AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
LITTERA SCRIPTA MANET
1985

FEDERAL REGISTER

Vol. 78 Monday,
No. 222 November 18, 2013

Part II

Commodity Futures Trading Commission

17 CFR Parts 15, 17, 18, et al.
Ownership and Control Reports, Forms 102/102S, 40/40S, and 71; Final Rule

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: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting new rules and related forms to enhance its identification of futures and swap market participants. These final rules will leverage the Commission's current 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 new and amended forms require the reporting of certain trading accounts active on reporting markets that are designated contract markets or swap execution facilities. Among other information, the forms collect ownership and control information with respect to both position-based special accounts and trading accounts that meet specified volume-based reporting levels.

DATES: *Effective date:* February 18, 2014.

Compliance date: The compliance date will be delayed by an additional 180 days, with the result that the compliance date of these final rules will be August 15, 2014.

FOR FURTHER INFORMATION CONTACT: Sebastian Pujol Schott, Associate Director, Division of Market Oversight (''DMO''), at 202–418–5641 or *sps@cftc.gov*; Mark Schlegel, Special Counsel, DMO, at 202–418–5055 or *mschlegel@cftc.gov*; Brian Robinson, Attorney Advisor, DMO, at 202–418–5385 or *brobinson@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.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Overview of Final Rules
B. Benefits Derived From Final Rule
II. Statutory Framework for Position Reporting and Trader and Account Identification
III. Current Trader and Account Identification Programs
A. Futures Large Trader Reporting—Current Forms 102 and 40
i. Identification of Special Accounts—Current Form 102
ii. Statement of Reporting Trader—Current Form 40
B. Large Trader Reporting for Physical Commodity Swaps—102S and 40S Filings
IV. Summary of 2010 and 2012 NPRMs
V. Summary of New and Amended Forms Adopted in These Final Rules
A. Position-Triggered Form 102A (Special Accounts)
i. Special Accounts and Reportable Positions
ii. 102A Form Requirements
iii. Timing of 102A Reporting
iv. Timing of 102A Change Updates and Refresh Updates
B. Volume-Triggered Form 102B (Volume Threshold Accounts)
i. Volume Threshold Accounts and Reportable Trading Volume Level
ii. 102B Form Requirements
iii. Timing of 102B Reporting
iv. Timing of 102B Change Updates and Refresh Updates
C. Position-Triggered Form 102S (Consolidated Accounts)
i. 102S Form Requirements
ii. Timing of 102S Reporting, Change Updates and Refresh Updates
D. Form 71 (Omnibus Accounts and Sub-Accounts)
E. New Form 40 (Reporting Traders)
VI. Data Submission Standards and Procedures
A. Overview
B. Schedule of Effective Date and Compliance Date
VII. Review of NPRM and Summary of Final Rules
A. Part 15
i. § 15.00(q)—Reporting Market
ii. § 15.00(t)—Control
iii. § 15.00(u)—Reportable Trading Volume
iv. § 15.00(v)—Direct Market Access
v. § 15.00(v)—Omnibus Account
vi. § 15.00(w)—Omnibus Account Originator
vii. § 15.00(x)—Volume Threshold Account
viii. § 15.00(y)—Omnibus Volume Threshold Account
ix. § 15.00(z)—Omnibus Reportable Sub-Account
x. § 15.00(aa)—Reportable Sub-Account
xi. § 15.00(bb)—Trading Account Controller; § 15.00(cc)—Volume Threshold Account Controller; § 15.00(dd)—Reportable Sub-Account Controller
xii. § 15.01(c)—Persons Required To Report
xiii. § 15.02—Reporting Forms
xiv. § 15.04—Reportable Trading Volume Level
B. Part 17
i. § 17.01(a)—Identification of Special Accounts (via 102A)
ii. § 17.01(b)—Identification of Volume Threshold Accounts (via 102B)
iii. § 17.01(c)—Identification of Omnibus Accounts and Sub-Accounts (via 71)
iv. § 17.01(d)—Exclusively Self-Cleared Contracts
v. § 17.01(e)—Identification of Omnibus Accounts and Sub-Accounts
vi. § 17.02(b)—Section 17.01(a) Reports (via 102A)
vii. § 17.02(c)—Section 17.01(b) Reports (via 102B)
viii. § 17.03(a)–(g)—Delegation of Authority to the Director of the Office of Data and Technology or the Director of the Division of Market Oversight
C. Part 18
i. § 18.04—Statement of Reporting Trader
ii. § 18.05—Maintenance of Books and Records
D. Part 20
i. § 20.5—Series S Filings
VIII. Related Matters
A. Paperwork Reduction Act
i. Overview
ii. Information To Be Provided
iii. Total Reporting and Recordkeeping Costs; Methodology Used To Estimate Costs
iv. Reporting Burdens—New and Revised Forms
v. Recordkeeping Burdens—Revised § 18.05
B. Consideration of Costs and Benefits
i. Background
ii. The Statutory Requirement for the Commission To Consider the Costs and Benefits of Its Actions
iii. Commission Request for Comments Regarding Cost and Benefit Estimates
iv. Methodology Used To Estimate Costs
v. Costs and Benefits of Individual Reporting Forms and Reporting and Recordkeeping Requirements
vi. Comments Regarding Costs and Benefits
vii. Consideration of Alternatives
viii. Reporting on Form 102S
ix. Consolidation Form Proposed by FIA
x. Section 15(a) Factors
C. Regulatory Flexibility Act

I. Background

A. Overview of Final Rules

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.[1] The reporting rules are currently structured to collect information with respect to positions in ''open contracts,''[2] including: (1) Information necessary to identify persons who hold or control ''reportable positions''[3] in open contracts (via current Form 40); and (2) information necessary to identify ''special accounts''[4] (via current Form 102). These final rules modify the current

[1] 17 CFR parts 15 through 21. These final rules generally relate to parts 15, 17, 18 and 20 of the Commission's regulations.

[2] ''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).

[3] 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.

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

reporting rules and forms as they pertain to positions in open contracts. Specifically, the Commission is expanding 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 [5] that is a registered entity under sections 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.[6] Volume threshold accounts associated with DCMs and SEFs will be required to be reported by clearing members, as discussed in sections V(B) and VII 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.

The amendments to the reporting rules and forms will achieve three primary purposes. First, they will expand and subdivide current Form 102 into a new 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 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''); and section 102S for the submission of 102S filings for swap counterparty and customer consolidated accounts with reportable positions (''102S,'' ''Form 102S,'' or ''102S filings''). Second, the amendments will enhance the Commission's surveillance and large trader reporting programs for futures, options on futures, and swaps through a variety of enhancements, including: 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'') upon special call by the Commission; [7] 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, these rules will provide for the electronic submission of Forms 102, 40, and 71 through either a web portal or secure FTP transmission.

B. Benefits Derived From Final Rules

The benefits of reporting through a dedicated ownership and control report (''OCR'') were discussed in proposed rulemakings that preceded these final rules—specifically, the Advanced Notice of Proposed Rulemaking published in July 2009 [8] (the ''2009 Advanced NPRM''), the Notice of Proposed Rulemaking published in July 2010 [9] (the ''2010 OCR NPRM'') and the subsequent Notice of Proposed Rulemaking published in July 2012 [10] (the ''NPRM''). Section IV below discusses the history of certain previous OCR rulemakings in more detail. As discussed in the NPRM, the final rules will enhance the Commission's current 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 current Forms 102 and 40, and introducing a new information collection for omnibus volume threshold accounts in New Form 71.[11] The rules will also help implement the 102S and 40S filing requirements adopted in connection with the Commission's part 20 rules addressing large trader reporting for physical commodity swaps (discussed below).[12] Ultimately, the final rules will 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. This will enable the Commission to better deter and prevent market manipulation; deter and detect abusive or disruptive practices (such as marking the close, ''wash trading,'' or money passing); and better perform risk-based monitoring and surveillance between related accounts.

As discussed in the NPRM, the final rules respond, in part, to the increased dispersion and complexity of trading in U.S. futures markets following their transition from localized, open-outcry venues to global electronic platforms.[13] Although electronic trading has conferred important informational benefits upon regulators, the resulting increases in trading volumes, products offered, and trader dispersion have created equally important regulatory challenges. Effective surveillance now requires automated analysis and pattern and anomaly detection involving millions of daily trade records [14] and hundreds of thousands of position records [15] present in the surveillance data sets received daily by the Commission.[16] Although the final rules are partly driven by these developments in the U.S. futures markets, as discussed above, the rules will also facilitate the creation of a robust surveillance program for swaps that adequately captures information with respect to swap market participants.

In order to perform effective surveillance, the Commission must receive data sets that contain a sufficient number of reference points for the Commission to uncover relationships between related accounts, and analyze information based on surveillance criteria that are frequently evolving in response to market events. The collection of additional information regarding trading accounts and traders will enable the Commission to perform more efficient and effective surveillance. In particular, the OCR data collection will enable the Commission to link transaction-level data that it receives (which includes trading account numbers, but not traders'

[5] ''Reporting market'' is defined in current § 15.00(q) as a designated contract market, registered entity under section 1a(29) of the Act, and unless determined otherwise by the Commission, a derivatives transaction execution facility. By way of these final rules, the Commission is revising § 15.00(q) to define reporting market as a designated contract market or a registered entity under section 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 VII and IX.

[6] *See infra* section VII and IX for a discussion of the definition of volume threshold account.

[7] 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'') will be collected by the Commission directly from originating firms, via Form 71.

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

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

[10] *See* Commission, Notice of Proposed Rulemaking: Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 77 FR 43968 (July 26, 2012).

[11] *See id.* at 43970. *See infra* section V for a discussion of New Form 71 and omnibus volume threshold accounts.

[12] *See infra* section V for a discussion of the 102S and 40S filing requirements. *See also* 17 CFR 20.5(a) and (b). 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] *See* NPRM *supra* note 10 at 43970.

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

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

[16] 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.

names) to position-based data (which includes large traders' names, but not their trading account numbers), as explained below.

As noted in the NPRM, ''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.'' [17] The OCR data collection will address a gap in the current system by providing common reference points between TSS and ISS data. New Form 102A, for example, is structured to collect special account numbers,[18] trading account numbers that comprise the special account, and the names of owners and controllers of both special accounts and such trading accounts, thereby linking TSS data to ISS data.[19]

The data collection will also help the Commission to better identify and categorize individual trading accounts and market participants that trigger position or newly-created volume-based reporting thresholds. For example, New Form 102A will require reporting firms to identify the constituent trading accounts of each reported special account. In this manner, New Form 102A will ensure a new level of interoperability between the Commission's TSS trade data and ISS large trader data, and will permit Commission staff to quickly reconstruct trading for any special account. In addition to linking the two databases, New Form 102A will identify both the owners and controllers of such constituent trading accounts, thereby providing the Commission with a new lens through which to identify and surveil market activity that might otherwise appear unrelated to the Commission's surveillance programs.

New Form 102B will, for the first time, require identification of trading accounts based solely on their total trading volume during a single trading day. This new information collection will 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 will facilitate Commission efforts to detect and deter attempted market disruptions that may occur even in the absence of large open positions that are reportable on New Form 102A. Finally, the automated collection of OCR information via electronic forms, rather than through ad-hoc, manual processes, will permit both the Commission and market participants to administer the reporting programs more efficiently and effectively. Additional information on the forms addressed by these final rules is provided in section V below.

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

The Commission's current reporting rules, and those adopted herein, are primarily implemented by the Commission pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Act.[20] Section 4a of the Act, as amended by the Dodd-Frank Act, requires the Commission to set and enforce speculative position limits with respect to both futures and swaps.[21] Section 4c(b) gives the Commission plenary authority to regulate transactions that involve commodity options.[22] 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 proprietary and customer transactions and positions in commodities for future delivery on any board of trade in the United States or elsewhere.[23] 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.[24] 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.[25] Collectively, these CEA provisions warrant the maintenance of an effective and rigorous system of market and financial surveillance.

As further discussed in the NPRM, 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'').[26] Title VII of the Dodd-Frank Act [27] 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-

[17] *See* NPRM *supra* note 10 at 43970.

[18] As discussed in section III(A) below, a special account is a commodity futures or option account that has a reportable position, based on reporting levels set by the Commission. A special account number is a unique account identifier assigned by an FCM, clearing member, or foreign broker to a special account. *See* 17 CFR 17.00(g)(2)(iii) and 17 CFR 17.01(a). Special account numbers are included in ISS data. The special account number does not correspond to the trading account number reported on the Trade Capture Report. Accordingly, the special account number is not sufficient to link TSS data to ISS data.

[19] The final rules do not amend the current reporting requirements with respect to ownership information, in connection with both position reporting pursuant to § 17.00 and Form 102 reporting pursuant to § 17.01. For a complete discussion of the reporting requirements with respect to ownership information, see section V(A)(i) below.

[20] 7 U.S.C. 1 *et seq.* In addition, CEA section 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). These final rules are also consistent with the purposes enumerated in CEA section 3(b), which states that 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).

[21] 7 U.S.C. 6a. *See* NPRM *supra* note 10 at 43970. *See infra* note 26 for a discussion of the Dodd-Frank Act.

[22] 7 U.S.C. 6c(b).

[23] 7 U.S.C. 6g(a).

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

[25] 7 U.S.C. 6i.

[26] *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./Law Regulation/OTCDERIVATIVES/index.htm. See* NPRM *supra* note 10 at 43971.

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

time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authority with respect to, among other parties, all registered entities and intermediaries subject to the Commission's oversight.

As part of the Commission's rulemaking program implementing the Dodd-Frank Act,[28] the rule changes adopted herein also include swaps-related considerations in connection with the Commission's large trader reporting rules for swaps, enacted in 2011.[29] New CEA section 4t acknowledges the Commission's authority to establish a large trader reporting system for swaps that the Commission has determined perform a significant price discovery function; accordingly, the swaps-related considerations in the rules adopted herein also rely in part on the Commission's authority in CEA section 4t. Similarly, new CEA section 4s(f) requires swap dealers and major swap participants to make such reports as required by the Commission by rule or regulation regarding the transactions and positions of the registered swap dealer or major swap participant.[30] In addition, new CEA section 5h(f)(10) requires SEFs to report to the Commission, in a form and manner acceptable to the Commission, information that the Commission determines to be necessary or appropriate for the Commission to perform its duties under the CEA.[31]

III. Current Trader and Account Identification Programs

Section III below summarizes the current trader and account identification program under Forms 102 and 40, which is also discussed in detail in Section III of the NPRM.[32]

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

Current § 17.00, in part 17 of the Commission's regulations, forms the basis of the Commission's large trader reporting program.[33] It requires each FCM, clearing member, and foreign broker to submit a daily report to the Commission for each ''special account'' it carries—*i.e.,* a commodity futures or option account that has a reportable position. Such ''§ 17.00 position reports'' 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).[34] The daily report is sent to the Commission as a single data file from each reporting party pursuant to technical specifications identified in § 17.00(g).[35] 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—Current 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, current § 17.01[36] requires the reporting party to separately identify the special account to the Commission on Form 102.[37] Pursuant to current § 17.02(b)(2),[38] 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 current § 17.01[39] states the requirement to submit Form 102, and enumerates 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, which is generally transmitted to the Commission via email, facsimile, or regular mail. As explained below, these final rules will replace current Form 102, and require respondents to electronically submit New Form 102; the Commission will no longer accept submissions by 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 current form, which will be updated and replaced by these final rules, 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)–(f),[40] require the reporting firm to provide the following: A special account number; the name, address, and other identification information for the controller, owner (if also the 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 party submitting the Form 102.[41]

Based on the Commission's experience in receiving and reviewing Form 102 submissions, and as discussed below in the context of the final rules, the Commission has determined to update Form 102 in order to accommodate more detailed ownership and control information regarding identified special accounts, and to identify underlying trading accounts. In addition, the Commission is implementing an automated transmission process for Form 102 reporting, through either a web portal or secure FTP transmission, so that both the Commission and market participants may benefit from the efficiencies of automation.[42]

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

[29] 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.

[30] 7 U.S.C. 6s(f).

[31] 7 U.S.C. 7b–3(f)(10).

[32] *See* NPRM *supra* note 10 at 43971.

[33] 17 CFR 17.00.

[34] 17 CFR 15.03(b).

[35] 17 CFR 17.00(g).

[36] 17 CFR 17.01.

[37] Current Form 102 is titled ''Identification of Special Accounts.'' 17 CFR 15.02.

[38] 17 CFR 17.02(b)(2).

[39] 17 CFR 17.01.

[40] 17 CFR 17.01(a)–(f).

[41] Form 102 requires the reporting party to provide the legal entity identifier (''LEI'') (if any) of the reporting party and of various other parties reportable on the form, such as account owners, controllers, and originators. As noted in the footnotes to the reporting forms in the Appendix, if a reporting party provides an LEI on New Form 102 that was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked as ''Optional Fields'' in the relevant question (*i.e.,* name and address), provided that such Optional Fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. The Commission is addressing such otherwise duplicative reporting in order to leverage information regarding reporting parties that is available from another source. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the fields marked on the forms as ''Supplemental Fields,'' then the reporting party will not be required to report any of the Supplemental Fields in the relevant question, provided that such Supplemental Fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. ''Optional Fields'' are currently captured by the CICI Utility, while ''Supplemental Fields'' are not currently captured by the CICI Utility. Reporting parties that take advantage of such relief from duplicative reporting on the forms should indicate in their submission that the omitted information has been reported to an LEI provider.

[42] *See infra* section VIII(B)(iv) for a discussion of the Commission's contact reference database, which is intended to streamline the automated submission process and reduce the burden on reporting parties.

ii. Statement of Reporting Trader—Current Form 40

Current § 18.04, in part 18 of the Commission's regulations, requires that, after a special call of the Commission, each trader holding or controlling a reportable position file with the Commission a ''Statement of Reporting Trader'' on current Form 40, at such time and place as directed in the call.[43] Current Form 40 is most commonly submitted to the Commission via email, facsimile, or regular mail, but this submission scheme will be changed by these final rules. Specifically, as discussed below, current Form 40 will be replaced by New Form 40, which must be electronically submitted in response to a special call through either a web-based portal or a secure FTP transmission. When submitted in a timely and accurate manner, Form 40 submissions provide the Commission with basic identifying information regarding reportable traders active in its markets.

Similar to current § 17.01, current § 18.04 specifically enumerates the data fields required in a Form 40 filing. Section 18.04 and Form 40 require a reporting trader receiving a special call to provide the following principal data points: 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 owners that are foreign governments.

Natural persons completing current Form 40 must also provide the following information, 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-natural persons completing current Form 40 must also provide the following information, as applicable: The jurisdiction where the reporting party is 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 on futures 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 and reviewing Form 40 submissions, the Commission has determined to update Form 40 in order to request more detailed information regarding the ownership, control and business activities of reporting traders. In addition, the Commission is implementing an automated transmission process for Form 40 reporting, through either a web portal or secure FTP transmission, so that both the Commission and market participants may benefit from the efficiencies of automation.

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

As noted above, and discussed in detail in Section III of the NPRM,[44] the Commission adopted rules in 2011 pertaining to swaps large trader reporting as new part 20 of the Commission's regulations.[45] In addition to establishing a position-based reporting scheme for swaps,[46] the rules also require the reporting of counterparty consolidated accounts with reportable positions (via Form 102S) and the filing of a Form 40S in response to a special call by the Commission. In general, the 102S and 40S filings serve an analogous function for swap counterparties with reportable positions to that served by the current Form 102 and Form 40 filings for futures and options on futures traders with reportable positions. These final rules will update Forms 102S and 40S, in part by requiring more detailed ownership and control information, and integrate the forms into the automated submission process.

Pursuant to § 20.5(a), in part 20 of the Commission's regulations, current 102S filings must be filed by a part 20 reporting party (a swap dealer or clearing firm) 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.''[47] 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.[48]

These final rules update and replace the reporting framework established by part 20. The information requested in new Form 102S also reflects considerations developed in the Swaps Large Trader Guidebook for compliance with part 20.[49] For example, new Form 102S requires information on both swap counterparty and customer consolidated accounts with a reportable position.[50] New Form 102S also requests ownership and control information regarding each non-omnibus consolidated account identified on the form. Building on the approach of modernizing Form 102 and Form 40 submissions, these final rules also provide for the electronic submission of both Form 102S and Form 40S.

IV. Summary of 2010 and 2012 NPRMs

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

[43] 17 CFR 18.04.

[44] *See* NPRM *supra* note 10 at 43972.

[45] *See supra* note 12.

[46] *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/ltrguidebook053112.pdf* (hereafter, ''Swaps Large Trader Guidebook'').

[47] 17 CFR 20.5(a).

[48] 17 CFR 20.5(b) and 20.6.

[49] *See supra* note 46.

[50] As explained in the Swaps Large Trader Guidebook, acceptable part 20 data records include ''customer,'' ''principal,'' ''counterparty'' and ''agent'' records. Customer consolidated accounts, principal consolidated accounts, and counterparty consolidated accounts must be reported on new Form 102S, but agent data records do not need to be reported on Form 102S. Customer consolidated accounts are treated as customer accounts for purposes of Form 102S reporting, while principal consolidated accounts and counterparty consolidated accounts are treated as counterparty accounts for purposes of Form 102S reporting.

exchanges and other reporting parties (the ''2010 OCR NPRM'').[51] The 2010 OCR NPRM proposed to collect this information through a dedicated ownership and control report (''OCR''). In an effort to accommodate comments received in response to the 2010 OCR NPRM, the Commission withdrew the 2010 OCR NPRM, and instead pursued the collection of account ownership and control information through a separate Notice of Proposed Rulemaking, published on July 26, 2012 (the ''NPRM'').[52]

The NPRM proposed new rules and related forms to enhance the Commission's identification of futures and swap market participants, by collecting ownership and control information for certain trading accounts active on reporting markets that are DCMs or SEFs. The rules proposed to leverage the Commission's current position and transaction reporting programs by requiring the electronic submission of trader identification and market participant data on revised Forms 102 and 40, and on New Form 71. The NPRM contained a detailed discussion of the current futures large trader program under Forms 102 and 40,[53] and the anticipated benefits of the revised and newly introduced forms,[54] topics which are also summarized in these final rules.

The Commission invited all interested parties to submit comments on the NPRM, including comments with respect to costs and benefits, within a designated comment window. The Commission received a total of eight comment letters from thirteen interested parties, which are listed below.[55]

The following parties submitted written comments:

1. CME Group Inc. (''CME'') [56]
2. Futures Industry Association (''FIA'')
3. ICE Futures U.S., Inc. (''ICE'')
4. North American Derivatives Exchange, Inc. (''Nadex'')
5. The National Rural Electric Cooperative Association, the Large Public Power Council, and the Electric Power Supply Association (collectively, ''Joint Electric Association'')
6. John Hazelwood Estate (''Hazelwood'') [57]
7. Sheila Bailey-Waddell (''Waddell'')
8. Ron Troncatty (''Troncatty'') [58]

The written comments received are summarized in section VII below. In response to the comments received, the Commission has revised and/or eliminated several regulations that were proposed in the NPRM. The Commission also received a number of comments pertaining to the costs and/or benefits of certain proposed regulations. Pursuant to section 15(a) of the CEA, the Commission has considered the costs and benefits of the regulations being adopted in this release, as discussed in more detail in section VIII(B) below. For purposes of these final rules, the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission.

V. Summary of New and Amended Forms Adopted in These Final Rules

As noted above, this rulemaking addresses three forms—New Form 102, New Form 71, and New Form 40. New Form 102 is designed as a multi-function form, since the requirement to submit New Form 102 can arise from one of three separate triggers: A special account, volume threshold account, or consolidated account becomes reportable. The data required to be submitted on a New Form 102 is determined by the underlying triggering mechanism. A discussion follows of the three New Form 102 triggering mechanisms, the related sections of the form, and the information required to be provided in each section. The Commission will send New Form 71 via a special call to collect additional information about certain volume threshold accounts identified as omnibus accounts on New Form 102B. New Form 40 will continue to serve its traditional purpose as a tool to be used, at the Commission's discretion, to collect additional information 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. In addition, section VII below discusses in detail the version of the forms proposed in the NPRM, the comments received on the forms, and the changes that are being made to the forms in these final rules in response to comments.

As part of its implementation plan related to this rulemaking, and described in more detail below, the Commission has developed both a web-based portal and a secure FTP transmission through which market participates will submit and update their reporting forms. Market participants may provide required information through either submission method. This automated process is intended to cure much of the inefficiency and potential error associated with the current submission process via email, facsimile, or regular mail.

A. Position-Triggered Form 102A (Special Accounts)

i. Special Accounts and Reportable Positions

New Form 102A is the section of New Form 102 that will serve a function most analogous to current 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 current § 15.00(r), and means any commodity futures or option account in which there is a reportable position.[59] For the purposes of part 17, reportable position is defined in current § 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 current § 15.03.[60] These final rules do not amend the definition of either special account or reportable position.

The Commission notes that under current regulations (§ 17.00(b), citing § 150.4),[61] reporting firms are required to separately aggregate the positions of common owners and those of common controllers for purposes of reporting special accounts to the Commission, except as otherwise instructed by the Commission or its designee. Special accounts that are so aggregated and reported to the Commission pursuant to § 17.00 must also be identified to the Commission on Form 102 pursuant to current § 17.01. The requirement to separately aggregate the positions of common owners and those of common controllers for purposes of reporting special accounts to the Commission on Form 102 is reflected in the instructions to New Form 102A. As noted in question 2 on New Form 102A, special accounts become reportable on the form based on (i) ownership of a reportable

[51] *See supra* note 9.

[52] *See supra* note 10.

[53] *See* NPRM *supra* note 10 at 43971.

[54] *See* NPRM *supra* note 10 at 43970.

[55] All NPRM comment letters (''CL'') are available through the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1247.*

[56] CME Group submitted a single comment letter on behalf of four DCMs, each of which is being counted for purposes of this summary as a separate interested party: 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. Its comments are noted here as those of ''CME''.

[57] Hazelwood's comment letter responds to the 2010 OCR NPRM, rather than the NPRM; however, it remains part of the record for this rulemaking.

[58] Mr. Troncatty's comment letter was unresponsive; however, it remains part of the record for this rulemaking.

[59] 17 CFR 15.00(r).

[60] 17 CFR 15.00(p)(1) and 15.03.

[61] 17 CFR 17.00(b) and 150.4.

position, (ii) control of a reportable position, (iii) both ownership and control of a reportable position, or (iv) because the relevant account is an omnibus account with a reportable position.

Following the implementation of these final rules, reporting parties should continue to report special accounts pursuant to § 17.00 on a disaggregated basis if the parties have been so instructed by the Commission or its designee. All reporting parties should continue to provide position reporting based on control of a special account. As an example, if a special account is controlled by one reporting party but owned by another, such account should be reported only by the reporting party that controls the special account.

Consistent with this guidance, and notwithstanding the requirement on New Form 102A to also report based solely on ownership of a reportable position, the Commission will not require reporting based on this trigger via New Form 102A following the implementation of these final rules. The Commission is retaining the reporting trigger based on ownership of a reportable position in New Form 102A as a placeholder, in the event that the Commission requires 102A reporting based solely on this trigger on a future date.

ii. 102A Form Requirements

As compared to current Form 102, the data fields in 102A will 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 will also require reporting firms that are clearing members to identify the trading accounts that comprise a position-based special account, and to provide TCR trading account numbers for those trading accounts.[62] To clarify, trading accounts that comprise a position-based special account 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. Notwithstanding the fact that the Commission will not require reporting of special accounts based solely on ownership (as discussed above), when completing New Form 102A, reporting parties must identify both the owners and controllers of trading accounts that comprise a position-based special account identified on the form. The Commission's objective, in requiring 102A reporting parties 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.

Based on comments received in response to the 2010 OCR NPRM, it is the Commission's understanding that non-clearing FCMs, foreign brokers, and omnibus account originators (collectively, ''non-clearing entities'') will generally not have the ability to match/identify a trading account number for their customers or sub-accounts (hereafter, ''sub-accounts'') on the TCR.[63] As a result, the Commission notes that the requirement in 102A to identify a trading account number for trading accounts that comprise a special account will only be a relevant/applicable data field for clearing members identifying trading accounts that comprise a special account.

Notwithstanding these limitations regarding the reporting of trading accounts that comprise a special account, non-clearing entities must continue to report special accounts on Form 102 with respect to their customers/sub-accounts, in the event that such accounts, if carried directly with a clearing member, would be required to be reported as a position-based special account. Current Form 102 requires non-clearing entities to report such special accounts, and New Form 102A does not change that requirement.

New Form 102A will 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 will 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. Finally, 102A requires any reporting firm that indicates on 102A that it is a foreign broker to identify its U.S. FCM.

New Form 102A also includes a question regarding the controllers of trading accounts.[64] Respondents should report all individuals meeting the definition of ''trading account controller'' set forth in § 15.00(bb) when responding to this question.[65] The Commission notes however that regardless of whether the trading is carried out in whole or in part through an automated trading system or direct human initiation, the underlying analysis remains the same. When completing Form 102A, reporting parties should identify each person that satisfies the definition of ''trading account controller,'' as defined in § 15.00(bb). Once respondents have identified all individuals meeting the definition of trading account controller in a Form 102A submission, they will not be required to submit change updates to the 102A if one previously identified controller takes the place of another previously identified controller. These instructions regarding the reporting of trading account controllers on New Form 102A are also applicable to the reporting of volume threshold account controllers on New Form 102B.[66]

iii. Timing of 102A Reporting[67]

This rulemaking imposes a bifurcated deadline for submitting certain information on New Form 102A. Reporting parties are required to submit a completed Form 102A to the Commission no later than 9 a.m.[68] on the business day following the date on which the special account becomes

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

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

[64] *See* question 10(iii) on Form 102A.

[65] Pursuant to § 15.00(bb), trading account controllers are natural persons ''who by power of attorney or otherwise actually direc[t] the trading of a trading account''. In the event that a respondent's trading in a reportable trading account is conducted in whole or in part through an automated trading system (''ATS''), when submitting New Form 102A the respondent should consider whether any operator, supervisor, or other individual involved in the administration of such ATS meets the definition of trading account controller with respect to the trading account. The Commission recognizes that, for some respondents, the individuals involved in the administration of an ATS may not qualify as trading account controllers. The Commission further recognizes that the administration of ATSs may vary from one respondent to another, and that such variance may impact which natural persons a respondent identifies as trading account controllers for accounts whose trading is conducted in whole or in part through an ATS.

[66] *See* question 6 on Form 102B.

[67] *See infra* the discussion of § 17.02(b) in section VII, which provides additional information regarding changes to the timing of New Form 102A reporting made in response to comments on the NPRM.

[68] Unless otherwise specified by the Commission or its designee, the stated time in the final rules is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets, in accordance with § 17.02(a).

reportable. This form must include all required information, including the names of the owner(s) and controller(s) of each trading account that is not an omnibus account, and that comprises a special account reported on the form. However, the reporting party may provide certain supplemental information regarding such owner(s) and controller(s) on a later date. No later than 9 a.m. on the third business day following the date on which the special account becomes reportable, the reporting party may update its Form 102 submission to provide information with respect to such owner(s) and controller(s) other than their names (*e.g.,* their address and other contact information).[69] The final rules also include an ''on-call'' provision, which requires a 102A to be submitted on such other date as directed by special call of the Commission.

iv. Timing of 102A Change Updates and Refresh Updates

The final rules also require reporting parties to submit an updated Form 102A in the event that a change occurs that causes the information submitted on the form to no longer be accurate (''change updates''). Change updates must be submitted according to the bifurcated schedule described in the preceding paragraph. The final rules also include an ''on-call'' provision, which requires 102A change updates to be submitted on such other date as directed by special call of the Commission.

In addition to change updates, § 17.02(b) requires that, starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), each FCM, clearing member, or foreign broker resubmit every 102A that it has submitted to the Commission or its designee for each of its special accounts (''refresh updates''). The goal of the refresh update provision for 102A is to establish discrete points in time where all 102A data is considered accurate and reliable, thereby avoiding the data drift that is often associated with long-term data collection efforts.

Both the change update and refresh update provisions of § 17.02(b) include a 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 or its designee that the account in question is no longer reportable as a special account and has not been reportable as a special account for the past six months. If a reporting party so notifies the Commission, and the special account becomes reportable again at a subsequent date, then the reporting party would be required to file a new Form 102A.

B. Volume-Triggered Form 102B (Volume Threshold Accounts)

i. Volume Threshold Accounts and Reportable Trading Volume Level

New Form 102B of New Form 102 introduces a new volume-based reporting structure not found in current Form 102. While current 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 account, as defined below in final § 15.00(x), means any trading account that carries reportable trading volume on or subject to the rules of a reporting market that is a DCM or SEF.[70] The reportable trading volume level (''RTVL'') is defined in final § 15.04 as trading volume of 50 or more contracts, during a single trading day, on a single reporting market that is a DCM or SEF, in all instruments that such reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months).[71] 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.

ii. 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 from SEFs, and to link the volume threshold account to other Commission's surveillance databases.[72] The data points will also assist the Commission in identifying traders whose end-of-day open interest does not reach reportable levels on Form 102A, but whose intra-day trading reaches the volume threshold, thus enabling the Commission to monitor trading that could potentially impact markets during concentrated periods of intra-day trading.

Second, 102B requires that clearing members provide, in response to question 3, the volume threshold account's associated special account number, if applicable. 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.

Third, 102B requires that clearing members indicate, in response to question 4, 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 4 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

[69] Specifically, the information marked as 'Follow-On Information' in questions 10(ii) and (iii) on New Form 102A may be provided within three business days. All other required fields on New Form 102A must be completed by 9:00 a.m. the following business day. See New Form 102A in the Appendix to these final rules for more information.

[70] *See supra* section I(A) for an explanation of the reporting markets relevant to 102B filings, and *infra* sections VII and IX for amendments to the definition of ''reporting market.'' *See also infra* the discussion of § 15.00(x) in section VII, which provides additional information regarding changes to the definition of volume threshold account made in response to comments on the NPRM.

[71] The 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 percentage of trading volume, while minimizing the adopted regulations' impact on low-volume accounts whose trading activity does not warrant inclusion in the adopted reporting and identification regime. Based on the sample data set used in the Commission's analysis, the 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 RTVL, as adopted, 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. *See* the discussion of § 15.04 in section VII below for additional information regarding the application of the RTVL to products traded on or subject to the rules of a SEF.

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

number, among other information).[73] 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 adopted herein and described below.

Fourth, 102B requires clearing members to provide information, in response to question 5, 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 5 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 6, sufficient to uniquely identify and contact each volume threshold account controller of an account that is not an omnibus account. Pursuant to final § 15.00(cc), a volume threshold account controller must be a natural person. The requested information includes the name of the account controller(s), address, phone number and job title, together with the name of the controller's employer and other identifying information.[74]

iii. Timing of 102B Reporting [75]

This rulemaking imposes a bifurcated deadline for submitting certain information on New Form 102B. Reporting parties are required to submit a completed Form 102B to the Commission no later than 9 a.m. on the business day following the date on which the volume threshold account becomes reportable. This form must include all required information, including the names of the owner(s) and controller(s) of each volume threshold account reported on the form that is not an omnibus account. However, the reporting party may provide certain supplemental information regarding such owner(s) and controller(s) on a later date. No later than 9 a.m. on the third business day following the date on which the volume threshold account becomes reportable, the reporting party may update its Form 102 submission to provide information with respect to such owner(s) and controller(s) other than their names (*e.g.,* their address and other contact information).[76] The final rules also include an ''on-call'' provision, which requires a 102B to be submitted on such other date as directed by special call of the Commission.

iv. Timing of 102B Change Updates and Refresh Updates

The final rules also require reporting parties to submit an updated Form 102B in the event that a change occurs that causes the information submitted on the form to no longer be accurate (''change updates''). Change updates must be submitted according to the bifurcated schedule described in the preceding paragraph. The final rules also include an ''on-call'' provision, which requires 102B change updates to be submitted on such other date as directed by special call of the Commission.

In addition to change updates, § 17.02(c) requires that, starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), each clearing member resubmit every 102B that it has submitted to the Commission for each of its volume threshold accounts (''refresh updates''). The goal of the refresh update provision for 102B is to establish discrete points in time where all 102B data is considered accurate and reliable, thereby avoiding the data drift that is often associated with long-term data collection efforts.

Both the change update and refresh update provisions of § 17.02(c) include a sunset provision. A clearing member may stop providing change updates or refresh updates for a Form 102B that it has submitted to the Commission for any volume threshold account upon notifying the Commission or its designee that the account in question 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. If a reporting party so notifies the Commission, and the volume threshold account becomes reportable again at a subsequent date, then the reporting party would be required to file a new Form 102B.

C. Position-Triggered Form 102S (Consolidated Accounts)

i. 102S Form Requirements

Section 102S of New Form 102 is designed to facilitate the electronic submission of 102S filings. Such filings are currently being submitted to the Commission (pursuant to § 17 CFR 20.5(a)) through a non-automated process. As noted above, pursuant to § 20.5(a), 102S filings must be filed by a part 20 reporting party (a swap dealer or clearing firm) 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.'' [77] By incorporating 102S in New Form 102, these rules will request more detailed ownership and control information regarding identified consolidated accounts, and require the submission of consolidated account reporting via an automated submission.[78] As explained above, 102S

[73] *See supra* note 41. Form 102B also requires the reporting party to provide the LEI (if any) of any omnibus account originator and volume threshold account owner(s) reported on the form. As noted in the footnotes to the reporting forms in the Appendix, if a reporting party provides an LEI on Form 102B that was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked as ''Optional Fields'' in the relevant question (*i.e.,* name and address), provided that such optional fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. Footnotes to the reporting forms in the Appendix contain instructions regarding other fields that are not required to be reported in certain circumstances.

[74] As with Form 102A, respondents should report *all* individuals meeting the definition of volume threshold account controller on Form 102B. In the event that a respondent's trading in a reportable volume threshold account is conducted in whole or in part through an ATS, when submitting New Form 102B the respondent should consider whether any operator, supervisor, or other individual involved in the administration of such ATS meets the definition of volume threshold account controller with respect to the volume threshold account. The Commission recognizes that, for some respondents, the individuals involved in the administration of an ATS may not qualify as volume threshold account controllers. *See supra* section V(A)(ii).

[75] *See infra* the discussion of § 17.02(c) in section VII, which provides additional information regarding changes to the timing of New Form 102B reporting made in response to comments on the NPRM.

[76] Specifically, the information marked as 'Follow-On Information' in questions 5 and 6 on New Form 102B may be provided within three business days. All other required fields on New Form 102B must be completed by 9:00 a.m. the following business day (including question 4, with respect to omnibus account information). See New Form 102B in the Appendix to these final rules for more information.

[77] 17 CFR 20.5(a).

[78] *See supra* note 41. Form 102S also requires the reporting party to provide the LEI (if any) of any omnibus account originator and consolidated account owner(s) and controller(s) reported on the form. As noted in the footnotes to the reporting forms in the Appendix, if a reporting party provides an LEI on Form 102S that was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked as ''Optional Fields'' in the relevant question (*i.e.,* name and

will also incorporate considerations developed in the Swaps Large Trader Guidebook for compliance with part 20. These rules will replace the 102S submission procedure and guidance in the Swaps Large Trader Guidebook.[79]

ii. Timing of 102S Reporting, Change Updates and Refresh Updates

The timing for submitting new 102S filings will continue to be subject to current § 20.5(a)(3).[80]

Section 20.5(a)(4) of the final rules requires that if any change causes the information filed on a 102S for a consolidated account to no longer be accurate, an updated 102S must be filed with the Commission no later than 9:00 a.m. 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, final § 20.5(a)(5) requires that, starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), each clearing member or swap dealer must 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 a 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 or its designee that the account in question is no longer reportable as a consolidated account and has not been reportable as a consolidated account for the past six months. If a reporting party so notifies the Commission, and the consolidated account becomes reportable again at a subsequent date, then the reporting party would be required to file a new Form 102S.

D. Form 71 (Omnibus Accounts and Sub-Accounts)

New Form 71 (''Identification of Omnibus Accounts and Sub-Accounts'') will be sent, in the Commission's discretion, in the event that a volume threshold account is identified as a customer omnibus account on Form 102B. The Commission will send New Form 71 via a special call to the originating firm of such an account. The Commission will provide the relevant account number and reporting market reported on the 102B when sending the Form 71. Recipients of a Form 71 will 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.[81] 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 will 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 will 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, via a special call at the discretion of the Commission, 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 will collect with respect to a non-omnibus volume threshold account identified on 102B. The key data points 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

address), provided that such optional fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. Footnotes to the reporting forms in the Appendix contain instructions regarding other fields that are not required to be reported in certain circumstances.

[79] *See* Swaps Large Trader Guidebook at p. 26 and p. 91, Appendix D. *See also supra* note 12.

[80] 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.''

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

required to provide information sufficient to identify and contact the owner(s) and controller(s) of such non-omnibus reportable sub-account (*e.g.,* 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).

E. New Form 40 (Reporting Traders)

In these final rules, the Commission adopts a revised Form 40 that will be sent, on special call of the Commission, to individuals and other entities identified on any of 102A, 102B, and Form 71. As adopted herein, New Form 40, still referred to as the ''Statement of Reporting Trader,'' will continue to serve the function traditionally met by current Form 40. New Form 40 will provide the Commission with detailed information regarding both the business activities and the ownership and control structure of a reporting trader identified in the Commission's Form 102 program (as updated by these final rules). New Form 40 will also be the vehicle through which market participants subject to 17 CFR 20.5(b) submit their 40S filings, and will be used to collect additional information regarding the owners and controllers of non-omnibus volume threshold accounts identified by Form 71. Those entities required to complete a New Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information submitted on New Form 40 by periodically updating the information on the New Form 40 web portal or by periodically resubmitting New Form 40 by secure FTP transmission.

Among other data, New Form 40 will request the following 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 party'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; an indication of all commodity groups and individual commodities that the reporting trader presently trades, or expects to trade in the near future, in derivatives markets; and other 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.

New Form 40 will also require reporting traders who engage in commodity index trading (''CIT''), as defined in the new form, to identify themselves to the Commission.[82] 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. 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.[83]

VI. Data Submission Standards and Procedures

A. Overview

During the comment period of the NPRM, the Commission's data and technology staff worked with potential reporting parties and other market participants to address the information technology standards associated with the rules proposed by the NPRM.[84] Following these discussions, the Commission established two submission methods for the reporting forms required by these final rules: (a) A web-based portal and (b) an XML-based, secure FTP data feed. While the NPRM contemplated that certain forms (Forms 40/S and 71) could be submitted only via the web portal, these final rules provide that reporting parties may submit each of the new or revised forms through either the web-based portal or the FTP data feed, in order to provide additional flexibility to reporting parties. The Commission is offering two filing methods for each form because it anticipates a wide range of technological capabilities among reporting parties (varying based on the relative size and experience of a given reporting party). Reporting parties will be able to select the submission method that works best with their existing data and technology infrastructure and the number of filings they expect to make. Those reporting parties electing to submit information through the FTP data feed should contact the Commission, which will provide the necessary technical information to establish the data feed. Following the publication of these final rules, the Commission intends to publish a data compliance guidebook with detailed instructions for the two submission methods.[85]

When a reporting party identifies a new account on New Form 102A, 102B or 102S, the Commission will evaluate the account to determine whether to request a New Form 40/40S or New Form 71 via a special call. If the Commission determines to send a New Form 40/40S or New Form 71 to the applicable reporting trader or account originator, the Commission will contact the reporting party (generally via email, using the email address provided on the New Form 102). The Commission will provide instructions for submitting the applicable form through either the web-based portal or secure FTP data feed. Depending on the information provided in New Form 71, the Commission may require a New Form 40 or New Form 71 from additional persons or entities identified in the New Form 71, using the same process described above.

B. Schedule of Effective Date and Compliance Date

As noted above, these final rules include separate ''effective'' and ''compliance'' dates:

- The effective date of these final rules will be February 18, 2014.
- The compliance date, however, will be delayed by an additional 180 days, with the result that the compliance date of these final rules will be August 15, 2014.

Between the publication of these final rules and the effective date, reporting parties should work with the Commission's data and technology staff

[82] See question 14 in New Form 40.

[83] See question 14ii(a) in New Form 40.

[84] Summaries of these discussions are available through the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1247.*

[85] For a recent example of a similar undertaking, see the Swaps Large Trader Guidebook, linked *supra* at note 46.

to test and implement any information technology standards or systems associated with the final rules. During this testing period, reporting parties should provide all test data or form filings requested by the Commission's data and technology staff, in the form and manner requested by staff.[86] In addition, the Commission will conduct beta testing of each submission method prior to the compliance date. All reporting parties subject to the final rules must be in full compliance by the compliance date, including having submitted complete and accurate filings using one of the two submission methods described above.

VII. Review of NPRM and Summary of Final Rules

A. Part 15

i. § 15.00(q)—Reporting Market

NPRM Proposal

Proposed § 15.00(q) revised the definition of ''reporting market'' in current § 15.00(q) to replace the provision's cross-reference to section 1a(29) of the Act with a cross-reference to § 1a(40). The proposed rule also revised current § 15.00(q) to remove the provision's reference to derivatives transaction execution facilities (''DTEFs'').[87]

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(q) without modification.

ii. § 15.00(t)—Control

NPRM Proposal

Proposed § 15.00(t) added ''control'' to the list of defined terms in § 15.00.[88] The Commission's proposed definition, which applied only to special accounts (New Form 102A) and consolidated accounts (Form 102S), defined control as ''to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account.'' The proposed definition specified that special accounts and consolidated accounts may have more than one controller. The Commission notes that the proposed definition of ''control'' applied solely for the purpose of satisfying the reporting obligations under parts 15 through 19 and 21 of the Commission's regulations. The proposed definition did 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) were not altered by the definition of ''control'' proposed in § 15.00(t).

Summary of Comments on NPRM Proposal

FIA commented that it would be difficult and/or meaningless to provide the requested control information, because the individuals responsible for trading an account within a special account or a volume threshold account can change often, even within the same trading day.[89] Furthermore, ''in the case of algorithmic trading programs, there likely will not be an identifiable individual who 'actually directs the trading' of the program. For this reason, FCMs do not currently collect this information.'' [90] FIA recommended removing the requirement to identify account controllers on Forms 102A and 102B.[91]

Discussion of Final Rule

The Commission is adopting proposed § 15.00(t) without modification. At the same time, the Commission is modifying the instructions on Form 102 in response to comments that discussed the difficulty of identifying individuals that exercise control on a transient basis, such as individuals operating an automated trading system (''ATS'') during a daily shift. The instructions for Form 102A and Form 102B have been revised to state that respondents should report all individuals who qualify as ''trading account controllers'' or ''volume threshold account controllers,'' as defined in § 15.00(bb) and (cc), respectively.[92] The Commission notes that regardless of whether the trading is carried out in whole or in part through an automated trading system or direct human initiation, the underlying analysis remains the same. When completing Form 102A and Form 102B, reporting parties should identify each person that satisfies the definition of ''trading account controller'' or ''volume threshold account controller,'' as defined in § 15.00(bb) and (cc), respectively. Once respondents have identified all individuals meeting the applicable controller definition in a Form 102A or Form 102B submission, they will not be required to submit change updates to the submission if one previously identified controller takes the place of another previously identified controller.

iii. § 15.00(u)—Reportable Trading Volume

NPRM Proposal

Volume threshold accounts, omnibus volume threshold accounts, omnibus reportable sub-accounts, and reportable sub-accounts all reflect accounts that execute (or receive via allocation or give-up) ''reportable trading volume.'' Proposed § 15.00(u) defined reportable trading volume as contract trading volume that meets or exceeds the level specified in proposed § 15.04. Section 15.04, in turn, provided that reportable trading volume for a trading account is trading volume of 50 or more contracts, during a single trading day, on a single

[86] The Commission will protect proprietary information consistent with the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 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.'' 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.

[87] 17 CFR 15.00(q) and 15.02. The Dodd-Frank Act modified section 1a of the CEA. As a result, the definition of ''registered entity'' previously found in section 1a(29) of the CEA is now in section 1a(40). In the NPRM, the Commission proposed to revise current § 15.00(q) so that it cites to section 1a(40) for the definition of registered entity. The Commission also proposed to revise current § 15.00(q) by removing the provision's reference to DTEFs, a category of regulated markets that was eliminated by section 734 of the Dodd-Frank Act.

[88] The definition of ''control'' in § 15.00 is based upon the definition of ''controlled account'' in section 1.3(j) of the Commission's regulations.

[89] CL–2012–FIA *supra* note 55 at 5.

[90] CL–2012–FIA *supra* note 55 at 6.

[91] CL–2012–FIA *supra* note 55 at 5. The 2010 OCR NPRM proposed a broader definition of an account controller: ''A natural person, or a group of natural persons, with the legal authority to exercise discretion over trading decisions by a trading account, with the authority to determine the trading strategy of an automated trading system, or responsible for the supervision of any automated system or strategy.'' In a comment letter dated December 23, 2010, FIA commented that ''this definition cuts too broad a swath and would require information on individuals that never actually exercise trading authority over an account but, because of their position with the customer, as an owner or officer, would be deemed to have this authority . . . FIA believes the definition of an account controller should be consistent with the Commission's definition of control as set out in Commission Rule 1.3(j) and generally applied at exchanges.'' The definition of an account controller reflected in § 15.00(t) and (bb)–(dd) of these final rules is based on Commission Rule 1.3(j).

[92] The Commission recognizes that, for some respondents that conduct trading in a reportable trading account or volume threshold account in whole or in part through an ATS, the individuals involved in the administration of such ATS may not qualify as trading account controllers or volume threshold account controllers. *See supra* section V(A)(ii).

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).

Discussion of Final Rule

See below the discussion of comments received regarding the reportable trading volume level proposed by § 15.04. No comments were received pertaining specifically to proposed § 15.00(u), and the Commission is adopting § 15.00(u) without modification.

iv. § 15.00(v)—Direct Market Access

NPRM Proposal

Proposed § 15.00(v) defined direct market access (''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. Proposed Forms 102A and 102B required an FCM to indicate whether a trading account or volume threshold account has been granted DMA to the trade matching system or the respective reporting system of the applicable reporting market.

Summary of Comments on NPRM Proposal

FIA, CME and ICE commented that the definition of DMA was overbroad, and FIA predicted that ''virtually all customers for which a Form 102 would be required to be filed will have been granted DMA.'' [93] CME commented that DMA data is not related to account ownership and control, the focus of these final rules, but rather to connectivity.[94]

Discussion of Final Rule

In response to CME's comment regarding the relevance of DMA information, the Commission has concluded that the OCR reporting forms are not the appropriate vehicle for reporting information regarding connectivity. The Commission is therefore not adopting proposed § 15.00(v), and will not include a question regarding DMA in Form 102.

v. § 15.00(v)—Omnibus Account [95]

NPRM Proposal

Proposed § 15.00(w) (re-ordered in the final rules as § 15.00(v)) defined omnibus account as 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.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(w) (re-ordered in the final rules as § 15.00(v)) without modification.

vi. § 15.00(w)—Omnibus Account Originator

NPRM Proposal

Proposed § 15.00(x) (re-ordered in the final rules as § 15.00(w)) defined omnibus account originator as 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.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(x) (re-ordered in the final rules as § 15.00(w)) without modification.

vii. § 15.00(x)—Volume Threshold Account

NPRM Proposal

Proposed § 15.00(y) (re-ordered in the final rules as § 15.00(x)) defined volume threshold account as 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 section 5 of the Act or a swap execution facility registered under section 5h of the Act.

In the case of a give-up trade, this NPRM definition was intended to require reporting by: (i) The carrying firm of the original executing account; (ii) the carrying firm of any intervening account(s); and (iii) the carrying firm of the account to which the give-up trade was ultimately allocated. Question 10 in Section VII of the NPRM emphasized the broad scope of the definition: ''The Commission intends that the definition of 'volume threshold account' captures all possible categories of accounts with reportable trading volume. . . . The Commission requests public comment regarding whether the proposed definition of 'volume threshold account' achieves this purpose.''

Summary of Comments on NPRM Proposal

In response to this question, CME commented that volume-based accounts should be reported at the carrying broker level, and noted that, ''this is where the account ownership and control information resides, not at executing brokers.'' [96]

Discussion of Final Rule

The Commission is adopting proposed § 15.00(y) (re-ordered in the final rules as § 15.00(x)) with one modification. The definition of volume threshold account is being scaled back in the final rules, to capture a smaller number of volume threshold accounts than under the NPRM proposal. The definition is being modified to: ''any trading account that carries reportable trading volume on or subject to the rules of a reporting market that is a [DCM or SEF].'' [97] This change will reduce the number of reportable volume threshold accounts in the case of a give-up trade:

- In a give-up scenario, this definition will require reporting by the carrying firm of the account to which the trade is ultimately allocated. Reporting will not be required, however, by the carrying firm of the original executing account, or by the carrying firm of any intervening account(s) prior to the account to which the trade is ultimately allocated.
- In a non-give-up scenario, there will be no change to the number of reportable volume threshold accounts. Under both the original and revised definition, reporting will be required by the carrying firm of the account in which the trade is both executed and cleared.

The Commission believes that this approach will be more efficient and less

[93] CL–2012–FIA *supra* note 55 at 6. CL–2012–CME *supra* note 55 at 2–3. CL–2012–ICE *supra* note 55 at 2.

[94] CL–2012–CME *supra* note 55 at 2–3.

[95] Note that the following definitions in section § 15.00 have been reordered due to the elimination of the definition of direct market access (proposed in the NPRM as § 15.00(v)).

[96] CL–2012–CME *supra* note 55 at 4.

[97] Based on comment letters received in response to various proposed OCR rulemakings, the Commission understands that, in the case of a give-up trade, the industry regards the account to which a give-up trade is ultimately allocated as the only ''carrying'' account in the give-up process. On this basis, the Commission does not view the original executing account of a give-up trade, or any intervening account(s) prior to the account to which the give-up trade is ultimately allocated, as ''carrying'' accounts in the give-up process.

burdensome for reporting parties, while nonetheless capturing a sufficient number of volume threshold accounts to advance the Commission's surveillance objectives.

viii. § 15.00(y)—Omnibus Volume Threshold Account

NPRM Proposal

Proposed § 15.00(z) (re-ordered in the final rules as § 15.00(y)) defined omnibus volume threshold account as 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 section 5 of the Act or a swap execution facility registered under section 5h of the Act.

Summary of Comments on NPRM Proposal

See the discussion above regarding CME's comment on the definition of ''volume threshold account.''

Discussion of Final Rule

The Commission is adopting proposed § 15.00(z) (re-ordered in the final rules as § 15.00(y)) with one modification, consistent with the change to the definition of volume threshold account described above. Under the final rules, omnibus volume threshold account means ''any trading account that, on an omnibus basis, carries reportable trading volume on or subject to the rules of a reporting market that is a [DCM or SEF].''

ix. § 15.00(z)—Omnibus Reportable Sub-Account

NPRM Proposal

Proposed § 15.00(aa) (re-ordered in the final rules as § 15.00(z)) defined omnibus reportable sub-account as 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.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(aa) (re-ordered in the final rules as § 15.00(z)) without modification.

x. § 15.00(aa)—Reportable Sub-Account

NPRM Proposal

Proposed § 15.00(bb) (re-ordered in the final rules as § 15.00(aa)) defined reportable sub-account as any trading sub-account of an omnibus volume threshold account or omnibus reportable sub-account, which sub-account executes reportable trading volume.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(bb) (re-ordered in the final rules as § 15.00(aa)) without modification.

xi. § 15.00(bb)—Trading Account Controller; § 15.00(cc)—Volume Threshold Account Controller; § 15.00(dd)—Reportable Sub-Account Controller

NPRM Proposal

The Commission proposed 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, proposed § 15.00(cc), (dd), and (ee) (re-ordered in the final rules as § 15.00(bb), (cc), and (dd)) defined 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), (dd), and (ee) are relevant to the submission of New Forms 102A (trading accounts), 102B (volume threshold accounts), and 71 (reportable sub-accounts), respectively.

Summary of Comments on NPRM Proposal

See above the discussion of comments received regarding the definition of control proposed by § 15.00(t).

Discussion of Final Rule

The Commission is adopting proposed § 15.00(cc), (dd), and (ee) (re-ordered in the final rules as § 15.00(bb), (cc), and (dd)) without modification. See the discussion of § 15.00(t) above regarding the modifications to the Form 102 instructions that will be made in response to comments received regarding the definition of control.

xii. § 15.01(c)—Persons Required To Report

NPRM Proposal

The introduction of new account and controller types in New Forms 102A, 102B, and 71 will result in a corresponding expansion in the categories of persons required to provide New Form 40 reports. Accordingly, the Commission proposed to amend § 15.01(c), which currently requires Form 40 reports only from persons who hold or control reportable positions.[98] Proposed § 15.01(c) required 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).

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.01(c) without modification.

xiii. § 15.02—Reporting Forms

NPRM Proposal

Current § 15.02 contains a list of the forms contained in parts 15 through 19, and 21.[99] Proposed § 15.02 was revised to reflect the proposed introduction of new Form 71, the renaming of Form 102, and the new OMB control number created by this rulemaking.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.02 without modification.

xiv. § 15.04—Reportable Trading Volume Level

NPRM Proposal

Proposed § 15.04 provided that reportable trading volume for a trading account is trading volume of 50 or more contracts, during a single trading day,

[98] 17 CFR 15.01(c).

[99] 17 CFR 15.00(q) and 15.02. The Dodd-Frank Act modified section 1a of the CEA. As a result, the definition of ''registered entity'' previously found in section 1a(29) of the CEA is now in section 1a(40). In the NPRM, the Commission proposed to revise current § 15.00(q) so that it cites to section 1a(40) for the definition of registered entity. The Commission also proposed to revise current § 15.00(q) by removing the provision's reference to DTEFs, a category of regulated markets that was eliminated by section 734 of the Dodd-Frank Act. These proposals are adopted in the final rules.

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).

Notably, proposed § 15.04 addressed trading volume, not open positions, and required 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.

Summary of Comments on NPRM Proposal

FIA, CME and ICE commented that the reportable trading volume level (''RTVL''), as proposed, would generate an excessive amount of data that may not be meaningful to the Commission's trade practice and market surveillance programs.[100] More specifically, Nadex commented that the proposed 50-contract reportable trading volume level would capture too many retail customers that are trading contracts with very small notional values.[101]

FIA and ICE both recommended that the Commission phase in a descending RTVL until the optimum level is reached.[102] FIA, for example, recommended that ''the Commission could require that only accounts meeting a volume threshold of 1,000 contracts per day be reported in the first three months; contracts meeting a volume threshold of 750 contracts per day be reported in the second three months after the compliance date; and so on until the optimum volume threshold is reached.'' [103] CME also expressed concern that the RTVL will capture too many accounts, but recommended that the RTVL should be changed to 250 contracts bought or sold during a calendar week.[104]

Nadex recommended that a different RTVL should be applied to contracts with small notional values, as compared to contracts with larger, traditional notional values. ''For any contract with a notional value of $1,000 or less, the RTVL could be increased to 5,000 (*i.e.,* 1,000 times the standard RTVL of 50). This would still result in the Commission capturing information with respect to a relatively insignificant amount of trading activity in terms of notional value, but would be significantly less burdensome for the DCMs that offer these contracts.'' [105] If the Commission determined not to adopt a different RTVL for contracts with small notional values, then Nadex recommended that ''DCMs should have the opportunity to obtain a waiver from the standard RTVL level with an appropriate alternative to be determined after consultation between the relevant market and CFTC staff.'' [106]

Discussion of Final Rule

Although the Commission acknowledges comments received regarding the appropriate RTVL, the Commission is adopting proposed § 15.04 without modification.

As indicated in the NPRM, the RTVL is based on Commission staff's analysis of DCM trade data received through the trade capture report from a sample of DCMs during a recent six-month period. The 50-contract RTVL is calibrated to identify a critical mass of the trading accounts active in Commission-regulated markets, measured not only by the percentage of trading volume for which those accounts are responsible, but also by the absolute number of accounts identified. The 50-contract RTVL identifies approximately 85 percent of trading volume in approximately 90 percent of the products sampled by the Commission over the six-month sample period. The 50-contract RTVL also identifies approximately one-third of the trading accounts in the sample set. As a result, the 50-contract RTVL will capture both: (1) Those accounts responsible for the large majority of trading volume; and (2) a meaningful absolute number of the trading accounts active in Commission-regulated markets. The Commission believes that (1) and (2) are both equally important in improving the Commission's ability to perform robust and comprehensive market and trade practice surveillance. While the 50-contract RTVL achieves the Commission's regulatory objectives, it is nonetheless also calibrated to minimize the regulations' impact on low-volume accounts whose trading activity does not warrant inclusion in the reporting regime.

Furthermore, the Commission also reiterates that volume threshold account reporting, through Form 102B, is a transaction-based reporting regime rather than a position-based regime. A fundamental purpose of volume-based reporting on Form 102B is to identify trading accounts based solely on their trading volume, independently of such accounts' contribution to open interest. The Commission's intent in this rulemaking is to achieve a comprehensive identification of the participants in regulated derivatives markets regardless of the trading strategies they may pursue.

For these reasons, the Commission declines to accept proposals that could reduce the trading volume or absolute number of accounts identified, including FIA's proposal that the final rules switch to an RTVL that descends from 1,000 contracts to 750 contracts, or proposals that would change the basis of measurement, including CME's proposal to use an RTVL of 250 contracts bought or sold per week. In addition, the Commission also declines to accept recommendations that would result in an impracticable administrative burden, including Nadex's recommendation that a different RTVL should be applied to contracts with small notional values. The Commission believes it would be inefficient for both the Commission and various reporting parties to create a reporting regime for its regulated markets that is differently scaled across multiple products, in response to the fact that trading volume varies from one product to the next.[107] Accordingly, the final rules will use the same RTVL proposed in the NPRM.

The NPRM proposed to apply the same RTVL (50 contracts) to volume threshold accounts associated with both DCMs and SEFs. Because the RTVL is based on the Commission's experience with DCMs, the NPRM asked for comment whether the 50-contract RTVL was also appropriate for the reporting of accounts associated with SEFs—and if not, what changes would be appropriate for reporting with regard to SEFs. The Commission did not receive any comments in response to this question. As a result, the Commission will apply the same RTVL (50 contracts) to volume threshold accounts associated with both DCMs and SEFs in the final rules, as contemplated by the NPRM.

In the event that trading activity in the SEF marketplace is lower than in the futures marketplace, the Commission expects that the 50 contract RTVL will likely identify a smaller percentage of volume threshold accounts associated with SEFs. The 50 contract RTVL for

[100] CL–2012–FIA *supra* note 55 at 8. CL–2012–CME *supra* note 55 at 3. CL–2012–ICE *supra* note 55 at 6.

[101] CL–2012–Nadex *supra* note 55 at 2–3.

[102] CL–2012–FIA *supra* note 55 at 8. CL–2012–ICE *supra* note 55 at 6.

[103] CL–2012–FIA *supra* note 55 at 8.

[104] CL–2012–CME *supra* note 55 at 3.

[105] CL–2012–Nadex *supra* note 55 at 3.

[106] *Id.*

[107] *See infra* section VIII(B)(vii) for a discussion of the administrative difficulties of implementing such a proposal.

SEFs would, correspondingly, impose a lesser burden on parties reporting volume threshold accounts on SEFs as compared to parties reporting such accounts on DCMs. Once the final rules have been implemented, if the Commission determines that the 50 contract RTVL is identifying an insufficient number of volume threshold accounts, the Commission may adjust the RTVL for SEF reporting via a subsequent rulemaking, to ensure that an equivalent segment of both the DCM and SEF marketplace is identified.

B. Part 17

i. § 17.01(a)—Identification of Special Accounts (via 102A)

NPRM Proposal

Proposed § 17.01(a) required reporting parties to identify special accounts on New Form 102A, and referred reporting parties directly to the new form for the required data points.

Summary of Comments on NPRM Proposal

Efficiency of Forms. FIA and CME both commented that the use of multiple reporting forms (*i.e.,* the 102A, 102B and 102S) to capture similar information is inefficient and unnecessary.[108] FIA stated that ''the proposed amendments appear to be designed to populate three separate data bases to accommodate the Commission's existing systems for conducting trade practice and market surveillance, thereby perpetuating an inefficient system.'' [109] As an example of this inefficiency, FIA noted that ''the proposed amendments would require reporting firms to provide contact information for each of Form 102A, Form 102B and Form 102S.'' [110] FIA stated that ''managing three separate forms for the same customer will create unnecessary work and be more challenging to keep current.'' [111] CME regarded the 102 reporting as duplicative and inefficient because it ''requires a different Form 102 depending on the type of trigger.'' [112]

In order to eliminate redundant requests on the forms for contact information, FIA suggested creating a ''Reporting Contact Reference Database,'' where contact information would be stored once for each special account number.[113] ''This would ensure that contact information is stored and maintained as a single record, eliminate redundancy and improve the quality of information in the ownership and control reporting process.'' [114] More generally, CME recommended that ''the Commission's systems can and should use a common set of reference data so that a previously identified account does not need to be re-reported based upon a different trigger.'' [115]

Discussion of Final Rule

Efficiency of Forms. In response to comments regarding the efficiency of the electronic submission process, the Commission is creating a contact reference database so that respondents will not need to enter contact information each time they manually complete a 102A, 102B or 102S through the web portal. For example, the respondent would enter the account number for the applicable form, and the Web portal page would automatically populate the contact information for that account number which the respondent had most recently provided. The Commission expects that this solution may be particularly helpful to small entities, which are likely to manually complete forms through the web portal. Larger firms, by contrast, are more likely to completely automate the process.[116]

Summary of Comments on NPRM Proposal

Burden of Collecting Information for Certain Fields. CME recommended that the data fields collected on any automated form should be limited to those records that an FCM obtains in its regular onboarding processes.[117] CME commented that if the Commission requires the inclusion of certain data points that are not currently collected, ''FCMs will need to revise their onboarding procedures to obtain that data for every account so that it can be recorded in a system and eventually be extracted for the automated reports, which would be, among other things, incredibly costly.'' [118] FIA recommended that data points that are not currently collected by FCMs be removed from the forms. Specifically, FIA recommended removing the requirement to provide a customer or account controller's NFA identification number, because FCMs generally do not request or record this information.[119] FIA also recommended that certain ownership and control fields be removed, because FCMs do not collect this information. On a related topic, FIA recommended that the requirement to list the customer or account controller's Web site be removed, because Web site addresses are subject to change and FCMs would have no ability to monitor for such changes and update their records.[120]

FIA proposed that the three sections of the proposed 102 be consolidated into a single Form 102, a draft of which is attached to the FIA comment letter (the ''FIA consolidated form'').[121] CME expressed support for the FIA consolidated form.[122] The FIA consolidated form does not include fields that FIA indicated are currently unavailable and would be burdensome to collect and/or maintain, such as the customer or account controller's NFA ID and Web site address.

Discussion of Final Rule

Burden of Collecting Information for Certain Fields. The Commission declines to accept the proposal to create a single, consolidated Form 102 based on the FIA consolidated form. The FIA consolidated form is missing a number of key data fields, the absence of which would undermine the goals of the Commission's data collection effort.[123] For example, the FIA consolidated form does not require respondents to state the reporting trigger. Instead, the directions to the FIA consolidated form state that, ''This form must be completed if an account exceeds the reportable levels on special accounts, volume threshold accounts or consolidated accounts.'' The form does not clarify whether respondents are reporting a special account, volume threshold account, or consolidated account that has reached a

[108] CL–2012–FIA *supra* note 55 at 3–4. CL–2012–CME *supra* note 55 at 2.

[109] CL–2012–FIA *supra* note 55 at 4.

[110] *Id.*

[111] *Id.*

[112] CL–2012–CME *supra* note 55 at 2.

[113] CL–2012–FIA *supra* note 55 at 4.

[114] *Id.*

[115] CL–2012–CME *supra* note 55 at 2.

[116] *See also supra* note 41. New Form 102 requires the reporting party to provide the LEI (if any) of the reporting party and of various other parties reportable on the form, such as account owners, controllers, and originators. As noted in the footnotes to the reporting forms in the Appendix, if a reporting party provides an LEI on New Form 102 that was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked as ''Optional Fields'' in the relevant question (*i.e.,* name and address), provided that such optional fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. The Commission is addressing such otherwise duplicative reporting in order to leverage information previously submitted by reporting parties. Footnotes to the reporting forms in the Appendix contain instructions regarding other fields that are not required to be reported in certain circumstances.

[117] *Id.*

[118] *Id.*

[119] CL–2012–FIA *supra* note 55 at 6.

[120] CL–2012–FIA *supra* note 55 at 7.

[121] CL–2012–FIA *supra* note 55 at 4 and Exhibit A.

[122] CL–2012–CME *supra* note 55 at 2.

[123] *See infra* section VIII(B)(vi) for a more detailed discussion of the FIA consolidated form.

reportable level. Without knowing the reporting trigger for the form (*e.g.,* whether the reporting party had reached a reportable position or reportable volume level), the Commission would be unable to efficiently and accurately categorize the trading accounts reported on the form, and utilize this account information for surveillance or other related purposes.

However, the Commission is accommodating FIA's comments in a more limited fashion, by clarifying in the instructions to the new forms that the NFA ID and Web site (the two examples of problematic fields cited by FIA) are only required to be reported to the extent the respondent has this information available in its records. There is no affirmative obligation for respondents to poll customers or other parties for the NFA ID and Web site if this information has not been previously collected.

Summary of Comments on NPRM Proposal

Identification of Special Account Owners. FIA noted that the current Form 102 requires that a special account be identified only by account controller (who may also be the account owner).[124] The new Form 102A requires that both the owner and controller of a special account be identified, if the account is reportable due to both ownership and control of a reportable position. FIA commented that ''if an account is identified by owner or controller, the FCM may be required to file two Form 102s for the same account.'' [125] FIA also commented that ownership information may be difficult for FCMs to provide, because FCMs ''currently collect only limited information on certain indirect owners of an account, *e.g.,* fund participants that have a 10 percent or greater ownership interest, when the account is opened. This information is not updated.'' [126] Finally, FIA commented that ''owner'' is not defined for purposes of Form 102.[127] FIA recommended ''removing the proposed requirement that special accounts be identified only by account owner.'' [128]

Discussion of Final Rule

Identification of Special Account Owners. The Commission declines to modify the reporting forms in response to comments regarding the identification of account owners. The Commission notes that FIA's comment that FCMs may be required to file two Form 102s for the same account appears to be based upon a misunderstanding of the New Form 102 filing procedure. Regardless of whether a Form 102A is filed as a result of ownership of a reportable position, control of a reportable position, or both ownership and control of a reportable position,[129] the form would be filed only once in response to each reporting trigger, by means of an electronic submission through a secure FTP data feed or through the Commission's secure Web site portal.

As discussed above, FIA commented on the difficulty of collecting information regarding the direct owners of an account. However, the Commission notes that New Form 102 is identical to current Form 102 in that it requires respondents to determine which party directly owns a special account. The New Form 102 is not more burdensome in this regard. As a result, the Commission is not, pursuant to these final rules, requiring respondents to change their current practices with respect to the manner in which they identify owners for purposes of 102 reporting.

Finally, FIA discussed the difficulty of maintaining accurate information regarding the indirect owners of an account. The Commission notes that the New Form 102 requests information regarding only the direct owners of trading accounts, not the indirect owners.

Summary of Comments on NPRM Proposal

Sharing of Information With Regulatory and Self-Regulatory Authorities. FIA and CME recommended that the information collected via the revised forms should be made available to ''appropriate regulatory and self-regulatory authorities'' (FIA) and ''relevant SROs'' (CME).[130] Furthermore, ICE recommended that the Commission should ''either provide a feed or separate file differentiated by exchange code(s) to each DCM containing information only for those accounts actively trading on the DCM, or permit DCMs to access and download the LTR [large trader reporting] and OCR data specific to the DCM.'' [131]

Discussion of Final Rule

Sharing of Information With Regulatory and Self-Regulatory Authorities. The Commission is not modifying the final rules to provide for the sharing of information collected via the forms with the parties proposed by commenters, such as regulatory and self-regulatory authorities. The Commission believes that it would be costly and overly burdensome for the Commission to distribute the collected information to external parties; furthermore, distribution to external parties would not be consistent with the scope of the Commission's responsibilities. The Commission notes that DCMs and SEFs may also implement rules requiring market participants to submit ownership and control information directly to them, if DCMs and SEFs determine that such reporting would be beneficial.

ii. § 17.01(b)—Identification of Volume Threshold Accounts (via 102B)

NPRM Proposal

Proposed § 17.01(b) subjects volume threshold accounts to an account identification regime comparable to the position-based regime already existing for special accounts. Proposed § 17.01(b) specifically requires clearing firms to identify volume threshold accounts on New Form 102B.

Summary of Comments on NPRM Proposal

See the discussion of § 17.01(a) above, which describes comments received regarding the identification of special accounts and volume threshold accounts on Forms 102A and 102B, respectively.

Discussion of Final Rule

The Commission is adopting proposed § 17.01(b) without modification.

iii. § 17.01(c)—Identification of Omnibus Accounts and Sub-Accounts (via 71)

NPRM Proposal

Proposed § 17.01(c) subjected omnibus accounts to their own volume-based account identification regime.[132] The proposed rule required 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

[124] CL–2012–FIA *supra* note 55 at 5.

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] *Id.*

[129] *See supra* section V(A)(i) regarding the requirement on New Form 102A to report special accounts solely on the basis of ownership.

[130] CL–2012–FIA *supra* note 55 at 8. CL–2012–CME *supra* note 55 at 3.

[131] CL–2012–ICE *supra* note 55 at 6.

[132] *See supra* section V(D) and *infra* section IX.

special call by the Commission or its designee.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 17.01(c) without modification.

iv. § 17.01(d)—Exclusively Self-Cleared Contracts

NPRM Proposal

Proposed § 17.01(d) required 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 current § 17.01(h) with respect to special accounts, but also incorporates the new volume threshold accounts added by these final rules.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 17.01(d) without modification.

v. § 17.01(e)—Identification of Omnibus Accounts and Sub-Accounts

NPRM Proposal

The Commission proposed 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.[133] Responses to special calls would be due within 24 hours.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 17.01(e) without modification.

vi. § 17.02(b)—Section 17.01(a) Reports (via 102A)

NPRM Proposal

Section 17.02(b)[134] currently addresses the form, manner, and completion date requirements of current 102 filings. Specifically, § 17.02(b)(1) requires reporting parties to submit current Form 102 upon special call by the Commission; in the absence of a special call, § 17.02(b)(2) requires reporting parties to submit current Form 102 within three business days of the first day that a special account is reported to the Commission. The Commission proposed to replace both provisions as described below.

First, as explained above, the Commission proposed to strike current § 17.02(b)(1) and to shift its special call requirements to proposed § 17.01(e). Second, the Commission proposed to strike current § 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) directed reporting parties to the Commission's Web site (*www.cftc.gov*) for detailed instructions on the Form 102A filing process. Proposed § 17.02(b)(2)–(4) addressed the completion date requirements of initial Form 102A submissions, 102A change updates, and 102A refresh updates, respectively.

Summary of Comments on NPRM Proposal

§ 17.02(b)(2)–(3) (new 102A filings and change 102A filings). Proposed § 17.02(b)(2)–(3) required firms to file a new Form 102A by 9:00 a.m. ET the following business day after a special account becomes reportable; similarly, changes to a previously submitted Form 102A were required to be reported by 9:00 a.m. ET the following business day. FIA stated that obtaining all the information required by Form 102A (including, for example, the trading accounts that comprise a special account) can take several days.[135] As a result, FIA recommended that the deadline for filing a complete Form 102A or any change update be modified to five business days from the date the account or change becomes reportable.[136]

§ 17.02(b)(4) (refresh 102A filings). Proposed § 17.02(b)(4) required firms to resubmit the Form 102A every six months for each special account, in order to ensure that the information reported is frequently updated. Refresh updates were also required under this proposed rule on such later date (*i.e.,* later than six months) specified by the Commission or its designee. FIA commented that this timeframe ''will impose significant operational and financial burden on reporting firms,'' and recommended that refresh updates instead be required every two years.[137] CME also recommended that refresh updates be required every two years.[138]

§ 17.02(b)(3)–(4) (when 102A accounts are no longer reportable). Proposed § 17.02(b)(3)–(4) provided that an FCM may stop reporting a change update or refresh update with respect to a special account upon notifying the Commission or its designee that the account in question is no longer reportable. FIA stated that ''the Commission provides no guidance on when an FCM may reasonably conclude that an account is no longer reportable. A customer may fall below and rise above the reportable position level frequently during the course of its relationship with an FCM.''[139] FIA therefore recommended that the Commission revise the proposed rule to provide that an FCM may determine that an account is no longer reportable with respect to a particular product if the account remains below the reporting level for a fixed period of time, such as 180 days/six months.[140] FIA's six-month proposal tracks the sunset provision in the NPRM for the reporting of change and refresh updates on Form 102B.[141]

Discussion of Final Rule

No comments were received pertaining to proposed § 17.02(b)(1), and the Commission is adopting this proposed rule without modification. In light of the comments received, the Commission is making the following modifications to § 17.02(b)(2)–(4) and to new Form 102A:

§ 17.02(b)(2)–(3) (new 102A filings and change 102A filings). New Form 102A requests information regarding both special accounts and the trading accounts that comprise a special account. The Commission is modifying the reporting deadline for new and changed Form 102A filings, specifically with respect to the reporting of non-omnibus trading accounts that comprise a special account. Respondents are required to provide the names of such trading account owners and controllers by 9:00 a.m. the following business day. However, respondents are required to provide the other contact details with respect to such trading account owners and controllers (address, telephone

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

[134] 17 CFR 17.02(b).

[135] CL–2012–FIA *supra* note 55 at 7.

[136] *Id.*

[137] *Id.*

[138] CL–2012–CME *supra* note 55 at 3.

[139] CL–2012–FIA *supra* note 55 at 7.

[140] CL–2012–FIA *supra* note 55 at 7–8.

[141] Under the NPRM and these final rules, clearing members may stop providing change and refresh updates on Form 102B for any volume threshold account upon notifying the Commission or its designee 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. See § 17.01(c)(3) and (4) in section IX, *infra.*

number, etc.) within three business days.[142]

In addition, the final rules will reduce the burden on reporting parties by clarifying that all Form 102 reporting deadlines in the final rules are eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

§ 17.02(b)(4) (refresh 102A filings). Refresh filings for special accounts will be required once per year, as opposed to once each six months (as proposed in the NPRM).[143] In light of this change, the final rules provide that refresh updates are required on such other date specified by the Commission or its designee that is equal to or greater than six months, which is consistent with the alternative deadline language in proposed §§ 17.02 and 20.5.

§ 17.02(b)(3)–(4) (when 102A special accounts are no longer reportable). In response to FIA's comment, pursuant to these final rules, reporting parties may stop providing Form 102A change updates and refresh updates for a special account if the account is no longer reportable as a special account and has not been reportable as a special account for the past six months. This change is intended to substantively replicate § 17.02(c)(3)–(4), which provide that clearing members may stop providing Form 102B change updates and refresh updates, respectively, upon notifying the Commission or its designee that the relevant 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.

Sections 17.02(b)(3) and (4) have also been modified to enable reporting parties to notify the Commission ''or its designee'' that an account is no longer reportable as a special account, based on the criteria described in these sections.

vii. § 17.02(c)—Section 17.01(b) Reports (via 102B)

NPRM Proposal

To address New Form 102B filings for volume threshold accounts, the Commission proposed to codify a new § 17.02(c). Proposed § 17.02(c) followed a structure similar to that of proposed § 17.02(b), with § 17.02(c)(1) directing reporting parties to *www.cftc.gov* for detailed instructions on the Form 102B filing process, and proposed § 17.02(c)(2)–(4) addressing the timing of initial Form 102B filings, 102B change updates, and 102B refresh updates, respectively.

Summary of Comments on NPRM Proposal

§ 17.02(c)(2)–(3) (new 102B filings and change 102B filings). Proposed § 17.02(c)(2)–(3) required firms to file a new Form 102B by 9:00 a.m. ET the following business day after the account becomes a volume threshold account; similarly, changes to a previously submitted Form 102B were required to be reported by 9:00 a.m. ET the following business day. See the discussion above of the comments received regarding Form 102A filings required by § 17.02(b)(2)–(3), which are also relevant to the new 102B and change 102B reporting obligations.

§ 17.02(c)(4) (refresh 102B filings). Proposed § 17.02(c)(4) required firms to resubmit the Form 102B every six months for each volume threshold account, in order to ensure that the information reported is frequently updated. Refresh updates were also required under this proposed rule on such later date (*i.e.,* later than six months) specified by the Commission or its designee. As noted above, FIA commented that this timeframe ''will impose significant operational and financial burden on reporting firms,'' and recommended that refresh updates instead be required every two years.[144] CME also recommended that refresh updates be required every two years.[145]

Discussion of Final Rule

No comments were received pertaining to proposed § 17.02(c)(1), and the Commission is adopting this proposed rule without modification. In light of the comments received, the Commission is making the following modifications to § 17.02(c)(2)–(4) and to new Form 102B:

§ 17.02(c)(2)–(3) (new 102B filings and change 102B filings). The Commission is modifying the reporting deadline for new and changed Form 102B filings, specifically with respect to the reporting of non-omnibus volume threshold accounts. Respondents are required to provide the names of non-omnibus volume threshold account owners and controllers reported on 102B by 9:00 a.m. the following business day. Respondents are required to provide the other contact details reported on 102B with respect to such parties (*i.e.,* the address, telephone number, etc. of non-omnibus volume threshold account owners and controllers) within three business days.[146] Notwithstanding this change to the reporting deadline with respect to non-omnibus volume threshold accounts, these final rules do not modify the reporting deadline for omnibus account information (question 4 on New Form 102B). Such omnibus account information must be reported by 9:00 a.m. the following business day.

§ 17.02(c)(4) (refresh 102B filings). Refresh filings for volume threshold accounts will be required once per year, as opposed to once each six months (as proposed in the NPRM). In light of this change, the final rules provide that refresh updates are required on such other date specified by the Commission or its designee that is equal to or greater than six months, which is consistent with the alternative deadline language in proposed §§ 17.02 and 20.5.

Sections 17.02(c)(3) and (4) have also been modified to enable reporting

[142] Specifically, the information marked as 'Follow-On Information' in questions 10(ii) and (iii) on New Form 102A may be provided within three business days. All other required fields on New Form 102A must be completed by 9:00 a.m. the following business day. See New Form 102A in the Appendix to these final rules for more information. The Commission is adopting a reporting requirement of three business days as an acceptable intermediate point between one business day (as proposed in the NPRM) and five business days (as requested by FIA, per the preceding summary of comments). The three business day requirement is therefore less burdensome than the one business day requirement proposed in the NPRM. Based on the experience of the Commission's surveillance group, the Commission believes that the three business day requirement, while longer than the one day proposal in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events that occur close to the time of reporting. By contrast, based on the experience of the Commission's surveillance group, the Commission believes that a five business day reporting deadline is too long to perform timely market surveillance, and maintain databases that are sufficiently accurate and current to be useful.

[143] The Commission is adopting a refresh reporting requirement of once per year as an acceptable intermediate point between once each six months (as proposed in the NPRM) and once every two years (as requested by FIA and CME, per the preceding summary of comments). The annual refresh requirement is therefore less burdensome than the six month requirement proposed in the NPRM. Based on the experience of the Commission's surveillance group, the Commission believes that the annual refresh requirement, while longer than the six month requirement proposed in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events. By contrast, based on the experience of the Commission's surveillance group, the Commission believes that a two year refresh deadline is too long to perform timely market surveillance and maintain databases that are sufficiently accurate and current to be useful.

[144] CL–2012–FIA *supra* note 55 at 7.

[145] CL–2012–CME *supra* note 55 at 3.

[146] Specifically, the information marked as 'Follow-On Information' in questions 5 and 6 on New Form 102B may be provided within three business days. All other required fields on New Form 102B must be completed by 9:00 a.m. the following business day. See New Form 102B in the Appendix to these final rules for more information.

parties to notify the Commission ''or its designee'' that an account is no longer reportable as a volume threshold account, based on the criteria described in these sections.

viii. § 17.03(a)–(g)—Delegation of Authority to the Director of the Office of Data and Technology or the Director of the Division of Market Oversight

NPRM Proposal

In the NPRM, the Commission proposed a number of new and revised provisions relating to the delegation of authority to solicit information on the OCR reporting forms. First, the Commission proposed to codify a new § 17.03(e) that provided 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 proposed to codify (a) a new § 17.03(f) that provided 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 provided 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.

Second, the Commission proposed to revise current § 17.03(a), which grants the Director of DMO the authority to determine whether FCMs, clearing 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.[147] More specifically, the NPRM revised § 17.03(a) to grant such authority to the Director of ODT, rather than the Director of DMO.

Third, the Commission proposed to revise current § 17.03(b), which grants the Director of DMO the authority to approve the late submission of position reports and Form 102.[148] The NPRM revised § 17.03(b) to grant such authority to the Director of ODT, rather than the Director of DMO. The NPRM further revised § 17.03(b) to: (i) Replace the provision's cross-reference to § 17.01,[149] which the Commission proposed to strike, with cross-references to proposed §§ 17.01(a) and 17.01(b); and (ii) eliminate the provision's cross-reference to current § 17.01(g),[150] which the Commission also proposed to strike.

Fourth, the Commission proposed to revise current § 17.03(c), which grants the Director of DMO the authority to permit reporting parties filing Form 102 to authenticate it through a means other than signing the form.[151] The NPRM revised § 17.03(c) to grant such authority to the Director of ODT, rather than the Director of DMO. The NPRM further revised § 17.03(c) to replace the provision's current cross-reference to § 17.01(f),[152] which the Commission proposed to strike, with a cross-reference to proposed § 17.01, and to address New Form 71.

Finally, the Commission proposed to revise current § 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).[153] The NPRM revised § 17.03(d) to grant such authority to the Director of ODT, rather than the Director of DMO.

Discussion of Final Rule

No comments were received pertaining to the proposed rules, and the Commission is adopting proposed § 17.03(a)–(g) without modification.

C. Part 18

i. § 18.04—Statement of Reporting Trader

NPRM Proposal

Current § 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 current § 18.04(a)–(c).[154] In the NPRM, the Commission proposed to amend § 18.04 by striking all of its current provisions and replacing them as described below.

First, and consistent with its approach to New Form 102, the Commission proposed to transition current § 18.04(a)–(c)'s detailed form content requirements from the regulatory text to New Form 40. Second, the Commission proposed to codify a new § 18.04(a) that, as with current § 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 proposed 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.

Summary of Comments on NPRM Proposal

FIA and Joint Electric Association stated that the Form 40 (and the corresponding Form 40S) is overly complicated and extensive without a justified regulatory need.[155] The forms request information regarding the ownership structure of the reporting trader, including all direct and indirect parents and subsidiaries and information regarding their trading activities. FIA commented that ''for some reporting traders, the number of parents and subsidiaries could number in the hundreds. Moreover, the reporting trader may not know, and may not be permitted to know, if the person in which the reporting trader has a 10 percent or greater interest engages in derivatives trading.'' [156] FIA also noted that the Form 40 requires the reporting of persons that have a 10 percent or greater ownership interest in the reporting trader.[157] FIA viewed the 10 percent threshold as inconsistent with the precedent established by Commission Rule 45.6(a), which establishes a control definition based in part upon ''the right to vote 25 percent or more of a class of voting interest.'' [158]

Joint Electric Association expressed concern that its members, which often enter into energy commodity swaps to hedge commercial risks, will not understand the terminology and purpose of the Form 40S.[159] They noted that Association members would, for the most part, be unlikely to have received an old Form 40. Joint Electric Association commented that ''most of the words in the form were not revised to reflect the different market structure whereby swap counterparties transact directly with registered 'swap dealers' . . . rather than through financial intermediaries or market professionals as is the case in the futures industry. As a result, commercial market participants receiving the New Form 40, if they have never seen old Form 40, have no context

[147] 17 CFR 17.03(a).

[148] 17 CFR 17.03(b).

[149] 17 CFR 17.01.

[150] 17 CFR 17.01(g).

[151] 17 CFR 17.03(c).

[152] 17 CFR 17.01(f).

[153] 17 CFR 17.03(d) and 17.00(g).

[154] 17 CFR 18.04(a)–(c).

[155] CL–2012–FIA *supra* note 55 at 8. CL–2012–Joint Electric Association *supra* note 55 at 3–4.

[156] CL–2012–FIA *supra* note 55 at 8.

[157] CL–2012–FIA *supra* note 55 at 5.

[158] *Id.*

[159] CL–2012–Joint Electric Association *supra* note 55 at 3.

within which to understand the new Form or their responsibilities to the Commission.'' [160]

FIA recommended that, instead of requiring identification of indirect owners that have an ownership interest of 10 percent or more, ''Form 40 be revised to require identification of indirect owners that have an ownership interest of 25 percent or more. Setting different indirect ownership levels for related purposes imposes an unnecessary operational burden on firms that must develop systems and procedures to assure compliance with these reporting requirements.'' [161]

Joint Electric Association recommended that various terms in the Form 40S (such as ''reportable position,'' ''swap dealer'' and ''major swap participant'') should be clarified and made more understandable to a commercial end user of energy commodity swaps.[162] Joint Electric Association made several other recommendations to simplify the form and reduce the reporting burden on small entities, including the following: Provide a ''regulatory reporting lite'' version of the form, which would excuse commercial end users from completing the majority of the form; [163] permit small entities to deliver the form by paper, facsimile or email, rather than make electronic filing through a web portal; [164] excuse small entities from any requirement to periodically update the form in response to a subsequent special call by the Commission; [165] and establish procedures to limit the application of the special call authority to small entities.[166]

Discussion of Final Rule

The Commission is adopting proposed § 18.04 without modifications.

The current Form 40 asks whether any person has a financial interest of 10 percent or more in the reporting trader. The Commission believes that it is appropriate to maintain the 10 percent threshold for reporting based on ownership that appears in current Form 40. The 10 percent threshold in current Form 40 allows the Commission to receive reporting on a greater number of ownership relationships than a 25 percent threshold would require, thereby benefiting the Commission's surveillance capabilities. The 10 percent threshold is also consistent with other Commission regulations, such as the aggregation requirements (based on 10 percent or greater ownership or equity interest) in § 150.4(b)–(c). The Commission notes that the 25 percent reporting threshold recommended by FIA reflects the definition of control for purposes of assigning legal entity identifiers (''LEIs'') to swap counterparties, a regulatory objective unrelated to the Form 40's objective of obtaining ownership and control information with regard to reporting traders.

The questions added to New Form 40 will provide the Commission with crucial information regarding reporting traders' ownership and control relationships and business activities. The Commission will utilize this information to perform more comprehensive oversight and surveillance of regulated derivatives markets, including by better understanding relationships that may exist among market participants, and to facilitate analysis of potentially disruptive or manipulative trading activity. The definitions of ''swap dealer'' and ''major swap participant,'' which are the subject of a comment by Joint Electric Association, have now been finalized.[167] In response to Joint Electric Association's other comments, the Commission expects New Form 40 to affect only a small subset of respondents that may be ''small entities'' for purposes of the Regulatory Flexibility Act.[168] This is due, in part, to the fact that the Commission will send New Form 40 on a discretionary basis in response to the reporting of an account that reaches a minimum position or volume threshold. The Commission does not expect that small entities will typically reach such reporting thresholds.[169]

Finally, the Commission declines to accept the proposal by Joint Electric Association that respondents retain the option to file by paper, facsimile or email. The Commission believes that the automation of Form 40, and the use of auto-population on the web-based Form, will result in increased efficiencies for the Commission and the majority of reporting parties. As noted in section VIII(A) below, the Commission expects that the majority of reporting parties will submit Form 40 via the web-based portal, as opposed to via an FTP data feed. The auto-population of certain data fields on the portal will reduce the burden and complexity of the submission process. As a result, the Commission estimates that the time required to update information contained in New Form 40 using the web-based portal will be *de minimis* for most reporting parties.

ii. § 18.05—Maintenance of Books and Records

NPRM Proposal

Current § 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.[170] In addition, current § 18.05 requires that the trader furnish the Commission with information concerning such positions upon request. The Commission proposed 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.

Discussion of Final Rule

No comments were received pertaining to the proposed rule. As noted above, the Commission proposed to expand § 18.05 to impose books and records requirements on volume threshold account controllers and owners of volume threshold accounts reported on New Form 102B and reportable sub-account controllers and persons who own a reportable sub-account reported on New Form 71. The Commission also notes that the definition of reportable trading volume encompasses trading on both DCMs and SEFs. Accordingly, the Commission is adopting § 18.05 as proposed, with the clarification that the books and records required to be kept by volume threshold

[160] *Id.*

[161] CL–2012–FIA *supra* note 55 at 5.

[162] CL–2012–Joint Electric Association *supra* note 55 at 4–5.

[163] CL–2012–Joint Electric Association *supra* note 55 at 5.

[164] CL–2012–Joint Electric Association *supra* note 55 at 6.

[165] CL–2012–Joint Electric Association *supra* note 55 at 7.

[166] *Id.*

[167] *See* Commission, Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Swap Participant'', 77 FR 30596 (May 23, 2012).

[168] The Regulatory Flexibility Act 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. *See* NPRM *supra* note 10 at 43990 and section VIII(C) *infra.*

[169] *See supra* the discussion of the RTVL for volume-based reporting in section VII(xiv). As noted above, the RTVL has been calibrated to yield information with respect to those trading accounts that are responsible for a substantial percentage of trading volume, while minimizing the proposed regulations' impact on low-volume accounts whose trading activity does not warrant inclusion in the reporting regime.

[170] 17 CFR 18.05.

account controllers, owners of volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts include books and records with respect to both their futures and swap market activities.

D. Part 20

i. § 20.5—Series S Filings

NPRM Proposal

As with Forms 102 and 40, the Commission proposed to transfer the list of data points required in Form 102S from the relevant regulatory text (*i.e.,* § 20.5) [171] to the form itself. More specifically, the Commission proposed 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 party shall submit a 102S filing (''initial 102S filing''). The timing for submitting initial 102S filings would continue to be subject to current § 20.5(a)(3).[172] Finally, the Commission proposed to codify new § 20.5(a)(4) and (5) to require change and refresh updates for Form 102S in the same manner as they are required for Form 102A. The Commission also proposed a conforming amendment to § 20.5(a)(2) to eliminate the current instructions with respect to updating 102S filings.

Summary of Comments on NPRM Proposal

FIA commented on the utility of Form 102S, which requires swap dealers and clearing members to identify and report a swap counterparty or customer consolidated account with a reportable position. FIA stated that the information that will be reported to swap data repositories under part 45 would provide the Commission with access to essentially the same information that proposed Form 102S will require.[173] FIA commented that ''requiring FCMs, and the industry generally, to divert critical operational and financial resources from building the systems necessary to implement the part 45 recordkeeping and reporting requirements to implement this interim solution, would impose an unnecessary operational burden and cost without a significant offsetting benefit.'' [174] CME commented that ''requiring swap reporting as part of OCR, to accomplish reporting that is already being done under part 20- and soon to be duplicated under SDR reporting with new unique legal entity identifiers- is unnecessary and imposes additional unjustified costs on the industry.'' [175]

See the discussion of § 17.02(b) above for a summary of the comments received on change and refresh obligations related to the Form 102, which are relevant to Form 102S.

Discussion of Final Rule

The Commission acknowledges the comments of FIA and CME regarding the Form 102S. Contrary to commenters' claims, however, SDRs will not, in all cases, be able to provide the ownership and control information requested on 102S. For example, the Commission anticipates that swap dealers and clearing members (the 102S reporting parties) will be able to consistently provide the contact information for owners and controllers of consolidated accounts on the 102S, based on the records these entities maintain. Part 45 reporting, by contrast, is based on counterparty data. This counterparty data may, in some cases, overlap with the owners and controllers of consolidated accounts reported on 102S. However, counterparty data will not, in all cases, overlap with 102S reporting and provide the ownership and control information required by 102S. As a result, the Commission cannot rely on SDR reporting under part 45 as a substitute for 102S. In addition, SDRs would not have a proactive obligation to send swap account information to the Commission; in contrast, 102S places an affirmative obligation on respondents to provide swap counterparty consolidated account information to the Commission.

Such differences notwithstanding, in developing New Form 102, the Commission has endeavored to identify and eliminate any duplicative reporting obligations that may arise from these final rules. For example, New Form 102 requires respondents to provide the legal entity identifiers (LEI) and related information (*i.e.,* names and addresses) of parties reportable on the form. However, if such related information has previously been reported to a CFTC-accepted provider of LEIs (*e.g.,* the CICI Utility), then reporting parties are not required to report it again on New Form 102. This eliminates all duplication between New Form 102 and data currently reported to an LEI provider. Furthermore, in the event the CICI Utility or another CFTC-accepted LEI provider is modified in the future to accept certain supplemental fields required on the forms,[176] then reporting parties will not be required to report these supplemental fields on New Form 102, if the information has previously been reported to such an LEI provider.[177]

More generally, staff is considering recommending that the Commission issue an Advanced Notice of Proposed Rulemaking seeking public input on possible revisions to part 45 that could increase efficiencies in reporting swap data and mitigate the burden on market participants. As markets, market participants, and trading conventions adapt to the swap data recordkeeping and reporting requirements under part 45, staff will review these requirements to ensure that they continue to fulfill their regulatory objectives in light of the evolving swaps marketplace. For the reasons discussed above, the Commission is implementing 102S reporting pursuant to the final rules.

The Commission is adopting proposed § 20.5(a)(1)–(2) without modification. In response to comments received with respect to § 17.02(b), the Commission is making the following modifications to proposed § 20.5(a)(4)–(5) and to Form 102S:

§ 20.5(a)(5) (refresh 102S filings). The discussion of § 17.02(b) above contains a summary of the comments received on change and refresh obligations related to the Form 102, which are relevant to Form 102S. In response to FIA's comments, refresh filings for consolidated accounts will be required once per year, as opposed to once each six months (as proposed in the NPRM). In light of this change, the final rules provide that refresh updates are required on such other date specified by the Commission or its designee that is equal to or greater than six months, which is consistent with the alternative deadline language in proposed §§ 17.02 and 20.5.

§ 20.5(a)(4)–(5) (when 102S consolidated accounts are no longer reportable). Reporting parties may stop providing Form 102S change updates and refresh updates for a consolidated account if the account is no longer reportable as a consolidated account and has not been reportable as a consolidated account for the past six months. This change is intended to

[171] 17 CFR 20.5.

[172] 17 CFR 20.5(a)(3).

[173] CL–2012–FIA *supra* note 55 at 2–3.

[174] CL–2012–FIA *supra* note 55 at 3.

[175] CL–2012–CME *supra* note 55 at 3.

[176] The Regulatory Oversight Committee (ROC) of the Global LEI System (GLEIS) is seeking to modify ISO 17442 LEI, the core standard underlying the GLEIS, in order to collect certain additional information from persons registering to receive an LEI.

[177] The supplemental fields required on New Form 102 include the name, phone number and email address of certain contact persons required by the reporting forms, among other fields. See the footnotes to the reporting forms in the Appendix for a detailed list of the information that may be omitted from the forms for the reasons described in this paragraph.

substantively replicate § 17.02(c)(3)–(4), which provide that clearing members may stop providing Form 102B change updates and refresh updates, respectively, upon notifying the Commission or its designee that the relevant 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.

Sections 20.5(a)(4) and (5) have also been modified to enable reporting parties to notify the Commission ''or its designee'' that an account is no longer reportable as a consolidated account, based on the criteria described in these sections.

VIII. Related Matters

A. Paperwork Reduction Act

i. Overview

The Paperwork Reduction Act (''PRA'') [178] 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 rulemaking will result in new collection of information requirements within the meaning of the PRA. The Commission has therefore submitted 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 3038–0103). Responses to this collection of information will be mandatory. The Commission will protect proprietary information consistent with the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 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.'' [179] 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 rulemaking will create new information collection requirements via §§ 17.01, 18.04, 18.05, and 20.5. Currently, OMB control number 3038–0009 covers, among other things, the collection requirements arising from current §§ 17.01, 18.04, and 18.05.[180] Also, OMB control number 3038–0095 covers, among other things, the collection requirements arising from current § 20.5.[181] 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 §§ 17.01, 18.04, 18.05, and 20.5 will be covered by 3038–0103. Once the collections covered by control number 3038–0103 become operational, OMB control number 3038–0009 will no longer cover collection requirements arising from §§ 17.01, 18.04, and 18.05. In addition, OMB control number 3038–0095 will no longer cover collection requirements arising from § 20.5. The remaining collection requirements covered by 3038–0009 and 3038–0095 will not be affected.

ii. Information To Be Provided

Section 17.01, as revised by this rulemaking, will result in the collection of information regarding the following types of accounts: (a) Special accounts (as defined in current § 15.00(r)); [182] and (b) volume threshold accounts, omnibus volume threshold accounts, and omnibus reportable sub-accounts (each as defined in § 15.00). Specifically, § 17.01 will provide for the filing of New Form 102A, New Form 102B and New Form 71, as follows:

1. pursuant to § 17.01(a), FCMs, clearing members, and foreign brokers will identify new special accounts to the Commission on New Form 102A; [183]

2. pursuant to § 17.01(b), clearing members will identify volume threshold accounts to the Commission on New Form 102B; [184] and

3. pursuant to § 17.01(c), omnibus volume threshold account originators and omnibus reportable sub-account originators will identify reportable sub-accounts to the Commission on New Form 71 when requested via a special call by the Commission or its designee.[185]

Additional reporting requirements will arise from § 18.04, which will 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, § 18.04 will provide for the filing of New Form 40, as follows:

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

2. pursuant to § 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 will file New Form 40 when requested via a special call by the Commission or its designee.[186]

Reporting requirements will also arise from § 20.5(a), which will require all reporting entities to submit New Form 102S for swap counterparty or customer consolidated accounts with reportable positions.[187] In addition, current § 20.5(b) requires every person subject to books or records under current § 20.6 to complete a 40S filing after a special call upon such person by the Commission.[188] However, current § 20.5(b) also provides that a 40S filing shall consist of the submission of Form 40. As discussed above, the final rules provide for the creation of New Form 40, which will expand and replace current Form 40. Accordingly, the final rules will require additional information from 40S filers.

[178] 44 U.S.C. 3501 *et seq.*

[179] 7 U.S.C. 12(a)(1).

[180] 17 CFR 17.01, 18.04 and 18.05.

[181] 17 CFR 20.5.

[182] 17 CFR 15.00(r).

[183] *See supra* sections III(A) and V(A) for a description of current Form 102 and a comparison to New Form 102A.

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

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

[186] *See supra* sections III(A) and V(E) for a description of current Form 40 and a comparison to New Form 40.

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

[188] 17 CFR 20.5(b) and 20.6. *See supra* sections III(B) and V(E) for a description of current Form 40S and a comparison to New Form 40S.

In addition to the reporting requirements summarized above, § 18.05 will impose recordkeeping requirements upon: (1) Traders who own, hold, or control a reportable futures or options on futures position (who are subject to current § 18.05); (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 a reportable futures or options on futures position, to owners and controllers of accounts with reportable trading volume.[189]

iii. Total Reporting and Recordkeeping Costs; Methodology Used To Estimate Costs

(a) Total Costs

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 revised § 18.05:

Regulation	Associated report	Estimated total annual industry cost [190]	Anticipated transmission method
17.01(a)	New Form 102A	$1,931,129	FTP.
17.01(b)	New Form 102B	1,299,799	FTP.
17.01(c)	New Form 71	427,147	Web.
18.04(a)	New Form 40	1,103,603	Web.
18.04(b)	New Form 40	3,977,173	Web.
18.05	Books and Records	18,569	N/A.
20.5(a)	102S Filing	289,669	FTP.
20.5(b)	40S Filing	527,207	Web.
Total		9,574,296	

Total reporting and recordkeeping costs for the final 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)); [191] (5) New Form 40 (pursuant to § 18.04(b)); [192] (6) the reporting and recordkeeping requirements of revised § 18.05; (7) New Form 102S; and (8) New Form 40S. The Commission has updated the cost estimates in the NPRM based on the most recent data and statistics available to the Commission.

Methodology Used To Estimate Costs

The Commission estimated the reporting burden associated with each filing obligation below by considering the two distinct filing methods that it will accommodate pursuant to these final rules (via FTP or via the web portal). With two methods of submission, reporting parties 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. While the NPRM contemplated that certain forms (Forms 40/S and 71) could be submitted only via the web portal, these final rules provide that all forms may be submitted either via the web portal or via FTP, in order to provide additional flexibility to reporting parties. In general, the Commission believes that FTP submission will be more cost effective for reporting parties with a large number of filings, while submission through the web-based portal will be more cost effective for reporting parties with a small number of filings.

As noted above, the Commission has calculated the total estimated industry cost for submitting each form via FTP or via the web portal. These calculations represent the total industry cost if all reporting parties submit information via one method—as compared to the total industry cost if all parties submit via the other method. For example, the 102A calculations below represent the total estimated industry cost if all reporting parties submit 102A via FTP ($1,931,129), or if all parties submit 102A via the web portal ($5,954,969). The Commission recognizes that, even if it is less expensive for the industry as a whole to submit 102A via FTP, it may be less expensive for certain individual reporting parties to submit 102A via the web portal. This may be due to the limited number of forms these parties expect to submit, their technology infrastructure, or other factors.

To expand on this example, if a new reporting party anticipates that it will submit only two 102A filings per year, it might logically conclude that it would be less expensive to submit its two filings via the web portal than to incur the development costs associated with establishing an FTP link to the Commission. In this instance, the Commission has estimated that the reporting party would incur 20 hours of initial development burden for each of the two records submitted via the web portal, or a total initial development burden of 40 hours. Accordingly, the reporting party may conclude that submitting its 102A filings via the web portal is more cost-effective than submitting the same information via FTP, which the Commission has estimated would require an initial development burden of 264 hours per entity (regardless of the number of forms submitted).[193]

[189] 17 CFR 18.05.

[190] The estimated total annual industry 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(B), below.

[191] 17 CFR 18.04(a).

[192] 17 CFR 18.04(b).

[193] In this example, the Commission expects that reporting parties making a small number of filings would choose to submit via the web-based portal, because web submission would be the most cost-effective submission method for such parties. In doing so, they will incur fewer costs than they would if they submitted via FTP, thereby lowering the total costs to the industry. As a result, the simplifying assumption that all reporting parties will submit New Form 102A (along with certain other forms discussed below) via FTP is a conservative assumption, which will tend to overestimate the total industry cost.

All burden estimates assume that information required by each form is generally available within the reporting party; 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 party. Finally, the cost estimates in section VIII(A) and (B) assume that all market participants will start from the same point in developing the systems required to implement OCR reporting. Accordingly, to the extent that current reporting parties leverage their existing reporting systems [194] to implement OCR reporting, the cost estimates are likely to overestimate actual costs to some degree for such parties.

For the following additional reasons, the Commission anticipates that total reporting and recordkeeping costs to the industry are likely to be lower than the sum of the costs associated with each form individually, as the Commission has calculated herein.

First, 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 to the industry for the final rules are likely to be substantially lower than estimated. For example, many reporting firms submitting New Form 102A will also submit New Form 102B, and will be able to leverage systems and information necessary for submitting one form to meet the requirements of the other.

Second, the Commission responded to several proposals by commenters to modify the reporting requirements in order to reduce the requirements' burdens and associated costs. Commenters did not quantify the magnitude of the potential cost savings from their alternative proposals. The final rules adopt a number of these proposals in modified fashion in order to reduce the rules' burden and costs, while also maintaining their regulatory benefits. The Commission has taken a conservative approach and made no downward adjustment for cost savings attributable to modifications that the Commission has made to the final rules to accommodate commenters' proposals.

iv. Reporting Burdens—New and Revised Forms

New Form 102A—§ 17.01(a):

Method 1 (102A FTP submission—lower estimate): Method 1 assumes that each New Form 102A reporting party will use an automated program to submit its forms via secure FTP. Each Method 1 submission will likely contain numerous 102A records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will 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 will not increase a reporting party's burden when using Method 1. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[195]

An assessment of Commission data collection efforts demonstrated that the Commission received Form 102 submissions from 260 reporting parties in 2012. The Commission anticipates that it will receive New Form 102A submissions from a similar number of reporting parties each year. Assuming all New Form 102A reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for New Form 102A will equal 27,560 hours. Using an estimated wage rate of $70.07 per hour,[196] annual industry costs for 102A filings made pursuant to Method 1 are estimated at $1,931,129. As indicated throughout this section VIII(A), the Commission has applied the same wage rate of $70.07 to submission via both the web portal and FTP, although each submission method will require a different annual or annualized burden, in terms of hours. This $70.07 wage rate encompasses the work of a senior programmer, programmer, intermediate compliance advisor, systems analyst, and assistant/associate general counsel, in the proportions described in the preceding footnote.

[194] Certain parties that will be required to report under these final rules now provide certain forms under the current reporting system (*e.g.,* the current Forms 102 and 40).

[195] 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 party) by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. 53 hours plus 53 hours (annual, ongoing operation and maintenance burdens per reporting party) equals 106 hours per reporting party. The submission of Form 71 through the web-based portal does not require initial development expenditures; as a result, the burdens and costs for this form are calculated on an annual basis rather than an annualized basis.

[196] 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 $70.07 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 2011, 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'' (29% weight); ''compliance advisor (intermediate)'' (15%), ''systems analyst'' (16%), and ''assistant/associate general counsel'' (10%). The $70.07 wage rate is a blended rate, such that the Commission has applied the same $70.07 wage rate when calculating the cost of submission via both FTP and the web-based portal. As noted above, the NPRM contemplated that Forms 40/S and 71 could be submitted only via the web portal. However, pursuant to these final rules, the Commission is allowing reporting parties to submit Forms 40/S and 71 via FTP as well, with the result that reporting parties may submit all forms either via the web portal or via FTP. In light of this change, the wage rage percentages in these final rules have been updated and slightly modified from the wage rate percentages in the NPRM, to more accurately reflect anticipated labor allocations. The NPRM employed the following wage rage percentages: ''programmer (senior)'' (30% weight); ''programmer'' (30% weight); ''compliance advisor (intermediate)'' (20%), ''systems analyst'' (10%), and ''assistant/associate general counsel'' (10%). While the NPRM calculated an estimated wage rate of $78.61 per hour, these final rules calculate an estimated wage rate of $70.07 per hour, using the 2011 SIFMA statistics and updated wage rate percentages. (Note that the national average of salary and bonuses for the professionals listed above declined between 2010 to 2011, according to the SIFMA report addressing each of those years. The 2010 SIMA report (which is the basis for the wage rate in the NPRM) indicates an aggregate national average of salary and bonuses of $530,321 for these professionals, while the 2011 SIFMA report indicates an aggregate national average of salary and bonuses of $510,943.) The Commission has also updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission (including, for example, the number of reporting forms and/or records received by the Commission in 2012). The NPRM calculated an estimated total annual cost to the industry of $9,147,061, as compared to an estimated total cost to the industry of $9,574,296 in these final rules, *supra. See also infra* note 265.

FORM 102A—LOWER ESTIMATE IS METHOD 1

[FTP submission]

Number of reporting parties per year	Annualized burden per reporting party (hours) [197]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
260	106	27,560	$70.07	$1,931,129

Method 2 (102A web submission—higher estimate): Method 2 assumes that each New Form 102A reporting party will complete and submit its forms online via a secure portal provided by the Commission. The Commission estimates that the total initial development burden will average 20 hours per New Form 102A record. The Commission also estimates that the annual ongoing burden, which includes change and refresh filings, will average 7 hours per year for each New Form 102A record. The estimated Method 2 total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 11 hours per New Form 102A record.[198]

In connection with the introduction of New Form 102A pursuant to this rulemaking, the Commission notes that (except as otherwise instructed by the Commission or its designee) 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.[199] On the basis of such regulations, the Commission anticipates that it will receive 7,726 New Form 102A records per year.[200] Assuming each of the 7,726 New Form 102A records are provided via Method 2, the Commission estimates that the total annual industry burden for New Form 102A will equal 84,986 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for 102A filings made pursuant to Method 2 are estimated at $5,954,969.[201]

[197] *See supra* note 195 for a discussion of the calculation of this annualized burden. As discussed above, the initial development burden per reporting party (264 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $18,498 (264 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

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

[199] See §§ 17.00 and 150.4 of the Commission's regulations.

[200] This estimate is based on the requirements of §§ 17.00 and 150.4 of the Commission's regulations. The 7,726 figure represents an increase from the 4,415 Form 102 records the Commission received in 2012. The Commission calculated that in approximately 75 percent of New Form 102A filings, the owner and controller of a special account reported on the form will be different. As a result, the Commission multiplied the 4,415 figure from 2012 by 1.75, and estimated that it will receive approximately 7,726 New Form 102A records per year.

Notwithstanding this estimate, which is based on the requirements of §§ 17.00 and 150.4, reporting parties should continue to report special accounts pursuant to § 17.00 on a disaggregated basis following the implementation of these final rules, if the parties have been so instructed by the Commission or its designee. All reporting parties should continue to provide position reporting based on control of a special account. As an example, if a special account is controlled by one reporting party but owned by another, such account should be reported only by the reporting party that controls the special account. Consistent with this guidance, and notwithstanding the requirement on New Form 102A to also report based solely on ownership of a reportable position, the Commission will not require reporting based on this trigger via New Form 102A following the implementation of these final rules. Because the Commission will not require reporting on New Form 102A based solely on ownership of a reportable position, the Commission anticipates that the number of New Form 102A records it receives per year is likely to be lower than the estimated 7,726 records. *See also supra* section V(A)(i).

[201] The $5,954,969 figure is arrived at by multiplying 7,726 records by 11 hours (equals 84,986 hours) by $70.07 (equals $5,954,969).

Conclusion: The Commission believes that providing filing options to the industry should lower their ultimate costs. 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 methods discussed above, the Commission anticipates that the annual cost to the industry of filing 102A will be approximately $1,931,129 (Method 1—FTP submission), 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 party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

New Form 102B—§ 17.01(b)

Method 1 (102B FTP submission—lower estimate): Method 1 assumes that each New Form 102B reporting party will use an automated program to submit its forms via secure FTP. Each Method 1 submission will likely contain numerous 102B records. The Commission estimates that the total initial development burden should average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will 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 party's burden when using Method 1. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 106 hours per reporting party.[202]

Because New Form 102B provides a new volume-based reporting structure not found in current Form 102, the Commission is unable to refer to historical reporting statistics to directly estimate the number of New Form 102B reporting parties. Instead, based on a review of transaction volume across a sample of several DCMs from the second half of 2011, the Commission estimated the number of trading accounts that the Commission anticipates will qualify as volume threshold accounts. The Commission estimated the number of DCM-related New Form 102B reporting parties by calculating the number of clearing members associated with these projected volume threshold accounts.

- For volume threshold accounts associated with DCMs, the Commission anticipates that it will receive New Form 102B submissions from approximately 100 reporting parties annually. Assuming that all such reporting parties 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.[203] Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $742,742.[204]
- In estimating the number of reporting parties that will submit New Form 102B for volume threshold accounts associated with SEFs, the Commission has made an assumption that trading activity in the SEF marketplace will be lower than in the futures marketplace. For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive New Form 102B submissions from approximately 75 reporting parties annually. Assuming that all such reporting parties 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.[205] Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $557,057.[206]

Collectively, annual industry costs for 102B filings made pursuant to Method 1 are estimated at $1,299,799.[207]

FORM 102B—LOWER ESTIMATE IS METHOD 1

[FTP submission]

Number of reporting parties per year	Annualized burden per reporting party (hours) [208]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
175	106	18,550	$70.07	$1,299,799

Method 2 (102B web submission—higher estimate): Method 2 assumes that each New Form 102B reporting party will complete and submit its forms online via a secure portal provided by the Commission. The Commission estimates that the total initial development burden will average 20 hours per New Form 102B record. The Commission also estimates that annual ongoing burdens, which include both change and refresh updates, will average 7 hours per year for each New Form 102B record. The estimated Method 2 total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 11 hours per New Form 102B record.[209]

Because New Form 102B provides a new volume-based reporting structure

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

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

[204] The $742,742 figure is arrived at by multiplying 100 reporting parties by 106 hours (equals 10,600 hours) by $70.07 (equals $742,742).

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

[206] The $557,057 figure is arrived at by multiplying 75 reporting parties by 106 hours (equals 7,950 hours) by $70.07 (equals $557,057).

[207] The $1,299,799 figure is arrived at by multiplying 175 reporting parties by 106 hours (equals 18,550 hours) by $70.07 (equals $1,299,799).

[208] *See supra* note 195 for a discussion of the calculation of this annualized burden. As discussed above, the initial development burden per reporting party (264 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $18,498 (264 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

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

not found in current 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 New Form 102B records that it will receive on an annual basis by reviewing transaction volume across a sample of several DCMs from the second half of 2011. Based on this data, the Commission calculated the relationship between (a) volume activity on the DCMs reviewed, (b) the number of reportable volume threshold accounts that would result from this volume activity, and (c) the number of DCM-related New Form 102B records the Commission would receive in connection with these volume threshold accounts. The Commission created a mathematical function based on these three factors. The Commission then made a projection regarding anticipated SEF-related volume activity, and applied the mathematical function described above to estimate (i) the number of SEF-related, reportable volume threshold accounts that would result from this volume activity, and (ii) the number of SEF-related New Form 102B records the Commission would receive in connection with these volume threshold accounts. Based on the preceding methodology, the Commission estimated the following:

- For volume threshold accounts associated with DCMs, the Commission anticipates that it will receive approximately 126,000 New Form 102B records annually. Assuming each such record 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. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 2 are estimated at $97,117,020.[210]

- For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive approximately 62,015 New Form 102B records annually. Assuming each such record 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 $70.07 per hour, annual industry costs for such filings made pursuant to Method 2 are estimated at $47,799,302.[211]

Collectively, annual industry costs for 102B filings made pursuant to Method 2 are estimated at $144,916,322.[212]

Conclusion

As discussed above, while the Commission estimates that establishing an FTP link will require an initial development burden of 264 hours, the Commission also believes that submission via FTP will virtually eliminate the ongoing marginal costs associated with each additional submission or each additional record contained in a submission. For this reason, the Commission believes that FTP submission will be more cost effective for reporting parties making a large number of filings. The Commission expects that a significant majority of New Form 102B reporting parties will be making a large number of filings. Therefore, when estimating the industry-wide costs, the Commission has made the simplifying assumption that all reporting parties will use the FTP submission method when submitting New Form 102B.

Given the cost estimates for the two individual methods discussed above, the Commission anticipates the annual cost to the industry of filing DCM and SEF-related 102B will be approximately $1,299,799 (Method 1—FTP submission), the lower of the two estimated filing methods. Notwithstanding the preceding discussion regarding submission via FTP by New Form 102B reporting parties, the Commission recognizes that reporting parties, given their own individualized needs, will make the most cost-effective choice for them, which may be either of the two submission methods.

New Form 71—§ 17.01(c)

Method 1 (71 FTP submission—higher estimate): New Form 71 must be provided in response to a special call by the Commission or its designee. Method 1 assumes that each New Form 71 reporting party will use an automated program to submit its form via secure FTP. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[213]

The number of New Form 71 filings per year will 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 current Form 102 omnibus special accounts and estimated that New Form 102B will capture a similar number of DCM-related omnibus volume threshold accounts.[214] Furthermore, the Commission estimated that it will require a New Form 71 for every such omnibus volume threshold account. Commission records indicate 564 omnibus special accounts in 2012, and the Commission expects an equal number of DCM-related omnibus volume threshold accounts. The Commission therefore anticipates that it will receive approximately 564 DCM-related New Form 71 filings per year, from the same number of reporting parties (564).

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 calculate the number of applicable reporting parties. To estimate the number of Form 71 reporting parties for omnibus volume threshold accounts associated with SEFs, 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 198 SEF-related omnibus volume threshold accounts, and an equal number of reporting parties (198).

The Commission notes that the final rules do not require change or refresh updates of New Form 71. Accordingly, the burdens and costs associated with such updates in the case of other forms described herein are not relevant to the calculation of burdens and costs for

[210] The $97,117,020 figure is arrived at by multiplying 126,000 records by 11 hours (equals 1,386,000 records) by $70.07 (equals $97,117,020).

[211] The $47,799,302 figure is arrived at by multiplying 62,015 records by 11 hours (equals 682,165 records) by $70.07 (equals $47,799,302).

[212] The $144,916,322 figure is arrived at by multiplying 188,015 records by 11 hours (equals 2,068,165 hours) by $70.07 (equals $144,916,322).

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

[214] 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 impracticable.

New Form 71 filings. The Commission also notes that it is likely to request the resubmission of New Form 71 each year.

• Based on an estimated 564 DCM-related New Form 71 reporting parties per year, the Commission estimates an aggregate reporting burden of 59,784 hours annually for DCM-related New Form 71 filings via Method 1. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $4,189,065.[215]

• Based on an estimated 198 SEF-related New Form 71 reporting parties per year, the Commission estimates an aggregate reporting burden of 20,988 hours annually for SEF-related New Form 71 filings via Method 1. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $1,470,629.[216]

Collectively, annual industry costs for New Form 71 filings made pursuant to Method 1 are estimated at $5,659,694.[217]

Method 2 (71 web submission—lower estimate): Method 2 assumes that each New Form 71 reporting party (*i.e.,* originators of omnibus volume threshold accounts or omnibus reportable sub-accounts) will complete and submit New Form 71 online via a secure portal provided by the Commission.[218] The Commission estimates that, on average, New Form 71 will create an annual reporting burden of 8 hours per filing.[219]

As discussed above, the Commission expects approximately 564 DCM-related New Form 71 filings per year, and 198 SEF-related New Form 71 filings per year.

• Based on an estimated 564 DCM-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 4,512 hours annually for such filings via Method 2. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 2 are estimated at $316,156.[220]

• Based on an estimated 198 SEF-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 1,584 hours annually for such filings via Method 2. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 2 are estimated at $110,991.[221]

Collectively, annual industry costs for New Form 71 filings made pursuant to Method 2 are estimated at $427,147.[222]

FORM 71—LOWER ESTIMATE IS METHOD 2

[Web submission]

Number of responses per year	Annual burden per response (hours)	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
762	8	6,096	$70.07	$427,147

Conclusion: The Commission believes that providing filing options to the industry should lower their ultimate costs. Because of this, estimated total costs to the industry for 71 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 the annual cost to the industry of filing 71 will be approximately $427,147 (Method 2—web submission), 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 party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods. New Form 40—§ 18.04(a) (arising from New Form 102A):[223]

Method 1 (40 FTP submission (arising from New Form 102A)—higher estimate): New Form 40 must be provided in response to a special call by the Commission or its designee. Method 1 assumes that each New Form 40 reporting party will use an automated program to submit its forms (arising from New Form 102A) via secure FTP. The Commission estimates that the total initial development burden will average 224 hours per reporting party. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 98 hours per reporting party.[224]

As noted above, in connection with the introduction of New Form 102A pursuant to this rulemaking, the Commission notes that (except as otherwise instructed by the Commission or its designee) 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.[225] On the basis of such regulations, the Commission anticipates that it will receive a greater number of

[215] The $4,189,065 figure is arrived at by multiplying 564 reporting parties by 106 hours (equals 59,784 hours) by $70.07 (equals $4,189,065).

[216] The $1,470,629 figure is arrived at by multiplying 198 reporting parties by 106 hours (equals 20,988 hours) by $70.07 (equals $1,470,629).

[217] The $5,659,694 figure is arrived at by multiplying 762 reporting parties by 106 hours (equals 80,772 hours) by $70.07 (equals $5,659,694).

[218] The Commission's special call will likely be in the form of an email request that will contain a URL for the portal, and a unique login and password for access to the portal.

[219] The submission of New Form 71 through the web-based portal does not require initial development expenditures; as a result, the burdens and costs for this form are calculated on an annual basis rather than an annualized basis.

[220] The $316,156 figure is arrived at by multiplying 564 records by 8 hours (equals 4,512 hours) by $70.07 (equals $316,156).

[221] The $110,991 figure is arrived at by multiplying 198 records by 8 hours (equals 1,584 hours) by $70.07 (equals $110,991).

[222] The $427,147 figure is arrived at by multiplying 762 records by 8 hours (equals 6,096 hours) by $70.07 (equals $427,147).

[223] As discussed in section VIII(A)(iii) above, 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 (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 party, 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.

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

[225] See §§ 17.00 and 150.4 of the Commission's regulations.

New Form 102A records per year (7,726) than the number of Form 102 records it has received in recent years.[226] While the number of New Form 40 filings arising from New Form 102A filings will vary according to the number of special calls made by the Commission, the Commission nonetheless anticipates that it may make a larger number of special calls than in recent years, due to the larger number of anticipated New Form 102A records.[227] As a result, the Commission estimates that New Form 102A will result in approximately 5,250 New Form 40 records per year, submitted by an equal number of reporting parties (5,250).[228]

Entities required to complete a New Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information they provide. Entities can update this information by either visiting the online New Form 40 portal to review, verify, and/or update their information, or by submitting updated information via FTP. Regardless of whether entities update the information contained in New Form 40 via the web or FTP, the Commission believes that the time required to provide this information will be *de minimis.*[229]

Assuming all 5,250 New Form 40 reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for New Form 40, as a result of New Form 102A, will equal 514,500 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for such New Form 40 filings made pursuant to Method 1 are estimated at $36,051,015.[230]

Method 2 (40 web submission (arising from New Form 102A)—lower estimate): Method 2 assumes that each reporting party filing New Form 40 as a result of Form 102A (*i.e.,* special account owners and controllers) will complete and submit New Form 40 online via a secure portal provided by the Commission.[231]

The Commission estimates that each of the 5,250 New Form 40 records will require three hours to complete.[232] Assuming each such New Form 40 record is provided via Method 2, the Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102A, will equal 15,750 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 40 filings arising from special accounts are estimated at $1,103,603.[233]

FORM 40—LOWER ESTIMATE IS METHOD 2

[Web submission]

Number of responses per year	Annualized burden per response (hours)[234]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
5,250	3	15,750	$70.07	$1,103,603

Conclusion: The Commission believes that providing filing options to the industry should lower their ultimate costs. Because of this, estimated total costs to the industry for 40 filings, as a result of New Form 102A, 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 the annual cost to the industry of filing 40, as a result of New Form 102A, will be approximately $1,103,603 (Method 2—web submission), 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 party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

New Form 40—§ 18.04(b) (arising from New Form 102B and New Form 71):

Method 1 (40 FTP submission (arising from New Form 102B and New Form 71)—higher estimate):

New Form 40 must be provided in response to a special call by the Commission or its designee. Method 1 assumes that each New Form 40 reporting party will use an automated program to submit its forms (arising from New Form 102B and New Form 71) via secure FTP. The Commission estimates that the total initial development burden will average 224 hours per reporting party. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 98 hours per reporting party.[235]

In estimating the number of anticipated New Form 40 special calls arising from both DCM-related and SEF-related New Form 102B and New Form 71, the Commission first considered the number of Form 40 special calls made in 2012 (approximately 3,000). The Commission sent some of these special calls to a subset of the 260 special account owners and controllers identified via existing DCM-related

[226] The Commission received 4,415 Form 102 records in 2012. *See also supra* note 200.

[227] The Commission made approximately 3,000 special calls in 2012. Such calls were made to special account owners and controllers identified via existing DCM-related Form 102.

[228] *See also supra* note 200. Because the Commission anticipates that the number of New Form 102A records it receives per year is likely to be lower than the estimated 7,726 records, the Commission may also make fewer special calls than the estimated 5,250 calls.

[229] *See infra* section VIII(B)(iv) for a discussion of the Commission's contact reference database, which is intended to streamline the automated submission process and reduce the burden on reporting parties.

[230] The $36,051,015 figure is arrived at by multiplying 5,250 reporting parties by 98 hours (equals 514,500 hours) by $70.07 (equals $36,051,015).

[231] The Commission's special call will likely be in the form of an email request that will contain a URL for the portal, and a unique login and password for access to the portal.

[232] The Commission's estimate of three 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.

[233] The $1,103,603 figure is arrived at by multiplying 5,250 records by 3 hours (equals 15,750 hours) by $70.07 (equals $1,103,603).

[234] As discussed above, the initial development burden per reporting party (10 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of two hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $701 (10 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

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

Form 102 in 2012. The Commission sent other of these special calls to individuals that were not identified via Form 102, but instead were identified through other surveillance means. The 260 reporting parties that submitted a Form 102 in 2012 represent approximately 8.7 percent of the 3,000 special calls sent in 2012 (''the special call ratio''). The Commission used this special call ratio as a baseline in calculating the number of anticipated New Form 40 filings arising from New Form 102B and New Form 71. The Commission acknowledges that this percentage represents a high-end baseline, since as noted above, the Commission made a special call in 2012 to a subset of the 260 reporting parties, rather than to each one.

Form 40s Arising From DCM-related New Form 102B and New Form 71. To estimate the number of Form 40 special calls arising from DCM-related New Form 102B and New Form 71, the Commission first calculated the number of anticipated reporting parties for each form: 100 reporting parties for DCM-related New Form 102B, and 564 reporting parties for DCM-related New Form 71, or 664 in total. Based on the special call ratio calculations performed above with respect to the Commission's 2012 special call practices, the Commission estimated that it will send special calls to approximately 7,662 recipients per year in connection with DCM-related New Form 102B and New Form 71.[236] Finally, the Commission calculated that in approximately 75 percent of New Form 102B and New Form 71 filings, the owner and controller of a volume threshold account reported on the form will be different.[237] In this scenario, the Commission may make a separate special call to both the owner and controller. As a result, the Commission multiplied the 7,662 recipient estimate by 1.75, and concluded that it will receive approximately 13,409 New Form 40 filings annually arising from DCM-related New Form 102B and New Form 71, from the same number of reporting parties (13,409).

Form 40s Arising From SEF-related New Form 102B and New Form 71. The Commission applied the same rationale to calculate the number of anticipated New Form 40 filings arising from SEF-related New Form 102B and New Form 71. The Commission first calculated the number of anticipated reporting parties for each form: 75 reporting parties for SEF-related New Form 102B, and 198 reporting parties for SEF-related New Form 71, or 273 in total. Based on the special call ratio calculations performed above with respect to the Commission's 2012 special call practices, the Commission estimated that it will send special calls to approximately 3,149 recipients per year in connection with SEF-related New Form 102B and New Form 71.[238] Finally, the Commission calculated that in approximately 75 percent of New Form 102B and New Form 71 filings, the owner and controller of a volume threshold account reported on the form will be different.[239] In this scenario, the Commission may make a separate special call to both the owner and controller. As a result, the Commission multiplied the 3,149 recipient estimate by 1.75, and concluded that it will receive approximately 5,511 New Form 40 filings annually arising from SEF-related New Form 102B and New Form 71, from the same number of reporting parties (5,511).

As discussed above, the Commission estimates that the time required to update information contained in New Form 40, whether submitted via the web or FTP, will be *de minimis.*[240]

- Based on an estimated 13,409 DCM-related New Form 40 reporting parties per year, the Commission estimates an aggregate reporting burden of 1,314,082 hours annually for DCM-related New Form 40 filings, arising from New Form 102B and New Form 71, via Method 1. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $92,077,726.[241]
- Based on an estimated 5,511 SEF-related New Form 40 reporting parties per year, the Commission estimates an aggregate reporting burden of 540,078 hours annually for SEF-related New Form 40 filings, arising from New Form 102B and New Form 71, via Method 1. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $37,843,265.[242]

Collectively, annual industry costs for New Form 40 filings (arising from New Form 102B and New Form 71) made pursuant to Method 1 are estimated at $129,920,991.[243]

Method 2 (40 web submission (arising from New Form 102B and New Form 71)—lower estimate):

Method 2 assumes that each reporting party filing New Form 40 as a result of New Form 102B and New Form 71 (*i.e.,* volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts) will complete and submit New Form 40 online via a secure portal provided by the Commission.[244]

As discussed above, the Commission anticipates that it will receive approximately 13,409 DCM-related New Form 40 filings annually and approximately 5,511 SEF-related New Form 40 filings annually, in each case arising from New Form 102B and New Form 71.[245] Each such New Form 40 filing is estimated to require three hours.[246] Assuming each such New

[236] The Commission applied the ratio of reporting parties to special calls that it developed with respect to its 2012 Form 40 special call practices. 260 reporting parties represents approximately 8.7 percent of the 3,000 special calls sent in 2012. Similarly, 664 reporting parties represents approximately 8.7 percent of 7,662 special calls. The Commission believes that 664 reporting parties is a high-end estimate, because the Commission will likely send New Form 40 to a subset of New Form 71 reporting parties, rather than to each reporting party, as this calculation assumes.

[237] 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 or New Form 71 will be the same, and that accordingly, only one New Form 40 would be required. Similarly, a number of potential New Form 40 reporting parties are likely to own or control both DCM-related and SEF-related volume threshold accounts, but only one New Form 40 would be required.

[238] The Commission applied the ratio of reporting parties to special calls that it developed with respect to its 2012 Form 40 special call practices. 260 reporting parties represents approximately 8.7 percent of the 3,000 special calls sent in 2012. Similarly, 273 reporting parties represents approximately 8.7 percent of 3,149 special calls. The Commission believes that 273 reporting parties is a high-end estimate, because the Commission will likely send New Form 40 to a subset of New Form 71 reporting parties, rather than to each reporting party, as this calculation assumes.

[239] *See supra* note 237.

[240] *See infra* section VIII(B)(iv) for a discussion of the Commission's contact reference database, which is intended to streamline the automated submission process and reduce the burden on reporting parties.

[241] The $92,077,726 figure is arrived at by multiplying 13,409 reporting parties by 98 hours (equals 1,314,082 hours) by $70.07 (equals $92,077,726).

[242] The $37,843,265 figure is arrived at by multiplying 5,511 reporting parties by 98 hours (equals 540,078 hours) by $70.07 (equals $37,843,265).

[243] The $129,920,991 figure is arrived at by multiplying 18,920 reporting parties by 98 hours (equals 1,854,160 hours) by $70.07 (equals $129,920,991).

[244] The Commission's special call will likely be in the form of an email request that will contain a URL for the portal, and a unique login and password for access to the portal.

[245] 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 parties are likely to own or control both DCM-related and SEF-related volume threshold accounts, but only one New Form 40 would be required.

[246] The Commission's estimate of three 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.

Form 40 record is provided via Method 2:

• The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 40,227 hours for DCM-related New Form 40 filings. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at $2,818,706.[247]

• The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 16,533 hours for SEF-related New Form 40 filings. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at $1,158,467.[248]

Collectively, annual industry costs for New Form 40 filings, as a result of New Form 102B and New Form 71, are estimated at $3,977,173.[249]

FORM 40—LOWER ESTIMATE IS METHOD 2

[Web submission]

Number of responses per year	Annualized burden per response (hours) [250]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
18,920	3	56,760	$70.07	$3,977,173

Conclusion: The Commission believes that providing filing options to the industry should lower their ultimate costs. Because of this, estimated total costs to the industry for 40 filings, as a result of New Form 102B and New Form 71, 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 the annual cost to the industry of filing 40, as a result of New Form 102B and New Form 71, will be approximately $3,977,173 (Method 2—web submission), 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 party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods. New Form 102S — § 20.5(a):

Method 1 (102S FTP submission—lower estimate): Method 1 assumes that each New Form 102S reporting party will use an automated program to submit its forms via secure FTP. Each Method 1 submission will likely contain numerous 102S records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will 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 current § 20.5(a)(3),[251] or any new submission procedures arising from the Swaps Large Trader Guidebook (*i.e.,* frequency of 102S filing submission), will not increase a reporting party's burden when using Method 1. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[252]

The 102S filing requirements in current § 20.5 [253] are nearly identical to the filing requirements for revised 102S; accordingly, the Commission used its recent experience with 102S filings to estimate the number of 102S reporting parties. An assessment of Commission data collection efforts demonstrated that the Commission received Form 102S submissions from 39 reporting parties in 2012. The Commission anticipates that it will receive New Form 102S submissions from a similar number of reporting parties each year. Assuming 102S reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for 102S filing will equal 4,134 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 102S are estimated at $289,669.[254]

[247] The $2,818,706 figure is arrived at by multiplying 13,409 filings by 3 hours (equals 40,227 hours) by $70.07 (equals $2,818,706).

[248] The $1,158,467 figure is arrived at by multiplying 5,511 filings by 3 hours (equals 16,533 hours) by $70.07 (equals $1,158,467).

[249] The $3,977,173 figure is arrived at by multiplying 18,920 filings by 3 hours (equals 56,760 hours) by $70.07 (equals $3,977,173).

[250] As discussed above, the initial development burden per reporting party (10 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of two hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $701 (10 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[251] 17 CFR 20.5(a)(3).

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

[253] 17 CFR 20.5.

[254] The $289,669 figure is arrived at by multiplying 39 reporting parties by 106 hours (equals 4,134 hours) by $70.07 (equals $289,669).

FORM 102S—LOWER ESTIMATE IS METHOD 1

[FTP submission]

Number of reporting parties per year	Annualized burden per reporting party (hours) [255]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
39	106	4,134	$70.07	$289,669

Method 2 (102S web submission—higher estimate): Method 2 assumes that each New Form 102S reporting party will complete and submit its forms online via a secure portal provided by the Commission. The Commission estimates that the total initial development burden will average 17 hours per 102S record. The Commission also estimates that the annual ongoing burden, including change and refresh updates, will average 7 hours per year for each 102S record. The sum of the Method 2 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 10 hours per 102S record.[256]

An assessment of Commission data collection efforts demonstrated that the Commission received approximately 2,508 102S records in 2012. The Commission anticipates that it will receive a similar number of 102S records each year. Assuming each of the estimated 2,508 102S records are provided via Method 2, the Commission estimates that the total annual industry burden for New Form 102S will equal 25,080 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 102S filings made pursuant to Method 2 are estimated at $1,757,356.[257]

Conclusion: 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 methods discussed above, the Commission anticipates the annual cost to the industry of filing 102S will be approximately $289,669 (Method 1—FTP submission), 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 party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

New Form 40S—§ 20.5(b): [258]

Method 1 (40S FTP submission—higher estimate): New Form 40S must be provided in response to a special call by the Commission or its designee. Method 1 assumes that each New Form 40S reporting party will use an automated program to submit its forms via secure FTP. The Commission estimates that the total initial development burden will average 224 hours per reporting party. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 98 hours per reporting party.[259]

Current § 20.5(b),[260] which requires the 40S filing, will not be altered by this rulemaking. As noted above, the Commission anticipates that it will receive approximately 2,508 102S records per year, and the Commission estimates that it will make approximately the same number of 40S special calls each year (2,508). Assuming all Form 40S reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for Form 40S will equal 245,784 hours. Time required to update information contained in 40S filings, whether submitted via the web or FTP, will be *de minimis.* Using an estimated wage rate of $70.07 per hour, annual industry costs for Form 40S filings made pursuant to Method 1 are estimated at $17,222,085.[261]

Method 2 (40S web submission—lower estimate): Method 2 assumes that each New Form 40S reporting party will complete and submit its forms online via a secure portal provided by the Commission.[262] As noted above, the Commission anticipates that it will receive approximately 2,508 102S records per year, and the Commission estimates that it will make approximately the same number of 40S special calls each year (2,508). Each response is estimated to require three hours,[263] resulting in an estimated total annual reporting burden of 7,524 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 40S filings made pursuant to Method 2 are estimated at $527,207.[264]

[255] *See supra* note 195 for a discussion of the calculation of this annualized burden. As discussed above, the initial development burden per reporting party (264 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $18,498 (264 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

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

[257] The $1,757,356 figure is arrived at by multiplying 2,508 records by 10 hours (equals 25,080 hours) by $70.07 (equals $1,757,356).

[258] The final rules do not 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 final rules do 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.

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

[260] 17 CFR 20.5(b).

[261] The $17,222,085 figure is arrived at by multiplying 2,508 reporting parties by 98 hours (equals 245,784 hours) by $70.07 (equals $17,222,085).

[262] The Commission's special call will likely be in the form of an email request that will contain a URL for the portal, and a unique login and password for access to the portal.

[263] The Commission's estimate of three 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.

[264] The $527,207 figure is arrived at by multiplying 2,508 filings by 3 hours (equals 7,524 hours) by $70.07 (equals $527,207).

FORM 40S—LOWER ESTIMATE IS METHOD 2

[Web submission]

Number of responses per year	Annualized burden per response (hours) [265]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
2,508	3	7,524	$70.07	$527,207

Conclusion: 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 40S filing 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 the annual industry cost to the industry of filing 40S will be approximately $527,207 (Method 2—web submission), 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 party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

v. Recordkeeping Burdens—Revised § 18.05

Current § 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.[266] In addition, current § 18.05 requires that the trader furnish the Commission with information concerning such positions upon request. The Commission is expanding § 18.05 to also impose books and records requirements upon (1) Volume threshold account controllers and (2) owners of volume threshold accounts, and upon (3) reportable sub-account controllers and (4) persons who own reportable sub-accounts. As a result, revised § 18.05 will likely impose a recordkeeping burden on a larger number of persons than current § 18.05. However, any additional persons subject to § 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 final regulation. Accordingly, the Commission believes that revised § 18.05 will not meaningfully increase recordkeeping burdens on persons brought under its scope.

The Commission sent 59 special calls pursuant to § 18.05 in 2012, 42 of which were based on trade data reflected in the TCR data feed.[267] As noted above, revised § 18.05 will make four new categories of persons, identified through the volume-based reporting regime, subject to § 18.05. Because the volume-based reporting regime is designed to identify designated types of trading activity, the Commission estimates that it will send special calls pursuant to revised § 18.05 to, at a minimum, 42 recipients (*i.e.,* the same number of persons to which the Commission sent special calls in 2012 based on trade data reflected in the TCR). At the same time, the Commission expects that the introduction of volume-based reporting will lead to the Commission sending more special calls than it would otherwise, because this regime will identify new ownership and control relationships and patterns of trading activity. As a result, for purposes of estimating the costs of revised § 18.05, the Commission assumes it will send 25% more special calls in response to trade data than it did in 2012, for a total of 53 special calls per year. These special calls will require a response from approximately 53 individual traders per year.

This estimate reflects only special calls sent pursuant to § 18.05 as a result of information collected via the volume-based reporting regime (*i.e.,* New Form 102B and New Form 71).[268] The estimated 53 recipients of such special calls may include some traders that are already subject to the costs and obligations of current § 18.05. The Commission estimates that each special call response submitted by the new categories of persons subject to revised § 18.05 will take approximately 5 hours, for a total annual reporting burden of 265 hours. Using an estimated wage rate of $70.07 per hour, annual reporting costs for the new categories of persons that are subject to revised § 18.05 are estimated at $18,569.[269]

§ 18.05—RECORDKEEPING BURDEN

Number of responses per year	Annual burden per response (hours)	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
53	5	265	$70.07	$18,569

[265] As discussed above, the initial development burden per reporting party (10 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of two hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $701 (10 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[266] 17 CFR 18.05.

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

[268] The NPRM estimated the total annual cost to the industry of § 18.05 following implementation of the final rules as $214,605. This figure included the cost to parties already subject to § 18.05 who will not be impacted by the amendments to § 18.05 described herein. Consistent with the description of costs to reporting parties presented elsewhere herein, the estimate of $18,569 represents only the new or incremental costs imposed by the changes to § 18.05 described in these final rules. The $18,569 estimate is therefore less than the $214,605 estimate for revised § 18.05 in the NPRM.

[269] The $18,569 figure is arrived at by multiplying 53 responses by 5 hours (equals 265 hours) by $70.07 (equals $18,569).

B. Consideration of Costs and Benefits

i. Background

The current rules and forms, which these final rules update, require FCMs, clearing members, and foreign brokers to identify special account traders to the Commission via Form 102.[270] The Commission sends a Form 40 in its discretion via a special call to a trader identified on Form 102, requiring the trader to provide the Commission with detailed information regarding the nature of the trader's market activity. The current Form 102 and Form 40 are generally submitted to the Commission via a manual submission process (via email, facsimile, or regular mail). The Commission then individually uploads the forms into the Commission's Integrated Surveillance System (ISS), discussed in section I(B) above. The questions and data points on both forms relate only to the Commission's current position-based reporting rules.

The final rules establish the information architecture necessary for the Commission to efficiently identify and categorize individual trading accounts and market participants that trigger position or newly-created volume-based reporting thresholds. By requiring the collection of ownership and control information via the new and amended forms, the Commission will be able to efficiently and effectively monitor risk exposure by institution, market class, and asset class over an extended period of time. To accomplish this, the final rules modify current Forms 102 and 40 to require additional information, require additional reporting via New Form 71, and modify the timing and method by which market participants are required to submit these forms to the Commission. New Form 102 will now be divided into three sections: 102A, 102B, and 102S. Section 102A captures information that must be reported when a trading account exceeds open position thresholds (a ''special account''); section 102B, which is new in its entirety, will capture information that must be reported when a trading account exceeds a specified volume threshold during a single trading day (a ''volume threshold account''); and section 102S will capture information that must be reported for consolidated accounts and swap counterparties that have a reportable position in swaps. The following summarizes each of the new and amended forms that will take the place of current Form 102 and 40 pursuant to these final rules.[271]

New Form 102A. As noted above, Form 102A is a position-based reporting form, which requires the reporting of both special accounts and the trading accounts that comprise special accounts. This reporting will allow the Commission to link special accounts holding reportable positions to the transactions (and associated trading accounts) identified on daily trade capture reports received by the Commission. By illustrating the connections between end-of-day position reporting via Form 102 and daily trade capture reports, the final rules will enable the Commission to perform a more accurate and timely accounting of market position at the level of individual trading accounts, thereby improving the Commission's surveillance capabilities.[272]

New Form 102B. While Form 102A requires the reporting of large trader positions that remain open at the end of the day, Form 102B requires the reporting of trading accounts that exceed a stated volume threshold during a single trading day, regardless of whether these positions remain open at the end of the day. This will identify traders whose end-of-day open interest does not reach reportable levels on Form 102A, but whose intra-day trading reaches the volume threshold, thus enabling the Commission to monitor trading that could potentially impact markets during concentrated periods of intra-day trading. The Commission expects that the addition of volume-based reporting will provide much needed information about high-frequency traders and other market participants using algorithmic systems, whose activities are not typically captured by the current position-based reporting regime. When combined with the position data reported on Form 102A, New Form 102B will improve the Commission's ability to: (i) Aggregate accounts under common ownership and/or control; (ii) better understand how certain market segments may affect the process of price formation; (iii) efficiently analyze trading behavior surrounding price spikes and other pricing anomalies throughout the day; and (iv) detect and investigate disruptive trading activities, including intraday speculative position limit violations and wash trades.

New Form 71. The Commission will send Form 71, in its discretion via a special call, to collect additional information on omnibus volume threshold accounts identified on Form 102B (or on another Form 71). 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. Form 71 illustrates the 'nested' structure of omnibus accounts and underlying omnibus sub-accounts that are volume threshold accounts, and identifies the ultimate owner and controller of these accounts. Form 71 will provide crucial ownership and control information to the Commission that is not collected under the current reporting regime. The Commission will use this ownership information to aggregate and analyze all trading by a market participant for surveillance purposes, irrespective of whether this trading is conducted through a single account, or through a number of accounts maintained by one or more intermediaries.

New Form 102S. Form 102S is designed to facilitate the electronic submission of 102S filings. Such filings are currently being submitted to the Commission (pursuant to 17 CFR 20.5(a)) through a non-automated process. Form 102S will provide position-based reporting of consolidated accounts in the swaps market. The form expands the current 102S reporting regime to require the reporting of ownership and control information with respect to such accounts. Swap reporting on Form 102S significantly improves the Commission's surveillance capabilities, by enabling it to track the market activity of a specific trader, including traders that may be dividing risk exposure between both on-exchange and off-exchange instruments. Swap reporting will also enable the Commission to more efficiently aggregate position exposure in a particular product or commodity group. Such reporting also aligns with the Commission's recently finalized rules on real-time public and regulatory reporting of swap trades, and improves transparency into markets that, historically, have often been opaque and/or over-the-counter.

New Form 40/40S. Each of the 102 forms and Form 71 requires respondents to identify the parties that the Commission should contact (such as the account owner, controller, and related contact persons) if the Commission requires additional information regarding traders or trading accounts identified on the forms. The

[270] *See supra* section III for a discussion of the current trader and account identification programs.

[271] *See supra* section IV for a detailed summary of the new and amended forms adopted in these final rules.

[272] See the discussion of the daily trade capture reports in section I(B) above.

Commission will send New Form 40 in its discretion via a special call to collect additional information from traders reported on each of the 102 forms and Form 71. These final rules expand Form 40 by requiring the reporting trader to: (1) Indicate whether it is engaged in commodity index trading (as that term is defined in the form) (a question that does not appear on current Form 40); (2) report its control relationships with other entities, and other relationships with persons that influence or exercise authority over the trading of a reporting trader (a question that has been expanded on New Form 40); (3) identify all the business sectors that pertain to its business activities or occupation (a question that has been expanded on New Form 40); and (4) identify all commodity groups and individual commodities that it presently trades, or expects to trade in the near future, in derivatives markets (a question that has been expanded on New Form 40), among other information.

Responses to these questions will improve the Commission's ability to perform effective surveillance, by enabling it to better understand the ownership and control structure of reporting traders, and the extent of their business activities across multiple markets and product groups. The Commission will, furthermore, be able to use information reported on New Form 40 to cross-check several of the ownership and control data fields reported on New Form 102. The additional information requested on New Form 40 will improve the quality of data published in the Commission's reports, including the classifications in the Commitments of Traders Report. Finally, the Commission will be able to compare the trading goals that a respondent reports on New Form 40 to its subsequent market activity. If the two do not correspond, the Commission will request additional information from the respondent in order to maintain accuracy in Commission databases and reports, or take other appropriate action.

In sum, the final rules will build upon the Commission's existing market and trade practice surveillance programs for futures, options on futures, and swaps, by improving the Commission's understanding of the impact of special accounts, consolidated accounts, and newly designated volume threshold accounts on market activity. In turn, this will allow the Commission to better perform risk-based monitoring and surveillance among related accounts; efficiently monitor risk exposure by institution, market class, and asset class; facilitate investigations into disruptive trading activity by Commission enforcement staff; and expand the Commission's ability to research and analyze how a wide-ranging variety of market participants impact market behavior.

ii. The Statutory Requirement for the Commission To Consider the Costs and Benefits of Its Actions

Section 15(a) of the CEA [273] requires the Commission to ''consider the costs and benefits'' of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits must 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. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors below.

As a general matter, the Commission considers the incremental costs and benefits of these rules, that is the costs and benefits that are above the standard established by the Commission's existing regulations.[274] Where reasonably feasible, the Commission has endeavored to estimate quantifiable costs and benefits. Where quantification is not feasible, the Commission identifies and describes costs and benefits qualitatively.[275]

iii. Commission Request for Comments Regarding Cost and Benefit Estimates

The Commission requested comment on a variety of cost and benefit metrics in the NPRM. As a general matter, the Commission requested that commenters provide data and any other information or statistics that they relied on to reach conclusions on the Commission's cost and benefit estimates. The Commission also requested comment, including specific quantitative estimates, on the expected costs related to upgrading or obtaining systems to implement and comply with the reporting requirement under the proposed new and revised forms, as well as the impact of the proposed rules (or the relative impact of any alternative rules) on the section 15(a) factors. Although some commenters stated that the NPRM understated the total cost to the industry, no commenter provided specific quantitative cost or benefit estimates, or other information to more precisely estimate costs beyond those presented in the NPRM.[276]

In the absence of specific quantitative estimates or alternative cost proposals by commenters, the Commission performed its own analysis in updating the NPRM cost benefit considerations for these final rules. As explained below, for purposes of these final rules, the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission. In this section VIII(B), the Commission has also calculated an estimated range of 25 percent below and 25 percent above the estimated total annual industry cost for each form. The Commission has applied these ranges because reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).[277]

iv. Methodology Used To Estimate Costs

As discussed above, the Commission has calculated the total estimated industry cost for submitting each form via FTP or via the web portal. For each form, these calculations represent the total industry cost if all reporting parties submit information via one method—as compared to the total industry cost if all parties submit via the other method. For example, the 102A estimates described in sections VIII(A) and (B) represent the total estimated industry cost if all reporting parties submit 102A via FTP ($1,931,129), or if all parties submit 102A via the web portal ($5,954,969). The Commission recognizes that, even if it is less expensive for the industry as a whole to submit 102A via FTP, it may be less expensive for certain individual reporting parties to submit 102A via the web portal. This may be due to the limited number of forms these parties

[273] 7 U.S.C. 19(a).

[274] As discussed below with respect to costs more specifically, the Commission's estimated cost ranges assume that all market participants will start from the same point in developing the systems required to implement OCR reporting, irrespective of whether they provide certain forms under the current reporting system (e.g., the current Forms 102 and 40).

[275] For example, to quantify benefits such as improved transparency and enhanced protections for market participants and the public would require information, data and/or metrics that either do not exist, or to which the Commission generally does not have access.

[276] *See* section VIII(B)(vi) below for additional discussion of comments received by the Commission regarding the costs and benefits of reporting.

[277] *See id.*

expect to submit, their technology infrastructure, or other factors.

To expand on this example, if a new reporting party anticipates that it will submit only two 102A filings per year, it might logically conclude that it would be less expensive to submit its two filings via the web portal than to incur the development costs associated with establishing an FTP link to the Commission. In this instance, the Commission has estimated that the reporting party would incur 20 hours of initial development burden for each of the two records submitted via the web portal, or a total initial development burden of 40 hours. Accordingly, the reporting party may conclude that submitting its 102A filings via the web portal is more cost-effective than submitting the same information via FTP, which the Commission has estimated would require an initial development burden of 264 hours per entity (regardless of the number of forms submitted).[278]

The cost estimates in section VIII(A) and (B) assume that all market participants will start from the same point in developing the systems required to implement OCR reporting. Accordingly, to the extent that current reporting parties leverage their existing reporting systems [279] to implement OCR reporting, the cost estimates are likely to overestimate actual costs to some degree for such parties.

For the following additional reasons, the Commission anticipates that total reporting and recordkeeping costs to the industry are likely to be lower than the sum of the costs associated with each form individually, as the Commission has calculated herein.

First, the reporting and recordkeeping burdens arising from each regulation and associated form were estimated independently of the requirements of the other regulations and associated forms. The Commission anticipates that substantial synergies are likely to exist across the systems and data necessary to meet the reporting requirements. For example, many reporting firms submitting New Form 102A via FTP (which the Commission believes is the more cost-effective submission method for the industry as a whole) will also submit New Form 102B via FTP, and will be able to leverage systems and information necessary for submitting one form to meet the requirement to submit the other.

Second, the Commission has incorporated a number of proposals made by commenters that are intended to reduce the reporting burden and associated costs to market participants. These proposals are described in section VII above and section VIII(B)(vii) below. While the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission, in order to generate more conservative cost estimates, the Commission has not reduced the cost estimates in these final rules to account for the incorporation of these cost-saving proposals.

v. Costs and Benefits of Individual Reporting Forms and Reporting and Recordkeeping Requirements

The discussion below considers the anticipated costs and benefits to the industry of New Form 102A, New Form 102B, New Form 71, New Form 40, New Form 102S, New Form 40S, and the reporting and recordkeeping requirements of revised § 18.05.

New Form 102A

(1) Overview of New Form 102A

New Form 102A, which identifies owners and controllers of special accounts and other related information, is based on the Form 102 currently in use. These final rules do not modify the definition of what constitutes a ''special account'' for reporting purposes.[280] The rules do, however, increase the amount of information required to be reported with respect to each special account. For example, New Form 102A requests that the respondent provide the Web site, NFA ID, and Legal Entity Identifier of the owners and controllers reported on the form, to the extent this information is available in the respondent's records. More significantly, New Form 102A requires respondents to identify the owners and controllers of each trading account that comprises the reported special account. The preceding information is not collected on current Form 102. These newly collected data points will allow the Commission to link special accounts holding reportable positions to the transactions (and associated trading accounts) identified on daily trade capture reports received by the Commission. The Commission understands that (as noted by comment letters on the 2010 OCR NPRM) [281] the majority of these data points already reside with reporting parties.[282] As a result, reporting parties will not need to coordinate with external parties in order to compile most data points required by New Form 102A.

(2) Benefits of New Form 102A

The reporting of trading accounts that comprise a special account will provide common reference points between TSS and ISS data, thereby enabling the Commission to efficiently compare end-of-day reportable positions with intra-day account activity.[283] By connecting end-of-day position level data with intra-day account activity, the Commission will be able to efficiently determine the ownership or control of specific positions held by individual trading accounts at any time throughout the trading day, thereby improving market transparency. More specifically, Commission staff will use the additional ownership and control information to determine whether a reported account is a new account of a previously reported trader, or whether it correlates to a previously unreported trader. If the account is owned or controlled by a previously reported trader, it will be aggregated with other related accounts currently being reported. By identifying and aggregating accounts in this manner, Commission staff can more thoroughly monitor and assess a trader's potential market impact during significant periods such as price spikes or settlement periods, monitor the trader's compliance with speculative position limits, and determine whether

[278] In this example, the Commission expects that reporting parties making a small number of filings would choose to submit via the web-based portal, because web submission would be the most cost-effective submission method for such parties. In doing so, they will incur fewer costs than they would if they submitted via FTP, thereby lowering the total costs to the industry. As a result, the simplifying assumption that all reporting parties will submit New Form 102A (along with certain other forms discussed below) via FTP is a conservative assumption, which will tend to overestimate the total industry cost.

[279] Certain parties that will be required to report under these final rules now provide certain forms under the current reporting system (*e.g.,* the current Forms 102 and 40).

[280] See § 15.005(r) of the Commission's regulations.

[281] All 2010 OCR NPRM comment letters are available through the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=755&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=1*

[282] The Commission received a number of comment letters in response to the 2010 OCR NPRM, and incorporated several of their suggestions in the NPRM (published in the **Federal Register** in 2012), which forms the basis for these final rules. Among these changes, the Commission removed certain questions from the reporting forms asking for data that, in the view of commenters, is not maintained by reporting parties. *See* NPRM *supra* note 10 at 43973–43974 for a discussion of comments received in response to the 2010 OCR NPRM that were incorporated in the NPRM. *See also* the December 23, 2010 comment letter from FIA at 9 and Exhibit A; October 7, 2010 comment letter from CME at 4; and October 7, 2010 comment letter from ICE at 3, which establish that the majority of the remaining data points, which appear on the forms adopted in these final rules, already reside with reporting parties.

[283] *See supra* section I(B) for a discussion of the TSS and ISS.

the trader is engaging in abusive or disruptive practices (such as marking the close, ''wash trading,'' or money passing). By aggregating the accounts of individual traders, the Commission will also be able to more efficiently calculate aggregate position exposure in a particular product or commodity group. In sum, the additional information provided by New Form 102A will contribute to the overall integrity of the financial markets, by improving the Commission's ability to detect and investigate disruptive or manipulative behavior.

(3) Costs of New Form 102A

The Commission assumes that each New Form 102A reporting party will submit New Form 102A via secure FTP, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. Each FTP submission will likely contain numerous 102A records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will 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 will not increase a reporting party's burden when using the FTP submission method. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[284]

An assessment of Commission data collection efforts demonstrated that the Commission received Form 102 submissions from 260 reporting parties in 2012. The Commission anticipates that it will receive New Form 102A submissions from a similar number of reporting parties each year. Assuming all New Form 102A reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for New Form 102A will equal 27,560 hours. Using an estimated wage rate of $70.07 per hour,[285] annual industry costs for 102A filings made pursuant to the FTP submission method are estimated at $1,931,129.

As indicated throughout this section VIII(B), the Commission has used the same wage rate of $70.07 when calculating the cost of submission via both the web portal and FTP. Each submission method will, nonetheless, require a different annual or annualized burden, in terms of hours. This $70.07 wage rate represents the work of a senior programmer, programmer, intermediate compliance advisor, systems analyst, and assistant/associate general counsel, in the proportions described in the preceding footnote.

FORM 102A

Regulation	Estimated total annual industry cost[286]	Estimated low and high range (25% below and 25% above estimated total annual industry cost)[287]	Anticipated transmission method[288]
17.01(a)	$1,931,129	$1,448,347–$2,413,911	FTP

[284] 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 party) by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. 53 hours plus 53 hours (annual, ongoing operation and maintenance burdens per reporting party) equals 106 hours per reporting party.

[285] 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 $70.07 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 2011, 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'' (29% weight); ''compliance advisor (intermediate)'' (15%), ''systems analyst'' (16%), and ''assistant/associate general counsel'' (10%). The $70.07 wage rate is a blended rate, such that the Commission has applied the same $70.07 wage rate when calculating the cost of submission via both FTP and the web-based portal. As noted above, the NPRM contemplated that Forms 40/S and 71 could be submitted only via the web portal. However, pursuant to these final rules, the Commission is allowing reporting parties to submit Forms 40/S and 71 via FTP as well, with the result that reporting parties may submit all forms either via the web portal or via FTP. In light of this change, the wage rage percentages in these final rules have been updated and slightly modified from the wage rate percentages in the NPRM, to more accurately reflect anticipated labor allocations. The NPRM employed the following wage rage percentages: ''programmer (senior)'' (30% weight); ''programmer'' (30% weight); ''compliance advisor (intermediate)'' (20%), ''systems analyst'' (10%), and ''assistant/associate general counsel'' (10%). While the NPRM calculated an estimated wage rate of $78.61 per hour, these final rules calculate an estimated wage rate of $70.07 per hour using the 2011 SIFMA statistics and updated wage rate percentages. (Note that the national average of salary and bonuses for the professionals listed above declined between 2010 to 2011, according to the SIFMA report addressing each of those years. The 2010 SIMA report (which is the basis for the wage rate in the NPRM) indicates an aggregate national average of salary and bonuses of $530,321 for these professionals, while the 2011 SIFMA report indicates an aggregate national average of salary and bonuses of $510,943.) The Commission has also updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission (including, for example, the number of reporting forms received by the Commission in 2012). The NPRM calculated an estimated total annual cost to the industry of $9,147,061, as compared to an estimated total cost to the industry of $9,574,296 in these final rules, per section VIII(A) above. *See also supra* note 265.

[286] As noted in section VIII(A), the initial development cost per reporting party is estimated at $18,498 (264 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[287] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[288] The Commission estimated the total annual industry cost associated with each filing obligation by considering the two distinct filing methods that it will accommodate pursuant to these final rules (web-based submission and FTP submission). The estimated cost of each filing obligation assumes that all reporting parties will file via the less expensive of the two filing methods. However, reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods. As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via the web-based portal, is $5,954,969. The $5,954,969 figure is arrived at by multiplying the anticipated 7,726 records by 11 hours anticipated burden per record (equals 84,986 hours) by a wage rate of $70.07 (equals $5,954,969). An estimated low and high range (25% below and above this figure) equals $4,466,227 and $7,443,711, respectively.

New Form 102B

(4) Overview of New Form 102B

New Form 102B provides a new volume-based reporting structure not found in current Form 102. While current 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.'' 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.

(5) Benefits of New Form 102B

The current position-based reporting regime captures over 90 percent of open interest in many markets regulated by the Commission. Nonetheless, the current system is not specifically designed to identify market participants using algorithmic systems, whose activities have been opaque under the position-based reporting regime. These traders typically enter and exit a given market position within very brief periods intraday, and are therefore rarely captured by end-of-day position reports. In highly liquid markets, participants of this type can make up a meaningful percentage of market activity. The addition of volume-based reporting, which identifies intra-day trading activity meeting a volume threshold regardless of whether positions continue to be held at the end of day, will enable the Commission to better understand the behavior and evolution of this rapidly growing market segment. Reporting on 102B will also enable the Commission to identify other types of high-volume traders that may hold positions for longer periods of time than is characteristic of high-frequency traders, but nonetheless enter and exit positions intraday.

While the Commission is able to view intraday transactions via the Commission's trade capture report, this report does not provide ownership or control information regarding the relevant trading accounts. Because the Commission lacks the information necessary to efficiently link transaction and account data, the Commission is unable to aggregate the positions of individual trading accounts, or associate trading accounts with special accounts in a timely fashion. The addition of volume-based reporting via New Form 102B will remedy this, by providing the Commission with an efficient means to collect the information required to aggregate positions, detect intra-day position limit violations, and calculate market share. When analyzing periods of elevated volatility—especially at significant trading times such as market open and close—the ability to aggregate intra-day trading behavior by owner/controller is crucial to understanding whether a trader has adversely affected (or has the potential to affect) market quality or price discovery.

In sum, the information collected on new Form 102B will significantly improve the efficiency and performance of the Commission's market and trade practice surveillance program. The Commission anticipates that New Form 102B will allow the Commission to perform more comprehensive surveillance, by identifying over 90 percent of market activity in many significant products that are traded intra-day but not held overnight, mirroring the level of account identification under the current end-of-day position-based reporting regime. In so doing, it will improve the integrity of financial markets, protecting market participants and the public from the costs of disruptive trading practices and other market abuses. Improving the Commission's surveillance program will also support the Commission's enforcement efforts to investigate such market abuses. Finally, the ability to more efficiently identify and aggregate trading activity will improve the Commission's research capabilities as well as its forensic analysis of disruptive market events, even when prohibited practices are not involved. For example, the Commission's efforts to identify and aggregate trading activity were shown to be particularly helpful in diagnosing events such as the Flash Crash of 2010.[289]

(6) Costs of New Form 102B

The Commission assumes that each New Form 102B reporting party will submit New Form 102B via secure FTP, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. Each FTP submission will likely contain numerous 102B records. The Commission estimates that the total initial development burden should average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will 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 party's burden when using the FTP submission method. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 106 hours per reporting party.[290]

Because New Form 102B provides a new volume-based reporting structure not found in current Form 102, the Commission is unable to refer to historical reporting statistics to directly estimate the number of New Form 102B reporting parties. Instead, the Commission estimated the number of New Form 102B reporting parties 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 will receive New Form 102B submissions from approximately 100 reporting parties annually. Assuming that all such reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B will equal 10,600 hours.[291] Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to the FTP submission method are estimated at $742,742.[292]
- For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive New Form 102B submissions from approximately 75 reporting parties annually. Assuming that all such reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B will equal 7,950 hours.[293] Using an estimated wage

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

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

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

[292] The $742,742 figure is arrived at by multiplying 100 reporting parties by 106 hours (equals 10,600 hours) by $70.07 (equals $742,742).

[293] The 7,950 hour figure is arrived at by multiplying 106 hours (annualized development

rate of $70.07 per hour, annual industry costs for such filings made pursuant to the FTP submission method are estimated at $557,057.[294]

Collectively, annual industry costs for 102B filings made pursuant to the FTP submission method are estimated at $1,299,799.[295]

FORM 102B

Regulation	Estimated total annual industry cost[296]	Estimated low and high range (25% below and 25% above estimated total annual industry cost)[297]	Anticipated transmission method[298]
17.01(b)	$1,299,799	$974,849–$1,624,749	FTP

New Form 71

(7) Overview of New Form 71

New Form 71 (''Identification of Omnibus Accounts and Sub-Accounts'') will be sent, in the Commission's discretion, in the event that a volume threshold account is identified as a customer omnibus account on Form 102B. The Commission will send New Form 71 via a special call to the originating firm of such an account. If the originating firm indicates that this account is itself an omnibus account (an ''omnibus reportable sub-account''), then the originating firm will be required to indicate whether the omnibus reportable sub-account is a house or customer omnibus account and identify the originator of the omnibus reportable sub-account. Another Form 71 will 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. Form 71 therefore illustrates the 'nested' structure of omnibus accounts and underlying omnibus sub-accounts that are volume threshold accounts, and identifies the ultimate owner and controller of these accounts.

(8) Benefits of New Form 71

Without the information provided on New Form 71, the Commission is unable to determine whether trading activity in omnibus accounts is attributable to accounts under common ownership or control, or whether it simply represents the combined trading activity of multiple traders acting independently of one another. Similar to the benefits of New Form 102B, the ability to aggregate trading activity will enable the Commission to better identify manipulative and disruptive trading activity, regardless of whether this activity is conducted through a single account, or spread across a number of omnibus accounts and sub-accounts.

(9) Costs of New Form 71

The Commission assumes that each New Form 71 reporting party (*i.e.,* originators of omnibus volume threshold accounts or omnibus reportable sub-accounts) will complete and submit New Form 71 online via a secure web-based portal provided by the Commission, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. The Commission estimates that, on average, New Form 71 will create an annual reporting burden of 8 hours per filing.[299]

As discussed in section VIII(A) above, the Commission expects approximately 564 DCM-related New Form 71 filings per year, and 198 SEF-related New Form 71 filings per year.

- Based on an estimated 564 DCM-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 4,512 hours annually for such filings via the web-based portal. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made via the web-based portal are estimated at $316,156.[300]
- Based on an estimated 198 SEF-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 1,584 hours annually for such filings via the web-based portal. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made via the web-based portal are estimated at $110,991.[301]

Collectively, annual industry costs for New Form 71 filings made via the web-based portal are estimated at $427,147.[302]

burden and ongoing operation and maintenance burden per reporting party) by 75 reporting parties.

[294] The $557,057 figure is arrived at by multiplying 75 reporting parties by 106 hours (equals 7,950 hours) by $70.07 (equals $557,057).

[295] The $1,299,799 figure is arrived at by multiplying 175 reporting parties by 106 hours (equals 18,550 hours) by $70.07 (equals $1,299,799).

[296] As noted in section VIII(A), the initial development cost per reporting party is estimated at $18,498 (264 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[297] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[298] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via the web-based portal, is $144,916,322. The $144,916,322 figure is arrived at by multiplying the anticipated 188,015 records by 11 hours anticipated burden per record (equals 2,068,165 hours) by a wage rate of $70.07 (equals $144,916,322). An estimated low and high range (25% below and above this figure) equals $108,687,242 and $181,145,403, respectively.

[299] The submission of New Form 71 through the web-based portal does not require initial development expenditures; as a result, the burdens and costs for this form are calculated on an annual basis rather than an annualized basis. In addition, Form 71 does not require change or refresh updates.

[300] The $316,156 figure is arrived at by multiplying 564 records by 8 hours (equals 4,512 hours) by $70.07 (equals $316,156).

[301] The $110,991 figure is arrived at by multiplying 198 records by 8 hours (equals 1,584 hours) by $70.07 (equals $110,991).

[302] The $427,147 figure is arrived at by multiplying 762 records by 8 hours (equals 6,096 hours) by $70.07 (equals $427,147).

[303] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[304] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via FTP data feed,

Continued

FORM 71

Regulation	Estimated total annual industry cost	Estimated low and high range (25% below and 25% above estimated total annual industry cost) [303]	Anticipated transmission method [304]
17.01(c)	$427,147	$320,360–$533,934	web

New Form 40

(10) Overview of New Form 40

New Form 40 will be sent, on special call of the Commission, to individuals and other entities identified on any of 102A, 102B, and Form 71. New Form 40, still referred to as the ''Statement of Reporting Trader,'' will continue to serve the function traditionally met by current Form 40. At the same time, New Form 40 will provide the Commission with more detailed information than current Form 40 regarding both the business activities and the ownership and control structure of a reporting trader identified in the Commission's Form 102 program (as updated by these final rules). New Form 40 will also be the vehicle through which market participants subject to 17 CFR 20.5(b) submit their 40S filings (discussed below), and will be used to collect additional information regarding the owners and controllers of non-omnibus volume threshold accounts identified by Form 71. Those entities required to complete a New Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information submitted on New Form 40 by periodically updating the information on the New Form 40 web portal or by periodically resubmitting New Form 40 by secure FTP transmission.

Among other requested data fields, New Form 40: asks if the respondent is engaged in commodity index trading (as that term is defined in the form) (a question that does not appear on current Form 40); requires the respondent to identify all the business sectors that pertain to its business activities or occupation (a question that has been expanded on New Form 40); requires the respondent to identify all commodity groups and individual commodities that it presently trades, or expects to trade in the near future, in derivatives markets (a question that has been expanded on New Form 40); and requires the respondent to indicate the business purpose for which it uses derivatives markets (a question that has been expanded on New Form 40).

(11) Benefits of New Form 40

The expanded Form 40 will improve the Commission's ability to perform effective surveillance, by providing the Commission with more detailed data on reporting traders, including: information regarding reporting traders' control relationships with other entities; other relationships with persons that influence or exercise authority over the trading of a reporting trader; and more detailed information regarding the business activities of the reporting trader. Responses to the questions above will enable the Commission to better understand the ownership and control structure of reporting traders, and the extent of their business activities across multiple markets and product groups. This enhanced visibility will, in turn, improve the Commission's ability to respond to market disruptions, which can come at a high cost to the investing and general public. The Commission will also be able to use information reported on New Form 40 to cross-check several of the ownership and control data fields reported on New Form 102. The Commission will be able to compare the trading goals that a respondent reports on New Form 40 to its subsequent market activity. If the two do not correspond, the Commission will request additional information from the respondent in order to maintain accuracy in Commission databases and reports, or take other appropriate action.

Currently, Form 40s (as well as Form 102s) are submitted to the Commission via facsimile, email, and physical mail. The Commission converts these submissions into an electronic format, and loads them into the Commission's Integrated Surveillance System. Automating Form 40 submission will improve efficiency by eliminating this additional layer of transcription. As a result, these final rules will reduce the likelihood of input errors. The rules will also reduce the burden and costs that arise when Commission staff must contact reporting parties to request additional information or clarification due to errors arising from mistaken inputs. The more accurate data reported via the automated Form 40 will, in turn, improve the quality of the Commission's published reports, such as the classifications in the Commitments of Traders report.

(12) Costs of New Form 40

New Form 40 Submissions Resulting from New Form 102A. The Commission assumes that each reporting party filing New Form 40 as a result of New Form 102A (*i.e.,* special account owners and controllers) will complete and submit New Form 40 online via a secure web-based portal provided by the Commission, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole.

As discussed in section VIII(A) above, the Commission expects approximately 5,250 New Form 40 records filings per year arising from New Form 102A filings. The Commission estimates that each of the 5,250 New Form 40 records will require three hours to complete.[305] Assuming each such New Form 40 record is provided via the web-based portal, the Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102A, will equal 15,750 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 40 filings arising from special accounts are estimated at $1,103,603.[306]

New Form 40 Submissions Resulting from New Form 102B and New Form 71. The Commission also assumes that each reporting party filing New Form 40 as a result of New Form 102B and New Form 71 (*i.e.,* volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts) will complete and submit New Form 40 online via a secure web-based portal provided by the Commission.

is $5,659,694. The $5,659,694 figure is arrived at by multiplying the anticipated 762 reporting parties by 106 hours of annualized development burden and ongoing operation and maintenance burden (equals 80,772 hours) by a wage rate of $70.07 (equals $5,659,694). An estimated low and high range (25% below and above this figure) equals $4,244,771 and $7,074,618, respectively.

[305] The Commission's estimate of three 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.

[306] The $1,103,603 figure is arrived at by multiplying 5,250 records by 3 hours (equals 15,750 hours) by $70.07 (equals $1,103,603).

As discussed in section VIII(A) above, the Commission anticipates that it will receive approximately 13,409 DCM-related New Form 40 filings annually and approximately 5,511 SEF-related New Form 40 filings annually, in each case arising from New Form 102B and New Form 71.[307] Each such New Form 40 filing is estimated to require three hours.[308] Assuming each such New Form 40 record is provided via the web-based portal:

• The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 40,227 hours for DCM-related New Form 40 filings. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at $2,818,706.[309]

• The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 16,533 hours for SEF-related New Form 40 filings. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at $1,158,467.[310]

Collectively, annual industry costs for New Form 40 filings, as a result of New Form 102B and New Form 71, are estimated at $3,977,173.[311]

FORM 40—SUBMISSIONS RESULTING FROM (a) NEW FORM 102A AND (b) NEW FORM 102B AND NEW FORM 71

Regulation	Estimated total annual industry cost[312]	Estimated low and high range (25% below and 25% above estimated total annual industry cost)[313]	Anticipated transmission method
18.04(a)	$1,103,603	$827,702–$1,379,504	web[314]
18.04(b)	3,977,173	$2,982,880–$4,971,466	web[315]

New Form 102S

(13) Overview of New Form 102S

Section 102S of New Form 102 is designed to facilitate the electronic submission of 102S filings. Such filings are currently being submitted to the Commission (pursuant to 17 CFR 20.5(a)) through a non-automated process.[316] Pursuant to § 20.5(a), 102S filings must be submitted by a part 20 reporting party (a swap dealer or clearing firm) for each reportable counterparty consolidated account when such account first becomes reportable.[317] By incorporating 102S in New Form 102, these final rules will require more detailed ownership and control information regarding identified consolidated accounts, and require the submission of consolidated account reporting via an automated submission.

(14) Benefits of New Form 102S

Form 102S will require reporting parties to identify swap counterparty or customer consolidated accounts with reportable positions. Swap reporting on Form 102S significantly improves the Commission's surveillance capabilities, by enabling it to track the market activity of a specific trader, including traders that may be dividing risk exposure between both on-exchange and off-exchange instruments. Swap reporting will also enable the Commission to more efficiently aggregate position exposure in a particular product or commodity group. The reporting of swap activity on Form 102S aligns with the Commission's recently finalized rules on real-time public and regulatory reporting of swap trades, and provides further transparency into markets that, historically, have often been opaque and/or over-the-counter.

As further changes arise in the commodity swap market, such as the introduction of SEFs, the identification of both special accounts (via 102A) and consolidated accounts (via 102S) will enable the Commission to monitor a broad range of market activity across traditional futures exchanges and SEFs. This will enable the Commission to quantify the amount of activity in a given product across different execution platforms, and monitor changes in this amount over time. The Commission's expanded view of the marketplace will enable it to more quickly and efficiently identify disruptive market activity occurring across multiple trading facilities (similar to the transmission effects that occurred during the Flash

[307] 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 parties are likely to own or control both DCM-related and SEF-related volume threshold accounts, but only one New Form 40 would be required.

[308] The Commission's estimate of three 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.

[309] The $2,818,706 figure is arrived at by multiplying 13,409 filings by 3 hours (equals 40,227 hours) by $70.07 (equals $2,818,706).

[310] The $1,158,467 figure is arrived at by multiplying 5,511 filings by 3 hours (equals 16,533 hours) by $70.07 (equals $1,158,467).

[311] The $3,977,173 figure is arrived at by multiplying 18,920 filings by 3 hours (equals 56,760 hours) by $70.07 (equals $3,977,173).

[312] As noted in section VIII(A) above, the initial development cost per reporting party is estimated at $701 (10 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[313] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[314] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method for New Form 40 submissions arising from New Form 102A, via FTP data feed, is $36,051,015. The $36,051,015 figure is arrived at by multiplying the anticipated 5,250 reporting parties by 98 hours of annualized development burden and ongoing operation and maintenance burden (equals 514,500 hours) by a wage rate of $70.07 (equals $36,051,015). An estimated low and high range (25% below and above this figure) equals $27,038,261 and $45,063,769, respectively.

[315] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method for New Form 40 submissions arising from New Form 102B and New Form 71, via FTP data feed, is $129,920,991. The $129,920,991 figure is arrived at by multiplying the anticipated 18,920 reporting parties by 98 hours of annualized development burden and ongoing operation and maintenance burden (equals 1,854,160 hours) by a wage rate of $70.07 (equals $129,920,991). An estimated low and high range (25% below and above this figure) equals $97,440,743 and $162,401,239, respectively.

[316] References in these final rules to ''102S filings'' are based on the regulatory text of § 20.5, which refers to ''102S filings'' and ''40S filings.''

[317] 17 CFR 20.5(a).

Crash).[318] In particular, New Form 102S will improve the Commission's ability to perform risk-based monitoring of trading activity conducted through accounts owned or controlled by, for example, a single market participant, but spread across multiple platform types.[319] In the event the Commission identifies trading activity requiring further investigation, the Commission will be able to contact market participants more quickly and efficiently using the ownership and control information collected through the OCR reporting process.

(15) Costs of New Form 102S

The Commission assumes that each New Form 102S reporting party will submit New Form 102S via secure FTP, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. Each FTP submission will likely contain numerous 102S records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will 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 current § 20.5(a)(3),[320] or any new submission procedures arising from the Swaps Large Trader Guidebook (*i.e.,* frequency of 102S filing submission), will not increase a reporting party's burden when using the FTP submission method. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[321]

The 102S filing requirements in current § 20.5 [322] are nearly identical to the filing requirements for revised 102S; accordingly, the Commission used its experience to date with 102S filings to estimate the number of 102S reporting parties. An assessment of Commission data collection efforts demonstrated that the Commission received Form 102S submissions from 39 reporting parties in 2012. The Commission anticipates that it will receive New Form 102S submissions from a similar number of reporting parties each year. Assuming 102S reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for 102S filing will equal 4,134 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 102S are estimated at $289,669.[323]

FORM 102S

Regulation	Estimated total annual industry cost [324]	Estimated low and high range (25% below and 25% above estimated total annual industry cost) [325]	Anticipated transmission method [326]
20.5(a)	$289,669	$217,252–$362,086	FTP

New Form 40S

(16) Overview of New Form 40S

New Form 40 will be the vehicle through which market participants subject to 17 CFR 20.5(b) submit New Form 40S. As a result, New Form 40 and New Form 40S are substantively identical. New Form 40S will be sent, on special call of the Commission, to individuals and other entities identified on Form 102S. New Form 40S will continue to serve the function traditionally met by current Form 40S. New Form 40S will provide the Commission with detailed information regarding both the business activities and the ownership and control structure of a reporting trader identified in the Commission's Form 102S program (as updated by these final rules). As noted above, a reporting party (a swap dealer or clearing firm) must submit a Form 102S for each reportable counterparty consolidated account when such account first becomes reportable. Those entities required to complete a New Form 40S will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information submitted on New Form 40S by periodically updating the information on the New Form 40S web portal or by periodically resubmitting New Form 40S by secure FTP transmission.

The expanded Form 40S will provide the Commission with more detailed data on reporting traders, including information regarding reporting traders' control relationships with other entities, and other relationships with persons that influence or exercise authority over the trading of a reporting trader. The expanded form also collects more detailed information regarding the business activities of the reporting trader. For example, New Form 40S:

[318] *See supra* note 289 for further information regarding the Flash Crash.

[319] The Commission also notes that 102S reporting is a necessary complement to SDR reporting under Part 45, and will provide information that is not otherwise available under the SDR reporting regime. The Commission anticipates that swap dealers and clearing members (the 102S reporting parties) will be able to consistently provide the contact information for owners and controllers of consolidated accounts on the 102S, based on the records these entities maintain. Part 45 reporting, by contrast, is based on counterparty data. Although this counterparty data may, in some cases, include the owners and controllers of consolidated accounts, it will not include this information in all cases. As a result, the Commission cannot rely on SDR reporting under Part 45 as a substitute for 102S reporting.

[320] 17 CFR 20.5(a)(3).

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

[322] 17 CFR 20.5.

[323] The $289,669 figure is arrived at by multiplying 39 reporting parties by 106 hours (equals 4,134 hours) by $70.07 (equals $289,669).

[324] As noted in section VIII(A), the initial development cost per reporting party is estimated at $18,498 (264 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[325] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[326] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via the web-based portal, is $1,757,356. The $1,757,356 figure is arrived at by multiplying the anticipated 2,508 records by 10 hours anticipated burden per record (equals 25,080 hours) by a wage rate of $70.07 (equals $1,757,356). An estimated low and high range (25% below and above this figure) equals $568,017 and $946,695, respectively.

Asks if the respondent is engaged in commodity index trading (as that term is defined in the form) (a question that does not appear on current Form 40S); requires the respondent to identify all the business sectors that pertain to its business activities or occupation (a question that has been expanded on New Form 40S); requires the respondent to identify all commodity groups and individual commodities that it presently trades, or expects to trade in the near future, in derivatives markets (a question that has been expanded on New Form 40S); and requires the respondent to indicate the business purpose for which it uses derivatives markets (a question that has been expanded on New Form 40S).

(17) Benefits of New Form 40S

Responses to the questions above will improve the Commission's ability to perform effective surveillance, by enabling it to better understand the ownership and control structure of reporting traders, and the extent of their business activities across multiple markets and product groups. The collection of the information described above will improve the Commission's ability to analyze and/or respond to market disruptions, which can exact a high cost to the investing and general public. The Commission will also be able to use information reported on New Form 40S to cross-check several of the ownership and control data fields reported on New Form 102S. The Commission will be able to compare the trading goals that a respondent reports on New Form 40S to its subsequent market activity. If the two do not correspond, the Commission will request additional information from the respondent in order to maintain accuracy in Commission databases and reports, or take other appropriate action.

(18) Costs of New Form 40S

The Commission assumes that each New Form 40S reporting party will complete and submit its forms online via a secure web-based portal provided by the Commission, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. As discussed in section VIII(A) above, the Commission anticipates that it will receive approximately 2,508 102S records per year, and the Commission estimates that it will make approximately the same number of 40S special calls each year (2,508). Each response is estimated to require three hours,[327] resulting in an estimated total annual reporting burden of 7,524 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 40S filings made via the web-based portal are estimated at $527,207.[328]

FORM 40S

Regulation	Estimated total annual industry cost [329]	Estimated low and high range (25% below and 25% above estimated total annual industry cost) [330]	Anticipated transmission method [331]
20.5(b)	$527,207	$395,405–$659,009	web

Expanded Obligation To Maintain Books and Records and Furnish Information to the Commission Under § 18.05

(19) Overview of § 18.05

Current § 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.[332] In addition, current § 18.05 requires that the trader furnish the Commission with information concerning such positions upon request. The Commission is expanding § 18.05 to impose books and records requirements upon four new categories of market participants, who are not required to maintain books and records pursuant to current § 18.05: (1) Owners of volume threshold accounts reported on New Form 102B; (2) controllers of volume threshold accounts reported on New Form 102B; (3) owners of reportable sub-accounts reported on New Form 71; and (4) controllers of reportable sub-accounts reported on New Form 71. Traders who hold or control reportable positions will remain subject to the books and records requirements, consistent with the current requirements.

(20) Benefits of Expanded Recordkeeping

As a result of the final rules, the four new categories of persons identified above will have the same books and records requirements as traders who hold or control a reportable futures or options on futures position, and are therefore required to maintain books and records under current § 18.05. When the Commission identifies potential instances of manipulative or abusive practices via the new and amended Forms 102, 40 and 71, or in the daily trade capture reports received by the Commission, it may request additional information via special call regarding traders' positions, transactions or activities. The § 18.05 special call enables the Commission to analyze a trader's activities in Commission-regulated markets and related cash markets, as well as the trader's other commercial activity. By requiring all persons subject to the revised reporting regime to provide detailed books and records to the Commission upon its request, the Commission will strengthen its ability to conduct surveillance and pursue enforcement actions in the event

[327] The Commission's estimate of three 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.

[328] The $527,207 figure is arrived at by multiplying 2,508 filings by 3 hours (equals 7,524 hours) by $70.07 (equals $527,207).

[329] As noted in section VIII(A) above, the initial development cost per reporting party is estimated at $701 (10 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[330] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[331] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via FTP data feed, is $17,222,085. The $17,222,085 figure is arrived at by multiplying the anticipated 2,508 reporting parties by 98 hours of annualized development burden and ongoing operation and maintenance burden (equals 245,784 hours) by a wage rate of $70.07 (equals $17,222,085). An estimated low and high range (25% below and above this figure) equals $12,916,564 and $21,527,606, respectively.

[332] 17 CFR 18.05.

of potentially manipulative or abusive activity.

(21) Costs of Expanded Recordkeeping

As noted above, revised § 18.05 will likely impose a recordkeeping burden on a larger number of persons than current § 18.05. The Commission anticipates that additional persons subject to § 18.05 will likely be able to rely on books and records already kept in the ordinary course of business to meet the requirements of the final regulation. This is due, in part, to the fact that § 18.05 requires traders to maintain fairly limited information regarding their trading activity. Section 18.05(a), for example, requires that, ''Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions in the commodity'' on certain enumerated trading markets. Furthermore, the Commission assumes that some parties required to maintain books and records pursuant to revised § 18.05 are likely required to maintain books and records under current § 18.05, because they hold or control reportable positions (*i.e.,* there will be a certain amount of overlap between these two groups). Accordingly, the Commission believes that revised § 18.05 will not meaningfully increase recordkeeping burdens on persons brought under its scope. As noted in section VII above, the Commission did not receive any comments regarding the changes to § 18.05 proposed in the NPRM.

The Commission sent 59 special calls pursuant to § 18.05 in 2012, 42 of which were based on trade data reflected in the TCR data feed.[333] As noted above, revised § 18.05 will make four new categories of persons, identified through the volume-based reporting regime, subject to § 18.05. Because the volume-based reporting regime is designed to identify designated types of trading activity, the Commission estimates that it will send special calls pursuant to revised § 18.05 to, at a minimum, 42 recipients (*i.e.,* the same number of persons to which the Commission sent special calls in 2012 based on trade data reflected in the TCR). At the same time, the Commission expects that the introduction of volume-based reporting will lead to the Commission sending more special calls than it would otherwise, because this regime will identify new ownership and control relationships and patterns of trading activity. As a result, for purposes of estimating the costs of revised § 18.05, the Commission assumes it will send 25% more special calls in response to trade data than it did in 2012, for a total of 53 special calls per year. These special calls will require a response from approximately 53 individual traders per year.

This estimate reflects only special calls sent pursuant to § 18.05 as a result of information collected via the volume-based reporting regime (*i.e.,* New Form 102B and New Form 71). The estimated 53 recipients of such special calls may include some traders that are already subject to the costs and obligations of current § 18.05. The Commission estimates that each special call response submitted by the new categories of persons subject to revised § 18.05 will take approximately 5 hours, for a total annual reporting burden of 265 hours. Using an estimated wage rate of $70.07 per hour, annual reporting costs for the new categories of persons that are subject to revised § 18.05 are estimated at $18,569.[334]

§ 18.05 RECORDKEEPING BURDEN

Regulation	Estimated total annual industry cost	Estimated low and high range (25% below and 25% above estimated total annual industry cost)[335]
18.05	$18,569	$13,927–$23,211

vi. Comments Regarding Costs and Benefits

As previously noted, the NPRM requested comment on many aspects of the proposed rules, including the Commission's evaluation of the rules' costs and benefits.[336] In response, ICE commented that it ''recognizes the value in collecting this OCR information for accounts that actively trade on DCMs, and integrating it with existing market surveillance and trade practice surveillance data to bridge gaps that may exist between individual transaction data contained in the trade register and position data contained in LTRs [large trader reporting]. Having such data readily available in Commission . . . surveillance systems would improve the efficiency of the investigative process by saving the additional work and time required to manually request such information from clearing members.'' [337]

ICE's comments are consistent with other supportive comments received in response to the 2009 NPRM.[338] Petroleum Marketers Association of America (PMAA), for example, stated that, ''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.'' [339]

Other NPRM commenters, however, asserted that the Commission's cost

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

[334] The $18,569 figure is arrived at by multiplying 53 responses by 5 hours (equals 265 hours) by $70.07 (equals $18,569).

[335] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that recordkeeping costs will differ among market participants based on a variety of factors, including the state of their current technology and recordkeeping systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[336] *See* NPRM *supra* note 10 at 43984 and 43990.

[337] CL–2012–ICE *supra* note 55 at 5.

[338] *See supra* note 8. All 2009 Advanced NPRM comment letters (''CL–2009'') are available through the Commission's Web site at: *http://www.cftc.gov/LawRegulation/FederalRegister/CommentFiles/09-008.*

[339] CL–2009–PMAA *supra* note 338 at 2. Similarly, the Air Transport Association (ATA), commenting on the 2009 Advanced NPRM, included a list of market and regulatory benefits of the ownership and control report. These include allowing Commission 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, linking 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. CL–2009–ATA *supra* note 338 at 2–3.

estimates were underestimated, that certain requirements imposed costs unwarranted by the magnitude of the anticipated benefits, and/or that certain requirements would not provide meaningful benefits.[340] CME commented that ''Commission estimates do not appear to take into consideration the process changes that firms would need to engage in to obtain all OCR data, nor do they contain estimates for changes that SROs might have to institute to their systems to incorporate the three tiered reporting method.'' [341] FIA commented that ''the proposed rules . . . would require significant changes to the procedures, processes and systems pursuant to which FCMs create and maintain records with respect to their customers and customer transactions. Such redesign would take longer and be substantially more expensive than the Commission has suggested in the **Federal Register** release accompanying the proposed rules.'' [342] FIA also stated that ''we are still developing our costs analyses and will forward them to the Commission as soon as they are ready.''[343] FIA did not provide the cost analyses mentioned in its comment letter to the Commission.

In the absence of specific quantitative estimates or alternative cost proposals by commenters, the Commission performed its own analysis in updating the NPRM cost benefit considerations for these final rules. As noted above, for purposes of these final rules, the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission. The Commission has also calculated the total initial development burden on a non-annualized basis for each reporting form, as applicable, and presented cost ranges below and above each estimate in this section VIII(B). The high end of the cost ranges responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

Commenters asserting that certain requirements imposed costs unwarranted by the magnitude of anticipated benefits, and/or that certain requirements would not provide meaningful benefits, typically proposed an alternative approach, such as removing a question on the reporting forms, or modifying a reporting deadline. Such comments are addressed in the consideration of alternatives below. In addition, section VII above contains a detailed discussion of the comments received in response to the NPRM, the Commission's response to comments, and any changes made to the final rules in response to comments.

vii. Consideration of Alternatives

Commenters suggested a number of alternatives to the rules proposed in the NPRM for purposes of minimizing the cost to market participants. The final rules incorporate a number of these alternative proposals, or otherwise modify the proposed rules where doing so reduces costs without sacrificing benefits.[344] The various alternatives considered for purposes of minimizing the cost to market participants (including those not ultimately adopted) are discussed below.

(a) Creation of Contact Reference Database

FIA commented that requiring firms to potentially submit three separate forms (102A, 102B and 102S) for the same customer ''will create unnecessary work and be more challenging to keep current.'' [345] To address this issue, FIA suggested that the Commission create a reporting contact reference database, which would ''ensure that contact information is stored and maintained as a single record, eliminate redundancy and improve the quality of information in the ownership and control reporting process.'' [346] In response to FIA's comment, the Commission is creating a contact reference database that will store contact information previously provided through the web-based portal by a reporting party on each of the reporting forms with respect to owners, controllers, and other parties. When a reporting party submits a subsequent reporting form through the web-based portal, the Commission will, to the extent practicable, pre-populate contact information that the reporting party previously provided. This will reduce the amount of time that is required for reporting entities to update information submitted to the Commission through the web-based portal without reducing the amount of information that is required to be submitted through the portal.[347]

Definition of ''Control''

Section 15.00(t), as proposed in the NPRM, added ''control'' to the list of defined terms in § 15.00.[348] The Commission's proposed definition, which applied only to special accounts (New Form 102A) and consolidated accounts (Form 102S), defined control as ''to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account.'' FIA commented that it would be difficult and/or meaningless to provide the requested control information, because the individuals responsible for trading an account within a special account or a volume threshold account can change often, even within the same trading day.[349] Furthermore, ''in the case of algorithmic trading programs, there likely will not be an identifiable individual who 'actually directs the trading' of the program. For this reason, FCMs do not currently collect this information.'' [350] FIA recommended removing the requirement to identify account controllers on Forms 102A and 102B.[351]

As noted in section VII, these final rules adopt proposed § 15.00(t) without modification. At the same time, the Commission is modifying the instructions on Form 102 in response to comments that discussed the difficulty of identifying individuals that exercise control on a transient basis, such as individuals operating an automated trading system (''ATS'') during a daily shift. The instructions for Form 102A and Form 102B have been revised to state that respondents should report all individuals who qualify as ''trading account controllers'' or ''volume threshold account controllers,'' as defined in § 15.00(bb) and (cc), respectively.[352] The Commission notes

[340] *See, e.g.,* the discussion of § 15.00(v) (direct market access), § 15.04 (reportable trading volume level) and § 17.01(a) in section VII, above.

[341] CL–2012–CME *supra* note 55 at 4.

[342] CL–2012–FIA NPRM *supra* note 55 at 9.

[343] *Id.*

[344] As noted in section VIII(A) above, while the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission, the Commission has not reduced the cost estimates in these final rules to account for the incorporation of the cost-saving proposals described below. As a result, total reporting costs to the industry are likely to be lower than the sum of the costs associated with each form individually, as the Commission has calculated above.

[345] CL–2012–FIA *supra* note 55 at 4.

[346] *Id.*

[347] *See also supra* note 41 for a discussion of certain fields in the reporting forms that have been made optional, subject to certain conditions discussed in the reporting forms, in order to leverage information that reporting parties have previously provided.

[348] The definition of ''control'' in § 15.00 is based upon the definition of ''controlled account'' in § 1.3(j) of the Commission's regulations.

[349] CL–2012–FIA *supra* note 55 at 5.

[350] CL–2012–FIA *supra* note 55 at 6.

[351] CL–2012–FIA *supra* note 55 at 5.

[352] The Commission recognizes that, for some respondents that conduct trading in a reportable trading account or volume threshold account in whole or in part through an ATS, the individuals involved in the administration of such ATS may not qualify as trading account controllers or volume threshold account controllers. *See supra* section V(A)(ii).

that regardless of whether the trading is carried out in whole or in part through an automated trading system or direct human initiation, the underlying analysis remains the same. When completing Form 102A and Form 102B, reporting parties should identify each person that satisfies the definition of ''trading account controller'' or ''volume threshold account controller,'' as defined in § 15.00(bb) and (cc), respectively. Once respondents have identified all individuals meeting the applicable controller definition in a Form 102A or Form 102B submission, they will not be required to submit change updates to the submission if one previously identified controller takes the place of another previously identified controller. These changes to the instructions on Form 102 are intended to reduce the reporting burden on market participants, who would otherwise be required to submit change updates to the 102 in the prior scenario. Respondents will be required to report the same number of controllers that they would be required to report under the NPRM proposal, but will do so in their original 102 submission, thereby eliminating the cost of submitting change updates due to a shift change. The Commission believes that this is a more effective solution than removing the control question altogether, as FIA had suggested, which would deprive the Commission of the ability to aggregate trading accounts based on common control.

Definition of ''Volume Threshold Account''

The NPRM defined a volume threshold account as 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 section 5 of the Act or a swap execution facility registered under section 5h of the Act.

In the case of a give-up trade, this NPRM definition was intended to require reporting by: (i) The carrying firm of the original executing account; (ii) the carrying firm of any intervening account(s); and (iii) the carrying firm of the account to which the give-up trade was ultimately allocated. Question 10 in Section VII of the NPRM emphasized the broad scope of the definition: ''The Commission intends that the definition of 'volume threshold account' captures all possible categories of accounts with reportable trading volume . . . The Commission requests public comment regarding whether the proposed definition of 'volume threshold account' achieves this purpose.'' In response to this question, CME commented that volume-based accounts should be reported at the carrying broker level, and noted that, ''this is where the account ownership and control information resides, not at executing brokers.'' [353]

As noted in section VII above, the Commission is adopting the definition of volume threshold account with one modification.[354] The following change incorporates CME's comment. It is also intended to reduce the burden and cost to reporting parties. The definition of volume threshold account is being scaled back in the final rules, to capture a smaller number of volume threshold accounts than under the NPRM proposal. The definition is being modified to: ''any trading account that carries reportable trading volume on or subject to the rules of a reporting market that is a [DCM or SEF].'' This change will lessen the burden on reporting parties, by reducing the number of reportable volume threshold accounts in the case of a give-up trade:

- In a give-up scenario, this definition will require reporting by the carrying firm of the account to which the trade is ultimately allocated. Reporting will not be required, however, by the carrying firm of the original executing account, or by the carrying firm of any intervening account(s).
- In a non-give-up scenario, there will be no change to the number of reportable volume threshold accounts. Under both the original and revised definition, reporting will be required by the carrying firm of the account in which the trade is both executed and cleared.

The Commission believes that this approach, which incorporates CME's comment, will be more efficient (and less burdensome and costly) for reporting parties than the approach proposed in the NPRM. At the same time, it captures a sufficient number of volume threshold accounts to advance the Commission's surveillance objectives.

Reportable Trading Volume Level

Section 15.04, as proposed in the NPRM, provided 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 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). Relative to alternatives proposed by commenters, the Commission has determined—as shown through its analysis of sample DCM trade data received through the TCR during a recent six-month period—that the 50-contract threshold represents the level that best optimizes visibility into both trading volume and the absolute number of trading accounts. Both components are fundamental to the volume-based reporting regime established by Form 102B. At the same time, the RTVL is calibrated to minimize the impact of the volume-based reporting requirements on low-volume accounts whose trading activity would not meaningfully advance the Commission's volume-based surveillance goals.

Several commenters criticized the 50-contract RTVL, and proposed alternatives to it. FIA, CME and ICE commented that the RTVL, as proposed, would generate an excessive amount of data that may not be meaningful to the Commission's trade practice and market surveillance programs.[355] More specifically, Nadex commented that the proposed 50-contract RTVL would capture too many retail customers that are trading contracts with very small notional values.[356] FIA and ICE both recommended that the Commission phase in a descending RTVL until the optimum level is reached.[357] FIA, for example, recommended that ''the Commission could require that only accounts meeting a volume threshold of 1,000 contracts per day be reported in the first three months; contracts meeting a volume threshold of 750 contracts per day be reported in the second three months after the compliance date; and so on until the optimum volume threshold is reached.'' [358] CME also expressed concern that the RTVL will capture too many accounts, but recommended that the RTVL should be changed to 250 contracts bought or sold during a calendar week.[359]

Nadex recommended that a different RTVL should be applied to contracts with small notional values, as compared to contracts with larger, traditional notional values. ''For any contract with a notional value of $1,000 or less, the

[353] CL–2012–CME *supra* note 55 at 4.

[354] The definition of volume threshold account appears in the final rules as § 15.00(x).

[355] CL–2012–FIA *supra* note 55 at 8. CL–2012–CME *supra* note 55 at 3. CL–2012–ICE *supra* note 55 at 6.

[356] CL–2012–Nadex *supra* note 55 at 2–3.

[357] CL–2012–FIA *supra* note 55 at 8. CL–2012–ICE *supra* note 55 at 6.

[358] CL–2012–FIA *supra* note 55 at 8.

[359] CL–2012–CME *supra* note 55 at 3.

RTVL could be increased to 5,000 (*i.e.,* 1,000 times the standard RTVL of 50). This would still result in the Commission capturing information with respect to a relatively insignificant amount of trading activity in terms of notional value, but would be significantly less burdensome for the DCMs that offer these contracts.'' [360]

Compared to these various alternatives, the 50-contract RTVL—which the Commission's analysis has shown to identify approximately 85 percent of trading volume in approximately 90 percent of the products sampled, and approximately one-third of the trading accounts in the sample set—best achieves the regulatory objective and design-purpose of Form 102B. That objective is to identify a critical mass of the trading accounts active in its regulated markets through 102B reporting, measured not only by the percentage of trading volume for which those accounts are responsible, but also by the number of accounts identified. This objective is independent of whether the identified accounts hold reportable positions and what trading strategies market participants may pursue. The 50-contract RTVL achieves this objective by capturing both: (1) Those accounts responsible for the majority of trading volume; and (2) a meaningful number of the trading accounts active in the Commission's regulated markets. The Commission seeks to identify a meaningful number of such trading accounts in order to improve its ability to protect market participants from instances of fraudulent or deceptive trading practices, regardless of the amount of trading volume that such practices represent, or their impact on the overall market. In determining the optimal threshold level, the Commission gave equal weight to the twin objectives of the volume-based reporting regime—trading volume and trading account identification. In its analysis, the Commission found that although higher RTVLs, such as those proposed by commenters, may have a relatively minor impact on the identification of trading volume in a particular market, they would likely lead to a disproportionately large exclusion of the number of trading accounts, thus rendering the RTVL ineffective to achieve the Commission's objective.[361] In particular, the alternative proposals to raise the RTVL threshold to 250 contracts and/or to incrementally introduce moderately lower thresholds down from 1,000 contracts over time would sacrifice visibility with respect to the number of trading accounts (and at the highest threshold levels perhaps in trading volume, as well) to a degree likely to frustrate the intent of volume account surveillance.

Furthermore, if the Commission were to substitute an alternative RTVL, in response to commenter proposals, that does not identify a sufficient percentage of trading volume or absolute number of trading accounts, the Commission would, in effect, partially transform 102B into another vehicle for identifying trading accounts associated with reportable positions. Form 102A will accomplish this objective separately.

Finally, even if modifying the RTVL to make fewer accounts reportable were consistent with the Commission's regulatory objectives (which it is not), doing so is unlikely to result in significant cost savings to market participants. As explained above, FTP submission of New Form 102B will be most cost-effective for the industry as a whole. Furthermore, the ongoing operation and maintenance burden for FTP submission of New Form 102B will average the same number of hours per year (53 hours) irrespective of how many records are contained in a submission.[362] Accordingly, the number of volume threshold accounts reported to the Commission by a reporting party via FTP should not have a material impact on the overall cost burden.

The Commission also considered the alternative of adopting threshold levels that distinguish on the basis of notional value, such as proposed by Nadex, and/or other contract or market characteristics. The Commission recognizes that the uniform 50-contract threshold will capture a relatively small degree of market activity that is less significant for purposes of its Form 102B regulatory objectives. However, an alternative that would appropriately filter for such less-significant contracts would be administratively impracticable for the Commission and increase the administrative burden for some, if not many, reporting parties. For example, in the five year period from January 1, 2008 through December 31, 2012, the Commission received from DCMs self-certifications or requests for approval for approximately 5,400 new products, or an average of almost 21 new products per week. It is simpler, and far superior in terms of administrative cost and burden to set a single RTVL level, above which all parties report, than to determine differing levels for different markets/products, monitor the appropriateness of such levels and adjust them as circumstances warrant over time, and effectively communicate such differing levels and their periodic adjustments to the trading community. Moreover, the cost of determining whether parties were compliant with the reporting requirements and enforcing those requirements would place further burden upon the Commission and reporting parties.

In sum, the Commission believes that it is has achieved an appropriate balance by implementing a uniform 50-contract RTVL rather than a product-by-product RTVL. While the uniform RVTL may capture a small number of additional accounts, representing a relatively small degree of market activity that is less significant for purposes of its Form 102B regulatory objectives, it avoids the administrative complexity of a product-by-product RTVL, which carries the potential to hobble Form 102B's regulatory effectiveness.

Direct Market Access

CME commented on a question in proposed Forms 102A and 102B, discussed in more detail in section VII above, which asks whether certain trading accounts have been granted direct market access (DMA).[363] CME stated that ''requiring this data may force substantial process change at the firms to obtain the data upfront and record it in the firm's reference database with other account information.'' [364] As discussed in section VII above, the Commission is not including the question regarding DMA in the final rules.

Reporting Deadline for Certain Information Required on Forms

FIA commented that obtaining all the information required by the Form 102 could potentially take longer than the

[360] CL–2012–Nadex *supra* note 55 at 3.

[361] This is because the correlation between trading volume and number of accounts when RTVL is adjusted up or down is not proportional. Rather, the curve for the number of accounts is much steeper than for trading account volume, meaning that, while a tick up or down in RTVL translates to a relatively modest proportional change in trading volume coverage, the impact on number-of-account coverage is more exaggerated. The Commission took this relationship into account when proposing the 50 RTVL threshold: while a lower RTVL threshold would yield a substantially higher number of accounts, the slight incremental gain in trading volume coverage would not significantly advance the Commission's volume account surveillance objectives. Furthermore, the relationship also explains why the alternatives proposed are suboptimal and unacceptable to capture the twin elements essential to achieve the regulatory objective of volume account surveillance.

[362] *See supra* section VIII(A)(iv).

[363] See the discussion of the definition of direct market access in proposed § 15.00(v).

[364] CL–2012–CME *supra* note 55 at 3.

deadlines proposed in the NPRM. ''Although it is possible to file limited information by 9:00 a.m., *i.e.,* the name of the account holder and the special account number, it is not practical to complete the entire Form 102 by that deadline.'' [365] As a result, FIA recommended that the deadline for filing a complete Form 102A or any change update be modified to five business days from the date the account or change becomes reportable.[366] In response to this comment, the Commission is extending the reporting deadline for new and changed Form 102A filings, specifically with respect to the reporting of non-omnibus trading accounts that comprise a special account. Respondents are required to provide the names of such trading account owners and controllers by 9:00 a.m. the following business day.[367] However, respondents are required to provide the other contact details with respect to such trading account owners and controllers (address, telephone number, etc.) within three business days, in order to permit respondents additional time to compile the required information.[368]

The Commission is also modifying the reporting deadline for new and changed Form 102B filings, specifically with respect to the reporting of non-omnibus volume threshold accounts. Respondents are required to provide the names of non-omnibus volume threshold account owners and controllers reported on 102B by 9:00 a.m. the following business day. Consistent with the change described above, respondents are required to provide the other contact details reported on 102B with respect to such parties (*i.e.,* the address, telephone number, etc. of non-omnibus volume threshold account owners and controllers) within three business days, in order to permit respondents additional time to compile the required information.[369]

FIA commented that the refresh filing deadline proposed by the NPRM, which required firms to resubmit the Form 102 for each special account, volume threshold account and consolidated account every six months, was too short. FIA stated that this six-month schedule ''will impose a significant operational and financial burden on reporting firms,'' and recommended that refresh updates instead be required every two years.[370] CME also recommended that refresh updates be required every two years.[371] In response to this comment, the Commission is modifying the reporting deadline for refresh filings. Refresh filings for special accounts, volume threshold accounts and consolidated accounts will be required once per year, as opposed to once every six months.[372] The Commission believes that the annual refresh requirement is a reasonable accommodation that will limit costs to market participants while still achieving the Commission's surveillance objectives. For the majority of accounts, there should be little or no change to prior reported information. As a result, the reporting burden for refresh filings should be minimal.

viii. Reporting on Form 102S

FIA commented on the utility of Form 102S, which requires swap dealers and clearing members to identify and report a swap counterparty or customer consolidated account with a reportable position. FIA stated that the information that will be reported to swap data repositories under part 45 would provide the Commission with access to essentially the same information that proposed Form 102S will require.[373] FIA commented that ''requiring FCMs, and the industry generally, to divert critical operational and financial resources from building the systems necessary to implement the part 45 recordkeeping and reporting requirements to implement this interim solution, would impose an unnecessary operational burden and cost without a significant offsetting benefit.'' [374] CME commented that ''requiring swap reporting as part of OCR, to accomplish reporting that is already being done under part 20—and soon to be duplicated under SDR reporting with new unique legal entity identifiers—is unnecessary and imposes additional unjustified costs on the industry.'' [375]

In light of FIA and CME's comments regarding the Form 102S, the Commission considered, but rejected, the alternative of omitting Form 102S from the final rules. Contrary to commenters' claims, SDRs will not, in all cases, be able to provide the ownership and control information requested on 102S. For example, the Commission anticipates that swap dealers and clearing members (the 102S reporting parties) will be able to consistently provide the contact information for owners and controllers of consolidated accounts on the 102S, based on the records these entities maintain. Part 45 reporting, by contrast, is based on counterparty data. This counterparty data may, in some cases,

[365] *Id.*

[366] *Id.*

[367] Unless otherwise specified by the Commission or its designee, the stated time in the final rules is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets, in accordance with § 17.02(a).

[368] Specifically, the information marked as 'Follow-On Information' in questions 10(ii) and (iii) on New Form 102A may be provided within three business days. All other required fields on New Form 102A must be completed by 9:00 a.m. the following business day. See New Form 102A in the Appendix to these final rules for more information. Notwithstanding the change to the reporting deadline with respect to non-omnibus trading accounts that comprise a special account, these final rules do not modify the reporting deadline for information with respect to *omnibus* trading accounts that comprise a special account (question 10(i) on New Form 102A). Such omnibus account information must be reported by 9:00 a.m. the following business day. The Commission is adopting a reporting requirement of three business days as an intermediate compromise between one business day (as proposed in the NPRM) and five business days (as requested by FIA). The three business day requirement is therefore less burdensome than the one business day requirement proposed in the NPRM. Based on the experience of the Commission's surveillance group, the Commission believes that the three business day requirement, while longer than the one day proposal in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events that occur close to the time of reporting. By contrast, based on the experience of the Commission's surveillance group, the Commission believes that a five business day reporting deadline is too long to perform timely market surveillance, and maintain databases that are sufficiently accurate and current to be useful.

[369] Specifically, the information marked as 'Follow-On Information' in questions 5 and 6 on New Form 102B may be provided within three business days. All other required fields on New Form 102B must be completed by 9:00 a.m. the following business day. See New Form 102B in the Appendix to these final rules for more information. Notwithstanding the change to the reporting deadline with respect to non-omnibus volume threshold accounts, these final rules do not modify the reporting deadline for information with respect to *omnibus* volume threshold accounts (question 4 on New Form 102B). Such omnibus account information must be reported by 9:00 a.m. the following business day.

[370] CL–2012–FIA *supra* note 55 at 7.

[371] CL–2012–CME *supra* note 55 at 3.

[372] The Commission is adopting a refresh reporting requirement of once per year as an acceptable intermediate point between once each six months (as proposed in the NPRM) and once every two years (as requested by FIA and CME). The annual refresh requirement is therefore less burdensome than the six month requirement proposed in the NPRM. Based on the experience of the Commission's surveillance group, the Commission believes that the annual refresh requirement, while longer than the six month requirement proposed in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events. By contrast, based on the experience of the Commission's surveillance group, the Commission believes that a two year refresh deadline is too long to perform timely market surveillance and maintain databases that are sufficiently accurate and current to be useful.

[373] CL–2012–FIA *supra* note 55 at 2–3.

[374] CL–2012–FIA *supra* note 55 at 3.

[375] CL–2012–CME *supra* note 55 at 3.

overlap with the owners and controllers of consolidated accounts reported on 102S. However, counterparty data will not, in all cases, overlap with 102S reporting. Furthermore, even when counterparty data does overlap with 102S reporting, it does not provide the ownership and control information required by 102S. Counterparty data provides a Legal Entity Identifier, which is a numeric data field that must be cross-checked against an external source in order to generate the names of owners and controllers. As a result, the Commission cannot rely on SDR reporting under part 45 as a substitute for 102S. For these reasons, the Commission is implementing 102S reporting pursuant to these final rules.

ix. Consolidated Form Proposed by FIA

For purposes of reducing the costs to reporting parties, and alleviating perceived inefficiencies in the forms proposed in the NPRM, FIA recommended consolidating the proposed forms into a single Form 102.[376] FIA attached a proposed form to its NPRM comment letter that consolidates Forms 102A, 102B and 102S (the ''FIA consolidated form''). The FIA consolidated form is the principal alternative approach proposed by commenters on the NPRM.[377]

The Commission notes that FIA's description of New Form 102A, 102B and 102S as inefficient and overlapping appears to arise from a presumption that reporting parties will print and complete each form as a separate paper filing. The forms included in the Appendix to these final rules are visual representations of reporting forms that will be completed through the Commission's web-based portal. In such an electronic environment, it will not be more burdensome for reporting parties to enter information via separate screens on a web portal (for 102A, 102B and 102S), as compared to via a single screen.

The Commission does not consider the FIA consolidated form an acceptable alternative, because it is missing a number of key data fields that appear on Forms 102A, 102B, and 102S. As discussed in more detail below, while the list of data fields that the FIA consolidated form is missing is not extensive, the absence of these data fields would create gaps in the reporting of ownership and control information. These gaps would prevent the Commission from realizing the goals of the OCR data collection. If the missing data fields were added back to FIA consolidated form, then the FIA form would be substantively identical to the forms adopted in these final rules.

The FIA consolidated form does not include the following data fields collected on New Forms 102A, 102B and 102S:

- The FIA consolidated form does not require respondents to state the reporting trigger. *I.e.,* the form does not clarify whether respondents are reporting a special account, volume threshold account, or consolidated account that has reached a reportable level. Instead, the directions to the FIA consolidated form state that, ''This form must be completed if an account exceeds the reportable levels on special accounts, volume threshold accounts or consolidated accounts.'' The Commission would receive ownership and control information regarding the reported trading accounts, but would not know what market activity the trader had engaged in that necessitated reporting pursuant to the Commission's regulations. Without knowing the reporting trigger for the form (*e.g.,* whether the reporting party had reached a reportable position or reportable volume level), the Commission would be unable to efficiently and accurately categorize the trading accounts reported on the form, and utilize this account information for surveillance or other related purposes.
- The FIA consolidated form does not require respondents to identify the originator of a consolidated account that is also an omnibus account, and provide contact information for this originator.[378] Without this contact information, the Commission would not know which party to contact to request additional information on the reported omnibus account (*e.g.,* via a Form 40). As noted above, one of the key reasons that the Commission is requesting additional information regarding ownership and control on the reporting forms is to enable it to send a Form 40 to such parties in order to identify them for surveillance purposes. Alternative proposals that would leave significant and potentially exploitable gaps in the reporting and identification system—*e.g.,* with respect to omnibus accounts—would defeat the Commission's intent for these final rules.
- Similarly, the FIA consolidated form does not require respondents to state whether a volume threshold account is an omnibus account—and if so, to identify the originator of the omnibus account and provide contact information for this originator.[379] Without the name and contact information of the originator of an omnibus volume threshold account, the Commission would be unable to send a Form 71 to the originator and collect ownership and control information for underlying sub-accounts. If the Commission does not send a Form 71 in this scenario, the Commission would again be unable to send a Form 40 to identify the ultimate owner and controller of the underlying sub-accounts. This would again create significant gaps in the reporting and identification system, which would defeat the Commission's intent for these final rules.

As discussed above, FIA commented that requiring respondents to potentially submit three separate forms (102A, 102B and 102S) for the same customer is inefficient. FIA proposed its consolidated form in an attempt to address this overlap, reduce the costs to reporting parties, and alleviate other perceived inefficiencies in the forms proposed in the NPRM.[380] As previously noted, the Commission is implementing a contact reference database to reduce the burden on parties reporting via the web-based portal.[381] This database will pre-populate certain fields on the portal with information previously provided by the respondent, thereby reducing the inefficiency associated with responding to more than one section of New Form 102.[382]

[376] CL–2012–FIA NPRM *supra* note 55 at 4.

[377] Note that the Commission published a prior Notice of Proposed Rulemaking on July 19, 2010 (the 2010 OCR NPRM) with respect to ownership and control reporting, which the Commission withdrew concurrent with the publication of the NPRM. *See supra* note 9. The Commission received a number of comment letters in response to the 2010 OCR NPRM, and incorporated several of their suggestions in the NPRM (published in the **Federal Register** in 2012), which forms the basis for these final rules. *See* NPRM *supra* note 10 at 43973–43974 for a discussion of comments received in response to the 2010 OCR NPRM that were incorporated in the NPRM.

[378] This information will be collected on New Form 102S as a result of these final rules.

[379] This information will be collected on New Form 102B as a result of these final rules.

[380] CL–2012–FIA *supra* note 55 at 4.

[381] As discussed in section VIII(B)(iv) above, the Commission has determined that it will be more cost-effective for the industry as a whole to submit Forms 102A, 102B and 102S via FTP. Nonetheless, it may be less expensive for certain individual reporting parties to submit these forms via the web portal. This may be due to the limited number of forms these parties expect to submit, their technology infrastructure, or other factors. The Commission has also determined that it will be more cost-effective for the industry as a whole to submit Forms 40/S and 71 via the web portal. The contact reference database will pre-populate information on Forms 40/S and 71 to the extent practicable.

[382] *See also supra* note 41 for a discussion of certain fields in the reporting forms that have been made optional, subject to certain conditions discussed in the reporting forms, in order to leverage information that reporting parties have previously provided.

x. Section 15(a) Factors

(a) Protection of Market Participants and the Public

The data collection requirements under these final rules will support the Commission in its mission to protect market participants and the public, by significantly improving the Commission's visibility with respect to market participants and their activities across derivatives markets. Specifically, the final rules build upon the Commission's existing market and trade practice surveillance programs for futures, options on futures, and swaps, by providing for the timely and efficient analysis of market data related to special accounts, consolidated accounts, and newly designated volume threshold accounts. The rules implement these goals in a manner designed to reduce costs to reporting entities. Improving the capabilities of the Commission's market and trade practice surveillance programs will support the integrity of financial markets, and protect market participants and the public from the costs of disruptive trading practices and other market abuses.

New Form 102A. As an example of these benefits, New Form 102A requires reporting of ownership and control information for the trading accounts that constitute special accounts. This will allow the Commission to more efficiently link special accounts holding reportable positions to the transactions (and associated trading accounts) identified on daily trade capture reports received by the Commission.[383] By illustrating the connections between end-of-day position reporting via Form 102 and daily trade capture reports, the final rules will enable the Commission to perform a more accurate and timely accounting of market position at the level of individual trading accounts. With this information, the Commission will be able to conduct a thorough assessment of a trader's potential market impact, including with respect to disruptive practices.

New Form 102B. New Form 102B institutes a reporting requirement for trading accounts that exceed a specific volume threshold on any single trading day, regardless of whether the account maintains open positions at the end of the day. The addition of volume-based reporting will provide the Commission with an efficient means to collect the information required to aggregate positions, detect intra-day position limit violations, and calculate market share. When analyzing periods of elevated volatility—especially at significant trading times such as market open and close—the ability to aggregate intra-day trading behavior by owner/controller is crucial to understanding whether a trader has adversely affected (or has the potential to affect) market quality or price discovery.

New Form 102S. New Form 102S will improve upon the current 102S reporting system by providing detailed ownership and control information regarding consolidated accounts. The information collected via Form 102S will allow the Commission's market and trade practice surveillance programs to track the market activity of traders that may be dividing risk exposure between both on-exchange and off-exchange instruments. In addition to the ability to track individual traders, swap reporting will also enable the Commission to aggregate exposure in a particular product or commodity group. The reporting of swap activity on Form 102S aligns with the Commission's recently finalized rules on real-time public and regulatory reporting of swap trades, and provides further transparency into markets that, historically, have often been opaque and/or over-the-counter.

Collectively, the ownership and control information on New Forms 102A/102B/102S, 40/40S and 71 will improve the Commission's ability to analyze and/or respond to market disruptions, which can come at a high cost to the investing and general public. The information will also enable the Commission to perform more robust research and analytics, encompassing a significantly greater segment of market activity on a more diverse set of platforms, as well as improve its classification of traders in Commission publications, such as the Commitments of Traders report. Finally, the Commission will be able to perform data integrity checks within and between its databases using the additional fields collected on the revised forms.

Efficiency, Competitiveness, and Financial Integrity of the Markets

The collection of ownership and control information via the new and amended forms will enable the Commission to better perform risk-based monitoring and surveillance among related accounts, and monitor risk exposure by institution, market class, and asset class. For example, the rules will enable the Commission to more efficiently link end-of-day position reporting and the trade capture reports received by the Commission. Accordingly, the rules will allow the Commission to aggregate respondents' positions across multiple products and markets, assess their potential market impact with respect to disruptive or manipulative activities during important periods, and analyze their compliance with speculative position limits at any time during the trading day. In the event the Commission identifies trading activity requiring further investigation, the Commission will be able to contact market participants more quickly and efficiently using the ownership and control information collected through the OCR reporting process.

The final rules will also promote resource allocation efficiency by automating the submission process, eliminating an additional layer of transcription and reducing the likelihood of input errors and/or the need to revert back to reporting parties for further explanation. In addition, the final rules permit respondents to use either of two available submission methods (FTP or web portal), thereby allowing respondents to select the method that is most economical in light of the number of filings they expect to make, and that integrates most efficiently with their existing data and technology infrastructure. These improvements in resource efficiency and data quality will also improve the Commission's published reports, such as the classifications in the Commitments of Traders report. Finally, the Commission will be able to perform data integrity checks within and between its databases using the additional data fields collected on the revised forms.

The Commission believes that market integrity is essential to fair and orderly markets that serve as effective centers for price discovery and risk management. By promoting these important goals, the final rules will help promote the utility of Commission-regulated markets.

Price Discovery

The Commission does not view the costs and benefits of the final rules as impacting price discovery in markets that it regulates.

Sound Risk Management Practices

The final rules establish the information architecture necessary to support Dodd-Frank's objectives of reducing risk, increasing transparency, and promoting market integrity within the financial system. The expanded reporting requirements will significantly improve the Commission's ability to perform risk-based monitoring of trading activity spread across multiple platform types but directed or controlled by individual entities. Such

[383] See the discussion of the daily trade capture reports in section I(B) above.

an expanded view of the marketplace will enable the Commission to more effectively identify disruptive or manipulative trading activity. The Commission does not believe that the costs arising from the final rules, which the Commission has taken steps to reduce, threaten the ability of market participants to manage risk.

Other Public Interest Considerations

The Commission does not view the costs and benefits of the final rules as impacting other public interest considerations beyond those discussed above.

C. Regulatory Flexibility Act

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.[384] 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).[385]

The final rules 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 final rules, or upon special call by the Commission. The Commission has previously determined that FCMs, clearing members, foreign brokers, and swap dealers are not small entities for purposes of the RFA.[386] The Commission has also determined that natural persons are not 'entities' for purposes of the RFA.[387] Accordingly, the final rules with respect to Forms 102 and 71 will not have a significant economic impact on a substantial number of small entities.

The final rules also require certain reporting traders to complete and submit New Form 40 upon special call by the Commission. Some of these reporting traders may be ''small entities'' under the RFA. In 2012, the Commission received approximately 3,123 completed Form 40s, from a total population of approximately 10,000 reporting traders. Of these 3,123 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 the final rules 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.'' [388]

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 final rules with respect to New Form 40 will not have a significant economic impact on a substantial number of small entities. New Form 40 will not be required on a routine and ongoing basis, but rather will 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 2012 the Commission made Form 40 requests to only 25 percent 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 should 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 will require reporting traders to provide only limited information to the Commission. As discussed above, the Commission estimates that a reporting trader submitting New Form 40 via the web-based portal will require only three hours, on an annualized basis, to complete the form.[389]

The final rules regarding revised § 18.05 will 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 will 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,[390] and will 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 the resulting economic burden will be appropriate, because this requirement will: (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 surveillance and investigatory functions to better deter price manipulation and other disruptions of market integrity.

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.

[384] 5 U.S.C. 601 *et seq.*

[385] 5 U.S.C. 601(2), 603, 604 and 605. While the definition of ''entity'' does not encompass natural persons, it does encompass sole proprietorships. 5 U.S.C. 601(6). The Commission recognizes that floor brokers and other natural persons doing business as sole proprietors could potentially be considered small entities. *See generally* 58 FR 40,335 at 40,347–48, n. 45 (July 28, 1993); 47 FR 18618 at 18,620, (Apr. 30, 1982).

[386] *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); 76 FR 71626 at 71680 (November 18, 2011) and 76 FR 43851 at 43860 (July 22, 2011) (clearing members).

[387] *See* 5 U.S.C. 601(6).

[388] 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).

[389] *See supra* section VIII(A).

[390] 17 CFR 18.05.

17 CFR Part 20

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

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR parts 15, 17, 18, and 20 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. Amend § 15.00 by revising paragraph (q) and adding paragraphs (t) through (dd) 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 section 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.

(v) *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.

(w) *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.

(x) *Volume threshold account* means any trading account that carries 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 section 5 of the Act or a swap execution facility registered under section 5h of the Act.

(y) *Omnibus volume threshold account* means any trading account that, on an omnibus basis, carries 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 section 5 of the Act or a swap execution facility registered under section 5h of the Act.

(z) *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.

(aa) *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.

(bb) *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.

(cc) *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.

(dd) *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. In § 15.01, revise paragraph (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 3038–0103.)

■ 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. In § 17.00, revise paragraph (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 paragraph (b) of this section and appendix A of this part (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) through (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. Amend § 17.02 by revising the introductory text and paragraph (b) and adding 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) through (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 becomes reportable as a special account, the futures commission merchant, clearing member, or foreign broker, as appropriate, shall submit a 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 in accordance with the instructions and schedule set forth in paragraphs (b)(2)(i) and (ii) of this section:

(i) The applicable reporting party shall submit a completed Form 102 to the Commission no later than 9 a.m. on the business day following the date on which the special account becomes reportable, or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by paragraphs (b)(3) and (4) of this section. Such form shall include all required information, including the names of the owner(s) and controller(s) of each trading account that is not an omnibus account, and that comprises a special account reported on the form, *provided that,* with respect to such owners(s) and controller(s), information other than the names of such parties may be reported in accordance with the instructions and schedule set forth in paragraph (b)(2)(ii) of this section. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(ii) With respect to the owner(s) and controller(s) of each trading account that is not an omnibus account, and that comprises a special account reported on Form 102, information other than the names of such parties must be provided on Form 102 no later than 9 a.m. on the third business day following the date on which the special account becomes reportable, or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by paragraphs (b)(3) and (4) of this section. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(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 in accordance with the instructions and schedule set forth in paragraphs (b)(2)(i) and (ii) of this section, 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 or its designee that the account in question is no longer reportable as a special account and has not been reportable as a special account for the past six months.

(4) *Refresh updates.* For Special Accounts—Starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), 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 or its designee that the account in question is no longer reportable as a special account and has not been reportable as a special account for the past six months.

(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 becomes reportable as a volume threshold account, the clearing member shall submit a 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 in accordance with the instructions and schedule set forth in paragraphs (c)(2)(i) and (ii) of this section:

(i) The clearing member shall submit a completed Form 102 to the Commission no later than 9 a.m. on the business day following the date on which the volume threshold account becomes reportable, or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by paragraphs (c)(3) and (4) of this section. Such form shall include all required information, including the names of the owner(s) and controller(s) of each volume threshold account reported on the form that is not an omnibus account, *provided that,* with respect to such owners(s) and controller(s), information other than the names of such parties may be reported in accordance with the instructions and schedule set forth in paragraph (c)(2)(ii) of this section. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(ii) With respect to the owner(s) and controller(s) of each volume threshold account reported on Form 102 that is not an omnibus account, information other than the names of such parties must be provided on Form 102 no later than 9 a.m. on the third business day following the date on which the volume threshold account becomes reportable, or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by paragraphs (c)(3) and (4) of this section. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(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 in accordance with the instructions and schedule set forth in paragraphs (c)(2)(i) and (ii) of this section, 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 or its designee 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 annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), 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 or its designee 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 § 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.

■ 11. Add appendix A to part 17 to read as follows:

Appendix A to Part 17—Form 102

Note: This Appendix is a representation of the final reporting form, which will be submitted in an electronic format pursuant to the rules in part 17, either via the Commission's web portal or via XML-based, secure FTP transmission.

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")[1] and the regulations thereunder,[2] 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 section 6(c)(2) of the Act (7 U.S.C. 9), section 9(a)(3) of the Act (7 U.S.C. 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 U.S.C. 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. sections 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.

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

[2] 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:[3]

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.[4]

Name of Reporting Firm: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Reporting Firm Contact Name (a natural person, "Contact"):
Contact Job Title:
Contact Phone Number:[5]
Contact Email Address:
Firm Website:
Firm NFA ID (if any):
Firm Legal Entity Identifier (if any):[6]
Reporting Firm Type(s) (mark all that apply):

---

[3] 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.
[4] The "reporting firm ID" is an alpha-numeric identifier assigned by the Commission.
[5] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[6] If the Firm Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Reporting Firm, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Firm Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Firm Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

☐ Futures commission merchant

☐ Clearing member

☐ Foreign broker

☐ Swap dealer

☐ Other: _____

Reporting Firm ID:

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

3. *Reporting number and name.*[9]

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

---

[7] Reporting parties are not required to submit Form 102A based solely on ownership of a reportable position at this time.

[8] 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.

[9] 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 on futures. 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:[10]

☐ 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: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[11]
Email Address:
Contact Name (if owner not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:[12]
Contact Email Address:
Owner Website (if any):[13]
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):[14]

---

[10] 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.

[11] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[12] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[13] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[14] If the Owner Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Special Account Owner, Street Address, City, State, Country, and Zip/Postal Code (collectively, the

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: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[15]
Email Address:
Contact Name (if controller not a natural person):
Contact Job Title:
Contact Relationship to Controller:
Contact Phone Number:[16]
Contact Email Address:
Controller Website (if any):[17]
Controller NFA ID (if any):
Controller Legal Entity Identifier (if any):[18]

"Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[15] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[16] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[17] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[18] If the Controller Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Special Account Controller, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Controller Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the

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: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[19]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[20]
Contact Email Address:
Originator Website (if any):[21]
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):[22]

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

"Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Controller Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[19] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[20] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[21] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[22] If the Originator Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Omnibus Account Originator, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

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. 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:[23]

☐ HOUSE

☐ CUSTOMER

Name of Omnibus Account Originator: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[24]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[25]

[23] 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.

[24] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

Contact Email Address:
Originator Website (if any):[26]
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):[27]

(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:

Legal entity: ☐

Natural person: ☐

Name of Trading Account Owner(s): [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Follow-On Information:[28]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[29]
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:[30]

---

[25] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[26] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[27] If the Originator Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Omnibus Account Originator, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[28] Follow-On Information may be submitted by the later date specified in § 17.02.

[29] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

Contact Email Address:
Owner Website (if any):[31]
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):[32]

(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):

Follow-On Information:[33]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[34]
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):

11. For Reporting Firms That Are Foreign Brokers.

---

[30] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[31] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[32] If the Owner Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Trading Account Owner(s), Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[33] Follow-On Information may be submitted by the later date specified in § 17.02.

[34] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

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:[35]
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. *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).

4. *Omnibus Account Information.*[36]

[35] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

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

☐ YES

☐ NO

If NO, proceed to (5) and (6), 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:[37]

☐ HOUSE

☐ CUSTOMER

Name of Omnibus Account Originator: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[38]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[39]
Contact Email Address:
Originator Website (if any):[40]
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):[41]

[36] 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.
[37] 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.
[38] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[39] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[40] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.
[41] If the Originator Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Omnibus Account Originator, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the

5. *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): [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Follow-On Information:[42]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[43]
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:[44]
Contact Email Address:
Owner Website (if any):[45]
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):[46]

"Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[42] Follow-On Information may be submitted by the later date specified in § 17.02.

[43] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[44] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[45] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[46] If the Owner Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Volume Threshold Account Owner(s), Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields

6. *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):

Follow-On Information:[47]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[48]
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):

that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[47] Follow-On Information may be submitted by the later date specified in § 17.02.

[48] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

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.[49]

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:[50]

☐ HOUSE

[49] 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.

[50] 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.

☐ CUSTOMER

Name of Omnibus Account Originator: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[51]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[52]
Contact Email Address:
Originator Website (if any):[53]
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):[54]

(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): [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:

[51] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[52] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[53] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.
[54] If the Originator Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Omnibus Account Originator, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

City:
State:
Country:
Zip/Postal Code:
Phone Number:[55]
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:[56]
Contact Email Address:
Owner Website (if any):[57]
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):[58]

(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): [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:

[55] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[56] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[57] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.
[58] If the Owner Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Consolidated Account Owner(s), Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

Phone Number:[59]
Email Address:
Contact Name (provide only if controller is not a natural person):
Contact Job Title:
Contact Relationship to controller:
Contact Phone Number:[60]
Contact Email Address:
Controller NFA ID (if any):
Controller Legal Entity Identifier (if any):[61]

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:

---

[59] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[60] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[61] If the Controller Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Consolidated Account Controller(s), Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Controller Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Controller Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

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:

_____

BILLING CODE 6351–01–C

■ 12. Add appendix B to part 17 to read as follows:

Appendix B to Part 17—Form 71

Note: This Appendix is a representation of the final reporting form, which will be submitted in an electronic format pursuant to the rules in Part 17, either via the Commission's web portal or via XML-based, secure FTP transmission.

BILLING CODE 6351–01–P

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")[1] and the regulations thereunder,[2] 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 section 6(c)(2) of the Act (7 U.S.C. 9), section 9(a)(3) of the Act (7 U.S.C. 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 U.S.C. 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. sections 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.

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

[2] 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 or via a secure FTP data feed to the Commission. 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 U.S.C. 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, carries 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 section 5 of the Act or a swap execution facility registered under section 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 carries 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 section 5 of the Act or a swap execution facility registered under section 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:[3]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[4]
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] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[4] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

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.[5]

□ HOUSE
□ CUSTOMER

Name of Reportable Sub-Account Originator:
Account Number of Reportable Sub-Account:[6]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[7]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[8]
Contact Email Address:
Originator Website (if any):[9]
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.

---

[5] 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.
[6] The Account Number should be a number or other identifier that is known to the reportable sub-account originator.
[7] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[8] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[9] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

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:[10]
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:[11]
Contact Email Address:
Owner Website (if any):[12]
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:[13]
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:

---

[10] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[11] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[12] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[13] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

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:

_____

PART 18—REPORTS BY TRADERS

■ 13. 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).

■ 14. 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.

■ 15. Amend § 18.05 to revise introductory paragraph (a), 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 transactions in the commodity or swap:

* * * * *

(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 or swap, its products and byproducts, and all commercial activities that it hedges in the futures, option, or swap 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.

■ 16. Add appendix A to part 18 to read as follows:

Appendix A to Part 18—Form 40

Note: This Appendix is a representation of the final reporting form, which will be submitted in an electronic format pursuant to the rules in Part 18, either via the Commission's web portal or via XML-based, secure FTP transmission.

BILLING CODE 6351–01–P

CFTC FORM 40
STATEMENT OF REPORTING TRADER

NOTICE: Failure to file a report required by the Commodity Exchange Act ("CEA" or the "Act")[1] and the regulations thereunder,[2] 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 section 6(c)(2) of the Act (7 U.S.C. 9), section 9(a)(3) of the Act (7 U.S.C. 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 U.S.C. 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. sections 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. sections 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 part 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.

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

[2] 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*.

BILLING CODE 6351–01–P

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[3] with the Commission.

[3] 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.

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 should be submitted (a) via the CFTC's web-based Form 40 submission process at *www.cftc.gov,* (b) via a secure FTP data feed to the Commission, or (c) as otherwise instructed by the Commission or its designee. If electronic submission attempts fail, the reporting trader shall contact the Commission at *techsupport@cftc.gov* for further technical support.

When to update—A reporting trader required to complete a Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information it provides. Reporting traders can update this information by either visiting the CFTC's web-based Form 40 portal to review, verify, and/or update their information, or by submitting updated information via FTP.

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.

Table of Contents

1. General information for Reporting Trader
2. Contact Information for Individual Responsible for Trading Activities
3. Contact Information for Individual Responsible for Risk Management Operations
4. Contact information for Individual Responsible for Information on the Form 40
5. Omnibus Account Identification
6. Foreign Government Affiliation
7. Non-Domestic Entity Indicator
8. Ownership Structure (Parent/Parents)
9. Ownership Structure (Subsidiary/Subsidiaries)
10. Control of Reporting Trader's Trading Activities by Others
11. Control of Other's Trading Activities by Reporting Trader
12. Other Parties Influencing Trading of Reporting Trader
13. Trading Subject to Express or Implied Agreement
14. Commodity Index Trading Indicator
15. Swap Dealer Identification
16. Major Swap Participant Identification
17. Business Sectors, Subsectors and Occupation
18. Commodities Being Traded in Derivative Markets
19. Business Purpose for Trading in Derivative Markets
20. Signature/Authentication, Name, and Date

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 U.S.C. 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 on futures, and swaps.

Omnibus volume threshold account—means any trading account that, on an omnibus basis, carries 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 section 5 of the Act or a swap execution facility registered under section 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 carries 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 section 5 of the Act or a swap execution facility registered under section 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 [4]
Email Address
Web site
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.

[4] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [5]
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 [6]
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 [7]
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 [8]
Web site [9]
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 [10]
Web site [11]
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)

[5] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[6] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[7] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[8] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[9] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

[10] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[11] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

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 [12]
Web site [13]
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 [14]
Web site [15]
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 [16]
Web site [17]
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 [18]
Web site [19]
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.

[12] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[13] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

[14] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[15] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

[16] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[17] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

[18] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[19] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

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 on Futures 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 on futures 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 on futures 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 on futures 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 on futures 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.

PART 20—LARGE TRADER REPORTING FOR PHYSICAL COMMODITY SWAPS

■ 17. 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).

■ 18. Amend § 20.5 to:
■ a. Revise paragraphs (a)(1) and (a)(2); and
■ b. Add paragraphs (a)(4) and (a)(5)

The revisions and additions 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, in accordance with the form instructions and as specified in this section.

(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. 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 or its designee that the account in question is no longer reportable as a consolidated account and has not been reportable as a consolidated account for the past six months. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(5) *Refresh updates.* For Consolidated Accounts—Starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), 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 or its designee that the account in question is no longer reportable as a consolidated account and has not been reportable as a consolidated account for the past six months.

* * * * *

Issued in Washington, DC, on November 5, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

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

Appendices to Ownership and Control Reports, Forms 102/102S, 40/40S, and 71—Commission Voting Summary and Statement of Chairman

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton, O'Malia, and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule on ownership and control reporting as it provides the Commission with greater detail on both who owns accounts and who controls accounts in the futures, options on futures, and swaps markets.

The reforms require, for the first time, that accounts which trade more than a certain volume in a day have to disclose who owns or controls them. Previously, the Commission only had a window into the ownership of those accounts that had large positions at the end of the day. This new information is critical in today's world of high frequency trading, as many accounts trade often throughout the day but end the day without reportable positions. Thus, with these reforms, the Commission will get additional tools to oversee the markets' largest day traders and high frequency traders.

There is also flexibility built into the rule such that if some of the required information on accounts has already been reported through a legal entity identifier, the market participant does not have to submit it twice.

Further this rule modernizes the reporting by requiring electronic submission of information, rather than by mailing or faxing forms.

These reforms enhance the Commission's ability to oversee the markets, as well as detect market manipulation and abusive or disruptive trading practices.

[FR Doc. 2013–26789 Filed 11–15–13; 8:45 am]

BILLING CODE 6351–01–P