



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038-AE49

Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments to Filing Dates

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is amending its regulations regarding the timing for furnishing to the Commission the chief compliance officer (“CCO”) annual reports of futures commission merchants (“FCMs”), swap dealers (“SDs”), and major swap participants (“MSPs”) (collectively, “Registrants”). The Commission is also amending its regulations by delegating to the Director of the Division of Swap Dealer and Intermediary Oversight (“DSIO”) authority to grant extensions to the CCO annual report filing deadline.

DATES: This rule will become effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule

On August 12, 2016, the Commission published a Notice of Proposed Rulemaking (“Proposal”)¹ to amend Commission Regulation 3.3(f) regarding when Registrants must furnish to the Commission annual reports describing, among other things, their compliance with the Commodity Exchange Act (“CEA”) and CFTC regulations (the “CCO Annual Reports”).² The Proposal sought to extend the time period for furnishing the CCO Annual Report to the Commission from 60 days to 90 days after a Registrant’s fiscal year-end by codifying the ongoing relief most recently provided to Registrants in CFTC Staff Letter No. 15-15.³ The Proposal would permit an FCM to furnish its CCO Annual Report to the Commission not more than 30 days after submission of its Form 1-FR-FCM or Financial Operational Combined Uniform Single Report (“FOCUS Report”), and would permit an SD or MSP to furnish its CCO Annual Report to the Commission not more than 90 days after its fiscal year-end until such time as the Commission adopts and implements rules establishing the time for filing the

¹ Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments to Filing Dates, 81 FR 53343 (Aug. 12, 2016).

² CEA section 4s(k)(3)(A)(i), 7 U.S.C. 6s(k)(3)(A)(i), requires CCOs for SDs and MSPs, in accordance with rules prescribed by the Commission, to prepare and sign an annual report describing, among other things, the SD’s or MSP’s compliance with the CEA and CFTC regulations. CEA section 4s(k)(3)(B)(i), 7 U.S.C. 6s(k)(3)(B)(i), requires the CCO Annual Report to accompany each appropriate financial report of the SD or MSP required to be furnished to the Commission. CEA section 4d(d), 7 U.S.C. 6d(d), requires CCOs of FCMs to “perform such duties and responsibilities” as are established by Commission regulation or rules of a registered futures association. Regulations 3.3(e) and (f), 17 CFR 3.3(e) and (f), codify the duty to furnish the CCO Annual Report to the Commission for all Registrants.

³ CFTC Letter No. 15-15, No-Action Relief for Futures Commission Merchants, Swap Dealers, and Major Swap Participants from Compliance with the Timing Requirements of Commission Regulation 3.3(f)(2) Relating to Annual Reports by Chief Compliance Officers (Mar. 27, 2015), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/15-15.pdf>.

annual financial condition report required under CEA section 4s(f). The Proposal also contemplated adding new paragraph (f)(2)(ii) to clarify the filing requirements for SDs and MSPs located in a jurisdiction for which the Commission has issued a comparability determination and which elect to file reports in accordance with that determination (“Substituted Compliance Registrants”). Finally, the Proposal added new paragraph (h) to delegate to the Director of DSIO authority to grant extensions to the CCO Annual Report filing deadline.

The Commission generally requested comments on the Proposal and also solicited comments on certain specific matters.⁴ For example, the Commission solicited comments on the appropriateness of permitting Registrants an additional 30 days to furnish their CCO Annual Reports to the Commission, as well as the Commission’s application of Regulation 3.3(f)(2) to Substituted Compliance Registrants.

II. Summary of Comments

In response to the Proposal, the Commission received one comment submitted jointly by the Futures Industry Association (the “FIA”), International Swaps and Derivatives Association (“ISDA”), and the Securities Industry and Financial Markets Association (“SIFMA”) (collectively, “Commenters”) on behalf of their FCM, SD, and MSP member firms.⁵ The Commenters were generally supportive of the Proposal and agreed with the basic premise that the statutory requirement under CEA section 4s(k)(3)(B)(i) requiring CCO Annual Reports to “accompany” each appropriate financial report does not require a simultaneous filing of the two reports.

⁴ See 81 FR at 53346.

⁵ Letter from FIA, ISDA, and SIFMA (Sept. 12, 2016). This comment letter is available on the Commission’s website at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1729>.

The Commenters made several suggestions aimed at more closely aligning the Proposal with the relief provided in CFTC Staff Letter No. 15-15 and providing greater certainty for all SDs. First, Commenters cautioned against linking the filing deadline for the CCO Annual Report to the submission date for the applicable annual financial reports. The Commenters stated that using the submission date as a reference point, rather than the deadline date, could have the practical effect of reducing the time period for filing the CCO Annual Report if a Registrant chose to submit their financial report early.⁶ Commenters asserted that this outcome would be problematic because the inherent differences, in both substance and process, between CCO Annual Reports and financial reports affect the time required to adequately prepare each report. As a result, linking the CCO Annual Report deadline to the submission of financial reports would require new coordination and processes between the distinct groups responsible for each report's preparation.⁷ To address this technical timing issue, the Commenters recommended that the filing of the CCO Annual Report be required 30 days after the regulatory deadline for filing the financial reports.⁸

The Commenters further noted that under the Commission's proposed Capital Requirements of Swap Dealers and Major Swap Participants rulemaking,⁹ prudentially regulated SDs would not be required to comply with the Commission's financial condition report requirement.¹⁰ As such, Commenters explained that under language in the Proposal, which ties the submission of the CCO Annual Report with the submission

⁶ Id. at 2.

⁷ Id.

⁸ Id.

⁹ See Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27802, 27838 (proposed May 12, 2011).

¹⁰ Letter from FIA, ISDA, and SIFMA at 2.

of applicable financial reports, prudentially regulated SDs would have a different CCO Annual Report deadline than other SDs.¹¹ Commenters suggested that, in order to achieve consistency among all SDs, the Commission should “set a 90-day deadline for SDs that are not subject to the Commission’s proposed financial reporting rule.”¹²

Finally, regarding application of the Proposal to Substituted Compliance Registrants, the Commenters requested that the Commission provide “supplemental guidance as to what constitutes a ‘specifically identifiable completion date’” for Substituted Compliance Registrants who file comparable annual reporting information (hereinafter, “Comparable Annual Report”).¹³ The Commenters indicated that different jurisdictions address reporting deadlines in many different ways that can change over time and from year to year. Accordingly, it was not clear to Commenters how the Proposal language would apply in all instances.

III. The Final Rule

The Commission has considered the comments it received in response to the Proposal. Upon consideration of Commenters’ suggestions, the Commission’s implementation experience,¹⁴ and the current absence of financial condition reporting requirements for SDs under Commission regulations,¹⁵ the Commission is adopting a final rule that modifies Regulation 3.3(f)(2)(i) to give all Registrants up to 90 days after their fiscal year-end to furnish the CCO Annual Report to the Commission. Because the CEA section 4s(k)(3)(B) contemplates year-end filing for financial reports and CCO

¹¹ Id.

¹² Id.

¹³ Id. at 3.

¹⁴ See 81 FR 53343, 53344 n.7.

¹⁵ Id. at 53345 n.14.

Annual Reports, the final rule ensures that the two reports will accompany one another at the Commission within a proximate and predictable timeframe. The Commission believes that providing all Registrants a deadline that follows their annual fiscal year meets Congressional intent and achieves fairness and consistency across all Registrants, while also codifying longstanding no-action relief. The final rule text effectively results in the same outcome as the Proposal, but does so in a manner that is simple and direct. The Commission is adopting Regulation 3.3(f)(2)(ii) as proposed, which incorporates the modified language of Regulation 3.3(f)(2)(i), and also clarifying its application to Substituted Compliance Registrants. The Commission received no comments on the proposed delegation of authority to the Director of DSIO to grant extensions to the CCO annual report filing deadline, and is adopting Regulation 3.3(h) as proposed.

A. CCO Annual Report Filing Deadline

The Commission believes that the language in CEA section 4s(k)(3)(B) requiring the CCO to “annually” prepare a compliance report to accompany each “appropriate” financial report does not require a simultaneous filing of the two reports to achieve its intended purpose. Rather, the intention of the statute is to require the CCO Annual Report to follow an annual reporting cycle in line with the financial reporting cycle aimed at providing the Commission, and a Registrant’s senior management, with a timely self-evaluation and internal assessment of the Registrant’s compliance program.¹⁶ In a similar manner, under Commission regulations, when entities are subject to capital adequacy requirements, periodic financial reporting is the mechanism employed to demonstrate

¹⁶ See Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant, 75 Fed. Reg. 70881, 70883 (proposed Nov. 19, 2010).

compliance. Annual and other financial reporting requirements provide the Commission and self-regulatory organizations information about the financial condition of the registrant. As observed by the Commission and highlighted by Commenters, the CCO Annual Report and annual financial reports, though they serve similar informational goals, are inherently different and require different processes and expertise to produce. Accordingly, while each ought to be completed on an annual reporting cycle and provided to the Commission in temporal proximity, their submission to the Commission need not occur simultaneously to achieve their intended purpose.

Permitting all Registrants to submit their CCO Annual Report to the Commission within 90 days after their fiscal year-end meets the statutory intent of having the CCO Annual Report follow an annual reporting cycle in line with the financial reporting cycle while providing fair and consistent treatment across all Registrants. The final rule also ensures that Registrants may continue to leverage their existing report preparation processes that were developed while the Commission's no-action relief was in place. This ensures that there is effectively no change in the burden and expense of preparing the CCO Annual Reports as a result of the final rule.

B. Deadline for Substituted Compliance Registrants

With respect to the application of new paragraph (f)(2)(ii) to Substituted Compliance Registrants, the Proposal provided that Substituted Compliance Registrants whose home jurisdictions' regulations identify a specific completion or due date have 15 days after that date to submit their Comparable Annual Report to the CFTC. If a Substituted Compliance Registrant's home jurisdiction does not require or is silent as to a particular completion or due date for the Comparable Annual Report, then the Substituted

Compliance Registrant must furnish its Comparable Annual Report to the Commission not more than 90 days after its fiscal year-end.

As described above, the Commenters requested additional guidance on the meaning of “specifically identifiable completion date.” The Commission is clarifying that the completion or due date could be set by the Substituted Compliance Registrant’s home jurisdiction’s regulations, or that the Substituted Compliance Registrant’s applicable regulatory authority could otherwise announce a modified completion or due date consistent with the practices and procedures of the applicable regulatory regime. The Commission anticipates a Substituted Compliance Registrant will timely inform DSIO of any such modifications to their completion or due date. Whether the completion or due date remains static from year to year, or is subject to annual modification, the Commission intends to defer to the Substituted Compliance Registrant’s home jurisdiction in this regard.

The Commission, however, is concerned about the possibility of significant reporting delays or deferrals that may apply to a specific Registrant. Accordingly, the Commission expects that a Substituted Compliance Registrant will inform the Commission of any delays or deferrals beyond the deadlines set by their home jurisdiction regulations or applicable regulatory authority that would extend that particular Registrant’s Comparable Annual Report filing date, and seek appropriate relief under Regulation 3.3(f)(5), as necessary.

C. Delegation of Authority to the Director of DSIO

The Commission received no comments on its proposal to delegate to the Director of DSIO, or such other employee(s) that the Director may designate, the authority to

grant extensions of time to file CCO Annual Reports. Accordingly, the Commission is adopting new paragraph (h) as proposed.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act¹⁷ (“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 reflecting the impact. In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on those entities. The Commission received no comments with respect to the RFA.

As discussed in the Proposal, the final rule amends the filing deadline for CCO Annual Reports of FCMs, SDs, and MSPs and clarifies the filing deadline for Comparable Annual Reports. The final rule affects FCMs, SDs, and MSPs that are required to be registered with the Commission. The Commission has previously established certain definitions of “small entities” to be used in evaluating the impact of its regulations on small entities in accordance with the RFA, and has previously determined that FCMs, SDs, and MSPs are not small entities for purposes of the RFA.¹⁸ Therefore, the Commission believes that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the final rule being

¹⁷ 5 U.S.C. 601 *et seq.*

¹⁸ *See* Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982) (FCMs); Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,” 77 FR 30596, 30701 (May 23, 2012) (SDs and MSPs).

published today by this Federal Register release will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”)¹⁹ provides that a federal 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 issued by the Office of Management and Budget (“OMB”). As discussed in the Proposal, the final rule contains a collection of information for which the Commission has previously received a control number from the Office of Management and Budget (“OMB”). The title for this collection of information is “Annual Report for Chief Compliance Officer of Registrants, OMB control number 3038–0080.” As discussed in the Proposal, the Commission believes that this final rule will not impose any new information collection requirements that require approval of OMB under the PRA. As a general matter, the final rule allows Registrants up to 90 days after the end of their fiscal years, and certain Substituted Compliance Registrants with up to 15 days after the date on which the Comparable Annual Report must be completed under the requirements of their home jurisdiction, to file the CCO Annual Report and Comparable Annual Reports, respectively. As such, the final rule does not, by itself, impose any new burden or any new information collection requirements in addition to those that already exist in connection with the preparation and delivery of the CCO Annual Report pursuant to part 3 of the Commission’s regulations.

C. Cost-Benefit Considerations

1. Background

¹⁹ 44 U.S.C. 3501 et seq.

As discussed above, the Commission is adopting amendments to the filing requirements for CCO Annual Reports in Regulation 3.3 that: (1) increase the amount of time registrants have to file their CCO Annual Reports with the Commission; and (2) clarify the filing requirements for Comparable Annual Reports. The baseline for this cost and benefit consideration is existing Commission Regulation 3.3.

2. Costs

The final rule does not change the report contents or require any additional actions to be taken by Registrants. The 90 days (or up to 15 days after the date on which a Comparable Annual Report must be completed under applicable home jurisdiction standards that allow more time) provided by the final rule lengthens the time before senior management or the board of the Registrants and the Commission may receive the CCO Annual Reports. The additional time to furnish the reports should not materially impact regulatory oversight given that the purpose of the reports is to provide a status update for the Registrant's compliance activities over the course of the preceding fiscal year and planned changes for the coming year. The reports generally do not serve to address crisis situations for which immediacy is critical. Therefore, the additional time allowed should not materially impact the usefulness of the information in the reports.²⁰ The Commission had no other information available to it indicating that changing the filing deadline would measurably change the cost to prepare the CCO Annual Reports. Accordingly, the Commission believes that the final rule does not impose any additional costs on any other market participants, the markets themselves, or the general public. In

²⁰ The CCO Annual Report must contain a description of material non-compliance events that occurred over the review period. However, reporting on those events in the CCO Annual Report provides transparency regarding the effectiveness of the implementation of the compliance program over the preceding year for management and the CFTC.

the Proposal, the Commission solicited comments regarding how the costs associated with the CCO Annual Reports could change as a result of adopting the Proposal, but did not receive any.

3. Benefits

The Commission believes that the final rule provides relief for Registrants from time pressures in preparing and filing their CCO Annual Reports. The additional time provided will allow Registrants to more carefully complete their internal processes used to develop the broad variety of information needed for the reports resulting in more accurate and complete reports. The Commission solicited comments regarding the nature of any benefits that could result from adoption of the Proposal, but did not receive any specific comments. Commenters were generally appreciative of the Commission's effort to improve the process.²¹

4. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.²² Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considered the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

a. Protection of Market Participants and the Public

²¹ Letter from FIA, ISDA, and SIFMA at 1.

²² 7 U.S.C. 19(a).

The Commission recognizes that there are trade-offs between reducing regulatory burdens and ensuring that the Commission has sufficient, timely information to fulfill its regulatory mission. The final rule is intended to reduce some of the regulatory burdens on Registrants. While the final rule will delay the time in which the Commission will receive the CCO Annual Reports, the delay is relatively short given that the information in the reports looks back over the entire year-long reporting period, and identifies planned improvements for the coming year. Accordingly, the Commission believes that the short delay will not affect the protection of market participants and the public.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the final rule could improve allocational efficiency for participants in the market by reducing the burden of preparing the CCO Annual Report in a shorter time-frame thereby allowing them to allocate compliance resources more efficiently over the report preparation period. The Commission believes that the final rule will not have any market efficiency, competitiveness, or market integrity impacts because the reports address internal compliance programs of each Registrant and are not publicly available.

c. Price Discovery

The Commission believes that the final rule does not impact on price discovery. Given that the final rule affects only the timing of when the CCO Annual Reports are filed with the Commission and the CCO Annual Reports generally would not contain trade information or be available to the public, the final rule does not affect price discovery.

d. Sound Risk Management Practices

The Commission believes that the final rule will not have a meaningful effect on the risk management practices of Registrants. While the CCO Annual Reports may discuss certain risk management aspects related to Registrants' compliance programs, the final rule only amends the timing of delivery of the reports to the Commission, not the contents of the reports. As described above under subsection 4.a, the short delay in delivery of the reports provided for by the final rule is not significant given the nature of the information included in the report and allowing additional time to prepare CCO Annual Reports might allow Registrants to prepare better reports that more effectively address the information contained therein.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations for this rulemaking.

List of Subjects in 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 3 as follows:

PART 3—REGISTRATION

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b-1, 6c, 6d, 6e, 6f, 6g, 6h, 6j, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of Pub. L. 111-203, 124 Stat. 1376.

2. Amend § 3.3 as follows:
 - a. Revise paragraph (f)(2); and
 - b. Add paragraph (h).

The revision and addition read as follows:

§ 3.3 Chief compliance officer.

* * * * *

(f) * * *

(2)(i) Except as provided in paragraph (f)(2)(ii) of this section, the annual report shall be furnished electronically to the Commission not more than 90 days after the end of the fiscal year of the futures commission merchant, swap dealer, or major swap participant.

(ii) The annual report of a swap dealer or major swap participant that is eligible to comply with a substituted compliance regime for paragraph (e) of this section pursuant to a comparability determination of the Commission may be furnished to the Commission electronically up to 15 days after the date on which the comparable annual report must be completed under the requirements of the applicable substituted compliance regime. If the substituted compliance regime does not specify a date by which the comparable annual report must be completed, then the annual report shall be furnished to the Commission by the date specified in paragraph (f)(2)(i) of this section.

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(h) Delegation of authority. The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight, or such other employee or employees as the Director may designate from time to time, the authority to grant

extensions of time, as set forth in paragraph (f)(5) of this section. Notwithstanding such delegation, in any case in which a Commission employee delegated authority under this paragraph believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an extension of time should be granted. The delegation of authority in this paragraph shall not prohibit the Commission, at its election, from exercising the authority set forth in paragraph (f)(5) of this section.

Issued in Washington, DC, on November 10, 2016, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Chief Compliance Officer Annual Report Requirements for Futures
Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments
to Filing Dates—Commission Voting Summary**

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016-27525 Filed: 11/15/2016 8:45 am; Publication Date: 11/16/2016]