

paragraph (b) by removing the words "A-95 and".

Dated: November 29, 1995.

Jill Long Thompson,

*Under Secretary for Rural Economic and Community Development.*

Dated: January 11, 1996.

Eugene Moos,

*Under Secretary for Farm and Foreign Agricultural Services.*

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 17

#### Reports by Futures Commission Merchants, Members of Contract Markets, and Foreign Brokers

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is amending rule 17.01 and modifying the form 102 required to be filed by clearing members, futures commission merchants (FCMs), and foreign brokers. This form identifies persons having financial interest in, or control of, special accounts in futures and options. The amendments being adopted clarify the information required on the form 102 for various kinds of special accounts reported to the Commission. The Commission is also amending rule 17.02 concerning the time in which a completed form 102 must be filed. The rule requires that firms provide certain specified identification information upon request by the Commission or its designee on the day when a special account is first reported, and that a completed form 102 be filed with the Commission within three business days.

**EFFECTIVE DATE:** August 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Lamont L. Reese, Supervisory Statistician, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418-5310.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. Large Trader Reporting System

Part 17 of the Commission's regulations requires that FCMs, clearing members, and foreign brokers (firms) submit a daily report to the Commission

with respect to futures positions in all special accounts on their books.<sup>1</sup> Information required to be provided to the Commission includes quantities of reportable futures positions, exchanges of futures for cash, and delivery notices issued or stopped by each special account.<sup>2</sup> For reporting purposes, futures positions in all accounts controlled by the same person and those in which a person has a ten percent or more financial interest must be combined and treated as if they are held in a single account. The firm assigns a reporting number to the special account and reports all information to the Commission using this number.<sup>3</sup>

In addition to the reporting number and the position and transaction information mentioned above, the firm must file a CFTC form 102 showing the information specified under § 17.01 of the regulations for each special account.<sup>4</sup> This information identifies persons who have a financial interest in or trading control of a special account, informs the Commission of the type of account that is being reported, and gives preliminary information whether positions and transactions are commercial or noncommercial in nature. The form must be filed when the account first becomes reportable, and updated when information concerning financial interest in, or control of, the special account changes.<sup>5</sup> In addition to its use by the Commission, the form 102 is used by the exchanges to identify accounts reported through their large trader reporting systems for both futures and options.<sup>6</sup>

##### B. Proposed Rulemaking

In June 1995 the Commission published in the Federal Register a proposal to change its form 102 and §§ 17.01 and 17.02 of its regulations to

<sup>1</sup> Special account means any commodity futures or option account in which there is a reportable position, 17 CFR 15.00 (1994). Firms report futures information to the Commission and option information to the exchanges.

<sup>2</sup> A reportable position is any open position held or controlled by a trader at the close of business in any one futures contract of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations, 17 CFR 15.03 (1994).

<sup>3</sup> The firm's reporting number may be the account number carried on its books. However, as noted above, the number may refer to a collection of accounts that are owned and/or controlled by the same person.

<sup>4</sup> 17 CFR 17.01 (1994).

<sup>5</sup> 17 CFR 17.02 (1994).

<sup>6</sup> Part 17 of the regulations requires that firms identify large traders in options on the form 102 and transmit the form to the appropriate exchange in accordance with their rules. Those exchanges that maintain a futures large trader reporting system also use the CFTC form 102 for identifying futures large traders.

resolve some of the ambiguities in the present form, making it more useful to both the exchanges and the Commission (60 FR 31653 June 16, 1995). The Commission also requested comment on a proposal set forth by the Chicago Mercantile Exchange (CME) to obtain information on the form 102 in machine-readable form.

The Futures Industry Association (FIA), two exchanges, and two FCMs commented on the Commission's proposal. All commentors supported Commission efforts to clarify information requested on its form 102 and supported the initiative of the CME to obtain data in machine-readable form. Some commentors took issue with certain of the new requirements, asking that they be eliminated or modified. These comments are discussed in detail below.<sup>7</sup> Commission staff will continue to explore the feasibility of obtaining information on the form 102 electronically, both with the FIA and the exchanges.

##### II. Comments on Proposed Rule Changes

##### A. Special Account Identifying Information

The proposed form requires that firms provide registration information if the person reported is registered as a commodity trading advisor (CTA) or securities investment advisor (SIA). The FIA opined that the responsibility for monitoring compliance with persons' registration status rested with the National Futures Association (NFA) and the Securities and Exchange Commission (SEC). In view of this, they recommended that this requirement be eliminated.

The Commission currently collects information concerning persons' registration status through means other than the form 102.<sup>8</sup> The request for firms to provide registration information on the form 102 comes principally from the exchanges. As explained in the notice of proposed rulemaking, the rules of some exchanges require that they obtain this information for enforcement purposes. The exchanges, however, collect information only from their

<sup>7</sup> The Commission also proposed to amend rule 17.01 to require that option and futures accounts be reported using the same designator, which may be any string of alphanumeric characters up to the maximum number permitted. Commentors supported this proposal, since using the same designator for both types of accounts for the same persons reduces the number of form 102s that firms must file and that the Commission must process. In view of this, the Commission is adopting this rule as proposed.

<sup>8</sup> This is generally through the form 40 filed by reportable traders and through the NFA (17 CFR § 18.04, 1994).

members, not from their members' customers. The exchanges, therefore, rely solely on the form 102 for routine information concerning futures trading participants. Although the exchanges could design their own account identification forms to collect this information, a proliferation of such forms would be burdensome for the industry. Adding the requirement that this information be included on the form 102 will result in an overall reduction in paperwork and a savings for all parties involved. Moreover, if the firms provide this information to the Commission, it will be more timely and complete. In view of the above, the Commission is adopting this requirement as proposed.

The FIA also sought clarification concerning identifying information that must be provided in four different circumstances. The Commission announced in its notice of proposed rulemaking that Commission staff, after consulting with the exchanges, would provide written advisories on reporting issues raised by firms. The Commission believes that the questions raised by FIA are in this category and has asked that the Division of Economic Analysis respond to these issues.

#### *B. Reporting Controlled Accounts*

When identifying special accounts controlled by independent account controllers, the Commission proposed that firms provide the following information:

1. For publicly-offered managed or guided account programs in which ten or more accounts participate, the name and account number used for the program and, in addition, for commodity pools that participate in the program, the name and address of the commodity pool operator; and

2. For each controlled account not included in 1 above, the account number and the names and addresses of persons having a ten percent or more financial interest in the account.

As explained in the Federal Register release, amendments to rule 17.01 were made in June of 1993 to limit the information provided about controlled accounts (58 FR 33329 June 17, 1993).<sup>9</sup>

The FIA and the exchanges questioned the need for firms to provide a name for each customer trading program. The FIA noted that, since no definition or purpose is provided on the

<sup>9</sup>Previous to these amendments, firms were required to identify the beneficial owners of all controlled accounts even though, in general, accounts that were a part of customer trading programs were held by small traders whose identity for surveillance purposes was not needed on a routine basis.

form itself for program name, firms are likely to provide the wrong information. The Commission agrees and has changed its form 102 accordingly. Rather than asking for program names, firms will only indicate whether a person controls ten or more accounts. Further instructions for reporting will be based on the answer to this question.

The FIA was also concerned that providing the proposed additional information for controlled accounts would often pose an administrative burden on the reporting firms. Except for requiring account numbers, the proposed requirements are the same as current requirements in regulation 17.01(b)(6). The Commission believes this information is important for properly combining accounts for the same traders and will adopt these amendments as proposed. The proposed amendments also provide that the required information be updated whenever it changes. The Commission is amending its proposal so that updates to the information required by these rules must be provided only on call by the Commission or its designee. The Commission believes this will alleviate much of the administrative burden imposed by these requirements.

#### *C. Two-Part Filing Requirements*

The Commission proposed that certain identification information be provided to the Commission on the first day that an account is reported to the Commission, and that a completed form be provided within three business days of that date. The FIA was concerned that the two-part filing requirement would not be beneficial to the industry and may impose additional administrative burdens upon operations' personnel. The FIA proposed that firms provide the identifying information by facsimile or telephone on the first day that a special account is reported only in response to a request by the Commission or its designee. In a majority of cases, Commission staff currently request form 102s when accounts are first reported. In view of this, the Commission is amending its proposal as recommended by the FIA. The Commission emphasizes however, that these amendments in no way alleviate the responsibility of firms to appropriately combine and report accounts. Accounts that are not combined to determine reporting status and for reporting may lead to a loss of important surveillance information.<sup>10</sup>

<sup>10</sup>The Commission also proposed amendments to rule 17.02 concerning the submission of position and transaction information in hard-copy form. The Commission proposed that this information be

Two exchanges commenting on the Commission's proposal also expressed some concern about the two-part filing requirement. Under Commission regulations, firms report large trader option positions only to the exchanges which in turn report them to the Commission (17 CFR 16.02). Firms identify reportable option accounts on the form 102 and provide these to the exchanges. These also are provided to the Commission by the exchanges. The exchanges expressed concern that the two-part requirement would affect the current turnover period allowed the exchanges. Both exchanges suggested that, if it were necessary to obtain option account identification quickly, the Commission do so independently through the reporting firms. One exchange suggested that the Commission receive both the position information and form 102s for option traders directly from reporting firms to reduce duplication of effort and avoid delays.

In light of the final rule, which permits filing of the form 102 in three days unless called for by the Commission, the turnover time for the exchanges will be unaffected. Moreover, calls for information will go directly to the reporting firms as the exchanges suggested.

#### *D. Clarification of Required Information*

The FIA requested clarification concerning the distinction the Commission made, if any, between an individual and sole proprietorship, since both terms were used on the form. The Commission recognizes that there may be little, if any, distinction between the terms. At times, however, accounts have been reported in the name of a business organized as a sole proprietorship. This term has been included on the form only to prevent confusion when firms specify the organization of the trader being reported.<sup>11</sup>

The FIA also asked whether the omnibus clearing status of a United States or offshore bank trading for customers was discernible from the information requested on the form. The regulations require that firms determine if an account they carry is a house or customer omnibus account. The Commission relies on reporting firms to

supplied by facsimile or in accordance with instructions by the Commission or its designee. Since no comments were received concerning this requirement, the Commission is adopting this amendment as proposed.

<sup>11</sup>If the owner of a sole proprietorship trades an account in the name of the business and separately an individual account, the accounts should be aggregated and can be reported either in the name of the individual or the business.

obtain accurate information concerning the omnibus clearing status for accounts in whatever manner is necessary. This may require that firms obtain information not included on the form.

#### E. Effective Date

One exchange has asked for a substantial period of time between publication of the final rules in the Federal Register and the effective date of the amendments in order to change computer software that captures information on the form. A delayed effective date may also assist firms in implementing use of the new forms. Accordingly, the Commission has determined that the effective date of these amendments be six months after they are published in the Federal Register. However, the Commission can process the new forms immediately. Therefore, if at any time prior to the effective date exchanges request that the new form be used by firms reporting to them, the firms may also use the new form to identify accounts to the Commission.

### III. Other Related Matters

#### A. The Regulatory Flexibility Act (RFA)

The RFA requires that agencies consider the impact of substantive rules on small businesses. These amendments affect large traders, FCMs, commodity pools, CTAs and other similar entities, such as foreign brokers and foreign traders. The Commission has defined "small entities" in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618-18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and FCMs are not considered to be small entities for purposes of the RFA. In this regard, the amendments to reporting requirements relating to the form 102 fall mainly upon FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable positions, *i.e.*, large positions. Thus, pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certified in its proposal for rulemaking that these proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission however, invited comments from any firm which believed that these rules would have a significant economic impact upon its operation. No comments were received.

#### B. Paperwork Reduction Act (PRA)

The PRA of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on

Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these rules and their associated information-collection requirements to the Office of Management and Budget (OMB). OMB approved the requirements associated with this rule on September 14, 1995.

The burden associated with the entire collection, including this rule, is as follows:

*Average Burden Hours Per Response*—1587 hour.

*Number of Respondents*—3709.

*Frequency of Response*—Daily.

The burden associated with this specific proposed rule, is as follows:

*Average Burden Hours Per Response*—0.2 hour.

*Number of Respondents*—6,592.

*Frequency of Response*—On occasion.

Copies of the OMB-approved information-collection requirements may be obtained from Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340.

#### List of Subjects in 17 CFR Part 17

Brokers, Commodity Futures, Reporting and Recordkeeping Requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5, and 8a of the Act, 7 U.S.C. 6g, 6i, 7, and 12a (1994), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

#### **PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS**

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

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

2. Section 17.01 is revised to read as follows:

##### **§ 17.01 Special account designation and identification.**

When a special account is reported for the first time, the FCM, clearing member, or foreign broker shall identify the account to the Commission or to the contract market on form 102 showing the information in paragraphs (a) through (f) of this section.

(a) Special account designator. A unique identifier for the account. *Provided*, that the same designator is assigned for option and futures

reporting, and the identifier is not changed or assigned to another account without prior approval of the Commission or its designee.

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

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

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

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

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

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

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

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

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

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

(ii) if ten or more accounts are controlled by the independent advisor, the account number and the name of each commodity pool that is controlled by the advisor and the name and location of the commodity pool operator;

(iii) if fewer than ten accounts are under control of the independent advisor, for each account the account number and the name and location of each person having a ten percent or more financial interest in the account. For commodity pools, provide the account number, name of the pool, and name and location of the commodity pool operator; and

(iv) on call by the Commission or its designee, for each account controlled by

the independent advisor, the account number and account name and the name and location of each person having a ten percent or more financial interest in the account.

(c) Other accounts. If the person identified in paragraphs (b)(1), (b)(2) or (b)(3) of this section either controls or has a financial interest of ten percent or more in an account *not* included in this special account, report the account number and the name of the account.

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

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

(f) Reporting firm. The name and address of the FCM clearing member, or foreign broker carrying the account, the signature, title, and business phone of

the authorized representative of the firm filing the report, and the date of signing the form 102.

(g) Form 102 updates. If, at the time an account is in special account status and a form 102 filed by an FCM, clearing member, or foreign broker is then no longer accurate because there has been a change in the information required under paragraph (b) of this section since the previous filing, the FCM, clearing member, or foreign broker shall file an updated form 102 with the Commission or the contract market, as appropriate, within three business days after such change occurs.

3. Section 17.02 is amended by revising the introductory text and paragraph (b), and adding a new paragraph (c) to read as follows:

**§ 17.02 Place and time of filing reports.**

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by FCMs, clearing members, and foreign brokers under §§ 17.00 and 17.01 shall be filed at the nearest appropriate Commission office as specified in paragraphs (a), (b), and (c) of this section, wherein the times stated are eastern times for information concerning markets located in that time zone, and central time for information concerning all other markets.

(a) \* \* \*

(b) For data submitted in hard-copy form pursuant to §§ 17.00 (a), or (h) at a Commission office by facsimile or as otherwise specified in accordance with instructions by the Commission or its designee. Data in hard-copy form required under § 17.00(a) shall be submitted no later than 9 a.m. on the business day following that to which the information pertains.

(c) For data submitted pursuant to § 17.01 on the form 102;

(1) on call by the Commission or its designee, the type of special account specified in 1(a), 1(b), or 1(c) of form 102, and the name and location of the person to be identified in 1(d) on the form 102 by facsimile or telephone on the same day that the special account in question is first reported to the Commission; and

(2) a completed form 102 within three business days of the first day that the special account in question is reported to the Commission.

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

Issued in Washington, DC, February 12th, 1996, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

BILLING CODE 6351-01-P



**COMMODITY FUTURES TRADING COMMISSION**  
**Identification of "Special Accounts"**

OMB No. 3038-0009

CFTC Form 102 (Revised 01/96)

For Administrative Use Only	
Trader Code:	Firm Code:

**NOTICE:** Failure to file a report required by the Commodity Exchange Act and the regulations thereunder, or the filing of a false or fraudulent report may be a basis for administrative action under 7 U.S.C. Sec. 9, and may be punishable by fine or imprisonment, or both, under 7 U.S.C. Sec. 13 or 18 U.S.C. Sec. 1001.

**INSTRUCTIONS TO FUTURES COMMISSION MERCHANTS, CLEARING MEMBERS, AND FOREIGN BROKERS**

Assign a reporting number to each special account when it is reportable for the first time in futures or options. If an account has been assigned a number for reporting in futures (options), use the same number for reporting options (futures). Such reporting number must not be changed or assigned to any other special account without prior approval of the Commodity Futures Trading Commission. For a futures account, transmit the form to the Commission. For an option account, transmit the form to the appropriate contract market in accordance with their instructions.

*PLEASE TYPE OR PRINT*

1. Check one of (a), (b) or (c) for the special account and give identifying information as directed below:

(a)  House omnibus or  Customer omnibus account of an FCM, clearing member, or foreign broker. Report the information in (d) below for that firm. In addition, complete items 6-12.

(b)  Account(s) owned and controlled by the same person or legal entity, such as a corporation or partnership (or controlled by an employee or officer of the entity). Report the information in (d) below for the person or other legal entity who owns and controls the accounts. In addition, complete items 2 and 4-12.

(c)  Accounts controlled by an advisor or legal entity who is independent of the account owners. Report the information in (d) below for the advisor or legal entity controlling the special account. In addition, complete items 3 through 12.

(d) Name: \_\_\_\_\_ Reporting Number: \_\_\_\_\_  
If individual, Last, First, Middle Initial

Street: \_\_\_\_\_ Business Phone: \_\_\_\_\_

City: \_\_\_\_\_ State/Country: \_\_\_\_\_ Zip/Postal Code: \_\_\_\_\_

If individual, Employer: \_\_\_\_\_ Job Title: \_\_\_\_\_

If (b) or (c) is checked, is the above-identified person or legal entity registered as a:

- commodity trading advisor  Yes  No
- securities investment advisor  Yes  No

If this special account is reported in the name of a business, such as a corporation, give the name of an officer or employee to contact:

Name: \_\_\_\_\_ Job Title: \_\_\_\_\_  
Last, First, Middle Initial

2. If item 1(b) is checked, complete the following:

(a) Check as many as apply to the legal entity identified in 1(d) above:

- Individual  Trust  Partnership  Joint
- Sole Proprietorship  Corporation  Other (Specify) \_\_\_\_\_

(b) Principal Business or Occupation: \_\_\_\_\_

*(Continued on Reverse Side)*

(c) Report on an attachment all account numbers and account names included in this special account if different than identified in 1(d) above.

(d) Report all persons or entities not identified in 1(d) above who have a 10% or more financial interest in this special account, including limited partners, indicating with an asterisk those having discretionary trading authority with respect to this account. If none, write "none". Use a continuation sheet, if necessary.

Name: \_\_\_\_\_  
Last, First, Middle Initial

Location: \_\_\_\_\_  
City and State or Country

(e) Report all persons other than those above who control the trading of accounts included in the special account. Use a continuation sheet, if necessary. If there are more than five such persons, show "multiple controllers" in the space below.

Name: \_\_\_\_\_  
Last, First, Middle Initial

Location: \_\_\_\_\_  
City and State or Country

3. Controlled Accounts. If you checked item 1(c), complete (a) or (b) below.

(a) If ten or more accounts are controlled by the advisor, provide on an attachment the account number and name of each pool controlled by the advisor, and the name and location of the CPO.

(b) If fewer than ten accounts are controlled by the advisor, provide on an attachment for each account the account number and names and locations of persons having a ten percent or more financial interest in the account. For commodity pools, provide the account number, name of the pool, and name and location of the CPO.

4. If the person or entity identified in 1(d) has trading authority over, or a 10% or more financial interest in, accounts not included in the special account, complete the information below for each such account. If none, write "none". Use a continuation sheet if necessary. Check "F" for financial interest and "C" for control.

Name: \_\_\_\_\_ Account Number: \_\_\_\_\_  F  C

Name: \_\_\_\_\_ Account Number: \_\_\_\_\_  F  C

5. Are trades and positions in this special account usually associated with commercial activity of the account owner in related cash commodities (i.e., positions considered as hedging in futures or options)?  Yes  No

If "yes," list those specific futures or option markets in which the trader hedges. Use a continuation sheet if necessary.

\_\_\_\_\_

6. Name, location and business phone number of the account executive handling the account. (If account executive is in a foreign country, list country and city.)

Name: \_\_\_\_\_ Business Phone: \_\_\_\_\_  
Last, First, Middle Initial

Location: \_\_\_\_\_  
City and State or Country

7. Firm Name and Address:	8. Name (Print):	
	9. Title:	
	10. Business Phone:	11. Date:
	12. Signature:	