



## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 17

### RIN 3038-AF27

### Large Trader Reporting Requirements

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing revisions to the Commission’s regulations that set forth large trader position reporting requirements for futures and options. First, the Commission is proposing to remove an outdated 80-character submission standard and delegate certain authority to the Office of Data and Technology to designate a modern submission standard for certain reports required to be submitted. Second, the Commission is proposing to replace certain enumerated data fields with an appendix specifying applicable data elements and a separate Guidebook specifying the form and manner for reporting. These revisions would modernize large trader position reporting and align it with other reporting structures set out in the Commission’s regulations.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by “Large Trader Reporting Requirements, RIN 3038-AF27,” by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov/>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.<sup>1</sup>

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

**FOR FURTHER INFORMATION CONTACT:** Owen Kopon, Associate Chief Counsel, at (202) 418-5360 or [okopon@cftc.gov](mailto:okopon@cftc.gov), Paul Chaffin, Assistant Chief Counsel, at (202) 418-5185 or [pchaffin@cftc.gov](mailto:pchaffin@cftc.gov), Division of Market Oversight, James Fay, IT Specialist, at (202) 418-5293 or [jfay@cftc.gov](mailto:jfay@cftc.gov), Division of Data, or Daniel Prager,

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<sup>1</sup> 17 CFR 145.9.

Research Economist, (202) 418-5801 or *dprager@cftc.gov*, Office of the Chief Economist, in each case at the Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### *A. Introduction*

Part 17 of the Commission's regulations governs large trader reporting for futures and options.<sup>2</sup> Among other things, those rules require futures commission merchants ("FCMs"), foreign brokers, clearing members, and certain reporting markets<sup>3</sup> (FCMs, foreign brokers, clearing members, and such reporting markets are collectively referred to herein as "reporting firms") to report daily position information of the largest futures and options traders to the Commission.<sup>4</sup>

The Commission uses these § 17.00(a) large trader reports to carry out its market surveillance programs, which include detection and prevention of price manipulation, as well as enforcement of speculative limits.<sup>5</sup> Among other things, data reported under Part 17 enable the Commission to identify large positions in single markets or across markets, including by aggregating the positions of a particular beneficial owner across multiple accounts held with multiple clearing members. In addition to supporting the Commission's surveillance programs, aggregated position data collected under Part 17 serves as the basis of the Commission's weekly Commitments of Traders ("COT") report.<sup>6</sup> Historically, a wide range of both commercial and speculative traders have used

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<sup>2</sup> 17 CFR Part 17.

<sup>3</sup> For exclusively self-cleared contracts, designated contract markets ("DCMs") must report data required to be reported under regulation 17.00(a) on behalf of clearing members. *See* 17 CFR 17.00(i).

<sup>4</sup> 17 CFR 17.00(a).

<sup>5</sup> *See, e.g.*, Final Rule, Reports; General Provisions; Adoption of Final Rules, 49 FR 46116, 46116 (Nov. 23, 1984).

<sup>6</sup> *See, e.g.*, Comprehensive Review of the Commitments of Traders Reporting Program, 71 FR 35627, 35630 (June 21, 2006) (stating that the Commission generates the COT report using Part 17 data); Final rule and corrections, Reporting Requirements for Contract Markets, Futures Commission Merchants,

the COT report for a variety of purposes related to their trading activities.<sup>7</sup> Finally, Part 17 data is an important source of data for fulfillment of the Commission's market analysis program and to support Commission research projects.

Since the 1980s, § 17.00(g) has set forth both the submission standard and data fields to be used in § 17.00(a) large trader reports.<sup>8</sup> Section 17.00(g) requires reporting firms to submit data in a highly-specified 80-character record format that is unique to § 17.00(a) large trader reports. As technology and markets have evolved, this record format has become outdated. It does not accommodate information needed to represent certain contracts, and necessitates manual work by staff to validate and ingest data.<sup>9</sup> The Commission is issuing a proposal to update data reporting under § 17.00(a) by removing § 17.00(g)'s 80-character record format and delegating authority to the Director of the Office of Data and Technology to designate a modern data submission standard. Additionally, the Commission proposes to replace the data fields enumerated in that § 17.00(g) record format with a proposed Appendix C to Part 17 specifying the data elements required to be reported, and to delegate to the Director of the Office of Data and Technology the authority to specify the form, manner, coding structure, and electronic data transmission procedures for reporting these data elements under Part 17. These changes would both address shortcomings of the current format for Part 17 data and align Part 17 reporting with the reporting structure set out in Parts 16, 20, 39, 43, and 45.<sup>10</sup>

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Members of Exchanges and Large Traders, 46 FR 59960, 59961 n.6 (Dec. 8, 1981) (“[I]n addition to market surveillance and enforcement of speculative limits, large trader data provides the basis for the Commission's monthly report on commitments of large traders.”).

<sup>7</sup> See, e.g., CFTC, “Commission Actions in Response to the Comprehensive Review of the Commitments of Traders Reporting Program,” at 6 (Dec. 5, 2006), available at <https://www.cftc.gov/idc/groups/public/@commitmentsoftraders/documents/file/noticeonsupplementalcotreport.pdf>; see also CFTC, Staff Report on Commodity Swap Dealers & Index Traders with Commission Recommendations, at 46 (Sept. 2008), available at <https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/cftcstaffreportonswapdealers09.pdf> (describing various market participants' and researchers' uses for the COT report).

<sup>8</sup> The final rule promulgating regulation 17.00(g) was published in 1986. Final Rule, Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers, and Large Traders, 51 FR 4712 (Feb. 7, 1986).

<sup>9</sup> 17 CFR 17.00(g).

<sup>10</sup> See 17 CFR Part 16; 17 CFR Part 20; 17 CFR Part 39; 17 CFR Part 43; 17 CFR Part 45.

*B. Statutory and Regulatory Framework for § 17.00(a) Large Trader Reporting for Futures and Options*

The reporting rules contained in Parts 15, 16, 17, 18, 19, and 21 of the Commission's regulations are structured to ensure that the Commission receives adequate information to facilitate oversight of futures and options markets via its market surveillance programs.<sup>11</sup> Part 16 requires contract markets to submit certain data; Parts 17 and 21 require FCMs, clearing members, foreign brokers, and certain reporting markets to submit certain data; and Parts 18 and 19 require individual traders to submit certain data.<sup>12</sup>

The reporting rules are implemented by the Commission based on the authority of sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act ("CEA"). Section 4a of the CEA permits the Commission to set and approve exchange-set limits and enforce speculative position limits.<sup>13</sup> Section 4c(b) of the CEA gives the Commission plenary authority to regulate transactions that involve commodity options.<sup>14</sup> Section 4g of the CEA imposes reporting and recordkeeping obligations on registered entities, and requires each registered entity to file such reports as the Commission may require on proprietary and customer transactions and positions in commodities for future delivery executed on any board of trade.<sup>15</sup> Additionally, Section 4g of the CEA requires registered entities to maintain daily trading records as required by the Commission and permits the Commission to require that such daily trading records be made available to the Commission.<sup>16</sup> Section 4i of the CEA requires the filing of such reports as the

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<sup>11</sup> See, e.g., Final Rule, Reporting Levels and Recordkeeping, 69 FR 76392, 76392 (Dec. 21, 2004).

<sup>12</sup> See 17 CFR Parts 16-19, 21.

<sup>13</sup> 7 U.S.C. 6a. Section 4a of the CEA also permits the Commission to set, approve, and enforce speculative position limits with respect to swaps.

<sup>14</sup> 7 U.S.C. 6c(b).

<sup>15</sup> 7 U.S.C. 6g.

<sup>16</sup> See *id.*

Commission may require when positions made or obtained on DCMs equal or exceed Commission-set levels.<sup>17</sup>

The Commission's large trader reporting regime for futures and options requires reporting firms to submit, pursuant to § 17.00(a), daily reports to the Commission providing positions in open contracts<sup>18</sup> and identifying information for the futures and options trader accounts that exceed Commission-set reporting levels—called special accounts<sup>19</sup>—and requires large traders themselves to provide certain identifying information.<sup>20</sup> More specifically, § 17.00(a) requires reporting firms to submit a § 17.00(a) large trader position report—historically referred to as a “series ’01 report”<sup>21</sup>—that itemizes by special account certain positions, deliveries of futures, and exchanges of futures for related positions associated with each account that carries a reportable position.<sup>22</sup> Section 17.01 requires, separately, that reporting firms submit information, via Form 102A,<sup>23</sup> identifying the traders behind special accounts by name, address, and occupation, once an account accrues a reportable position.<sup>24</sup> Reporting firms, as appropriate, submit Forms 102 to the Commission for each account when that account becomes reportable as a special account.<sup>25</sup> By aggregating information from § 17.00(a) large trader position reports and Forms 102, the Commission can determine the size of each reportable trader's overall positions across special accounts held with multiple FCMs, clearing members, or foreign brokers.

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<sup>17</sup> 7 U.S.C. 6i.

<sup>18</sup> “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* 17 CFR 1.3 and 17 CFR 15.00(n).

<sup>19</sup> A “special account” means any commodity futures or options account in which there is a “reportable position.” 17 CFR 15.00(r). A “reportable position” is any open contract position held or controlled by a trader at the close of business in any one futures contract of a commodity traded on any one contract market that equals or exceeds the reportable levels fixed by the Commission in regulation 15.03. 17 CFR 15.03.

<sup>20</sup> 17 CFR Part 18.

<sup>21</sup> *See, e.g.*, 17 CFR 15.02 (enumerating reports by “Form No.”).

<sup>22</sup> 17 CFR 17.00(a).

<sup>23</sup> *See* 17 CFR Part 17, App'x A.

<sup>24</sup> 17 CFR 17.01.

<sup>25</sup> 17 CFR 17.02(b).

These data reported under Part 17 are used for the Commission’s market surveillance program, for generating the weekly COT report, for market analysis, and for research projects.<sup>26</sup> Section 17.00(g) provides the data submission standard and data elements for the reportable positions by special accounts—§ 17.00(a) large trader report data, or series ’01 report data—in the form of an 80-character record format.<sup>27</sup>

The Commission receives § 17.00(a) large trader reports by 9 a.m. on the business day following the day to which the information pertains.<sup>28</sup> Information obtained from such reports is ingested into the Commission’s Integrated Surveillance System (“ISS”), where it may be linked to ownership and control information for special accounts reported pursuant to § 17.01.<sup>29</sup>

*C. Shortcomings of the § 17.00(g) Record Format*

Section 17.00(g)’s 80-character record format has been in place since 1986,<sup>30</sup> and has become outdated and difficult for staff to use. Historically, Part 17 has evolved alongside technological advances in data transmission. At the time of the Commission’s establishment, daily reports with respect to special accounts could be submitted to the Commission on paper series ’01 forms.<sup>31</sup> In 1984, the Commission amended Part 17 to permit, but not require, reporting firms to submit Part 17 reports on certain Commission-compatible data processing media—at that time, computer printouts or magnetic tape.<sup>32</sup>

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<sup>26</sup> See, e.g., Final Rule, Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers, and Large Traders, 51 FR 4712, at 4712 (Feb. 7, 1986).

<sup>27</sup> 17 CFR 17.00(g).

<sup>28</sup> 17 CFR 17.02(a).

<sup>29</sup> ISS receives and stores end-of-day position reports submitted to the CFTC and allows the Commission’s divisions and offices to monitor daily activities of large traders. See, e.g., Final Rule, Ownership and Control Reports, Form 102/102S, 40/40S, and 71, 78 FR 69178, 69180 (Nov. 18, 2013). Among other things, ISS is used to generate the COT report.

<sup>30</sup> See 51 FR 4712.

<sup>31</sup> See, e.g., Final Rule, Rules Under the Commodity Exchange Act, 41 FR 3192, 3208 (Jan. 21, 1976) (regulation 17.03 permitted reporting of series 01 information on “compatible data-processing punched cards” in addition to magnetic tape or discs). The Commission’s predecessor agency received regulation 17.00(a) large trader reporting in a similar format. See, e.g., Supersedure of Certain Regulations, 26 FR 2968, 2969 (Apr. 7, 1961).

<sup>32</sup> Final Rule, Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers and Large Traders, 51 FR 4712-01, 4713-14 (Feb. 7, 1986).

The Commission found these methods improved data quality and saved time, money, and effort for both the Commission and market participants.<sup>33</sup> In 1986, the Commission revised Part 17 to specifically require that a reporting firm submit reports in a machine-readable form compatible with the Commission's data processing system, unless otherwise authorized by the Commission.<sup>34</sup> At that time, newly-established § 17.00(g) set out the data fields to be reported and introduced an 80-character submission standard based on Cobol Programming Language descriptions.<sup>35</sup> Market participants were required to submit § 17.00(a) large trader position reports using compatible data processing media, defined to include magnetic tape, magnetic diskette, or dial-up data transmission at speeds up to 1200 baud asynchronous transmission and 4800 baud synchronous transmission.<sup>36</sup> The Commission made minor amendments to the particulars of the 80-character record format in 1997 and, in recognition of evolving data transmission methods, revised the definition of "compatible data-processing media" to delete its list of specific compatible media and delegate to staff the authority to define acceptable media.<sup>37</sup> The 80-character record format has remained largely unchanged since 1997. In 2004, the Commission revised requirements that specified that reports be transmitted by "dial-up" to allow for more general transmission via internet connection,<sup>38</sup> and expanded the requirement that reporting firms include information concerning volume attributable to exchanges of futures for physicals to include information concerning exchanges of futures for derivatives positions.<sup>39</sup>

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<sup>33</sup> *Id.* at 4714; *see also* Proposed Rule, Reporting Requirements for Contract Markets, Futures Commission Merchants, Clearing Members and Traders, 50 FR 30450-01, 30452 (Jul. 26, 1985).

<sup>34</sup> 51 FR at 4714.

<sup>35</sup> 17 CFR 17.00(g) (1986). "Cobol" refers to Common Business Oriented Language.

<sup>36</sup> 17 CFR 15.00(1) (1986); *see also* 51 FR at 4714. By 1995, the Commission received 95 percent of its futures large trader data through dial-up transmission or on machine-readable media. *See* Proposed Rule, Futures Commission Merchants, Clearing Members and Foreign Brokers; Option Large Trader Reports Daily Filing Requirements, 61 FR 37409-01, 37411 (Jul. 18, 1996).

<sup>37</sup> *See* Final Rule, Recordkeeping: Reports by Futures Commission Merchants, Clearing Members, Foreign Brokers, and Large Traders, 85 FR 24026, 24028 (May 2, 1997).

<sup>38</sup> *See* Final Rule, Reporting Levels and Recordkeeping, 69 FR 76392-01, 76394 (Dec. 21, 2004).

<sup>39</sup> *See id.* at 76394.

Technology for financial reporting has further advanced since the 1990s. As a result, the record format for § 17.00(a) large trader reports has become outdated.

First, the Cobol Language submission standard embedded in current § 17.00(g) is outdated. No other CFTC reporting regime relies in the same manner on a Cobol Language submission standard today.<sup>40</sup> Outside of the Part 17 context, the Commission has transitioned to more modern data submission standards, such as Financial Products Markup Language (“FpML”),<sup>41</sup> the Financial Information eXchange (“FIX”) Protocol or Financial Information eXchange Markup Language (“FIXML”),<sup>42</sup> and other submission standards using extensible markup language (“XML”).<sup>43</sup> XML standards have the ability to capture complex or customizable information about products<sup>44</sup> beyond the capabilities of the simpler Cobol Language used in the current § 17.00(g) standard. The Commission converted reporting for transaction data reporting by DCMs to an FIXML standard in the 2009 to 2010 period.<sup>45</sup> XML-based standards like FpML and FIXML both have been widely used by market participants and regulators to represent financial data for purposes of electronically messaging and confirming derivatives trades since at least 2011.<sup>46</sup>

Second, the current § 17.00(g) record format has grown error-prone. Correcting errors in § 17.00(a) data is burdensome for both Commission staff and industry.

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<sup>40</sup> In 2004, the Commission removed a Cobol Language record format used for special calls under regulation 21.02 as part of the process of modernizing the rules covering data and hard copy submissions to the Commission under Parts 15 through 21. *See id.* at 76400 (removing regulation 21.02).

<sup>41</sup> FpML is a freely-licensed business information exchange standard for derivatives. *See* FpML, “What is FpML®?,” *available at* <https://www.fpml.org/about/what-is-fpml/> (last visited April 26, 2023).

<sup>42</sup> *See* FIX Trading, “What is FIX?,” *available at* <https://www.fixtrading.org/what-is-fix/> (last visited April 26, 2023).

<sup>43</sup> *See, e.g.,* Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (June 22, 2015), *available at* <https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/ltrguidebook062215.pdf> (incorporating FpML and FIXML data standards for Part 20 reporting); CFTC Technical Specification, Parts 43 and 45 swap data reporting and public dissemination requirements, Version 3.0 (Sept. 30, 2021), *available at* [https://www.cftc.gov/media/6576/Part43\\_45TechnicalSpecification093021CLEAN/download](https://www.cftc.gov/media/6576/Part43_45TechnicalSpecification093021CLEAN/download) (incorporating FIXML data standard for Parts 43 and 45 reporting).

<sup>44</sup> *See id.*

<sup>45</sup> *See* Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009).

<sup>46</sup> *See* CFTC and SEC, “Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives,” at 11 (Apr. 7, 2011), *available at* [https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfstudy\\_algo\\_040711.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfstudy_algo_040711.pdf).

Uncorrected errors in such data impair the Commission's ability to utilize data for surveillance and market analysis. In addition to relying on data reported under § 17.00(a) for market surveillance, the Commission generates the weekly COT report based on such data.<sup>47</sup> Because the current § 17.00(g) record format does not support automated data quality checks from the Commission back to reporting firms, Commission staff must manually contact reporting firms to address errors, which has proven time-consuming and inefficient. Reporting firms must, in turn, submit error corrections. This error correction process puts the timeliness of the COT report in jeopardy. The error correction process also imposes costs on the Commission and on industry that could be reduced or avoided if the Commission were able to implement automated data quality checks.

Third, data received in the § 17.00(g) record format is difficult to query outside of ISS, limiting staff's flexibility in working with this data and impeding staff's ability to integrate this data with other data housed outside of ISS.

Fourth, new contract features have been introduced to the market since the last revisions to § 17.00(g), including certain features which are in some cases not readily susceptible to representation in § 17.00(g)'s current 80-character record format. For example, the current § 17.00(g) submission standard contains a single data field that allows the reporting firm to indicate the strike for an option position, but cannot accommodate reporting strikes for a bounded option position—a position in a contract that has both an upper and lower strike—in that single data field. To accommodate data reporting for such contracts, the Commission must undertake additional manual work, including ingesting supplemental data reports. This is time-consuming, inefficient, and introduces unnecessary risks of error.

In light of the above, the Commission is proposing to amend Part 17 to (1) remove the outdated 80-character record format and replace it with provisions that

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<sup>47</sup> See, e.g., 46 FR at 59961 n.6.

delegate to staff the authority to designate a modern data submission standard, and (2) replace the data fields represented in the 80-character record format with an appendix of applicable data elements and a Part 17 Guidebook to provide the form and manner for submitting data reports. In introducing an appendix of applicable data elements, the Commission also proposes to add data elements necessary to represent positions in certain innovative contracts in § 17.00(a) reports and to indicate the types of transactions that resulted in day-to-day changes in positions as described below.

## **II. Proposed Rules**

### *A. Sections 17.00(g), 17.00(h), and 17.03(d)—Submission Standard*

As discussed above, the current § 17.00(g) record format has become outdated, error-prone, and difficult to use. The Commission is proposing amendments to remove § 17.00(g)'s current, outdated 80-character record format and to replace it with provisions that allow the Commission to implement modern data submission standards.<sup>48</sup>

Specifically, the Commission proposes to remove current § 17.00(g)'s 80-character record format and amend § 17.03(d) to delegate authority to the Director of the Office of Data and Technology to designate a submission standard for reports required under § 17.00(a). That submission standard would be published in a Part 17 Guidebook. The Commission proposes replacing current § 17.00(g) with a provision requiring that a report under § 17.00(a) include all applicable data elements specified in a proposed Appendix C to Part 17, and be submitted in the form and manner provided in the Part 17 Guidebook. Delegated authority would facilitate implementing a submission standard that accommodates technological advances and provides efficiencies to market participants required to submit reports required by § 17.00(a).

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<sup>48</sup> 17 CFR 17.00(g).

## **1. Removal of the § 17.00(g) Record Format and Delegation of Authority to the Office of Data and Technology to Require Modern Submission Standards**

As discussed above, the current § 17.00(g) record format has become outdated. The Cobol Language submission standard is used nowhere else in CFTC reporting, as the Commission has otherwise transitioned to more modern data submission standards for data reporting across its reporting regulations.<sup>49</sup> That record format is also error-prone and difficult to query outside of ISS, rendering large trader position data difficult to integrate with other Commission data. And, that submission standard lacks the flexibility to accommodate certain features of innovative contracts.

To replace the current § 17.00(g) record format, the Commission proposes to revise §§ 17.00(g) and 17.03(d) to explicitly delegate authority to the Director of the Office of Data and Technology to determine the form and manner for reporting data required to be reported under § 17.00(a), including to establish the data submission standard for such reports. Concurrently with the issuance of this notice, the Office of Data and Technology has published a proposed Part 17 Guidebook on the Commission's website, <https://www.cftc.gov>. The proposed Part 17 Guidebook will specify the data submission standard for reports required under § 17.00(a), among other things. Such an approach is consistent with the Commission's practice in other data reporting regimes.<sup>50</sup>

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<sup>49</sup> See, e.g., See Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009) (regulation 16.02 data to be reported in FIXML); Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (June 22, 2015), available at <https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/ltrguidebook062215.pdf> (incorporating FpML and FIXML data standards for Part 20 reporting); CFTC Technical Specification, Parts 43 and 45 swap data reporting and public dissemination requirements, Version 3.0 (Sept. 30, 2021), available at [https://www.cftc.gov/media/6576/Part43\\_45TechnicalSpecification093021CLEAN/download](https://www.cftc.gov/media/6576/Part43_45TechnicalSpecification093021CLEAN/download) (incorporating FIXML data standard for Parts 43 and 45 reporting).

<sup>50</sup> See, e.g., 17 CFR 45.15(a)(2) (delegating authority to staff to determine whether to require reporting swap data using one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), to accommodate the needs of different communities of users); 17 CFR 20.8(d) (delegating authority to staff to provide instructions or determine the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required for large trader swaps reporting under Part 20).

To facilitate adaptation to modern data standards, the Commission has delegated authority to the Divisions to determine which data standards to permit or require in order to accommodate the needs of different communities of users.<sup>51</sup> The Divisions exercise delegated authority through the publication of guidebooks or technical specifications that set out the form, manner, and timing for reporting data.

The proposed Part 17 Guidebook specifies that reporting firms submit § 17.00(a) data in FIXML format. In its other reporting regimes, the Commission typically requires modern XML submission standards, such as FpML<sup>52</sup> or FIXML.<sup>53</sup> Receiving Part 17 data in a modern submission format comparable to that used in the submission of other datasets the Commission relies on would enable staff to more easily analyze Part 17 data outside of ISS and to more easily integrate Part 17 data with other Commission datasets. Notably, the Commission receives Trade Capture Reports and Ownership and Control Reports in a FIXML format.<sup>54</sup> Section 17.00(a) position data can be linked to § 16.02 transaction data through ownership and control data required to be reported under § 17.01.<sup>55</sup> Receiving § 17.00(a) position data via FIXML and storing the same in ISS

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<sup>51</sup> See, e.g., 17 CFR 20.8; 17 CFR 45.11; 17 CFR 45.15(a)(2).

<sup>52</sup> See, e.g., Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for Part 20 Reports (June 22, 2015), available at <https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/ltrguidebook062215.pdf> (permitting submission using FpML).

<sup>53</sup> See, e.g., *id.* (permitting submission of Part 20 reports using FIXML); see also See Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009) (FIXML is used for reporting transaction data for futures and options reporting under regulation 16.02). FIXML is an XML standard using the Financial Information eXchange Protocol (“FIX”); see also Notice of Proposed Rulemaking, Account Ownership and Control Report, 75 FR, 41775, 41784 (July 19, 2010) (“Reporting entities should submit the [ownership and control reports required under regulation 17.01] weekly, in FIXML . . .”); see also Notice of Proposed Rulemaking, Reporting and Information Requirements for Derivatives Clearing Organizations, 87 FR 76698, 76704 (Dec. 15, 2022) (addressing use of FIXML standard for daily reporting required of derivatives clearing organizations).

<sup>54</sup> See Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009) (FIXML scheduled to be implemented for Trade Capture Reports in 2009); Notice of Proposed Rulemaking, Account Ownership and Control Report, 75 FR, 41775, 41784 (July 19, 2010) (“Reporting entities should submit the [ownership and control reports required under regulation 17.01] weekly, in FIXML . . .”).

<sup>55</sup> 17 CFR 17.01. Trade Capture Reports contain trade and related order book data at the transaction level organized by trading account numbers, but do not generally contain biographical information for the owners of those trading accounts. See Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009). Such biographical information is provided separately through Ownership and Control Reports, which are submitted for special accounts identified under Part 17. See *id.*

would facilitate linking ISS data to Trade Capture Report data stored in the Commission's Trade Surveillance System ("TSS"). Adopting an XML-based standard for large trader position reports required under § 17.00(a) should also improve data quality by reducing the rate of errors.

The Commission has previously recognized the importance of flexibility with respect to promulgating reporting submission standards to accommodate technological advances. For example, for Part 17 reporting, the Commission previously revised the definition of "compatible data-processing media" to remove enumeration of specific media in part because it was impractical to define the term by regulation since electronic media were evolving at such a rapid pace.<sup>56</sup> Elsewhere, for swaps large trader reporting under Part 20, the Commission delegated to staff the authority to provide instructions for and determine the format, coding structure, and electronic data transmission procedures for submitting data records in order to allow the Commission to respond to changing market and technological conditions for the purpose of ensuring timely and accurate data reporting.<sup>57</sup> Such an approach allows the Commission to consult with market participants and update reporting submission standards to remain consistent with industry best practices.<sup>58</sup>

Amending §§ 17.00(g) and 17.03(d) to facilitate implementation of a modern data submission standard should also simplify reporting for reporting firms. Although updating submission standards will require technological changes for reporting firms, the Commission believes that eliminating the use of the unique § 17.00(g) record format and replacing it with a more commonly-used submission standard may result in more efficient reporting. Additionally, using a modern submission standard should facilitate automated

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<sup>56</sup> 62 FR at 24028; 17 CFR 15.00(d) (defining "compatible data processing media" as data processing media approved by the Commission or its designee).

<sup>57</sup> Final Rule, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851, 43857 (Jul. 22, 2011).

<sup>58</sup> See, e.g., 76 FR at 43857 n.20 (explaining that "the Commission anticipates consulting with clearing organizations and reporting entities before determining the format, coding structure, and electronic data transmission procedures" for Part 20 reports).

data quality checks from the Commission back to reporting firms, which should reduce burdens associated with correcting data errors and the time necessary to complete the correction process. A more efficient error correction process will also, in turn, assist staff in timely generating the weekly COT report. The Commission invites comments on all aspects of the proposed Part 17 Guidebook in addition to comments on this notice of proposed rulemaking.

## **2. Secure FTP Feed Versus Portal Submission**

The Commission recognizes that reporting firms' technological capabilities may vary based on relative size and experience of a given reporting firm. For example, the Commission understands that today, although some firms have automated the process for creating reports required by § 17.00(a), other firms manually create those reports. Accordingly, the proposed Part 17 Guidebook offers two submission methods for § 17.00(a) data: (a) an XML-based, secure file transfer protocol ("FTP") data feed, and (b) a web-based portal to ingest manual submissions. The Commission anticipates that such an approach will provide greater flexibility to reporting firms. Reporting firms may consider their existing data reporting infrastructure and the volume of reports they expect to submit, among other factors, when selecting their preferred submission method. The proposed Part 17 Guidebook provides detailed instructions for submitting under each method.

## **3. Delegation of Authority to Determine the Form and Manner for Error Corrections**

Current § 17.00(h) provides that, unless otherwise approved by the Commission or its designee, corrections of errors and omissions in data required to be reported under § 17.00(a) shall be filed on series '01 forms or in the format, coding structure and data transmission procedures approved in writing by the Commission or its designee.<sup>59</sup>

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<sup>59</sup> 17 CFR 17.00(h).

Consistent with the Commission’s proposal to revise Part 17 to modernize the reporting of data under § 17.00(a), the Commission proposes updating the submission standard for error corrections to mirror the submission standard for the data to be corrected.

Today, reporting firms submit error corrections using the current § 17.00(g) record format.<sup>60</sup> Upon receipt of a correction, staff replaces the original, erroneous record with the corrected record. Staff will employ a similar process to ingest error corrections following the proposed removal of the current § 17.00(g) record format, such that corrected and omitted data will be submitted using the new data submission standard published by the Office of Data and Technology in the proposed Part 17 Guidebook pursuant to delegated authority.<sup>61</sup>

Currently, staff manually notifies reporting firms when it identifies errors in § 17.00(a) reports submitted by those firms. Following implementation of this proposal, the Commission expects to automate this process to notify reporting firms of errors on the same day erroneous reports are submitted. The Commission expects automating this process will facilitate more rapid corrections to reported data, which will improve the quality of the data used by Commission staff.

#### Request for Comment

The Commission requests comments on all aspects of the proposed changes to regulations in Part 17, including proposed changes to §§ 17.00(a), 17.00(g) and 17.03(d). The Commission requests specific comment on the following:

(1) The advantages and disadvantages of the proposed Part 17 Guidebook requiring a FIXML submission standard for reports required under § 17.00(a), including

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<sup>60</sup> Reports that correct errors or omissions populate the “Record Type” data field with a character that identifies that the submitted record corrects an error or omission and provides further information about that correction. *See* 17 CFR 17.00(g)(2)(xiv).

<sup>61</sup> As discussed below, the Commission proposes to retain the current “Record type” data field as a data element that will serve to identify reports that correct errors or omissions.

with respect to data quality, implementation costs, and ongoing costs post-implementation.

(2) The proposal to permit reporting firms to submit § 17.00(a) large trader position reports through the Commission's web-based portal as an alternative to submission by secure FTP.

(3) The advantages and disadvantages of correcting errors in data required to be reported under § 17.00(a) in the manner provided in the proposed Part 17 Guidebook, including with respect to data quality, implementation costs, and ongoing costs post-implementation.

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

**1. Appendix C**

As discussed above, in order to facilitate implementation of a modern submission standard, the Commission proposes removing the record format set out in § 17.00(g). Removing that record format will remove the data fields as well. To replace the data fields proposed to be deleted from § 17.00(g), the Commission proposes to add an Appendix C to Part 17 specifying required data elements and defining those elements. Enumerating required data elements in an appendix is consistent with the approach taken for certain other Commission data reporting regulations.<sup>62</sup> In addition to retaining the data currently required to be reported under § 17.00(a), proposed Appendix C would provide revised definitions and add certain data elements not currently required by the § 17.00(g) record format.

The Commission is proposing to remove the definitions set out in current § 17.00(g)(2). The Commission is proposing to include related definitions in Appendix C, revised to remove language providing the form and manner for reporting data. Given that the current § 17.00(g) record format will be removed from the rule and updated guidance

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<sup>62</sup> See, e.g., 17 CFR Part 20 App'x B; 17 CFR Part 43 App'x A; 17 CFR Part 45 App'x 1.

on the form and manner for reporting will be required, certain of the § 17.00(g)(2) definitions contain language that would become superfluous. For example, for the “Report Type” data element, the Commission is proposing not to include in Appendix C the portion of the definition that specifies that “[v]alid values” to submit include “RP” for reporting positions, “DN” for reporting notices, and “EP” for reporting exchanges of futures for a commodity or for a derivatives position.<sup>63</sup>

Rather than specifying the form and manner for reporting the § 17.00(a) data elements in the rule, the Commission is proposing to delegate authority to determine the form and manner for reporting each data element to the Director of the Office of Data and Technology. To implement this delegation of authority, the Commission is proposing to amend § 17.03(d) to provide that the Director of the Office of Data and Technology would specify the form, manner, coding structure, and electronic data transmission procedures for reports and submissions under § 17.00(a). The proposed Part 17 Guidebook would set forth the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in proposed Appendix C to Part 17, and to determine whether to permit or require one or more particular data standards.

Providing form and manner requirements through a Part 17 Guidebook would bring the Part 17 framework in line with reporting under Parts 16, 20, 43, and 45, for which, rather than embedding technical reporting details into regulation text, the Commission has delegated authority to staff to set the form and manner for reporting outside of the regulation text through a published technical specification or guidebook.<sup>64</sup>

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<sup>63</sup> 17 CFR 17.00(g)(2)(i).

<sup>64</sup> *See, e.g.*, 17 CFR 16.07(c), (d) (delegating authority to staff to approve the format, coding structure and electronic data transmission procedures used by reporting markets and to determine the specific content of any daily trade and supporting data report); 17 CFR 20.2(d) (delegating authority to staff for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part); 17 CFR 43.7(a) (delegating authority to staff to publish the technical specification providing the form and manner for reporting and publicly disseminating the swap transaction and pricing data elements in appendix A of Part 43); 17 CFR 45.15(b)(1) (delegating authority to staff to publish the technical specifications providing the form and manner for reporting the swap data elements in appendix 1 to Part 45 to swap data repositories).

Implementing form and manner requirements through a Part 17 Guidebook will facilitate the Commission's ability to respond to changing market conventions and technological conditions, to harmonize submission standards with those of other authorities,<sup>65</sup> and to accommodate the introduction of innovative products.

As discussed above, concurrently with the issuance of this notice, the Commission has published a proposed Part 17 Guidebook on its website, <https://www.cftc.gov>. Commenters are invited to comment on both the data submission standard in the proposed Part 17 Guidebook and on the data elements in proposed Appendix C.

#### Request for Comment

The Commission requests comments on all aspects of the proposed Part 17 Guidebook published at the time of publication of this notice of proposed rulemaking.

## **2. Data Elements in Appendix C**

Proposed Appendix C will maintain certain data elements included in the current § 17.00(g) record format, revise certain data elements included in the current § 17.00(g) record format, and add certain data elements not previously included in the § 17.00(g) record format. The proposed additional data elements capture information not captured by the current § 17.00(g) record format that is necessary to fulfill the Commission's surveillance and market analysis missions. The form and manner for reporting each of these data elements would be set forth in the proposed Part 17 Guidebook. The Commission invites comment on any of the data elements proposed in Appendix C. This section discusses these data elements below by category.

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<sup>65</sup> Final Rule, Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503, 75535 (Nov. 25, 2020) ("The Commission . . . believes delegation to DMO will benefit data element harmonization."); *see also* Final Rule, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851, 43857 (Jul. 22, 2011) (the purpose of delegating authority to staff to provide "instructions for determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under [Part 20] . . . is to facilitate the ability of the Commission to respond to changing market and technological conditions for the purpose of ensuring timely and accurate data reporting").

First, proposed Appendix C includes data elements currently captured by the fields in the current § 17.00(g) record format. In some instances, those data elements are revised to account for the introduction of a modern data submission standard. Second, proposed Appendix C includes data elements necessary to facilitate a modern, XML-based data submission standard, including data elements used to manage ingestion of data, such as “Total Message Count” and “Message Type.” Third, proposed Appendix C would add data elements necessary to capture product-identifying information not captured by the current record format, such as “Ticker Symbol” as well as certain data elements necessary to capture information to represent innovative contracts such as “bounded contracts,” options expiring to baskets of futures, and other novel contracts. The current record format does not allow reporting firms to represent all economically material terms of such contracts, and as a result the Commission is in some instances unable to determine whether certain special accounts carry positions in the same or different products. Fourth, proposed Appendix C would add data elements necessary to capture accurate information concerning changes in positions of special accounts that is not available in current § 17.00(a) large trader reporting but would benefit the Commission’s surveillance programs and market analysis.

#### **a. Category 1: Currently Reported Data Elements**

Proposed Appendix C retains data elements capturing certain of the information currently captured by § 17.00(g)’s 80-character record format.<sup>66</sup> The 80-character record format captures certain information necessary to process data,<sup>67</sup> information concerning

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<sup>66</sup> These fields would include (1) Data Element #7 Record Type (Action), (2) Data Element #8 Report Date, (3) Data Element #9 (Reporting Firm ID), (4) Data Element #11 Account ID, (5) Data Element #12 Exchange Indicator, (6) Data Element #13 Commodity Clearing Code, (7) Data Element #16 Maturity Month Year, (8) Data Element #20 Strike Level, (9) Data Element #26 Put or Call Indicator, (10) Data Element #27 Exercise Style, (11) Data Element #30 Underlying Contract ID, (12) Data Element #31 Underlying Maturity Month Year, (13) Data Element #32 Long Position, (14) Data Element #33 Short Position, (15) Data Element #38 Delivery Notices Stopped, and (16) Data Element #39 Delivery Notices Issued.

<sup>67</sup> For example, “Report Date,” and “Record Type.” 17 CFR 17.00(g)(1).

the reporting firm and special account,<sup>68</sup> product-identifying information,<sup>69</sup> and information concerning the direction or nature of the trades underlying the position.<sup>70</sup>

Proposed Appendix C calls for certain of this information in a different format than currently provided. For example, whereas the current § 17.00(g) record format captures information concerning whether a position is long or short in a single field, proposed Appendix C would capture long and short positions using separate data elements (“Long Position” and “Short Position”). Similarly, whereas the current § 17.00(g) record format identifies exchanges of futures for related positions using a single “Report type” field, proposed Appendix C would capture information concerning such exchanges in greater granularity through several data elements. As discussed further below, this greater granularity will facilitate Commission market surveillance and analysis programs.

#### **b. Category 2: XML Implementation and Data Processing**

Proposed Appendix C calls for certain data elements to facilitate processing of data.<sup>71</sup> Such data elements generally do not correspond to analogous data elements in § 17.00(g)’s record format. These include data elements concerning the submission of messages to the Commission, data elements identifying the sender and special account controller, and data elements identifying the date and time of the report. This information is necessary to enable the Commission to track and manage reports received using an XML submission standard.

The “Special Account Controller LEI” data element captures the legal entity identifier (“LEI”) of the account controller. An LEI is a unique code assigned to an

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<sup>68</sup> For example, “Reporting Firm” and “Account Number.” 17 CFR 17.00(g)(1).

<sup>69</sup> For example, “Commodity Code,” “Expiration Date,” and “Exchange Code.”

<sup>70</sup> For example, “Report type,” “Put or Call,” “Strike Price,” “Exercise Style,” “Long – Buy – Stopped,” and “Short – Sell – Issued.”

<sup>71</sup> These fields would include (1) Data Element #1 Total Message Count, (2) Data Element #2 Message Type, (3) Data Element #3 Sender ID, (4) Data Element #4 To ID, (5) Data Element #5 Message Transmit Datetime, (6) Data Element #6 Report ID, and (7) Data Element #10 Special Account Controller LEI.

entity in accordance with the standards set by the Global Legal Identifier System.<sup>72</sup> The “Special Account Controller LEI” data element would allow the Commission to link data reports submitted under § 17.00(a) with other data reports concerning the same counterparty. The Commission notes that not all special account controllers possess a legal entity identifier, or “LEI.” Some special account controllers may be ineligible to receive an LEI. For example, it is highly likely that a natural person who controls a special account would be unable to obtain an LEI.<sup>73</sup> For clarity, the Commission expects the “Special Account Controller LEI” data element will be conditional—an LEI must be reported for special accounts for which the special account controller is eligible to receive an LEI, but an LEI need not be reported for special accounts for which the special account controller is ineligible for an LEI. For such accounts, the Commission will receive identifying information via Form 102A.

### **c. Category 3: Product Identification**

Proposed Appendix C calls for reporting of certain data elements that, where applicable, are necessary to identify and distinguish the futures or option contract pertaining to the reported position. Specifically, additional data elements are necessary to draw more granular distinctions between certain contracts for reportable positions,<sup>74</sup> to accommodate reporting of positions in bounded or barrier contracts,<sup>75</sup> to accommodate

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<sup>72</sup> The Global Legal Identifier System was established by the finance ministers and the central bank governors of the Group of Twenty nations and the Financial Stability Board. *See* Charter of the Regulatory Oversight Committee For the Global Legal Entity Identifier System, available at [https://www.lei.org/publications/gls/roc\\_20190130-1.pdf](https://www.lei.org/publications/gls/roc_20190130-1.pdf).

<sup>73</sup> The Commission has elsewhere discussed this issue in regulations concerning reporting of swap data. *See, e.g.*, Final Rule, Swap Data Reporting and Recordkeeping, 85 FR 75503, 75520 (Nov. 25, 2020).

<sup>74</sup> These fields would include (1) Data Element #14 Product Type, (2) Data Element #15 Ticker Symbol, (3) Data Element #17 Maturity Time, (4) Data Element #18 Listing Date, and (5) Data Element #19 Earliest Exercise Date.

<sup>75</sup> These fields would include (1) Data Element #22 Cap Level, (2) Data Element #23 Floor Level, (3) Data Element #24 Bound or Barrier Type, (4) Data Element #25 Bound or Barrier Level, (5) Data Element #28 Payout Amount, and (6) Data Element #29 Payout Type.

reporting of positions in contracts with non-price or non-numeric strikes,<sup>76</sup> and to accommodate reporting of positions in other innovative contracts.<sup>77</sup>

*Distinguishing Products.* Certain additional fields are necessary to precisely identify the product for a reported position. When § 17.00(g) was promulgated and revised in the 1980s and 1990s, exchanges listed a less diverse array of futures and options contracts than those available today. More granular data is required to distinguish among products in today's futures and options markets. Section 17.00(g)'s current record format allows the Commission to identify the product for a given position based on a combination of data points that indicate whether the product is a futures or option contract and identify the underlying commodity. That record format, however, is limited. For example, that record format allows the Commission to identify the underlying commodity through a "Commodity Code" field, which is populated with an exchange-assigned code corresponding to a relevant underlier.<sup>78</sup> However, the "Commodity Code" field does not currently enable the Commission to draw more granular distinctions between products that reference the same commodity but have material differences. A proposed "Product Type" field would allow the Commission to differentiate between futures and options contracts that use the same "Commodity Code" without separately relying on other reported fields, which may be insufficient to adequately distinguish between products in some instances.<sup>79</sup> A proposed "Ticker Symbol" field would provide the Commission with the published ticker symbol

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<sup>76</sup> These fields would include Data Element #21 Alpha Strike, as well as transposing the "Strike Price" field in the current regulation 17.00(g) record format to Data Element #20, "Strike Level," in proposed Appendix C.

<sup>77</sup> For example, Data Element #50 Product-Specific Terms.

<sup>78</sup> 17 CFR 17.00(g)(2)(vii) (the "Commodity" field reflects an exchange-assigned commodity code for the futures and options contract).

<sup>79</sup> The Commission proposes to retain the "Commodity Code" field, but to rename it to "Commodity Clearing Code," which more accurately reflects industry terminology and provides consistency in labeling between reports provided under Part 17 and Part 16.

associated with the product on the listing contract market.<sup>80</sup> Proposed Appendix C would provide for “Maturity Month Year” and “Underlying Maturity Month Year” data elements, where applicable, to be populated with a specific day when necessary to characterize a product.<sup>81</sup> Similarly, a “Maturity Time” data element, where applicable, would be populated with the expiration time of an option or last trading time of a future for contracts that have multiple expiration times within a single day. A “Listing Date” data element, where applicable, would be populated with the listing date for options that had early expirations and were relisted with identical strikes and expirations, allowing the Commission to distinguish between tranches of closely related contracts. Absent such a field, different tranches of certain options contracts might be indistinguishable in ISS.<sup>82</sup> An “Earliest Exercise Date” data element would provide, where applicable, the date when American or Bermuda options<sup>83</sup> may be exercised, which would assist the Commission in identifying more complex positions.

*Bounded or Barrier Contracts.* Certain of these data elements are necessary to accurately report “bounded”<sup>84</sup> or “barrier”<sup>85</sup> contracts, including “Cap Level,” “Floor Level,” and “Bound or Barrier Level,” as the current § 17.00(g) record format does not

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<sup>80</sup> Ticker symbols typically include a product code consisting of a multi-letter code assigned to the underlier, a month code consisting of a single alphabetical character assigned to a month or quarter, and a year code consisting of a numerical code representing a particular year.

<sup>81</sup> This responds to the advent of certain futures and options contracts with more varied maturity or expiration dates.

<sup>82</sup> If a DCM lists an option that settles based on the occurrence of a specified event—as opposed to expiring at a future time that is certain at the time the contract is executed—and that specified event may occur serially at multiple times, a “Listing Date” data element would permit the Commission to distinguish between iterations of that contract as it is re-listed following expirations.

<sup>83</sup> An American Option is an option that can be exercised at any time prior to or on the expiration date. *See* CFTC, Futures Glossary, *available at* <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm> (last visited April 26, 2023). A Bermuda Option is an option which can be exercised on a specified set of predetermined dates during the life of the option. *See id.* In contrast, a European Option is an option that may only be exercised on the expiration date. *See id.*

<sup>84</sup> A bounded futures contract specifies upper and lower boundaries, which limit short and long interest exposure. *See, e.g.,* Eris Exchange, LLC, “CFTC Regulation 40.2(a) Certification. Notification Regarding the Initial Listing of Eris Exchange Financially Settled Bounded Futures Contract on Bitcoin and Ether” (Aug. 21, 2020), *available at* <https://www.cftc.gov/sites/default/files/filings/ptc/20/08/ptc082420erisdcm001.pdf>.

<sup>85</sup> A barrier option contract specifies a “barrier,” either a price or an event, the occurrence of which triggers either a knock-in or knock-out provision.

accommodate this information. A “Bound or Barrier Type” data element would be necessary to identify the behavior of a product when it hits a bound or barrier, including to distinguish between “knock-in,” “knock-out,” and capped products.<sup>86</sup> Receiving data sufficient to understand the economics of bounded and barrier contracts would, among other things, support the Commission’s surveillance program. Position data that more completely reflects the economics of positions in bounded or barrier options would provide the Commission with greater insight into, for example, potential cross-market manipulation. Where a bounded or barrier contract references the price or value of a contract or commodity listed in another market, a manipulative trader may trade in that other market for the purpose of influencing the price or value of that contract in order to hit or avoid a bound or barrier for an options position held in the first market.

To obtain comprehensive data concerning positions in bounded and barrier contract and certain binary option contracts based on the occurrence or non-occurrence of a specified event, proposed Appendix C also includes “Payout Amount” and “Payout Type” data elements. The proposed “Payout Amount” data element is intended to capture a cash amount of the payout associated with a product where that amount may not otherwise be determined based on reported data. The proposed “Payout Type” data element would allow the Commission to distinguish between vanilla, capped, binary, and other options that use the same Commodity Clearing Code.

*Non-Price and Non-Numeric Strike Levels.* Certain of the data elements in Proposed Appendix C are necessary to accurately capture information for options contracts that contain non-price and non-numeric strike levels. Specifically, § 17.00(g)’s

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<sup>86</sup> A knock-in is a provision in an option or other derivative contract whereby the contract is activated only if the price of the underlying instrument reaches a specified level before a specified expiration date. A knock-out is a provision in an option whereby the contract is immediately canceled if the price of the underlying instrument reaches a specified level during the life of the contract. See CFTC, Futures Glossary, available at <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/CFTCGlossary/index.htm> (last visited April 26, 2023).

record format's "Strike Price" field would be converted to two separate data elements: "Strike Level" and "Alpha Strike." These data elements, respectively, would accommodate reporting of certain listed options contracts with non-monetary threshold levels and non-numeric threshold levels. For example, a binary option with U.S. Gross Domestic Product ("GDP") as an underlier would have a non-price strike—a GDP figure. Other contracts that incorporate the occurrence or non-occurrence of a specified event as an underlier might specify as strikes non-numeric units, which would more appropriately be reported as a strike "value," or "Alpha Strike." For example, a binary option with different categories of hurricane landfalls as strike values might include as "Alpha Strikes" different categories of hurricane—for example, "Category 1 or higher" or "Category 2 or higher."

*Product-Specific Terms.* To account for the likelihood that exchanges will introduce contracts that include novel features, proposed Appendix C includes a "Product-Specific Terms" data element. For innovative contracts, this data element would be populated with data reflecting economically material terms of contracts are not otherwise able to be represented in the proposed Appendix C data elements. The data element would not require reporting of any information that is not already separately recorded by a DCM for recordkeeping purposes. Future editions of the proposed Part 17 Guidebook would specify the form and manner of reporting positions in products subject to reporting that includes the "Product-Specific Terms" data element.

Reporting under this data element—as well as certain other data elements designed to represent particular products, such as the aforementioned fields designed to capture terms of bounded and barrier contracts—would only be required to be reported for contracts that cannot otherwise be represented in Part 17 reporting. Put differently, for reporting firms that facilitate trading or clearing of contracts that can be adequately represented in the other data elements in the proposed Part 17 Guidebook, reporting data

pursuant to the “Product-Specific Terms” data element would not be required. Reporting firms that do become involved in trading futures and options contracts for which economically material terms are not otherwise reportable under § 17.00(a) may be required to report such data. Pursuant to the proposed rule, the Director of the Office of Data and Technology would have delegated authority to publish the form and manner of any product-specific terms required to be reported pursuant to this proposed data element.

#### **d. Category 4: Information Concerning Changes in Positions**

Proposed Appendix C would add data elements necessary to capture accurate information regarding changes in positions that is not fully-captured by the current § 17.00(g) record format.<sup>87</sup> Understanding the nature and quantity of transactions that resulted in day-to-day changes in positions of special accounts will provide Commission staff with additional information for surveillance purposes, and will allow Commission staff to link position data reported at the special account level pursuant to § 17.00(a) with transaction data reported at the trading account level under § 16.02.<sup>88</sup> Additionally, information identifying the nature and quantity of transactions that resulted in day-to-day changes in positions of special accounts should provide reporting firms with an additional tool to perform an internal consistency review on data reported under § 17.00(a), and therefore enhance data quality.

Changes in positions are generally effected by buying and selling contracts; the expiration or settlement of contracts, which may result in assignments of contracts; or

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<sup>87</sup> These fields would include (1) Data Element #34 Contracts Bought, (2) Data Element #35 Contracts Sold, (3) Data Element #36 EDRPs Bought, (4) Data Element #37 EDRPs Sold, (5) Data Element #38 Delivery Notices Stopped, (6) Data Element #39 Delivery Notices Issued, (7) Data Element #40 Long Options Expired, (8) Data Element #41 Short Options Expired, (9) Data Element #42 Long Options Exercised, (10) Data Element #43 Short Options Exercised, (11) Data Element #44 Long Futures Assigned, (12) Data Element #45 Short Futures Assigned, (13) Data Element # 46 Long Transfers Sent, (14) Data Element #47 Long Transfers Received, (15) Data Element #48 Short Transfers Sent, and (16) Data Element #49 Short Transfers Received.

<sup>88</sup> DCMs identify traders by account numbers, but certain DCMs do not routinely collect detailed trader-identifying data. *See, e.g.*, Final Rule, Significant Price Discovery Contracts on Exempt Commercial Markets, 74 FR 12178, 12185 (Mar. 23, 2009). The Commission instead generally obtains such trader-identifying data from FCMs, clearing members, and foreign brokers through regulation 17.01. 17 CFR 17.01.

off-exchange transactions, such as block-trades, exchanges of derivatives for related positions (“EDRPs”), and transfers. Although the current § 17.00(g) record format requires reporting of the aggregate of certain EDRPs each day and the total delivery notices issued and stopped via the “Report Type” and “Long-Buy-Stopped (Short-Sell-Issued)”<sup>89</sup> fields, it otherwise does not capture data concerning changes in position. Proposed Appendix C would include data elements necessary to capture this information, as follows.

*Contracts Bought and Sold.* Proposed Appendix C includes data elements to capture “Contracts Bought” and “Contracts Sold.” The current § 17.00(g) record format captures aggregate positions, but does not reflect the amount of buying and selling associated with a particular special account. Obtaining reliable and accurate counts of gross buys and sells associated with a special account would enhance the Commission’s ability to differentiate between large position holders that appear passive and large position holders that also trade in significant quantities of contracts daily.

In addition to contracts bought and sold on-exchange, contracts bought or sold via block trades are included in the sums reported as “Contracts Bought” and “Contracts Sold.” The Commission also expects that contracts acquired through give-ups<sup>90</sup> and allocations will be included in the totals of “Contracts Bought” and “Contracts Sold,” as such contracts would be treated as positions in the carrying accounts through which they are ultimately cleared rather than positions in the accounts that execute the transactions, if such accounts differ from the accounts through which such transactions are cleared.

*Exchanges of Derivatives for Related Positions (EDRPs).* A DCM’s rules may authorize, for bona fide business purposes, privately-negotiated exchanges of derivatives

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<sup>89</sup> 17 CFR 17.00(g)(2)(i), (xi).

<sup>90</sup> The term “give-up” means an order executed by one broker on behalf of another broker which clears and settles the order.

for related positions, or “EDRPs.”<sup>91</sup> As discussed, the current § 17.00(g) record format requires reporting of aggregate EDRPs, but does not provide more granular data necessary to understand whether a position was exchanged for a physical commodity (exchanges for physical, or “EFPs”), exchanged for a swap or other derivative (exchanges for swaps, or “EFSs,” sometimes referred to as exchanges for risk, or “EFRs”), exchanged for an option, or exchanged for some other related position. Proposed Appendix C includes an “Exchanges of Derivatives for Related Positions” data element that is defined to require reporting firms to disaggregate EDRP transactions by type of EDRP in the form and manner for reporting set forth in the proposed Part 17 Guidebook. The proposed Part 17 Guidebook requires reporting firms to disaggregate reporting of EDRPs into EFPs bought and sold, EFSs bought and sold, and exchanges of options for option (“EOOs”) bought and sold.<sup>92</sup>

This would also effect an update to a record format devised largely during the 1970s and 1980s, before EDRPs other than EFPs were commonly used.<sup>93</sup> EFSs, for example, were not explicitly authorized under the CEA until 2000, years after the initial § 17.00(g) record format had been promulgated.<sup>94</sup> In 2004, when the Commission

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<sup>91</sup> See 17 CFR 38.500 (authorizing “exchange[s] of” “[f]utures in connection with a cash commodity transaction,” “[f]utures for cash commodities,” and “[f]utures for swaps”). In practice, such transactions are often referred to as “exchanges of futures for related positions” or “EFRPs.” The Commission has used the terminology “exchanges of derivatives for related positions” or “EDRPs” because it believes this is a more accurate and descriptive term given it includes transactions not limited to futures, such as swaps. Noticed of Proposed Rulemaking, Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572, 80593 (Dec. 22, 2010).

<sup>92</sup> The Commission believes these three categories of EDRPs capture current market practices, but recognizes the possibility that a DCM or DCMs may, in the future, introduce additional EDRPs. For example, DCMs could conceivably permit exchanges of futures for futures. See, e.g., 75 FR at 80588 (recognizing that the term “exchanges of derivatives for related position” describes a panoply of off-exchange transactions currently offered by DCMs including, in addition to EFPs and EFSs, exchanges of futures for futures). The Commission expects that if any DCM revises its rulebook to permit an additional type of EDRP transaction, reporting firms would also submit disaggregated data reflecting changes of position effected through that type of EDRP transaction. For example, if a DCM revised its rulebook to permit exchanges of futures for futures, the proposed Part 17 Guidebook would be updated to facilitate reporting firms submitting information reflecting changes in positions resulting from exchanges of futures for futures.

<sup>93</sup> Cf. CFTC, Division of Trade and Markets: Report on Exchange of Futures for Physicals (1987) (analysis of EFPs published in 1987, relying in part on data reported pursuant to regulation 17.00(a)).

<sup>94</sup> See, e.g., Concept Release, Regulation of Noncompetitive Transactions Executed on or Subject to the

amended the § 17.00(g) record format to require reporting of EDRPs generally, including EFSs, rather than just EFPs, it did not require reporting firms to distinguish among these different types of transactions, but rather required that such reporting group together all EFPs, EFSs, EFRs, EFOs<sup>95</sup> or other exchanges of futures for a commodity or for a derivatives position permitted by exchange rules, and report the sum under the same category.<sup>96</sup> At the time, the Commission found this to be “an appropriate approach because all of these trades are similar in that they permit the exchange of a futures position for an off-exchange position.”<sup>97</sup> The Commission now, based on experience surveilling EDRP practices in futures and options markets, proposes to require more granular differentiation in reporting of different types of EDRPs. More granular differentiation between the types of off-exchange transactions that effect changes in positions will provide a better understanding of the methods by which traders exit and enter positions. In particular, disaggregated EDRP data allows staff to confirm market integrity when there are concerns about a potential squeeze or other matters near the expiration of the physical delivery contract.

*Expirations and Settlement of Contracts.* In addition to EDRP counts and counts of contracts bought and sold, proposed Appendix C would add data elements necessary to capture expirations and settlements, including whether options were exercised and contracts assigned. Proposed Appendix C would capture such information in “Delivery Notices Stopped,” “Delivery Notices Issued,” “Long Options Expired,” “Short Options Expired,” “Long Options Exercised,” “Short Options Exercised,” “Long Futures

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Rules of a Contract Market, 63 FR 3708 (Jan. 26, 1998) (requesting comment on whether Commission regulations should be modified in order to permit EFSs and exchanges of futures for options); Proposed Rules, Execution of Transactions: Regulation 1.38 and Guidance on Core Principle 9, 69 FR 39880, 39881 (July 1, 2004) (proposing amendments to regulation 1.38 to permit DCMs to allow exchanges of futures for another derivatives position following the Commodity Futures Modernization Act of 2000 amending the CEA to “specifically allow[] the exchange of futures for swaps”); *see also* 7 U.S.C. 7(b)(3).

<sup>95</sup> “EFOs” refers to “exchanges of futures for options.” Final Rule, Reporting Levels and Recordkeeping, 69 FR 76392, 76394 (Dec. 21, 2004).

<sup>96</sup> 69 FR at 76395.

<sup>97</sup> *Id.*

Assigned,” and “Short Futures Assigned” data elements. The current § 17.00(g) record format captures information concerning delivery notices stopped and issued, but does not capture information concerning changes in positions due to option expirations and exercises.

*Transfers.* The Commission also proposes to include “Long Transfers Sent,” “Long Transfers Received,” “Short Transfers Sent,” and “Short Transfers Received” data elements to capture transfers of contracts that effect a change in position in a special account. This information is not directly captured by the current § 17.00(g) record format.

*Internal Consistency Check for Data Concerning Changes in Position.* The inclusion in reports required under § 17.00(a) of data elements reflecting counts of transactions that resulted in day-to-day changes in positions would enable reporting firms to perform internal consistency checks on position reports before submitting those reports. Specifically, the day-to-day change in the size of a position for a particular special account should equal the net value of contracts bought and sold, EDRPs bought and sold, expirations and assignments of contracts, and transfers.

#### Request for Comment

The Commission requests comment on all aspects of proposed Appendix C, including the proposed data elements enumerated therein. The Commission requests specific comment on the following:

(4) Are there any data elements not included in proposed Appendix C that commenters believe are necessary to obtain a complete and accurate picture of positions held by large traders? If so, please identify such data elements.

(5) Are there any transactions that would effect changes in positions that are not accounted for by the Data Elements discussed in Section II.B.2.d above? If so, please identify such transactions.

(6) Are there any data elements proposed to be added in Appendix C that commenters believe are not necessary to obtain a complete and accurate picture of positions held by large traders? If so, please identify such data elements and explain why.

### **III. Compliance Date**

The Commission understands that market participants would require sufficient time to revise or build infrastructure to submit data required under § 17.00 using the proposed new submission standard. In addition, given that proposed Appendix C would require the submission of additional data elements beyond the information required by the current § 17.00(g) record format, the Commission understands that reporting firms may need to make additional adjustments to reporting systems.

The Commission expects that the compliance date for the rules proposed herein would be 365 days following publication of a final rule in the *Federal Register*.

The Commission also expects to permit reporting firms to begin reporting under the proposed new regime for § 17.00(a) reports in advance of the compliance date, while continuing to permit reporting firms to report under the current § 17.00(g) record format. The Commission believes that this approach will allow early adopters to realize the advantages of reporting using a modern data submission standard while allowing slower adopters sufficient time to modify and test reporting systems.

#### **Request for Comment**

The Commission requests comment on all aspects of the proposed compliance date. The Commission requests specific comment on the following:

(7) Is the proposed compliance date of 365 days after publication of a final rule in the *Federal Register* an appropriate amount of time for compliance? If not, please propose an alternative timeline and provide reasons supporting that alternative timeline.

## **IV. Related Matters**

### *A. Cost-Benefit Considerations*

#### **1. Introduction**

Section 15(a)<sup>98</sup> of the CEA requires the Commission to consider the costs and benefits of its actions before issuing a new regulation or order under the CEA. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new rule or to determine whether the benefits of the adopted rule outweigh its costs. Rather, section 15(a) requires the Commission to “consider the costs and benefits” of a subject rule. Section 15(a) further specifies that the costs and benefits of proposed rules 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. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

Although the Commission believes the proposed amendments would create meaningful benefits for market participants and the public, the Commission also recognizes that the proposed amendments would impose costs. The Commission has endeavored to enumerate these costs and, when possible, assign a quantitative value to the costs reporting entities might face given the proposed changes. Where it is not possible to reasonably quantify costs and benefits of the proposed amendments, those costs and benefits are discussed qualitatively.

#### **2. Background**

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<sup>98</sup> 7 U.S.C. 19(a).

The data required to be reported under § 17.00(a) comprise core data used by many divisions within the Commission, including the Division of Market Oversight (“DMO”), the Office of the Chief Economist (“OCE”), and the Division of Enforcement (“DOE”). In addition, § 17.00(a) submissions are collated to produce the database from which public COT reports are created. COT reports are used by news media, researchers, academics, and industry professionals to describe current trends in futures trading, conduct analysis of past trading patterns, and inform current market strategies. The current § 17.00(g) record format, which instructs reporting firms to submit data in an 80-character, Cobol-based format, has been in effect since 1986 and was last revised in 2004.<sup>99</sup> This current format limits the amount of descriptive data that can be included in any given field. This limits the Commission’s ability to capture the economic characteristics of certain products in § 17.00(a) position reports and, in some instances, prevents the Commission from distinguishing a position in one contract from a position in another contract. In addition, the current reporting fields do not allow for the granular reporting of EDRPs, of certain futures and options contracts, and for complete information reflecting day-to-day changes in position.

### **3. Baselines**

The costs and benefits considered herein use as a baseline the reporting provided by reporting firms under current Part 17 regulations. In particular, entities are currently required to report positions for special accounts<sup>100</sup> by 9 a.m. on the business day following the trading day<sup>101</sup> and to correct errors as they are found by either the Commission or the reporting entity.<sup>102</sup> These elements of the rule would not change under the new reporting requirements.

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<sup>99</sup> See Final Rule, Reporting Levels and Recordkeeping, 69 FR 76392-01, 76394 (Dec. 21, 2004).

<sup>100</sup> See 17 CFR 17.00(a).

<sup>101</sup> See 17 CFR 17.02(a).

<sup>102</sup> 17 CFR 17.00(h).

The Commission notes that this cost-benefit consideration is based on its understanding that the derivatives market regulated by the Commission functions internationally with: (1) transactions that involve U.S. entities occurring across different international jurisdictions; (2) some entities organized outside of the United States that are registered with the Commission; and (3) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the proposed regulations on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with, or effect on U.S. commerce.<sup>103</sup>

#### **4. Proposed Amendments to Part 17**

The Commission proposes two categories of amendments to Part 17. First, the Commission proposes to remove current § 17.00(g)'s 80-character record format and amend § 17.03(d) to delegate authority to the Director of the Office of Data and Technology to designate a submission standard for reports required under § 17.00(a). That submission standard would be published in a Part 17 Guidebook, to be published on the Commission's website. The proposed Part 17 Guidebook designates a modern XML submission standard for submitting reports required under § 17.00(a). Second, the Commission proposes adding an Appendix C to Part 17 enumerating data elements to be included in § 17.00(a) reports. The proposed data elements consist of (1) certain data elements currently required to be reported under § 17.00(g), (2) certain data elements necessary for processing files submitted in XML, (3) certain data elements necessary to represent innovative contracts that cannot currently be represented using the § 17.00(g) format, and (4) data elements necessary to understand the transactions that resulted in day-to-day changes in positions of large traders. The form and manner for reporting

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<sup>103</sup> See, e.g., 7 U.S.C. 2(i).

these data elements in proposed Appendix C would be provided in the Part 17 Guidebook.

**a. Change in submission standard from current § 17.00(g) record format to a modern data standard designated in a Part 17 Guidebook**

Currently, reporting firms submit § 17.00(a) position reports using § 17.00(g)'s 80-character record format. The proposed amendments would require such reports to be submitted using a submission standard, which would be designated in a Part 17 Guidebook published by the Office of Data and Technology on the Commission's website. The proposed Part 17 Guidebook would require such submissions to be made using an XML format similar to that used in other reporting required by the Commission, including Trade Capture Reports submitted pursuant to § 16.02 and swap data reports submitted to swap data repositories pursuant to Part 43 and Part 45.<sup>104</sup> In order to collect and transmit these reports to the Commission, reporting firms would have to modify the systems they currently use to report Part 17 data.

The Commission estimates there are currently over 300 reporting firms submitting 17.00(a) reports. Reporting firms are divided between DCMs, FCMs, clearing members, and foreign brokers, including some firms that are registered under multiple categories. Over a 30-day period in early 2023 there were 310 reporting firms submitting § 17.00(a) reports. The Commission estimates that approximately 74 of these reporting firms automate the creation of § 17.00(a) reports and 236 of these firms create and submit § 17.00(a) reports manually. The Commission believes that reporting firms that currently automate the creation of § 17.00(a) reports will continue to do so and will submit such reports by secure FTP, and that reporting firms that currently manually create § 17.00(a)

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<sup>104</sup> See, e.g., Advanced Notice of Proposed Rulemaking, Account Ownership and Control Information, 74 FR 31642, 31644 (July 2, 2009); 17 CFR 43.7(a)(1); 17 CFR 45.15(a)(2).

reports will continue these practices rather than modifying their systems to facilitate reporting by secure FTP. Firms that currently manually create § 17.00(a) reports may need to update systems used to manually generate those reports.

## **1. Benefits**

The proposed revisions concerning the data submission standard will facilitate more rapid data ingestion for the Commission and increased automation in ingesting data required to be reported under § 17.00(a), which will reduce staff time devoted to data ingestion.

The proposed revisions concerning the data submission standard should also enhance data quality. First, a modern data submission standard should be less error-prone than the current § 17.00(g) record format. Second, a modern data submission standard should facilitate automated, real-time error correction notifications, which will reduce the amount of manual staff intervention in the error correction process and should provide reporting firms with more efficient timelines for correcting errors. By improving data quality and enabling more rapid corrections of errors, the proposed revisions concerning the data submission standard should ensure the timeliness of COT reports.

The proposed revisions concerning the data submission standard should simplify the error correction process for reporting firms by automating and accelerating feedback concerning errors.

The proposed revisions concerning the data submission standard should enhance DMO's ability to monitor the markets, support DOE's surveillance program, and facilitate OCE research projects.

## **2. Costs**

The Commission believes that the changes proposed to Part 17 would cause reporting firms to modify their systems to collect and submit data using a new data submission standard. The cost of such modifications is likely to vary from entity to

entity. Under the proposed Part 17 Guidebook, reporting firms would submit reports required under § 17.00(a) using an XML submission standard.

The Commission expects more sophisticated reporting firms that submit a substantial number of daily reports, such as FCMs, will build systems to report using the XML submission standard designated in the proposed Part 17 Guidebook, and will arrange to automate daily submissions using a secure FTP data feed. The Commission estimates that 74 entities will submit reports in in this manner. The Commission estimates those entities would incur a one-time initial cost of approximately \$29,800 for each entity (200 hours × \$149/hour) to modify and test their systems, or an estimated aggregate dollar cost of \$2,205,200 (74 entities × \$29,800).<sup>105</sup> The Commission understands that some reporting firms today submit reports required under § 17.00(a) manually through the CFTC Portal, and believes that many of those firms would continue to do so under the new submission standard. The Commission estimates that 236 entities would continue to manually report through the CFTC Portal and would incur a one-time initial cost of approximately \$1,310 to update their systems (10 hours × \$131/hour) for each entity, or an estimated aggregate dollar cost of \$309,160 (236 entities × \$1,310).<sup>106</sup>

On an ongoing basis, the Commission believes that the 310 estimated reporting firms would incur minimal additional costs above the baseline once setup is complete. However, the Commission estimates that approximately 74 entities filing using secure FTP may incur an ongoing operation and maintenance cost of \$3,576 per year (2 hours per month × \$149 per hour) per entity to maintain their systems, or an estimated

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<sup>105</sup> For costs associated with upgrading reporting systems for secure FTP filers, the Commission estimates that modifications and testing will be undertaken by computer and information research scientists, database architects, software developers, programmers, and testers. The associated costs are taken from the U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at* [https://www.bls.gov/oes/2021/may/oes\\_nat](https://www.bls.gov/oes/2021/may/oes_nat), and adjusted with a multiple of 2.5 to account for benefits and overhead costs.

<sup>106</sup> For costs associated with upgrading reporting systems for CFTC Portal filers, the Commission estimates that the necessary modifications will be undertaken by data scientists. The associated costs are taken from the U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at* [https://www.bls.gov/oes/2021/may/oes\\_nat](https://www.bls.gov/oes/2021/may/oes_nat), and adjusted with a multiple of 2.5 to account for benefits and overhead costs.

aggregate annual cost of \$264,624 (74 entities × \$3,756). In addition, the Commission estimates that 236 entities filing manually would incur ongoing additional costs of \$3,144 per year (2 hours per month × \$131 per hour) per entity to maintain their systems, or an estimated aggregate annual cost of \$741,984 (236 entities × \$3,144). However, the Commission believes that costs associated with correcting errors would be reduced due to improved data validation at the time of ingest.

These cost estimates are based on a number of assumptions and cover a number of tasks required by reporting firms to design, test, and implement an updated data system based on an XML submission standard. These tasks include defining requirements, developing an extraction query, developing an interim extraction format (such as a CSV, or “comma-separated values,” file), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing.

### **(C) Request for Comment**

The Commission requests comment on the range of costs reporting markets, FCMs, clearing members, and foreign brokers would incur to implement an XML submission standard to comply with the proposed amendments. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

#### **b. Changes in Data Elements Reported**

As detailed above, the current 80-character § 17.00(g) format does not allow for flexibility in the reporting of certain types of futures, such as bounded futures, and options, such as capped or barrier options. The proposed amendments would enable these products to be identified in § 17.00(a) reports, and would capture additional information reflecting changes in position, including reporting concerning numbers of transfers, reporting of numbers of expirations of contracts, and more granular reporting of

EDRPs, including specifying the type of related product (physical, swap, or option).

Additionally, the expanded reporting regime instills flexibility such that the proposed Part 17 Guidebook can facilitate reporting of positions in products with innovative features.

#### **(A) Benefits**

The proposed additional fields necessary to identify certain contracts will facilitate collection of more robust market information for the Commission, including allowing the Commission to distinguish between positions in different contracts that may not currently be distinguishable. The proposed additional fields necessary to identify changes in positions, including more granular information concerning types of EDRPs, would also allow the Commission to collect better market information. Additionally, obtaining accurate, granular information concerning daily changes in position should improve data quality. These data elements will enable reporting firms to perform an internal consistency check to confirm the accuracy of data, which should reduce reporting errors.

Obtaining accurate, granular information concerning daily changes in position would also support the Commission's surveillance and monitoring programs. This data would provide the Commission with a more comprehensive understanding concerning the nature of changes in positions—as opposed to merely understanding the scope of positions—and should further facilitate linking position data reported under § 17.00(a)<sup>107</sup> with transaction data reporting under § 16.02.<sup>108</sup>

#### **(B) Costs**

The proposed amendments will require reporting firms to report certain additional data elements to the Commission beyond those elements required by the current § 17.00(g) record format.

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<sup>107</sup> 17 CFR 17.00(a).

<sup>108</sup> 17 CFR 16.02.

CFTC staff experienced in designing data reporting, ingestion, and validation systems, estimate that for the 74 reporting firms that automate reporting through a secure file transfer protocol, the process of upgrading and testing systems to collect and report new fields will require them to incur on average 400 hours to update, test, and implement the proposed additional data elements required by proposed Appendix C, for a total of 29,600 hours across all FTP filers at an hourly wage rate of \$149. This would amount to total capital and start-up costs of \$4,410,400 across all FTP filers (400 hours × 74 FTP filers × \$149 = \$4,410,400). In addition, the Commission estimates that these firms may each incur one-time costs of up to \$1,000 for equipment modifications associated with these changes.

The Commission estimates that the 236 reporting firms that manually input data required to be reported under § 17.00(a) into the CFTC Portal will incur on average 20 hours to implement additional data elements required by proposed Appendix C, or 4,720 total hours across all manual filers, at an hourly wage rate of \$131 per hour. The Commission estimates that in the aggregate manual filers will incur total capital and start-up costs associated with updating, testing and implementing new data elements of \$618,320 (4,720 hours × \$131/hour).

On an ongoing basis, there would be minimal additional costs related to the addition of new data elements, since reporting entities would not be required to submit substantially more information than the baseline. For example, the Commission does not believe that the proposed amendments are likely to affect the overall number of reports submitted annually under § 17.00(a). However, given the additional data elements required by the proposed amendments, the Commission estimates that 74 entities who automate their reporting systems may each incur an ongoing operation and maintenance cost of \$3,576 per year (2 hours per month × \$149 per hour) per entity, or an estimated aggregate annual cost of \$264,624 (74 entities × \$3,576) related to implementation of the

new data elements. In addition, the Commission estimates that 236 firms that manually file reports may incur ongoing operation and maintenance costs of \$3,144 per year (2 hours per month × \$131 per hour) per entity as a result of implementing the proposed amendments implementing new data elements, or an estimated aggregate annual cost of \$741,984 (236 entities × \$3,144).

These cost estimates are based on a number of assumptions and cover a number of tasks required by the reporting firms to design, test, and implement an updated data system based on an XML format. These tasks include defining requirements, developing an extraction query, developing an interim extraction format (such as a CSV, or “comma-separated values,” file), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing.

Additionally, these costs may be mitigated because certain of the proposed data elements are conditional and will only be applicable to a small subset of the reporting firms. For example, if a particular FCM is not a participant on an exchange that lists “bounded” or “barrier” contracts, that FCM will not be required to report proposed data elements that are conditional and only applicable to positions in “bounded” or “barrier” contracts.

### **(C) Request for Comment**

The Commission requests comment on the range of costs reporting markets, FCMs, clearing members, and foreign brokers would incur to report the data elements described in the proposed amendments. Are there additional costs or benefits that the Commission should consider? Are there any data elements proposed to be added in Appendix C that commenters believe would be unduly onerous or burdensome to report pursuant to part 17? If so, please identify such data elements and explain why. Commenters are encouraged to include both qualitative and quantitative assessments of

these benefits. Specific areas of interest include the following: the necessity of collecting additional fields in order to obtain a complete view of futures and options positions across all markets; (ii) evaluations of the accuracy of the Commission's estimate of the burden of the proposed information reporting; (iii) determining whether there are ways to enhance the utility of reported information; and (iv) minimizing the burden of additional data collection to reporting entities.

## **5. Section 15(a) Considerations**

CEA Section 15(a)<sup>109</sup> requires the Commission to consider the costs and benefits of the proposed amendments to Part 17 with respect to the following factors: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. A discussion of these proposed amendments in light of the CEA Section 15(a) factors is set out immediately below.

### **a. Protection of Market Participants and the Public**

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

Additionally, reducing the risk of errors and delays in the publication of the COT report would benefit the public by providing more accurate data on positions held by large traders.

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<sup>109</sup> 7 U.S.C. 19(a).

Furthermore, higher-quality and more granular position data from large traders would improve the Commission's oversight and enforcement capabilities and, in turn, would aid the Commission in protecting markets, participants, and the public in general.

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

The Commission believes the proposed amendments would improve the accuracy and completeness of futures and options position data available to the Commission by improving data quality and providing Commission staff with a more complete understanding of the products comprising certain positions. In particular, the proposed rule would allow for more complete reporting of EDRPs and complex futures and options positions. Access to more accurate and complete data would in turn assist the Commission with, among other things, evaluating if certain traders are in violation of position limits, monitoring concentrations of risk exposures, and preventing fraud and market manipulation. In addition, as described above, the proposed amendments are expected to improve the efficiency of data reporting and analysis by reducing the number of reporting errors and automating data validity and error corrections processes.

**c. Price Discovery**

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

**d. Sound Risk Management Practices.**

The Commission believes the proposed rule changes would improve the data quality associated with futures and options position reporting required under § 17.00(a). The proposed additional data elements would capture more complete product information for certain positions and more complete information concerning changes in position would provide the Commission with an expanded view of the marketplace that would enable the Commission to more effectively identify disruptive or manipulative trading

activity. These improvements in the reporting would allow the Commission to evaluate risk throughout the futures and related markets.

The Commission does not believe that the costs arising from the proposed rules would threaten the ability of market participants to manage risks.

**e. Other Public Interest Considerations.**

The Commission believes that the increased reliability and detail resulting from improvements to data reporting would further other public interest considerations, including transparency in the futures market to the public and detection of fraud or manipulation. Additionally, the reporting structure would provide additional flexibility to collect information on new products developed by exchanges, thereby allowing for those exchanges to innovate and respond to the demands of the marketplace while still providing traders' positions to the Commission.

**f. General Request for Comment**

The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs, particularly from existing reporting firms that can provide quantitative cost data based on their respective experiences. Commenters may also suggest other alternatives to the proposed approach.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act<sup>110</sup> ("RFA") requires that agencies, in proposing rules, consider the impact of those rules on small business or, in the statute's parlance,

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<sup>110</sup> 5 U.S.C. 601 *et seq.*

“small entities.”<sup>111</sup> These amendments affect large traders, FCMs, and other similar entities. The Commission has defined “small entities” as used by the Commission in evaluating the impact of its rules in accordance with the RFA.<sup>112</sup> In that statement, the Commission concluded that large traders and FCMs are not considered small entities for purposes of the RFA. Thus, under section 3(a) of the RFA,<sup>113</sup> the Chairman, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any firm which believes that these rules would have a significant economic impact on its operations.

### *C. Paperwork Reduction Act*

The Paperwork Reduction Act (“PRA”)<sup>114</sup> imposes certain requirements on federal agencies, including the Commission, in connection with agencies’ conducting or sponsoring any collection of information, as defined by the PRA. This proposed rulemaking would result in the collection of information within the meaning of the PRA, as discussed below. The proposed rulemaking contains collections of information for which the Commission has previously received control number 3038-0009 from the Office of Management and Budget (“OMB”).<sup>115</sup>

The Commission is proposing to amend the above information collection to accommodate newly proposed and revised information collection requirements for participants in the futures and options markets that require approval from OMB under the PRA. The amendments are expected to modify the existing annual burden for complying with certain requirements of Part 17. Specifically, the Commission is proposing to

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<sup>111</sup> See 5 U.S.C. 603. The RFA applies to rules subject to notice and comment rulemakings issued pursuant to section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), or any other law. *Id.*

<sup>112</sup> See Policy Statement and Final Establishment of Definitions, 47 FR 18618 (Apr. 30, 1982).

<sup>113</sup> 5 U.S.C. 605(b).

<sup>114</sup> 44 U.S.C. 3501 *et seq.*

<sup>115</sup> For the previously approved estimates, see ICR Reference No: 202303-3038-002, available at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202303-3038-002](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-002).

amend §§ 17.00(a), 17.00(g), 17.00(h), and 17.03(d), which set out (1) the data submission standard and (2) the data elements for large trader reports required to be filed under § 17.00(a), among other things.<sup>116</sup> The Commission has previously estimated that the reporting requirements associated with § 17.00 of the Commission’s regulations entail an estimated 17,160 burden hours for all reporting firms.<sup>117</sup> The Commission is revising its total burden estimates for this clearance to reflect updated estimates of the number of respondents to the collection. The Commission is also estimating the total capital and start-up costs and ongoing operation and maintenance costs associated with the proposed amendments to the Part 17 regulations described herein.

The Commission is therefore submitting this proposal to the OMB for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Responses to this collection of information by reporting firms pursuant to the Part 17 regulations would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act<sup>118</sup> and 17 CFR 145, “Commission Records and Information.” In addition, CEA section 8(a)(1) strictly prohibits the Commission, unless specifically authorized by the CEA, from making public data and information that would

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<sup>116</sup> The Commission proposes two categories of amendments to Part 17. First, the Commission proposes to remove current regulation 17.00(g)’s 80-character record format and amend regulation 17.03(d) to delegate authority to the Director of the Office of Data and Technology to determine the form, manner, coding structure, and electronic data transmission procedures for reporting the data elements in Appendix C to Part 17 and to determine whether to permit or require one or more particular data standards for reports required under regulation 17.00(a). That submission standard would be published in a Part 17 Guidebook, to be published on the Commission’s website. The proposed Part 17 Guidebook designates a modern XML submission standard for submitting reports required under regulation 17.00(a). Second, the Commission proposes adding an Appendix C to Part 17 enumerating data elements to be included in regulation 17.00(a) reports. The proposed data elements consist of (1) certain data elements currently required to be reported under regulation 17.00(g), (2) certain data elements necessary for processing files submitted in XML, (3) certain data elements necessary to represent innovative contracts that cannot currently be represented using the regulation 17.00(g) format, and (4) data elements necessary to understand the transactions that resulted in day-to-day changes in positions of large traders. The form and manner for reporting these data elements in proposed Appendix C would be provided in the Part 17 Guidebook. The burden estimates provided in this section take into account the burden associated with reporting using a modern XML submission standard and reporting the data elements as set out in proposed Appendix C, in compliance with the proposed Part 17 Guidebook.

<sup>117</sup> See ICR Reference No: 202303-3038-002, available at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202303-3038-002](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-002)

<sup>118</sup> 5 U.S.C. 552.

separately disclose the business transactions or market positions of any person and trade secrets or names of customers.<sup>119</sup> The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.<sup>120</sup>

The Commission expects that requiring reporting pursuant to a modern data standard will not require reporting firms to submit substantially more information than is currently required. Accordingly, the Commission is retaining its previous estimated numbers of reports, burden hours per report, and average burden hour cost. However, based on review of recent data from 2023, the Commission is reducing its estimate of the number of respondents from 330 to 310. Accordingly, the Commission is reducing its estimate from the previous 17,160 burden hours for all reporting firms<sup>121</sup> to 16,120 burden hours. In addition, the Commission anticipates that implementation of a modern submission standard as proposed in the rules should reduce or eliminate manual corrections and resubmissions that occur under the currently operative regulations.

The aggregate annual estimate for the reporting burden associated with Part 17, as amended by the proposal,<sup>122</sup> would be as follows:

*Estimated number of respondents:* 310.

*Estimated Average Burden Hours per Respondent:* 52 hours.

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

*Frequency of collection:* Periodically.

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

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<sup>119</sup> 7 U.S.C. 12(a)(1).

<sup>120</sup> 5 U.S.C. 552a.

<sup>121</sup> See ICR Reference No: 202303-3038-002, available at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202303-3038-002](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-3038-002).

<sup>122</sup> The previous burden estimates for 17 CFR 17.00 are available at Notice, Agency Information Collection Activities Under OMB Review, 88 FR 18127 (Mar. 27, 2023).

costs to implement the proposed rule changes, and (3) costs to modify equipment as necessary to comply with the proposed rule changes. The Commission estimates that some respondents may report by secure FTP (“FTP filers”) and some firms may report manually (“manual filers”), and that the total capital and start-up costs will vary based on whether a respondent is an FTP Filer or a Manual Filer.

The Commission estimates that FTP filers would comprise 74 respondents. The Commission estimates that these respondents would incur one-time initial costs associated with (1) modifying systems to adopt a new data standard, (2) updating and testing systems to implement new data elements, and (3) modifying equipment to implement new data elements. First, the Commission estimates that such firms would incur a one-time initial burden of 200 hours per entity to modify their systems to adopt changes to the data submission standard described in this proposed rulemaking, for a total estimated 14,800 total hours. Second, the Commission estimates that FTP filers will incur total capital and start-up costs associated with updating, testing, and implementing new data elements of 400 hours, for a total estimated 29,600 hours. Third, the Commission also estimates that FTP filers would incur one-time costs of \$1,000 to modify equipment to implement new data elements. This would amount to \$6,689,600  $((200 + 400 \text{ hours}) \times 74 \text{ FTP filers} \times \$149^{123}) + (74 \text{ FTP filers} \times \$1,000) = \$6,689,600$ .

In addition, the Commission estimates that as a result of implementing that new data submission standard, these 74 FTP filers may incur additional operating and maintenance costs of 24 hours per year, for 1,776 total hours, resulting in costs of

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<sup>123</sup> For the cost calculations for FTP submitters, Commission staff used a composite (blended) wage rate by averaging the hour wages for (1) Computer Research Scientists, (2) Database Architects, (3) Software Developers, and (4) Developers, Programmers, and Testers. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates from May 2021, the mean hourly wage for a computer research scientist is \$68.58, database architect is \$58.58, software developer is \$58.17, and developers, programmers, and testers is \$54.68. See U.S. Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, available at [https://www.bls.gov/oes/2021/may/oes\\_nat](https://www.bls.gov/oes/2021/may/oes_nat). The average of those wages is \$59.42. Commission staff has applied a multiplier of 2.5 times to account for benefits and overhead. The Commission is therefore using an hourly wage rate of \$149 for FTP submitters.

\$264,624 (24 hours × 74 FTP filers × \$149<sup>124</sup> = \$264,624), and, as a result of implementing new data elements, these 74 FTP filers may incur additional operating and maintenance costs of 24 hours per year, for 1,776 total hours, resulting in costs of \$264,624 (24 hours × 74 FTP filers × \$149<sup>125</sup> = \$264,624). This yields additional annual operating and maintenance costs of \$529,248 for FTP filers.

The Commission estimates that manual filers would comprise 236 reporting firms. The Commission estimates that these respondents would incur one-time initial costs associated with (1) modifying systems to adopt a new data standard and (2) updating and testing systems to implement new data elements. First, the Commission estimates such respondents would incur a one-time initial burden of 10 hours to modify their systems to implement a new data standard, for a total estimated 2,360 total hours. Second, the Commission estimates that manual filers will incur an average one-time cost of 20 hours to implement additional data elements required by proposed Appendix C, for a total estimated 4,720 total hours. This would amount to aggregate one-time initial costs of \$927,480 ((10 hours + 20 hours) × 236 manual filers × \$131<sup>126</sup> = \$927,480).

In addition, the Commission estimates that as a result of implementing that new data submission standard, these 236 manual filers may incur additional operating and maintenance costs of 24 hours per year, for 5,664 total hours, for an associated cost of \$741,984 (24 hours × 236 manual filers × \$131<sup>127</sup> = \$741,984), and, as a result of implementing new data elements, these 236 manual filers may incur additional operating and maintenance costs of 24 hours per year, for 5,664 total hours, for an associated cost

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<sup>124</sup> See *id.*

<sup>125</sup> See *id.*

<sup>126</sup> For the cost calculations for manual submitters, Commission staff used the wage rate for Data Scientists. Per the U.S. Bureau of Labor Statistics, national industry-specific occupational employment and wage estimates from May 2021, the mean hourly wage for a data scientist is \$52.24. See U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics, *available at* [https://www.bls.gov/oes/2021/may/oes\\_nat](https://www.bls.gov/oes/2021/may/oes_nat). Commission staff has applied a multiplier of 2.5 times to account for benefits and overhead. The Commission is therefore using an hourly wage rate of \$131 for manual submitters.

<sup>127</sup> See *id.*

of \$741,984 (24 hours × 236 manual filers × \$131<sup>128</sup> = \$741,984). This yields additional annual operating and maintenance costs of \$1,483,968 for manual filers.

Accordingly, the total estimated capital and start-up costs across all 310 reporting entities is \$7,617,080 (\$6,689,600 + \$927,480 = \$7,617,080). Based on five-year, straight line depreciation, this amounts to annualized total capital and start-up costs for all covered entities of \$1,523,416. The total estimated annual operating and maintenance costs across all entities is \$2,013,216 (\$529,248 for FTP filers + \$1,483,968 for manual filers = \$2,013,216). The Commission estimates that total annual capital and start-up costs and operation and maintenance costs for all covered entities would be \$3,536,632 (\$1,523,416 + \$2,013,216 = \$3,536,632).

#### Request for Comment

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on reporting firms, including through the use of appropriate automated, electronic,

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<sup>128</sup> *See id.*

mechanical, or other technological information collection techniques, *e.g.*, permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160 or from <https://RegInfo.gov>. Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;

- (202) 395–6566 (fax); or
- [OIRAsubmissions@omb.eop.gov](mailto:OIRAsubmissions@omb.eop.gov) (email).

Please provide the Commission with a copy of submitted comments so that comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this release in the *Federal Register*. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

#### *D. Antitrust Considerations*

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

The Commission does not anticipate that the proposed amendments to Part 17 would result in anti-competitive behavior. The Commission encourages comments from the public on any aspect of the proposal that may have the potential to be inconsistent with the antitrust laws or anticompetitive in nature.

## **List of Subjects**

### *17 CFR Part 17*

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

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend part 17 of title 17 of the Code of Federal Regulations as follows:

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

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

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

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

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

\* \* \* \* \*

(a) \* \* \*

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

**Appendix C to Part 17 – Data Elements**

	<b>Data Element Name</b>	<b>Definition for Data Element</b>
1	Total Message Count	The total number of reports included in the file.
2	Message Type	Message report type.
3	Sender ID	The CFTC-issued reporting firm identifier.
4	To ID	Indicates the report was submitted to the CFTC.
5	Message Transmit Datetime	The date and time the file was created.
6	Report ID	A unique identifier assigned to each position report.
7	Record Type (Action)	Indicates the action that triggered the Position Report.
8	Report Date	The date of the information being reported.
9	Reporting Firm ID	CFTC assigned identifier for the reporting firm.
10	Special Account Controller LEI	The Legal Entity Identifier issued to the special account controller.
11	Account ID	A unique account identifier, assigned by the reporting firm to each special account. Assignment of the account number is subject to

		the provisions of § 17.00(b) and Appendix A of this part (Form 102).
12	Exchange Indicator	The exchange where the contract is traded.
13	Commodity Clearing Code	The clearinghouse-assigned commodity code for the futures or options contract.
14	Product Type	Type of Product.
15	Ticker Symbol	Ticker symbol of the product traded.
16	Maturity Month Year	Month and year of the delivery or maturity of the product, as applicable. Day must be provided when necessary to characterize a product.
17	Maturity Time	The expiration time of an option or last trading time of a future.
18	Listing Date	Product listing date.
19	First Exercise Date	The earliest time at which notice of exercise can be given.
20	Strike Level	Numeric option moneyness criterion.
21	Alpha Strike	Non-Numeric option moneyness criterion.
22	Cap Level	Ceiling value of a capped option or bounded future.
23	Floor Level	Floor value of a capped option or bounded future.
24	Bound or Barrier Type	Behavior of the product when it hits the bound or barrier.
25	Bound or Barrier Level	Bound or barrier level of a contingent option.
26	Put or Call Indicator	Nature of the option exercise.
27	Exercise Style	Type of exercise of an option.
28	Payout Amount	Cash amount indicating the payout associated with the product.
29	Payout Type	The type of valuation method or payout trigger.
30	Underlying Contract ID	The instrument that forms the basis of an option.
31	Underlying Maturity Month Year	Underlying delivery year and month (and day where applicable).
32	Long Position	The total of long open contracts carried at the end of the day.
33	Short Position	The total of short open contracts carried at the end of the day.
34	Contracts Bought	The total quantity of contracts bought (gross) during the day associated with a special account, including all block trades and trade allocations such as give-ups, even if the give-ups are processed beyond T+1. Do not include exchanges of derivatives for related positions EDRPs (EFP, EFS or EFR, EOO) or transfers.
35	Contracts Sold	The total quantity of contracts sold (gross) during the day associated with a special account, including all block trades and trade allocations such as give-ups, even if the give-ups are processed beyond T+1. Do not include exchanges of derivatives for related positions EDRPs (EFP, EFS or EFR, EOO) or transfers.
36	EDRPs Bought	The quantity of purchases of futures or options in connection with exchanges of futures or options for related positions (“EDRPs”) done pursuant to a DCM’s rules, disaggregated into quantity of purchases of futures or options in connection with EDRPs by type of EDRP, including exchanges of futures for physical, exchanges

		of futures for risk, exchanges of options for options, and any other EDRP offered pursuant to a DCM's rules.
37	EDRPs Sold	The quantity of sales of futures or options in connection with EDRPs done pursuant to a DCM's rules, disaggregated into quantity of sales of futures or options in connection with EDRPs by type of EDRP, including exchanges of futures for physical, exchanges of futures for risk, exchanges of options for options, and any other EDRP offered pursuant to a DCM's rules.
38	Delivery Notices Stopped	The number of futures contracts for which delivery notices have been stopped during a day.
39	Delivery Notices Issued	The number of futures contracts for which delivery notices have been issued during a day.
40	Long Options Expired	Long options positions expired without being exercised.
41	Short Options Expired	Short options positions expired without being exercised.
42	Long Options Exercised	Long options positions exercised during the day.
43	Short Options Exercised	Short options positions exercised during the day.
44	Long Futures Assigned	Long futures assigned as the result of an option exercise.
45	Short Futures Assigned	Short futures assigned as the result of an option exercise.
46	Long Transfers Sent	Long positions sent through other transfers during the day. (Do not include give-ups.)
47	Long Transfers Received	Long positions received through other transfers during the day. (Do not include give-ups.)
48	Short Transfers Sent	Short positions sent through other transfers during the day. (Do not include give-ups.)
49	Short Transfers Received	Short positions received through other transfers during the day. (Do not include give-ups.)
50	Product-Specific Terms	Terms of the contract that are economically material to the contract, maintained in the ordinary course of business by the reporting market listing the contract, and not otherwise required to be reported under the data elements in this Appendix.

Issued in Washington, DC on June 20, 2023, by the Commission.

Robert Sidman,

*Deputy Secretary of the Commission*

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

**Appendices to Large Trader Reporting Requirements—Voting Summary and Commissioners' Statements**

**Appendix 1—Voting Summary**

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

**Appendix 2—Statement of Chairman Rostin Behnam in Support of the Notice of Proposed Rulemaking on Amendments to Part 17 Large Trader Reporting Requirements**

I support today’s proposed rule which would modernize and create a path for efficient future modernization of large trader data reporting under Part 17 of the Commission’s regulations. The proposal also seeks to align Part 17 data and reporting with the reporting structure in Parts 16, 20, 39, 43, and 45.

Part 17 governs large trader reporting for futures and options, and requires certain registrants to report daily position information for the largest futures and options traders. The Commission uses the large trader reports for surveillance (detection and prevention of price manipulation) and enforcement of speculative limits. These reports also provide the basis for the Commission’s weekly Commitments of Traders (“COT”) report, which is used by a wide range of commercial and speculative traders, and was itself recently modernized to include an updated interface that simplifies the downloading of COT data and an Application Program Interface (API), which enables an easier automated download process.<sup>1</sup>

Large trader data and the COT report alike are tools of the trade, and ensuring that they are usable internally and externally promotes transparency and efficiency as we carry out our regulatory and enforcement functions. Submission standards and data fields for the report (§ 17.00(g)) were promulgated in 1986 and last updated in 1997, and have become outdated and difficult for staff to use. The proposal seeks to modernize the format

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<sup>1</sup> See Press Release Number 8612-22, CFTC, CFTC Launches New Commitments of Traders Reports (Oct. 20, 2022), CFTC Launches New Commitments of Traders Reports, available at <https://www.cftc.gov/PressRoom/PressReleases/8612-22>.

standards and data fields by: removing the 80-character format and delegating authority to the Director of the Division of Data (DOD) to designate a modern data submission standard; replacing the data fields enumerated in the regulation with a new Appendix C specifying data elements to be reported; and delegating to the DOD Director the authority to specify the form, manner, coding structure, and electronic data transmission procedures for reporting.

The Part 17 proposal is accompanied by the contemporaneous publication of a proposed Part 17 Guidebook on the Commission's website. The proposed Guidebook designates a modern FIXML submission standard for submitting reports required under § 17.00(a). The proposal includes a general description of the Guidebook and requests comments from the public.

At their core, rules like this support foundational compliance and unequivocally support our efforts in ensuring that end-users and individual and institutional investors alike can measure and understand risks. Further, this rule will allow a better understanding that those trading in our markets are being monitored, and their impacts and influence within such markets, constantly measured and evaluated.

### **Appendix 3— Statement of Commissioner Kristin N. Johnson In Support of Notice of Proposed Rulemaking on Large Trader Reporting Requirements**

I strongly support issuing the proposal on Large Trader Reporting Requirements. Large trader reports “effectuate the Commission’s market and financial surveillance programs by providing information concerning the size and composition” of Commission regulated markets and the accounts that hold the largest positional exposures.<sup>1</sup> The Commission’s large trader reporting system serves as a foundational tool for protecting market integrity as well as price discovery and hedging utility of futures contracts for commercial end-users. Despite technology-based formatting limitations, the large trader

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<sup>1</sup> Notice of Proposed Rulemaking, Position Limits for Derivatives, 78 FR 75,680, 75,741 (Dec. 12, 2013).

reporting system has admirably supported the Commission’s market surveillance and position limits enforcement programs for decades.

Among other uses, data reported under Part 17 enables the Commission to identify large positions in single markets or across markets, including by aggregating positions of a particular beneficial owner across multiple accounts held with multiple clearing members. This data also supports the Commission’s surveillance programs and serves as the basis of the Commission’s weekly Commitment of Traders (“COT”) reports. In addition, the data required to be reported under § 17.00(a) comprise core data used by many divisions within the Commission, including the Division of Market Oversight (“DMO”), the Office of the Chief Economist (“OCE”), and the Division of Enforcement.

Requiring reporting in an extensible markup language (“XML”) protocol as proposed is consistent with current regulatory practices and reconciles the format for transmitting large trader reports with the Commission’s transactional reporting structures for designated contract markets, derivatives clearing organizations, physical commodity swaps, and swap data repositories.<sup>2</sup> This harmonization, if properly implemented, should unlock surveillance synergies and allow the Commission’s Integrated Surveillance System, where large trader reports are housed, to interact with other reporting frameworks including Ownership and Control Reports, which are triggered when accounts exceed volume thresholds,<sup>3</sup> and Trade Capture Reports, which contain transaction level and related order book data.<sup>4</sup>

Although the proposal preserves the core data that large trader reports collect today, it also measuredly proposes to integrate complementary data that is not fully

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<sup>2</sup> Notice of Proposed Rulemaking, Large Trader Reporting Requirements at 14 (Jun. 7, 2023), [https://www.cftc.gov/media/8716/votingdraft060723\\_17CFRPart17/download](https://www.cftc.gov/media/8716/votingdraft060723_17CFRPart17/download) (hereinafter “Large Trader Proposal”).

<sup>3</sup> 17 CFR 17.01.

<sup>4</sup> 17 CFR 16.02.

reflected in current reports. Access to more fulsome and reliable data will improve the Commission's understanding of how traders employ certain transactions and serve as a deterrent to potential abusive trading practices.

The proposal would also require reporting data elements that capture “Contracts Bought” and “Contracts Sold” instead of reporting aggregated positions that do not presently consider the amount of buying and selling associated with a particular special account from one trading day to the next.<sup>5</sup> I am heartened by the proposal's one-year compliance period,<sup>6</sup> and I encourage stakeholders to meaningfully engage with this proposal to enhance the Commission's regulatory mandate without placing undue burdens on the firms that potentially would have to comply with new requirements.

I commend staff—Owen Kopon and Paul Chaffin from DMO, James Fay from the Division of Data, and Daniel Prager from OCE—for bringing to the Commission a thoughtful proposal for modernizing large trader reports.

#### **Appendix 4— Statement of Commissioner Christy Goldsmith Romero on Strengthening and Modernizing Large Trader Reporting Requirements for Transparency and Market Integrity**

At my confirmation hearing for this role, I testified, “If confirmed, my highest priority would be to work to ensure that the markets are working well—that they are open, fair, and competitive....Whether focused on hard commodities like agriculture, energy, or metals, or on the financial sector, the Commission plays a critical role in ensuring that these markets work well. That starts with the Agricultural sector—the farmers, ranchers, and producers our nation depends on—to put food on our tables and contribute to our nation's economic activity. For our farmers and ranchers to help drive our economy and feed the world, they need U.S. derivatives markets for risk management

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<sup>5</sup> Large Trader Proposal at 29 to 30.

<sup>6</sup> Large Trader Proposal at 34.

and price discovery.”<sup>1</sup>

Transparency is critical to fair and orderly markets. It provides the market confidence that pricing is appropriate, reflects market fundamentals, and is free of manipulation and excessive speculation. This confidence is reflected in the fact that the Commission’s Commitments of Traders report that reports position information for the largest traders in our markets is consistently the most downloaded item from our website. Market participants, news media, researchers, academics, and industry professionals, use these reports to determine current trends, conduct analysis of trading patterns, and inform market strategies. The importance of these reports was highlighted when the Commission had to postpone the reports temporarily after the cyber attack on Ion Markets.<sup>2</sup>

Fair and orderly markets also require confidence that the Commission is monitoring markets and taking strong action to promote market integrity. The Commitments of Traders report is a tool in the Commission’s market surveillance program and enforcement program to deter and catch market manipulation and excessive speculation. As I have visited with our nation’s farmers and producers, I have heard about their need for the Commission to protect the integrity of our markets, to ensure that prices are not artificially increased, thereby unfairly raising input costs.

The Commission has a critical mission to deter and combat excess speculation in our markets— which I discussed Monday in a recent enforcement action.<sup>3</sup> In September, I proposed that the CFTC use its expertise and data to study whether prices in key

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<sup>1</sup> *Statement of Christy Goldsmith Romero, Confirmation Hearing*, U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Mar. 2, 2022) available at [https://www.agriculture.senate.gov/imo/media/doc/Testimony\\_Goldsmith%20Romero.pdf](https://www.agriculture.senate.gov/imo/media/doc/Testimony_Goldsmith%20Romero.pdf).

<sup>2</sup> See CFTC, *CFTC Announces Postponement of Commitment of Traders Report*, (Feb. 16, 2023) available at <https://www.cftc.gov/PressRoom/PressReleases/8662-23>.

<sup>3</sup> See CFTC Commissioner Christy Goldsmith Romero, *The Importance of Protecting Commodity Markets Against Excess Speculation in the Ghost Cattle Fraud Case*, (June 5, 2023) Statement of Commissioner Goldsmith Romero on the Importance of Protecting Commodity Markets Against Excessive Speculation in the Ghost Cattle Fraud Case CFTC v. Cody Easterday available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement060523>.

commodities markets are being determined by market fundamentals, and to root out any manipulation and excessive speculation so that families and businesses aren't forced to pay artificially increased prices.<sup>4</sup> These deep dive studies would need data on the activity of the largest traders in our markets—which is the sole focus of these reporting requirements.

The Commission will benefit from strengthening and modernizing this important surveillance tool, as will the public. I particularly appreciate the recognition of the need to determine positions across markets for more comprehensive data, and for data quality improvements. The proposed changes would enhance the Commission's ability to identify disruptive or manipulative trading activity. For these reasons, I support the proposed rule. I thank the staff and look forward to public comment.

**Appendix 5—Statement of Commissioner Caroline D. Pham in Support of Notice of Proposed Rulemaking for Large Trader Reporting Requirements Under Part 17**

Today, the Commodity Futures Trading Commission (Commission or CFTC) is considering whether to propose revisions that would update the outdated large trader reporting submission standards in Part 17 of the Commission's regulations. I am pleased to support this proposed rulemaking because the CFTC relies on its large trader reporting data to generate its weekly Commitment of Traders (COT) Report and to carry out our important market surveillance functions.

Part 17 is the CFTC's regulatory framework that outlines the reporting obligations for clearing members, including futures commission merchants (FCMs) and foreign brokers, collectively known as reporting firms. Part 17 requires these reporting firms to submit daily trade data to the CFTC, which includes data on open interest, positions held,

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<sup>4</sup> See Opening Statement of Commissioner Christy Goldsmith Romero Before the Energy and Environmental Markets Advisory Committee, Opening Statement of Commissioner Christy Goldsmith Romero Before the Energy and Environmental Markets Advisory Committee (September 20, 2022) available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement092022>.

and other relevant position information on futures and options on futures.

This framework allows the CFTC to maintain an up-to-date and accurate picture of the markets, ensuring that market participants and end-users have the necessary information for price discovery and risk management. By regularly collecting and publishing this market data through the CFTC's COT Report, Part 17 helps maintain market integrity and fosters transparency, providing valuable insights into market trends and dynamics.

The COT Report has been vital to our derivatives market since its inception in 1962. The report provides a weekly summary of the open interest positions held by various categories of market participants, including commercial traders, non-commercial traders, and nonreportable positions. By understanding the positions held by commercial and noncommercial traders, market participants and end-users can better manage their risk exposure, assess the supply and demand fundamentals that drive price movements, and gauge the overall sentiment in markets, enabling market participants to make informed decisions about their own positions and strategies.

Part 17 data is also used by the CFTC to monitor market activities and to detect potential fraud, market manipulation, and position limit violations. Collecting position data that accurately reflects the full picture of a market participant's position also enables the CFTC to assess the financial risks presented by large customer positions to registrants such as FCMs, and derivatives clearing organizations (DCOs).

As we deliberate today on the proposed rule to amend Part 17, it is crucial to remember that we should periodically update our reporting rules as needed to reflect developments in the derivatives markets, while ensuring such updates do not cause disruption to the CFTC's weekly COT Report or our market oversight. And in the rulemaking process, the Commission must give fair consideration to every alternative to ensure that our efforts to enhance market transparency do not unnecessarily increase the

regulatory burden and costs for market participants, particularly end-users who are already dealing with inflation, rising interest rates, and increased costs for inputs. I often say that we are not regulating in a vacuum, and the Commission must take into account real-world considerations and the realities of implementing significant changes to systems, operations, and processes.

To that end, I'm pleased that the proposed implementation period is one year from publication of the final rule, and encourage commenters to note if this is not enough time.

The COT Report is an invaluable tool in the derivatives market, providing transparency and aiding in price discovery and risk management for market participants and end-users, and enabling the CFTC's market surveillance and oversight mission. I'd like to recognize and thank the following CFTC staff members: Owen Kopon and Paul Chaffin in the Division of Market Oversight, James Fay in the Division of Data, and Daniel Prager in the Office of Chief Economist, for their critical work on these important requirements.

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