eastern time on the business day after such change occurs, or on such other date as directed by special call of the Commission, *provided that,* a clearing member or swap dealer may stop providing change updates for a Form 102 that it has submitted to the Commission for any consolidated account upon notifying the Commission that the account in question is no longer reportable as a consolidated account.

(5) *Refresh updates.* For Consolidated Accounts—Starting on a date specified by the Commission or its designee and at the end of each six month increment thereafter (or such later date specified by the Commission or its designee), each clearing member or swap dealer shall resubmit every Form 102 that it has submitted to the Commission for each of its consolidated accounts, *provided that,* a clearing member or swap dealer may stop providing refresh updates for a Form 102 that it has submitted to the Commission for any consolidated account upon notifying the Commission that the account in question is no longer reportable as a consolidated account.

* * * * *

Issued in Washington, DC, on June 27, 2012 by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following Annex will not appear in the Code of Federal Regulations.

BILLING CODE P

ANNEX—FORMS 102, 40 AND 71

CFTC FORM 102
Identification of Special Accounts, Volume Threshold Accounts, and Consolidated Accounts

NOTICE: Failure to file a report required by the Commodity Exchange Act ("CEA" or the "Act")[170] and the regulations thereunder,[171] or the filing of a report with the Commodity Futures Trading Commission ("CFTC" or "Commission") that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of § 6(c)(2) of the Act (7 USC 9, 15), § 9(a)(3) of the Act (7 USC 13(a)(3)), and/or § 1001 of Title 18, Crimes and Criminal Procedure (18 USC 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission's authority for soliciting this information is granted in sections 4a, 4c(b), 4g, 4i and 8 of the CEA and related regulations (*see*, *e.g.*, 17 CFR § 17.01(b)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (*see*, *e.g.*, 7 U.S.C. §§ 9 and 13a-1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission's market and trade practice surveillance activities to (a) provide information concerning the size and composition of the commodity derivatives markets, (b) permit the Commission to monitor and enforce speculative position limits and (c) enhance the Commission's trade surveillance data. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to contract markets to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with, the CFTC System of Records Notices, available on www.cftc.gov.

[170] 7 U.S.C. section 1, *et seq*.

[171] Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq*.

BACKGROUND & INSTRUCTIONS

17 CFR § 17.01(a) requires each futures commission merchant, clearing member, or foreign broker to identify and report its special accounts to the Commission on Form 102. 17 CFR § 17.01(b) requires each clearing member to identify and report its volume threshold accounts to the Commission on Form 102. In addition, 17 CFR § 20.5 requires each reporting entity holding or carrying a consolidated account with a reportable position to identify and report the counterparty of such account to the Commission by submitting a 102S filing. As appropriate, please follow the instructions below to generate and submit the required report or filing. Unless the context requires otherwise, the terms used herein shall have the same meaning as ascribed in parts 15 to 21 of the Commission's regulations.

Complete Form 102 as follows:

General Information – Cover Sheet:	All filers.
Section 102A:	Only complete when submitting Form 102 for a special account.
Section 102B:	Only complete when submitting Form 102 for a volume threshold account.
Section 102S:	Only complete when submitting a 102S filing.
Signature/Authentication:	All filers.

Submitting Form 102: Once completed, please submit this form to the Commission pursuant to the instructions on [www.cftc.gov] or as otherwise directed by Commission staff. If submission attempts fail, the reporting trader shall contact the Commission at [techsupport@cftc.gov] for further technical support.

Please be advised that pursuant to 5 CFR § 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

General Information – Cover Sheet.

Please indicate the type of account to be reported (choose only one):

Special Account (please complete section 102A)	☐
Volume Threshold Account 102 (please complete section 102B)	☐
Consolidated Account 102S filing (please complete section 102S)	☐

Reporting Firm Contact Information:[172]

Whether submitting Form 102 for a special account, volume threshold account, or as a 102S filing for a consolidated account, please provide the contact information of the reporting firm and, as applicable, indicate whether the reporting firm is a futures commission merchant, clearing member, foreign broker, and/or swap dealer. In addition, provide the reporting firm's reporting firm ID.[173]

Name of Reporting Firm:
Street Address:
City:
State:
Country:
Zip/Postal Code:
Reporting Firm Contact Name (a natural person, "Contact"):
Contact Job Title:
Contact Phone Number:
Contact Email Address:
Firm Website:
Firm NFA ID (if any):
Firm Legal Entity Identifier (if any):
Reporting Firm Type(s) (mark all that apply):

☐ Futures commission merchant

☐ Clearing member

☐ Foreign broker

☐ Swap dealer

☐ Other: _____

Reporting Firm ID:

[172] The term "reporting firm" as used herein may refer to a futures commission merchant, clearing member, foreign broker, swap dealer, or other reporting entity, as appropriate.
[173] The "reporting firm ID" is an alpha-numeric identifier assigned by the Commission.

Section 102A – Identifying and reporting a *special account*.

1. *New/Modified Indicator:*

☐ Special account being reported for the first time

☐ Re-submitted or modified Information for a previously reported special account

2. *Special Account Origination.*

For each special account, indicate whether the account is being reported based on ownership of a reportable position, control of a reportable position, both ownership and control of a reportable position, or because it is an omnibus account with a reportable position (choose only one):

Ownership of a reportable position (complete questions 3, 4, 6, 9, 10, and 11)	☐
Control of a reportable position (complete questions 3, 7, 9, 10,and 11)	☐
Ownership and control of a reportable position (complete questions 3, 6, 7, 9, 10, and 11)	☐
Omnibus account with a reportable position[174] (complete questions 3, 5, 8, 9, 10, and 11)	☐

3. *Reporting number and name.*[175]

Provide the reporting number and name of the special account.

Special Account Number:
Special Account Name:

4. *House or Customer Indicator.*

If the reported special account is being reported based on ownership of a reportable position, indicate whether the special account is a house or customer account of the reporting firm:

☐ HOUSE

☐ CUSTOMER

[174] Omnibus accounts are accounts that one futures commission merchant, clearing member or foreign broker carries for another in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

[175] Reporting firms shall assign a reporting number and name to each special account when it is reportable for the first time in futures or options. If an account has been assigned a number and name for reporting in futures (options), use the same number and name for reporting options (futures). Such reporting number and name must not be changed or assigned to any other special account without the prior approval of the Commission.

5. *Omnibus Account Information.*

If the reported special account is an omnibus account, indicate whether the account is a house or customer omnibus account:[176]

☐ HOUSE

☐ CUSTOMER

6. *Special Account Owner(s) Contact Information.*

Provide the following information regarding the owner of this special account. Owners may be natural persons or any type of legal entity.

Indicate whether the owner is a legal entity or a natural person:
Legal entity: ☐
Natural person: ☐
Name of Special Account Owner:
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Email Address:
Contact Name (if owner not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:
Contact Email Address:
Owner Website (if any):
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):

7. *Special Account Controller(s) Contact Information.*

Provide the following information regarding the controller of this special account. Controllers may be natural persons or any type of legal entity.

Indicate whether the controller is a legal entity or a natural person:
Legal entity: ☐
Natural person: ☐
Name of Special Account Controller:
Street Address:
City:

[176] House omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.

State:
Country:
Zip/Postal Code:
Phone Number:
Email Address:
Contact Name (if controller not a natural person):
    Contact Job Title:
    Contact Relationship to Controller:
    Contact Phone Number:
    Contact Email Address:
Controller Website (if any):
Controller NFA ID (if any):
Controller Legal Entity Identifier (if any):

8. *Omnibus Account Originator Contact Information*.

Provide contact information for the originator of the omnibus account in this special account.

Name of Omnibus Account Originator:
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Contact Name:
    Contact Job Title:
    Contact Relationship to Originator:
    Contact Phone Number:
    Contact Email Address:
Originator Website (if any):
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):

9. *Identification of Trading Account(s) that Comprise the Special Account.*

For each special account reported by an entity acting as a *clearing member*, provide the trading account number(s), and any related short code(s), that comprise this special account. Also identify the reporting market at which each trading account number appears.

Trading Account Number:
Short Code(s):
Reporting Market:

10. *Market Access.*

For each trading account identified in question 9, indicate whether the trading account has been granted direct market access ("DMA") to the trade matching system of the respective reporting market identified in question 9.

DMA Status:

☐ YES

☐ NO

11. Trading Account Ownership and Control Information.

(i) Omnibus Account Information.

For each trading account identified in question 9, is such account an omnibus account, or used to execute trades for an omnibus account?

☐ YES

☐ NO

If NO, proceed to (ii) and (iii), below. If YES, indicate whether the account is a house or customer omnibus account and provide contact information for the originator of the omnibus account:[177]

☐ HOUSE

☐ CUSTOMER

Name of Omnibus Account Originator:
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:
Contact Email Address:
Originator Website (if any):
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):

(ii) Trading Account Owner(s).

For each trading account identified in question 9 that is not an omnibus account, provide the requested information for each owner ("owner").

Indicate whether the owner is a legal entity or a natural person:

[177] As above, house omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.

Legal entity: ☐

Natural person: ☐

Name of Trading Account Owner(s):
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Email Address (if owner(s) a natural person):
Contact Name (provide only if owner is not a natural person):

Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:
Contact Email Address:

Owner Website (if any):
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):

(iii) Trading Account Controller(s).

For each trading account identified in question 9 that is not an omnibus account, provide the requested information for each controller ("controller"). NOTE: As defined in §15.00, the controller identified for a trading account that comprises or pertains to a special account must be a natural person.

Name of Trading Account Controller(s):
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Name of Employer:
Employer NFA ID (if any):
Employer Legal Entity Identifier (if any):
Job Title:
Relationship to Owner:
Email Address:
Controller NFA ID (if any):

12. For Reporting Firms That Are Foreign Brokers.

If the reporting firm indicated that it is a foreign broker in the "Reporting Firm Contact Information" above, identify the reporting firm's U.S. futures commission merchant.

Name of U.S. futures commission merchant:
Street Address:
City:
State:
Country:
Zip/Postal Code:
Contact Name at U.S. futures commission merchant (a natural person,

"Contact"):
Contact Job Title:
Contact Phone Number:
Contact Email Address:

_____

Section 102B – Identifying and reporting a *volume threshold account.*

1. *New/Modified Indicator:*

☐ Volume threshold account being reported for the first time

☐ Re-submitted or modified Information for a previously reported volume threshold account

2. *Trading Account Data for the Volume Threshold Account.*

Provide the trading account number, and any related short code(s), deemed to be a volume threshold account. Also identify the reporting market at which the volume threshold account had reportable trading volume.

Trading Account Number:
Short Code(s):
Reporting Market:

3. *Market Access.*

Indicate whether the volume threshold account has been granted direct market access ("DMA") to the trade matching system or trade execution platform of the respective reporting market identified above.

DMA Status:

☐ YES

☐ NO

4. *Associated Special Account Number.*

If the volume threshold account has been previously identified as a trading account that comprises a special account(s) reported by a clearing member in question 9 in section 102A of this form, provide the associated special account number(s).

5. *Omnibus Account Information.*[178]

Is the reported volume threshold account an omnibus account, or used to execute trades for an omnibus account?

☐ YES

[178] As above, omnibus accounts are accounts that one futures commission merchant, clearing member or foreign broker carries for another in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

☐ NO

If NO, proceed to (6) and (7), below. If YES, indicate whether the account is a house or customer omnibus account and provide contact information for the originator of the omnibus account:[179]

☐ HOUSE

☐ CUSTOMER

Name of Omnibus Account Originator:
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:
Contact Email Address:
Originator Website (if any):
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):

6. *Volume Threshold Account Owner(s).*

For each volume threshold account that is not an omnibus account, provide the requested information for each owner ("owner").

Indicate whether the owner is a legal entity or a natural person:
Legal entity: ☐
Natural person: ☐
Name of Volume Threshold Account Owner(s):
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Email Address (if owner(s) a natural person):
Contact Name (provide only if owner is not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:
Contact Email Address:
Owner Website (if any):
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):

[179] As above, house omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.

7. *Volume Threshold Account Controller(s).*

For each volume threshold account identified that is not an omnibus account, provide the requested information for each volume threshold account controller ("controller"). NOTE: As defined in §15.00, a volume threshold account controller must be a natural person.

Name of Volume Threshold Account Controller(s):
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Name of Employer:
Employer NFA ID (if any):
Employer Legal Entity Identifier (if any):
Job Title:
Relationship to Owner:
Email Address:
Controller NFA ID (if any):

Section 102S – Identifying and reporting a swap counterparty or customer *consolidated account* with a reportable position (102S filing).

1. *New/Modified Indicator.*

☐ Counterparty or customer reported for the first time

☐ Re-submitted or modified Information for a previously reported counterparty or customer

2. *102S Identifier.* Please enter the identifier for the consolidated account reported herein. A 102S identifier is a unique identifier for each reporting entity or counterparty/customer as assigned by the reporting entity. If the reporting entity currently identifies a counterparty via Section 102A of a Form 102, the identifier used on Section 102A of the Form 102 may also be used for the 102S identifier, as long as the same legal entity is referenced.

102S identifier:

3. *Counterparty or Customer Ownership and Control Information.* Please provide the requested counterparty or customer contact information for both owners and controllers of the consolidated account.

(i) *Consolidated Account Type.* Please indicate the consolidated account type:

☐ HOUSE ACCOUNT

☐ CUSTOMER ACCOUNT

(ii) *Omnibus Account Information.*[180]

Is the reported consolidated account an omnibus account, or used to execute trades for an omnibus account?

☐ YES

☐ NO

If NO, proceed to (iii) and (iv), below. If YES, indicate whether the account is a house or customer omnibus account and provide contact information for the originator of the omnibus account:[181]

☐ HOUSE

☐ CUSTOMER

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[180] As above, omnibus accounts are accounts that one futures commission merchant, clearing member or foreign broker carries for another in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

[181] As above, house omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.

Name of Omnibus Account Originator:
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:
Contact Email Address:
Originator Website (if any):
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):

(iii) Consolidated Account Owner(s).

For each reportable consolidated account that is not an omnibus account, provide the requested information for each owner ("owner").

Indicate whether the owner is a legal entity or a natural person:
Legal entity: ☐
Natural person: ☐
Name of Consolidated Account Owner(s):
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Email Address (if owner(s) a natural person):
Contact Name (provide only if owner is not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:
Contact Email Address:
Owner Website (if any):
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):

(iv) Consolidated Account Controller(s).

For each reportable consolidated account that is not an omnibus account, provide the requested information for each controller ("controller"). Controllers may be natural persons or any type of legal entity.

Indicate whether the controller is a legal entity or a natural person:
Legal entity: ☐
Natural person: ☐
Name of Consolidated Account Controller(s):

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Email Address:
Contact Name (provide only if controller is not a natural person):
Contact Job Title:
Contact Relationship to controller:
Contact Phone Number:
Contact Email Address:
Controller NFA ID (if any):
Controller Legal Entity Identifier (if any):

4. *Paired Swaps and Swaptions Market Activity*. Provide a brief description of the nature of the counterparty's or customer's paired swaps and swaptions market activity (please include a response for each type of paired swap or swaption market activity):

Enter the description here:

Signature/Authentication.

1. *Please sign/authenticate the Form 102 prior to submitting.*

Signature/Electronic Authentication:

☐ By checking this box and submitting this form (or by clicking "submit," "send," or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by the reporting firm identified below to provide the information and representations submitted on this Form 102, and that the information and representations are true and correct.

Reporting Firm Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

Submitted on behalf of:

_____ (Reporting Firm Name)

Date of Submission:

_____

CFTC FORM 40
STATEMENT OF REPORTING TRADER

NOTICE: Failure to file a report required by the Commodity Exchange Act ("CEA" or the "Act")[182] and the regulations thereunder,[183] or the filing of a report with the Commodity Futures Trading Commission ("CFTC" or "Commission") that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of § 6(c)(2) of the Act (7 USC 9, 15), § 9(a)(3) of the Act (7 USC 13(a)(3)), and/or § 1001 of Title 18, Crimes and Criminal Procedure (18 USC 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission's authority for soliciting information from traders with large futures, option, swap, or other derivatives market positions is granted in sections 4a, 4i, 4t and 8 of the CEA (*see* 7 U.S.C. §§ 6i and 12). The Commission's authority for soliciting information from volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts is granted in sections 4i and 8 of the CEA and related regulations (*see, e.g.*, 17 CFR § 18.04(b)). Such entities and individuals are required to provide the information requested, and failure to comply may result in the imposition of criminal or administrative sanctions (*see*, *e.g.*, 7 U.S.C. §§ 9 and 13a-1, and/or 18 U.S.C. 1001).

The information requested is most commonly used in the Commission's market and trade practice surveillance activities to (a) provide information concerning the size and composition of the commodity derivatives markets, (b) permit the Commission to monitor and enforce speculative position limits and (c) enhance the Commission's trade surveillance data. Information contained in these records may be used by the Commission in the conduct of investigations or litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to contract markets to meet responsibilities assigned to them by law. In accordance with the Privacy Act and the Commission's rules thereunder (*see* 17 CFR § 146), the complete listing of uses of the information contained in these records is found in the Commission's System of Records Notices, available on www.cftc.gov. These uses include CFTC-15, Large Trader Report Files (Integrated Surveillance System).

Information contained in these records may be used by the Commission in the conduct of investigations or litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to reporting markets to meet responsibilities assigned to them by law.

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[182] 7 U.S.C. section 1, *et seq*.

[183] Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq*.

GENERAL INSTRUCTIONS

Who Must File a Form 40 – 17 CFR § 18.04(a) requires every person who owns or controls a reportable position to file a Form 40 – Statement of Reporting Trader with the Commission. 17 CFR § 18.04(b) requires every volume threshold account controller, person who owns a volume threshold account, reportable sub-account controller, and person who owns a reportable sub-account to file a Form 40 – Statement of Reporting Trader with the Commission. 17 CFR § 20.5 requires every person subject to books or records under 17 CFR § 20.6 to file a 40S filing[184] with the Commission.

When to file – A reporting trader must file a Form 40 on call by the Commission or its designee.

Where to file – The Form 40 shall be filed by submitting the completed form to the nearest CFTC office or as otherwise instructed by the Commission or its designee. Generally, a Form 40 should be submitted via the CFTC's web-based Form 40 submission process at [www.cftc.gov]. If submission attempts fail, the reporting trader shall contact the Commission at [techsupport@cftc.gov] for further technical support.

When to update – A reporting trader must update and maintain the accuracy of its Form 40 profile information on the CFTC's web-based Form 40 portal, as directed by the Commission or its designee in a special call, by periodically visiting the portal to review, verify, and/or update this information.

Signature – Each Form 40 submitted to the Commission must be signed or otherwise authenticated by either (1) the reporting trader submitting the form or (2) an individual that is duly authorized by the reporting trader to provide the information and representations contained in the form.

What to File – All reporting traders that are filing a Form 40 pursuant to either 17 CFR § 18.04(a) (*i.e.* reportable position reporting traders) or 17 CFR § 20.5 (*i.e.* swaps books and records reporting traders) must complete all questions. All reporting traders that are filing a Form 40 pursuant to 17 CFR § 18.04(b) (*i.e.* volume threshold account controllers, persons who own a volume threshold account, reportable sub-account controllers, and persons who own a reportable sub-account reporting trader) must complete all questions *unless they are natural persons*. Reporting traders that are filing a Form 40 pursuant to 17 CFR § 18.04(b) who are natural persons shall mark not applicable for questions 7 and 8.

Please be advised that pursuant to 5 CFR § 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

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[184] As used in this document, "Form 40" may refer to either a Form 40 – Statement of Reporting Trader or a 40S Filing, as appropriate, and as the context may require.

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ACKNOWLEDGEMENT OF DEFINITIONS

Before proceeding with your submission, please check this box to indicate that you have read the definitions for the following terms – as they are used in the Form 40: ☐

Commodity (or commodities) – generally, all goods and articles (except onions and motion picture box office receipts, or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value, or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in (*see* 7 USC 1a(9)).

Commodity index Trading ("CIT") – means:

a. An investment strategy that consists of investing in an instrument (*e.g.*, a commodity index fund, exchange-traded fund for commodities, or exchange-traded note for commodities) that enters into one or more derivative contracts to track the performance of a published index that is based on the price of one or more commodities, or commodities in combination with other securities; or

b. An investment strategy that consists of entering into one or more derivative contracts to track the performance of a published index that is based on the price of one or more commodities, or commodities in combination with other securities.

Control – as used in this Form, "control" means to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account. A special account or a consolidated account may have more than one controller.

Derivatives – futures, options, swaps, and swaptions.

Omnibus volume threshold account - means any trading account that, on an omnibus basis, executes or receives via allocation or give up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act.

Parent – for purposes of Form 40, a person is a parent of a reporting trader if it has a direct or indirect controlling interest in the reporting trader; and a person has a controlling interest if such person has the ability to control the reporting trader through the ownership of voting equity, by contract, or otherwise.

Person – an individual, association, partnership, corporation, trust, or government agency and/or department.
Reportable sub-account – means any trading sub-account of an omnibus volume threshold account or omnibus reportable sub-account, which sub-account executes reportable trading volume.

Reportable sub-account controller – means a natural person who by power of attorney or otherwise actually directs the trading of a reportable sub-account. A reportable sub-account may have more than one controller.

Reportable trading volume – means contract trading volume that meets or exceeds the level specified in 17 CFR § 15.04.

Reporting trader – a person who must file a Form 40, whether pursuant to 17 CFR § 18.04(a), 17 CFR § 18.04(b), or 17 CFR § 20.05.

Subsidiary – for purposes of Form 40, a person is a subsidiary of a reporting trader if the reporting trader has a direct or indirect controlling interest in the person; and a reporting trader has a controlling interest if such reporting trader has the ability to control the person through the ownership of voting equity, by contract, or otherwise.

Volume threshold account – means any trading account that executes, or receives via allocation or give up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act.
Volume threshold account controller – means a natural person who by power of attorney or otherwise actually directs the trading of a volume threshold account. A volume threshold account may have more than one controller.

CFTC FORM 40

General Information for Reporting Trader:
For question 1, please provide the name, contact information and other requested information regarding the reporting trader. If the reporting trader is an individual, provide their full legal name and the name of the reporting trader's employer.

1. Indicate whether the reporting trader is a legal entity or a natural person:
   Legal entity: □

   Natural person: □

   Name of Reporting Trader
   Street Address
   City
   State
   Country
   Zip/Postal Code
   Phone Number
   Email Address
   Website
   NFA ID (if any)
   Legal Entity Identifier (if any)
   Name of Employer
   Employer NFA ID (if any)
   Employer Legal Entity Identifier (if any)

Contact Information:
For questions 2, 3, and 4, provide the name and contact information as requested.

2. Individual to contact regarding the derivatives trading of the reporting trader (this individual should be able to answer specific questions about the reporting trader's trading activity when contacted by Commission staff):

   Check here if this individual has the same contact information as that of the reporting trader.
   Name
   Street Address
   City
   State
   Country
   Zip/Postal Code
   Phone Number
   Email Address
   NFA ID (if any)

3. Individual to contact regarding the risk management operations of the reporting trader (this individual should be able to answer specific questions about the reporting trader's risk management operations, including account margining, when contacted by Commission staff):

Check here if this individual has the same contact information as that of the reporting trader.
Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number
Email Address
NFA ID (if any)

4. Individual responsible for the information on the Form 40 (this individual should be able to verify, clarify, and explain the answers submitted by a reporting trader on the Form 40):

Check here if this individual has the same contact information as that of the reporting trader.
Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number
Email Address
NFA ID (if any)

Omnibus Account Identification:
For question 5, indicate whether the reporting trader has a customer omnibus account with a futures commission merchant, clearing member, or foreign broker (NOTE: For the purpose of this question, an omnibus account is an account that one futures commission merchant, clearing member or foreign broker carries for another in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm. In addition, the Commission has traditionally identified omnibus accounts as either *house* or *customer* omnibus accounts. House omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity):

5. Does the reporting trader have a customer omnibus account with a futures commission merchant, clearing member, or foreign broker? YES/NO
IF YES, Give the name(s) of the futures commission merchant, clearing member, or foreign broker carrying the account(s) of the reporting trader.

Foreign Government Affiliation:
For question 6, please complete the following (NOTE: For the purpose of this question, affiliation can include, but is not limited to, a situation (1) where the foreign government directly or indirectly controls the reporting trader's assets, operations, and/or derivatives trading, or (2) where the reporting trader

operates as a direct or indirect subsidiary of a foreign government, its agencies or departments, or any investment program of the foreign government):

6. Is the reporting trader directly or indirectly affiliated with a government other than that of the United States? YES/NO

   IF YES, give the name of the government(s).
   IF YES, explain the nature of the affiliation between the reporting trader and the government(s) listed above.

Non-Domestic Entity Indicator.
For question 7, if the Reporting Trader is a legal entity, please complete the following.

7. Is the reporting trader organized under the laws of a country other than the United States? YES/NO
   IF YES, give the name of the country or countries under whose laws the reporting trader is organized.

Ownership Structure of the Reporting Trader:
For questions 8 and 9, provide the requested ownership information only as applicable.
If the Reporting Trader is a commodity pool, also provide the requested information in questions 8i, 8ii, and 8iii. If the Reporting Trader is reporting commodity pools in which it has an ownership interest, also provide the requested information in questions 9i, 9ii, and 9iii.

8. List all the parents of the reporting trader (including the immediate parent and any parent(s) of its parent) and, separately, all persons that have a 10 percent or greater ownership interest in the reporting trader (commodity pool investors are deemed to have an ownership interest in the pool). For each such parent or 10 percent or greater owner include the following information:

   Indicate whether the party identified below is a legal entity or a natural person:

   Legal entity: □

   Natural person: □

   Name
   Street Address
   City
   State
   Country
   Zip/Postal Code
   Phone Number
   Website
   Email Address
   NFA ID (if any)
   Legal Entity Identifier (if any)
   Parent Company/10% Owner/ or Both Indicator

   8i. For each person identified in question 8 that is a limited partner, shareholder, or other similar type of pool participant, indicate if they are a principal or affiliate of the operator of the commodity pool.

Principal/Affiliate Indicator

8ii. For each person identified in question 8 that is a limited partner, shareholder, or other similar type of pool participant, indicate if they are also a commodity pool operator of the pool.

Commodity Pool Operator Indicator

8iii. For each person identified in question 8 that is a limited partner, shareholder, or other similar type of pool participant and where the operator of the commodity pool is exempt from registration under §4.13 of the Commission's regulations, indicate if that person has an ownership or equity interest of 25 percent or greater in the commodity pool.

25% Ownership Indicator

9. List all the subsidiaries of the reporting trader (including the immediate subsidiary and any subsidiaries of those subsidiaries) and, separately, all persons in which the reporting trader has a 10 percent or greater ownership interest (including a 10 percent or greater interest in a commodity pool(s)). Only list subsidiaries and persons that engage in derivatives trading. For each such subsidiary and/or person include the following information:

Indicate whether the party identified below is a legal entity or a natural person:

Legal entity: □

Natural person: □

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number
Website
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)
Subsidiary/10% Ownership/ or Both Indicator

9i. For each person identified in question 9 that is a commodity pool and for which you are a limited partner, shareholder or other similar type of pool participant, indicate if you are a principal or affiliate of the operator of the commodity pool.

Principal/Affiliate Indicator

9ii. For each person identified in question 9 that is a commodity pool and for which you are a limited partner, shareholder or other similar type of pool participant, indicate if you are the commodity pool operator for the pool.

Commodity Pool Operator Indicator

9iii. For each person identified in question 9 that is a commodity pool and for which you are a limited partner, shareholder or other similar type of pool participant and for which the operator of the commodity pool is exempt from registration under §4.13 of the Commission's regulations, indicate if you have an ownership or equity interest of 25 percent or greater in the commodity pool.

25% Ownership Indicator

Control of Trading:
For questions 10, 11, 12, and 13 provide the requested control information only as applicable.

10. List all persons outside of the reporting trader that control some or all of the derivatives trading of the reporting trader (including persons that may have been previously identified as a parent, above):

    Indicate whether the party identified below is a legal entity or a natural person:

    Legal entity: □

    Natural person: □

    Name
    Street Address
    City
    State
    Country
    Zip/Postal Code
    Phone Number
    Website
    Email Address
    NFA ID (if any)
    Legal Entity Identifier (if any)
    Some/All Indicator

11. List all persons for which the reporting trader controls some or all of the derivatives trading (including persons that may have been previously identified as a subsidiary, above):

    Indicate whether the party identified below is a legal entity or a natural person:

    Legal entity: □

    Natural person: □

    Name
    Street Address
    City
    State
    Country
    Zip/Postal Code
    Phone Number
    Website
    Email Address
    NFA ID (if any)
    Legal Entity Identifier (if any)

Some/All Indicator

12. List any other person(s) that directly or indirectly influence, or exercise authority over, some or all of the trading of the reporting trader, but who do not exercise "control" as defined in this Form:
Indicate whether the party identified below is a legal entity or a natural person:

Legal entity: □

Natural person: □

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number
Website
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)
Some/All Indicator

13. Is some or all of the derivatives trading of the reporting trader subject to an express or implied agreement or understanding with any other person(s) not addressed in questions 10, 11, or 12, above? YES/NO
If yes, provide the following information:

Indicate whether the party identified below is a legal entity or a natural person:

Legal entity: □

Natural person: □

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number
Website
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)
Some/All Indicator

Commodity Index Trading Indicator:
For question 14, please answer the following:

14i. Is the reporting trader engaged in commodity index trading as defined in paragraph (a) of the definition of CIT above? YES/NO

14ii. Is the reporting trader engaged in commodity index trading as defined in paragraph (b) of the definition of CIT above? YES/NO

a. If the reporting trader is engaged in CIT (as defined in paragraph (b)) with respect to one or more commodities or commodity groups appearing on Supplemental List II, indicate whether the reporting trader is, in the aggregate, pursuing long exposure or short exposure with respect to such commodities or commodity groups. It is not necessary to respond to this question with respect to CIT that tracks the performance of multiple unrelated commodities or commodity groups (*e.g.*, an investment in an exchange-traded fund that tracks the performance of an index representing commodities spanning multiple commodity groups).

14iii. If the reporting trader is currently engaged in commodity index trading as defined in paragraphs (a) or (b) of the CIT definition above, indicate the month and year on which the reporting trader first became engaged in commodity index trading.

Swaps Participation Indicators
For questions 15 and 16, please indicate if the reporting trader meets the specified definition:

15. Is the reporting trader a Swap Dealer, as defined in § 1.3(ppp) of regulations under the Commodity Exchange Act? YES/NO

16. Is the reporting trader a Major Swap Participant, as defined in § 1.3(qqq) of regulations under the Commodity Exchange Act? YES/NO

Nature of Business and of Derivatives Trading Activities:
For questions 17, 18, and 19 provide the requested information only as applicable.

17. Select all business sectors and subsectors that pertain to the business activities or occupation of the reporting trader. If more than one business subsector is selected, indicate which business subsector primarily describes the nature of the reporting trader's business.

Choose from Supplemental List I

18. Select all commodity groups and individual commodities that the reporting trader presently trades or expects to trade in the near future in derivative markets.

Choose from Supplemental List II

19. For each selected individual commodity identified in question 18, indicate the business purpose(s) for which the reporting trader uses derivative markets. If the reporting trader has more than one business purpose for trading in an individual commodity, also indicate the predominant business purpose.

Choose from Supplemental List III

Signature/Authentication, Name, and Date

20. Please sign/authenticate the Form 40 prior to submitting.

Signature/ Electronic Authentication:

□ By checking this box and submitting this form (or by clicking "submit," "send," or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by the reporting trader identified below to provide the information and representations submitted on this Form 40, and that the information and representations are true and correct.

Reporting Trader Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

Submitted on behalf of:

_____ (Reporting Trader Name)

Date of Submission:

_____

Supplemental List I: List of Business Sectors and Subsectors

Business Sector

Subsector

Agriculture and Forestry
- *Oilseed Farming*
- *Grain Farming*
- *Fruit and Tree Nut Farming*
- *Other Crop Farming (Specify)*
- *Cattle Ranching and Farming*
- *Hog and Pig Farming*
- *Poultry and Egg Production*
- *Sheep and Goat Farming*
- *Other Animal Production*
- *Forestry, Logging, or Timber Production*
- *Cooperative*
- *Other (Specify)*

Mining, Oil and Natural Gas Extraction
- *Oil Exploration/Production*
- *Natural Gas Exploration/Production*
- *Coal Mining*
- *Precious Metal Mining*
- *Non-Precious Metal Mining*
- *Other (Specify)*

Utilities
- *Utility/Cooperative*
- *Electric Power Generation*
- *Local Distribution Company*
- *Natural Gas Distribution*
- *Other (Specify)*

Construction
- *Building Construction*
- *Heavy and Civil Engineering Construction*
- *Other (Specify)*

Manufacturing, Refining and Processing
- *Animal Food Manufacturing*
- *Grain Milling*
- *Oilseed Milling*
- *Sugar and Confectionery Product Manufacturing*
- *Fruit and Vegetable Preserving and Specialty Food Manufacturing*
- *Dairy Product Manufacturing*
- *Animal Slaughtering and Processing*
- *Bakeries*
- *Other Food Manufacturing*
- *Beverage Manufacturing Textile Mills*
- *Textile Product Mills*
- *Apparel Manufacturing*
- *Wood Product Manufacturing*
- *Paper Manufacturing*

Pulp, Paper, and Paperboard Mills
Petroleum and Coal Products Manufacturing
Renewable Fuels Manufacturing
Petrochemical/Chemical Manufacturing
Plastics and Rubber Products Manufacturing
Natural Gas Processing
Precious Metal Processor/Smelter
Non-Precious Metal Processor
Metals Fabricator
Other (Specify)

Wholesale Trade
Lumber and Other Construction Materials Merchant Wholesalers
Metal and Mineral Merchant Dealer
Grocery and Related Product Merchant Wholesaler
Farm Product Raw Material Merchant Wholesalers
Chemical and Allied Products Merchant Wholesalers
Petroleum and Petroleum Products Merchant Wholesalers
Natural Gas, Power Marketer
Importer/Exporter (specify commodities)
Other (Specify)

Retail Trade
Building Materials and Supplies Dealers
Food and Beverage Stores
Jeweler/Precious Metals Retailer
Vehicle Fuel Retailer/Convenience Store Operator
Fuel Dealers
Other (Specify)

Transportation and Warehousing
Air Transport
Trucking
Pipeline Transportation of Crude Oil
Pipeline Transportation of Natural Gas
Farm Product Warehousing and Storage
Energy Distributor (warehousing, storage)
Other (Specify)

End User (*NOTE: May not be the only/primary subsector selected*)
Metals End User (Construction Co., Brass Mill, Steel Mill)
Emissions End User (Factory, Industrial Cos.)
Petroleum End User (Airline Cos. Municipalities, Industrial Cos., Trucking Cos.)

Information
Other (Specify)

Financial Institutions and Investment Management

Dealers and Financial Intermediaries
Broker/Dealer
Bank Holding Company
Investment/Merchant Bank
Non-US Commercial Bank
US Commercial Bank
Swaps/Derivatives Dealer

Universal Bank

Asset/Investment/Fund Management
Asset/Investment Manager
Institutional Clients
Retail Clients
Managed Accounts and Pools (CTAs, CPOs, etc.)
Institutional Clients
Retail Clients
College Endowment, Trust, Foundation
Fund of Hedge Funds
Hedge Fund
Mutual Fund
Pension Fund
Private Wealth Management
Private Bank
Exchange Traded Fund Issuer
Exchange Traded Note Issuer

Government Financial Institution
Central Bank
Sovereign Wealth Fund
Government Sponsored Enterprise (GSE)
Other Governmental Entity (Specify)

Other Financial or Trading Entities
Arbitrageur
Individual Trader/Investor
Floor Broker
Floor Trader
Market Maker
Proprietary Trader
Corporate Treasury
Mortgage Originator
Savings Bank
Credit Union
Insurance Company
Other (Specify)

Real Estate
Other (Specify)

Arts, Entertainment, and Recreation
Performing Arts Companies
Promoters of Performing Arts
Agents and Managers for Artists and Entertainers
Independent Artists, Writers, Performers
Other (Specify)

Accommodation and Food Services
Food Services
Other (Specify)

Public Administration
Administration of Environmental Quality Programs
Administration of Economic Programs

Other (Specify)

Supplemental List II: Commodity Groups and Individual Commodities

Commodity Group

Individual Commodity

GRAINS
- OATS
- WHEAT
- CORN
- RICE

LIVESTOCK/MEAT PRODUCTS
- LIVE CATTLE
- PORK BELLIES
- FEEDER CATTLE
- LEAN HOGS

DAIRY PRODUCTS
- MILK
- BUTTER
- CHEESE

OILSEED AND PRODUCTS
- SOYBEAN OIL
- SOYBEAN MEAL
- SOYBEANS

FIBER
- COTTON

FOODSTUFFS/SOFTS
- COFFEE
- FROZEN CONCENTRATED ORANGE JUICE
- SUGAR
- COCOA

OTHER AGRICULTURAL

REAL ESTATE

CURRENCY

EQUITIES AND EQUITY INDICIES

INTEREST RATES
- TREASURY COMPLEX
- OTHER INTEREST RATE PRODUCTS

OTHER FINANCIAL INSTRUMENTS

PETROLEUM AND PRODUCTS
- JET FUEL
- ETHANOL

BIODIESEL
FUEL OIL
HEATING OIL
GASOLINE
NAPHTHA
CRUDE OIL
DIESEL

NATURAL GAS AND PRODUCTS
NATURAL GAS LIQUIDS
NATURAL GAS

ELECTRICITY AND SOURCES
COAL
ELECTRICITY
URANIUM

PRECIOUS METALS
PALLADIUM
PLATINUM
SILVER
GOLD

BASE METALS
STEEL
COPPER

WOOD PRODUCTS
LUMBER
PULP

CHEMICALS

PLASTICS

EMISSIONS

WEATHER

OTHER (SPECIFY)

Supplemental List III: Business Purposes of Commodity Derivatives Trading

Business Purpose

Definition

Example

Offsetting Cash or Spot Market Input Price Risk
Using derivative markets for commodities that are direct inputs or purchases for your business so as to offset price risk associated with your purchase of these inputs.
E.g. You are a grain processor, so you use wheat futures to offset the price risk incidental to your cash purchases of wheat.

Offsetting Cash or Spot Market Output Price Risk
Using derivative markets for commodities that are direct outputs or sales of your business so as to offset price risk associated with your sale of these outputs.
E.g. You are a gasoline refiner, so you use gasoline futures to offset price risk associated with your production of gasoline.

Offsetting Other Cash or Spot Market Price Risks (Cross Price Risk)
Using derivative markets for a commodity that is not a direct input or output of your business, but which has significant price correlations with the direct inputs or outputs of your business.
E.g. You manufacture ethanol which is used as an additive in and competitor for gasoline as a combustive fuel. While you neither directly consume nor produce gasoline, you may find that the price you receive for your ethanol product is highly correlated with the price of gasoline, and therefore you reduce ethanol price risk by using gasoline futures contracts.

Other Physical Risk Management Strategies
Managing other price risks incidental to the operation of your business or physical assets through the use of commodity derivative markets.
E.g. You are a manufacturer with significant international sales, so you use foreign currency futures to offset risks associated with changes in the competitiveness of your exports and therefore the value of your physical assets such as production plants, land, machinery, etc.

Client Futures/Options Trading
Fulfilling customer/client desire for portfolio diversification or exposure to various asset classes through your activity as a Commodity Pool Operator, Commodity Trading Advisor, or other similar role.
E.g. You collect funds and execute trading strategies through the use of futures/options markets at the expressed intent and for the sole benefit of clients.

Managing Client Swaps Exposure
Reducing risk stemming from holding or executing swaps contracts on behalf of clients or customers through the use of futures/options markets.
E.g. You sell crude oil swaps to a client and agree to accept the risk inherent in the index price. You offset this risk through purchases of crude oil futures, in effect transferring price risk from the client to another market participant.

Making Markets/Providing Liquidity

Engaging in derivatives transactions to assume risk and help transfer ownership of derivative positions from one market participant to another, realizing the bid-ask spread as the return.

E.g. You accept risk by buying and selling futures/options contracts so that other traders can move into and out of positions when they wish. You then find other traders willing to take the other side of those transactions.

Arbitrage

Using derivative markets as part of a strategy designed to realize risk-free profit from pricing anomalies.

E.g. You realize that the wheat futures contract is trading at a discount (even after considering storage, transport, etc.) relative to the wheat cash price, and therefore find it profitable to purchase the wheat futures contract, take delivery, and then resell the wheat in the cash market for a risk-free profit.

Establishing Price Exposure

Using derivative markets as a way to express your belief in the future movement of market prices. This strategy does not involve offsetting risks incidental to your business, but instead involves directional trading.

E.g. You conduct research and believe that crude oil prices are due to rise, so you take long futures positions in crude oil to profit from your predictions.

Financial Asset Management

Using derivatives to diversify, rebalance, or otherwise allocate financial assets so that risks to the value of the investment portfolio are reduced. This strategy is used by entities such as pension funds and endowments to manage overall risk to their financial portfolios.

E.g. You hold Treasury bonds as a component of your investment portfolio, and use futures contracts to reduce overall portfolio risk that would result from falling bond prices.

Managing Proprietary Swaps Exposure

Reducing risk stemming from your proprietary holding or execution of swaps contracts through the use of futures/options markets.

E.g. You trade interest rate swaps as part of your business or investment strategy, and offset some of the risk inherent in those swaps through your use of Eurodollar futures markets.

Other: Specify

List and explain your business purpose if the above categories do not adequately describe the reason you trade in a particular commodity derivative market.

CFTC FORM 71
IDENTIFICATION OF
OMNIBUS ACCOUNTS AND SUB-ACCOUNTS

NOTICE: Failure to file a report required by the Commodity Exchange Act ("CEA" or the "Act")[185] and the regulations thereunder,[186] or the filing of a report with the Commodity Futures Trading Commission ("CFTC" or "Commission") that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of § 6(c)(2) of the Act (7 USC 9, 15), § 9(a)(3) of the Act (7 USC 13(a)(3)), and/or § 1001 of Title 18, Crimes and Criminal Procedure (18 USC 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission's authority for soliciting this information is granted in sections 4a, 4c(b), 4g, 4i and 8 of the CEA and related regulations (*see*, *e.g.*, 17 CFR § 17.01(c)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (*see*, *e.g.*, 7 U.S.C. §§ 9 and 13a-1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission's market and trade practice surveillance activities to (a) provide information concerning the size and composition of the commodity derivatives markets, (b) permit the Commission to monitor and enforce speculative position limits and (c) enhance the Commission's trade surveillance data. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to reporting markets to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with, the CFTC System of Records Notices, available on www.cftc.gov.

[185] 7 U.S.C. section 1, *et seq*.

[186] Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq*.

BACKGROUND & GENERAL INSTRUCTIONS

Who Must File a Form 71 – 17 CFR § 17.01(c) requires each originator of (a) an omnibus volume threshold account or (b) an omnibus reportable sub-account (collectively, "Reporting Parties") to file a Form 71 – Identification of Omnibus Accounts and Sub-Accounts with the Commodity Futures Trading Commission ("CFTC" or "Commission").

When to file – Each Reporting Party must file a Form 71 on call by the Commission or its designee.

Where to file – The Form 71 shall be filed by submitting the completed form to the nearest CFTC office or as otherwise instructed by the Commission or its designee. Generally, a Form 71 should be submitted via the CFTC's web-based Form 71 submission process at [www.cftc.gov]. If submission attempts fail, the reporting trader shall contact the Commission at [techsupport@cftc.gov] for further technical support.

Signature – Each Form 71 submitted to the Commission must be signed or otherwise authenticated by an individual that is duly authorized by the relevant Reporting Party to provide the information and representations contained in the form.

What to File – Each Reporting Party must complete part A, the relevant question in part B, and part C. Unless otherwise noted, the terms used herein shall have the same meaning as ascribed in parts 15 to 21 of the Commission's regulations.

Please be advised that pursuant to 5 CFR § 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

ACKNOWLEDGEMENT OF DEFINITIONS

Before proceeding with your submission, please check this box to indicate that you have read the definitions for the following terms, as they are used in the Form 71: ☐

Commodity (or commodities) – generally, all goods and articles (except onions and motion picture box office receipts, or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value, or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in (*see* 7 USC 1a(9)).

Omnibus account – any trading account that one futures commission merchant, clearing member or foreign broker carries for another and in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

Omnibus reportable sub-account – means any trading sub-account of an omnibus volume threshold account, which sub-account executes reportable trading volume on an omnibus basis. Omnibus reportable sub-account also means any trading account that is itself an omnibus account, executes reportable trading volume, and is a sub-account of another omnibus reportable sub-account.

Omnibus volume threshold account – means any trading account that, on an omnibus basis, executes or receives via allocation or give up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act.

Person – an individual, association, partnership, corporation, trust, or government agency and/or department.

Reportable sub-account – means any trading sub-account of an omnibus volume threshold account or omnibus reportable sub-account, which sub-account executes reportable trading volume.

Reportable sub-account controller – means a natural person who by power of attorney or otherwise actually directs the trading of a reportable sub-account. A reportable sub-account may have more than one controller.

Reportable trading volume – means contract trading volume that meets or exceeds the level specified in 17 CFR § 15.04.

Volume threshold account – means any trading account that executes, or receives via allocation or give up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under § 5 of the Act or a swap execution facility registered under § 5h of the Act.

CFTC FORM 71

A. **Re-confirmation of Omnibus Volume Threshold Account or Omnibus Reportable Sub-Account:**

Account number [(auto-populated)] was identified on Form [[102B] OR [71] (auto-populated)] by [[clearing member] OR [preceding originator] (auto-populated)] as an [[omnibus volume threshold account] OR [omnibus reportable sub-account] (auto-populated)] on [reporting market (auto-populated)].

The following information was provided on Form [[102B] OR [71] (auto-populated)] regarding you as the originator ("Originator") of this [[omnibus volume threshold account] OR [omnibus reportable sub-account] (auto-populated)]. Please update any incorrect information in the space provided below.

Name of Originator: [(Fields below will be auto-populated)] [space to correct incorrect info]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:
Contact Email Address:
Originator Website (if any):
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):

B. Identification of Reportable Sub-Accounts:

The following questions request information regarding the allocation of trades from account number [[omnibus volume threshold account number] OR [omnibus reportable sub-account number] (auto-populated)] on [date (auto-populated)] on [reporting market (auto-populated)] to other accounts.

1. If you did not allocate any trades from account number [(auto-populated)] on [date (auto-populated)] on [reporting market (auto-populated)], check this box and proceed to part C: □

2. If you allocated trades from account number [(auto-populated)] on [date (auto-populated)] on [reporting market (auto-populated)], but the sum of allocations did not result in reportable trading volume for a recipient account on [date (auto-populated)], check this box and proceed to part C: □

3. If you allocated trades from account number [(auto-populated)] on [date (auto-populated)] on [reporting market (auto-populated)] that resulted in reportable trading volume for a recipient account, provide the following information for each such recipient account (hereafter, a "reportable sub-account"):

(a) Identification of Omnibus Reportable Sub-Accounts.

(i) Is the reportable sub-account an omnibus reportable sub-account?

□ YES

□ NO

(ii) If NO, proceed to (b) below. If YES, indicate whether the omnibus reportable sub-account is a house or customer omnibus account and provide the contact information of the originator of the omnibus account.[187]

□ HOUSE

□ CUSTOMER

Name of Reportable Sub-Account Originator:
Account Number of Reportable Sub-Account:[188]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:
Contact Email Address:
Originator Website (if any):
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):

(b) Identification of Non-Omnibus Reportable Sub-Accounts:

(i) For each reportable sub-account that is not an omnibus account, provide the requested information for each owner ("owner") of the reportable sub-account.

Indicate whether the owner is a legal entity or a natural person:

Legal entity: □

Natural person: □

Name of Reportable Sub-Account Owner(s):
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:

[187] House omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.

[188] The Account Number should be a number or other identifier that is known to the reportable sub-account originator.

Email Address (if owner is a natural person):
Contact Name (if owner is not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:
Contact Email Address:
Owner Website (if any):
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):

(ii) For each reportable sub-account that is not an omnibus account, provide the requested information for each reportable sub-account controller. (NOTE: a reportable sub-account controller must be a natural person.)

Name of Reportable Sub-Account Controller(s):
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:
Name of Employer:
Job Title:
Relationship to Owner:
Email Address:
Controller NFA ID (if any):

After completing the applicable questions in part B.3, proceed to part C.

C. Signature/Authentication, Name, and Date:

Please sign/authenticate the Form 71 prior to submitting.

Signature/ Electronic Authentication of [Originator (auto-populated)]:

□ By checking this box and submitting this form (or by clicking "submit," "send," or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by [Originator (auto-populated)] to provide the information and representations submitted on this Form 71, and that the information and representations are true and correct.

Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

Submitted on behalf of:

_____ [Originator (auto-populated)]

Date of Submission:

_____

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