

CFTC Staff Issues Relief from Ownership and Control Reporting Rules

The conditional, time-limited no-action letter extends certain compliance deadlines under the new rules.

On November 18, 2013, the US Commodity Futures Trading Commission (CFTC) published final rules on Ownership and Control Reports (the Final OCR Rules) in the Federal Register. The rules are intended to provide the CFTC with enhanced visibility over participants in the futures and swaps markets in addition to the already existing reporting requirements under Parts 43 (real-time reporting), 45 (regulatory reporting) and 46 (historical reporting) of the CFTC regulations for swaps.¹ Among other things, the Final OCR Rules expand upon the CFTC's existing position and transaction reporting programs by updating existing Forms 102, 102S, 40 and 40S as well as introducing new mandatory forms to report large trader activity in swaps and futures based on intra-day volume thresholds through new Forms 102B and 71. The Final OCR Rules also add additional recordkeeping requirements to Part 18 of the CFTC regulations. These recordkeeping requirements mean certain categories of persons are required to submit data to the CFTC and require that all large trader forms be submitted to the CFTC electronically.² For a more detailed summary of the Final OCR Rules, please see [our previous Client Alert](#) regarding the CFTC's large trader reporting requirements and the Final OCR Rules.

The compliance date for the Final OCR Rules was August 15, 2014. However, in response to requests to provide the industry with additional time to: (i) build and test systems to comply with the electronic reporting requirements;³ and (ii) educate clients regarding the Final OCR Rules, on July 23, 2014, the CFTC Staff issued No-Action Letter 14-95 (NAL 14-95), available [here](#). NAL 14-95 provides conditional no-action relief from the requirement for market participants to submit the new forms under the Final OCR Rules as follows:

- Relief from electronically reporting via new Forms 102A and 102S until February 11, 2015
- Relief from electronically reporting via new Form 102B until March 11, 2015
- Relief from electronically reporting via new Forms 40, 40S and 71 until February 11, 2016⁴

However, NAL 14-95 does not provide any relief from certain new recordkeeping obligations imposed by the Final OCR Rules, which can apply to non-registrants such as end-users in addition to CFTC registrants such as swap dealers. Therefore, the compliance date for these recordkeeping obligations remains August 15, 2014.

Background

In July 2011, the CFTC extended its existing large trader reporting requirements to cover "paired swaps" and "paired swaptions" (*i.e.*, swaps, options on swaps and options that are swaps and that are linked, or

priced at a differential, to either the price of certain enumerated “covered futures contracts” or the price of the physical commodity at the delivery location of the covered futures contract) in addition to exchange-traded futures and commodity options, which have historically been subject to the CFTC’s large trader reporting regime.⁵ Covered futures contracts include those futures contracts enumerated in CFTC Regulation 20.2 and which are all listed on a US exchange — including, e.g., NYMEX Natural Gas, CBOT Ethanol, CMX Gold, and various other agricultural, energy and metals futures contracts. To the extent that a non-US swap dealer trades with a non-US person in swaps that reference, for example, futures contracts listed on a European exchange, such contracts would not be subject to the CFTC’s larger trader reporting rules or the Final OCR Rules, as such contracts do not reference covered futures contracts.

The Final OCR Rules further modify the CFTC’s large trader reporting regime to require market participants to submit more information about large trader positions (based on end-of-day positions) on new versions of Forms 102A, 102S, 40 and 40S. The Final OCR Rules also introduce new reporting requirements for traders that reach or exceed a specified volume of trades on the new Form 102B and the expanded Forms 40 and 40S, and for originators of omnibus accounts (described below) on new Form 71.

Under this new regime (and similar to the historical process), when a “Reporting Entity” (*i.e.*, a futures commission merchant (FCM), clearing member, foreign broker⁶ or swap dealer) has an account or counterparty with a “reportable position” or a position that exceeds certain volume thresholds, the Reporting Entity must (automatically and without any request from the CFTC) submit a report to the CFTC identifying the counterparty and the relevant activity.⁷ The CFTC may then contact the trader or counterparty to that trade directly via a “special call” and request that the trader or counterparty file a separate form with more detailed information regarding its activities as well as ownership and control information (*i.e.*, a non-reporting party under the CFTC’s regulatory/real-time reporting rules would become subject to reporting obligations under the Final OCR Rules which are entirely separate and apart from other CFTC reporting requirements imposed under Parts 43, 45, and 46 of the CFTC’s regulations).⁸

In connection with these requirements, the Final OCR Rules require Reporting Entities to submit the following forms:

- **Form 102A:** FCMs, clearing members, and foreign brokers (Form 102A Reporting Entities) must submit Form 102A for accounts⁹ with commodity futures or options that exceed reporting thresholds¹⁰ — which are set forth in CFTC Rule 15.03 and vary by the type of commodity — at the end of a given trading day.¹¹ For purposes of Form 102A, accounts that are owned and controlled by the same person or legal entity with reportable positions are specifically referred to as a “Special Accounts.” A “Special Account” may be based on ownership of a reportable position,¹² control of a reportable position,¹³ both ownership and control of a reportable position, or because it is an “Omnibus Account” (*i.e.*, an account that one FCM, clearing member or foreign broker carries for another FCM, clearing member or foreign broker in which the transactions of multiple individual accounts are combined) with a reportable position. New Form 102A is similar to existing Form 102, but expands upon the information that must be reported for a Special Account and, most importantly, requires the information reported on New Form 102A to be continuously updated, which arguably means that if information filed on Form 102A becomes incorrect and the Form 102A Reporting Entity fails to update the information in a timely manner, it could be subject to sanction for providing the CFTC with false information and could also, possibly, be considered fraud under the Commodity Exchange Act (CEA). Form 102A must be submitted to the CFTC by 9 a.m. on the business day following the date on which the Special Account becomes reportable, except that certain fields in Form 102A identified as “follow-on

information” may be submitted by 9 a.m. on the third business day following the date on which a Special Account becomes reportable. It is also important to note that Form 102A Reporting Entities must submit “refresh updates” on an annual basis whereby the Form 102 Reporting Entities resubmit every Form 102A that it has submitted to the CFTC for each of its Special Accounts.¹⁴

As an example, if an FCM that carries an account for a large energy trader that controls trading accounts with reportable positions in natural gas futures contracts (*i.e.*, 200 contracts) at the end of a given trading day, the energy trader’s accounts would be deemed a “Special Account” and the FCM must submit a Form 102A by 9 a.m. on the business day following the date on which the energy trader’s accounts became reportable (with certain follow-on information submitted on the third business day thereafter) and must also update the Form 102A to the extent any information on the Form 102A changes after the FCM’s original submission of the Form 102A. Separately, and as discussed below, the CFTC may then make a special call (via Form 40) to the energy trader (or its owner or control person) to obtain additional information about the customer and its positions.

- **Form 102B:** Form 102B applies to clearing members (Form 102B Reporting Entities) for the collection of ownership and control information on accounts they carry that are associated with designated contract markets (DCMs) and swap execution facilities (SEFs). Specifically, Form 102B is triggered when an account meets a specified trading level in an individual product on a DCM or SEF. The reportable trading volume level is defined as trading volume of 50 or more contracts of the same product,¹⁵ during a single trading day, on a single DCM or SEF — defined as “Volume Threshold Accounts” — regardless of whether the Volume Threshold Accounts maintain reportable positions at the end of the day.¹⁶ Unlike Special Accounts, Volume Threshold Accounts are measured based on intra-day volume levels, not end-of-day positions, in DCM- or SEF-traded products with the same product identifier and, in the case of swaps, are not specifically limited to paired swaps or paired swaptions that are linked to covered futures contracts listed on a US exchange. In other words, each swap that is executed — regardless of its notional size — is counted toward the intra-day volume threshold. Volume Threshold Accounts may include individual accounts carried by a clearing member for customers as well as “Omnibus Accounts” (as defined above). Form 102B is a new form created by the Final OCR Rules and, as noted above, could reflect, without limitation, trading in futures, options on futures, swaps and any other product traded on or subject to the rules of a DCM or SEF. According to the CFTC, Form 102B will provide much needed information about high-frequency traders and other market participants using algorithmic systems whose end-of-day positions do not reach reporting levels, but whose intra-day trading could potentially impact markets during concentrated periods of intra-day trading.¹⁷ As with Form 102A, Form 102B Reporting Entities are required to submit any changes to a Form 102B that was previously submitted to the CFTC and are also required to submit refresh updates on an annual basis.

For example, a Form 102B Reporting Entity would be required to file a Form 102B with the CFTC if it had cleared in any individual account or Omnibus Account associated with a DCM or SEF 50 or more contracts of the same product at any time during any given trading day. Then, as described below, the CFTC may send a special call to the owner or controller of the individual account (via Form 40) or the originator of the Omnibus Account (via Form 70) to obtain additional information about the individual account or Omnibus Account.

- **Form 102S:** Swap dealers and clearing members (Form 102S Reporting Entities) must submit a Form 102S for accounts with 50 or more futures equivalent paired swaps or paired swaptions at

the end of a given trading day, based on the same commodity underlying a futures contract listed in CFTC Rule 20.2, grouped separately by swaps and swaptions, then grouped by gross long contracts on a futures equivalent basis or gross short contracts on a futures equivalent basis. An account with a reportable position in paired swaps or paired swaptions is referred to in the CFTC's large trader reporting rules for swaps as a "Reportable Account."¹⁸ The Final OCR Rules do not modify the existing deadlines for 102S filings under CFTC Regulation 20.5, with the result being that an electronic Form 102S must be submitted within three days following the day that the account became a Reportable Account. Form 102S Reporting Entities must also submit any changes to information previously submitted on Form 102S within one business day and refresh updates on an annual basis.

For instance, if a swap dealer entered into a spark spread call option with an end-user counterparty that is keyed, in part, on the NYMEX natural gas futures contract (*i.e.*, a covered futures contract), the swap dealer would be required to submit a Form 102S to the CFTC (if the position is comprised of 50 or more futures equivalent NYMEX natural gas futures contracts (*i.e.*, a paired swap or paired swaption calculated to a futures equivalency based on total notional quantity and duration of the swap (or swaption) where 1 futures contract equals 10,000 MMBTU of natural gas)) within three days following the day that the end-user's position became reportable and must also submit any changes to the information previously submitted to the CFTC on the Form 102S. New Form 102S is similar to existing Form 102S, but expands upon the information that must be reported to include, among other things, additional ownership and control information.¹⁹ As with Form 102A, after the CFTC receives a Form 102S, it may then send a special call to the swap dealer's counterparty (via Form 40S, as described below).

DCMs and SEFs that list exclusively self-cleared contracts must satisfy these reporting requirements (other than those related to Form 102S) on behalf of all clearing members.²⁰ An "exclusively self-cleared" contract is defined in CFTC Regulation 15.00(h) as any cleared contract for which no persons, other than the DCM or SEF and its clearing organization are permitted to accept any money, securities, or property to margin, guarantee, or secure the trade. Accordingly, any DCM or SEF that lists such contracts must also file Forms 102A and 102B as if they were clearing members.

The Final OCR Rules also require traders and counterparties identified as the owner, holder, or controller of a position reported on Forms 102A, 102B or 102S to submit the following forms:

- **Form 40:** Must be submitted, upon a special call by the CFTC, by a person who: (i) owns, holds, or controls a Special Account that was reported on Form 102A, (ii) owns or controls a Volume Threshold Account that was reported on Form 102B or (iii) owns or controls a sub-account of an Omnibus Account that qualified as a Volume Threshold Account and was reported on Form 102B.

Accordingly, in the example outlined above with the large energy trader that maintains a reportable position in natural gas futures contracts, the CFTC may, after receiving the Form 102A from its FCM, issue a special call to the energy trader (or its owner or control person) to obtain additional information about the energy trader's positions. This information may include, among other things, the name and address on the account, the person(s) owning and/or controlling the trading, the person to contact regarding trading, the nature of the account (*e.g.*, whether it is an omnibus account for another broker or an individual account), whether the reported account is related — by financial interest or control — to another account, and the principal occupation or business of the account owner. Form 40 also discloses whether the account is being used for hedging cash market exposure. Those entities required to complete a new Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of

the information submitted by periodically updating the information on the new Form 40 web portal or by resubmitting the new Form 40 by secure FTP transmission.

- **Form 40S:** Must also be submitted, upon a special call by the CFTC, by a person who owns or controls a reportable position in paired swaps or swaptions that was reported on Form 102S by a Form 102S Reporting Entity and must be updated periodically as directed in the special call. Thus, with respect to the example above of an end-user counterparty to a spark spread call option, after the swap dealer submits the Form 102S to the CFTC, the CFTC may issue a separate Form 40S request to the end-user counterparty (or its owner or control person) to request additional information about the counterparty's positions.

Finally, the Final OCR Rules would require the originator of an omnibus account (*i.e.*, an FCM, clearing member or foreign broker that opens an account with another such entity), to submit the following form:

- **Form 71:** Must be submitted, upon a special call by the CFTC, by the originator of an Omnibus Account that is a Volume Threshold Account that was identified in Form 102B by a reporting entity. Form 71 is designed to permit originating firms to report information directly to the CFTC without requiring such firms to disclose information regarding customers or potential customers.²¹

It is also important to note that the CFTC, in the cross-border guidance applicable to swaps, made the large trader reporting rules applicable to non-US Reporting Entities and their non-US counterparties.²² The CFTC also declined to make any substituted compliance determination with respect to its large trader reporting rules because it believed it needs the information to conduct effective surveillance.²³ Therefore, non-US swap dealers will be required to comply with the Final OCR Rules and a non-US swap dealer's counterparty (even if such counterparty is a non-US person and otherwise does not have any US contacts) will also be required to comply with the updated requirements in new Form 40S upon a special call by the CFTC. This is because the CFTC believes it is essential to the CFTC's ability to conduct effective surveillance of paired swaps and swaptions that are specifically linked to U.S. listed futures contracts.

Compliance Obligations under NAL 14-95

As noted above, NAL 14-95 provides relief from many of the new obligations imposed by the Final OCR Rules, but market participants will be required to satisfy certain conditions in order to rely on the relief, including: (i) continuing to use "legacy" Forms 102, 102S, 40 and 40S in accordance with the requirements for such forms prior to implementation of the Final OCR Rules; and (ii) complying with certain new recordkeeping obligations imposed by the Final OCR Rules for which NAL 14-95 does not provide any relief. Therefore, any entity required to report under the CFTC's existing large trader reporting regime will continue to have reporting obligations under NAL 14-95. Specifically:

- FCMs, clearing members and foreign brokers must continue to submit, and update as necessary, legacy Form 102
- Swap dealers and clearing members must continue to submit, and update as necessary, legacy Form 102S
- Traders with reportable positions in futures, options on futures, paired swaps or paired swaptions must continue to submit (but do not need to update) legacy Forms 40 and 40S upon a special call from the CFTC

Additionally, DCMs that list exclusively self-cleared contracts (as described above) must submit, and update as necessary, legacy Form 102 on behalf of all of its clearing members.²⁴ However, information regarding Volume Threshold Accounts will not need to be reported on Forms 102B or 71 under NAL 14-95 because the CFTC's legacy forms did not require such information to be reported. In addition, it is important to note that entities reporting on Forms 102 and 102S (but not 40/40S) are required to update information that is submitted to the CFTC. As noted above, if a Form 102 reporting party fails to update the forms that they submit to the CFTC, they could be subject to sanction for providing the CFTC with false information, violating the Final OCR Rules, and could also, possibly, be considered fraud under the CEA. Although entities reporting on Form 40/40S are not required to update their submissions under the conditions of NAL 14-95, the CEA makes it unlawful for any person to make false or misleading statements of material fact to the CFTC in any report filed with the CFTC.

Market participants will also have to comply with the new recordkeeping obligations imposed by the Final OCR Rules (under CFTC Rule 18.05) because NAL 14-95 does not provide relief from those requirements. These recordkeeping requirements apply to: (i) traders who own, hold, or control a reportable futures or option position and (ii) market participants that own or control individual or Omnibus Volume Threshold Accounts. Importantly, Reporting Entities will not be required to submit Form 102B, which identifies Volume Threshold Accounts, but recordkeeping obligations may be triggered for market participants that own or control Volume Threshold Accounts. Therefore, market participants (who are not already Reporting Entities) may need to monitor whether or not their accounts exceed the 50 or more contracts threshold during a single trading day on a single DCM or SEF applicable to Volume Threshold Accounts in order to determine whether or not the recordkeeping obligations under CFTC Rule 18.05 apply to them. Once triggered, these market participants must maintain books and records relating to: (i) all positions and transactions in the commodity, whether held on reporting markets, over the counter or on foreign boards of trade (FBOT); and (ii) all positions in the cash commodity (e.g., forward or spot transactions to which the futures contract relates), its products or by-products, and all commercial activities that the trader hedges in the reportable futures or option contracts.²⁵

The table below sets forth a more detailed summary of the substance of and conditions to the no-action relief.

NEW FORM	LEGACY FORM	CFTC RULE	SUBSTANCE	APPLIES TO (REPORTING PARTIES)	MECHANISM FOR REPORTING	NAL COMPLIANCE DEADLINE	CONDITIONS OF NAL
102A	102	§§ 17.01(a), (d), (e) and 17.02(b)	<p>Position-based reporting for futures and options at the end-of day.</p> <p>Report: Special Accounts based on ownership of a reportable position, control of a reportable position, both ownership and control of a reportable position or Special Accounts that are Omnibus Accounts.</p> <p>Owners and controllers of Special Accounts identified on Form 102A may be required to submit further information to the CFTC via a Form 40 (discussed below) special call.</p>	<p>FCMs, clearing members, and foreign brokers.</p> <p>DCMs and SEFs that list exclusively self-cleared contracts (“Reporting Markets”).²⁶</p>	Self-reporting.	February 11, 2015	<p>Reporting Entities must:</p> <ul style="list-style-type: none"> • Comply with reporting requirements under legacy Form 102 • Submit a legacy Form 102 within three business days of the first day that an account is reported to the CFTC • Upon a call by the CFTC, identify the type of account and name and location of the person identified on legacy Form 102 • Update the legacy Form 102 within three business days of any changes • Cooperate with CFTC staff to test and implement electronic reporting methods. <p>Reporting Markets that list exclusively self-cleared contract must submit and update legacy Form 102 on behalf of all clearing members.</p>
102B	N/A	§§ 17.01(b), (d), (e) and 17.02(c)	<p>Volume based reporting of accounts that have intra-day trading volume in futures, options, or swaps that exceed a certain level, regardless of whether account is reportable at the end-of day.</p> <p>Report: Volume Threshold Accounts of individual accounts carried for customers or Volume Threshold Accounts that are Omnibus Accounts.</p> <p>Owners and controllers of</p>	Clearing members and Reporting Markets.	Self-reporting.	March 11, 2015	No conditions apply to Reporting Entities other than to cooperate with CFTC staff to test and implement electronic reporting methods.

			Volume Threshold Accounts may be required to submit further information to the CFTC via a Form 40 (discussed below) and originators of a Volume Threshold Account may be required to submit further information via a Form 71 (discussed below).				
102S	102S	§ 20.5(a)	Position-based reporting for paired swaps and paired swaptions that are linked to a covered futures contract. Report: <i>Reportable Accounts</i> with paired swaps or paired swaptions comprised of 50 or more futures equivalent contracts.	Swap dealers and clearing members.	Self-reporting.	February 11, 2015	Reporting Entities must: <ul style="list-style-type: none"> • Comply with reporting requirements under legacy Form 102S • Submit and update a legacy Form 102S within three days of the first day that a counterparty account becomes reportable • Cooperate with CFTC staff to test and implement electronic reporting methods • A Reporting Entity may submit a legacy Form 102S only once for each counterparty, even if such persons at various times have multiple reportable positions in the same or different paired swaps or swaptions.
40	40	§ 18.04	Sent by CFTC to owners and controllers of Special Accounts identified on Form 102A or owners and controllers of Volume Threshold Accounts identified on Form 102B to collect further information regarding the owner and/or controller.	Reporting traders who own, hold, or control a position or account that was reported on Forms 102A or 102B.	Upon special call from the CFTC.	February 11, 2016	Reporting entities must: <ul style="list-style-type: none"> • Comply with reporting requirements under legacy Form 40 • File with the CFTC a legacy Form 40 at such time and place as directed by the CFTC upon a special call by the CFTC • Cooperate with CFTC staff to test and implement electronic reporting methods.
40S	40S	§ 20.5(b)	Sent by CFTC to owners and controllers of Reportable Accounts identified on Form	Reporting traders who own or control a reportable position in	Upon special call from the CFTC.	February 11, 2016	Reporting parties must: <ul style="list-style-type: none"> • Comply with reporting requirements under legacy Form 40S

			102S to collect further information regarding the owner/controller.	paired swaps or swaptions that was reported on Form 102S.			<ul style="list-style-type: none"> • File with the CFTC a legacy Form 40S at such time and place as directed by the CFTC upon a special call by the CFTC • Cooperate with CFTC staff to test and implement electronic reporting methods.
71	N/A	§§ 17.01(c), (e)	Sent to originators of an Omnibus Account that is a Volume Threshold Account identified in form 102B.	Originators of an Omnibus Volume Threshold Account.	Upon special call from the CFTC.	February 11, 2016	No conditions apply to reporting parties other than to cooperate with CFTC staff to test and implement electronic reporting methods.

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Endnotes

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- ¹ See Ownership and Control Reports, Forms 102/102S, 40/40S, and 71; Final Rule, 78 Fed. Reg. 69178 (Nov. 18, 2013).
 - ² See Final OCR Rule, 78 Fed. Reg. at 69198.
 - ³ The no-action request was submitted by the Futures Industry Association (FIA), who is also developing a technology service that is designed to help the industry and customers comply with the Final OCR Rules.
 - ⁴ See CFTC Letter No. 14-95 (July 23, 2014).
 - ⁵ See Large Trader Reporting for Physical Commodity Swaps, 76 Fed. Reg. 43851, 43862- 43863 (July 22, 2011) (codified at 17 C.F.R. §§ 20.1; 20.2). The CFTC recently imposed a \$650,000 civil penalty on a large FCM for repeatedly submitting inaccurate large trader reports under the CFTC's existing large trader reporting regime. The CFTC claimed that the large trader reports, which were filed on Form 102, failed to report the actual number of delivery notices issued and stopped and inaccurately reported the number of exchanges for related positions (EFRPs) bought and sold.
 - ⁶ A foreign broker is any person located outside the United States, its territories or possessions who is engaged in soliciting or in accepting orders only from persons located outside the United States, its territories or possessions for the purchase or sale of any commodity interest transaction on or subject to the rules of any designated contract market or swap execution facility and

that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. 17 C.F.R. § 1.3(xx).

⁷ See, e.g., Final OCR Rules, 78 Fed. Reg. at 43684 (codified at 17 C.F.R. § 20.5).

⁸ See *id.*

⁹ See Final OCR Rules, 78 Fed. Reg. at 69184.

¹⁰ For exchange-traded futures and commodity options, a “reportable position” is defined in CFTC Regulation 15.00(p)(1) as any open contract position that at the close of the market on any business day equals or exceeds the quantity set forth in CFTC Regulation 15.03 in either: (i) any one futures contract or commodity on any reporting market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a reporting market; or (ii) long or short put or call options that exercise into the same future of any commodity, or other long or short put or call commodity options that have identical expirations and exercise into the same commodity, on any one reporting market.

¹¹ See 17 C.F.R. § 17.02(b).

¹² Notwithstanding the requirement on New Form 102A to report based solely on ownership of a reportable position, the CFTC has stated that it will not require reporting based on this trigger via New Form 102A following the implementation of the Final OCR Rules. The CFTC is retaining the reporting trigger based on ownership of a reportable position in New Form 102A as a placeholder, in the event that the CFTC requires 102A reporting based solely on this trigger on a future date.

¹³ “Control” is defined in CFTC Regulation 15.00(t) to mean to actually direct, by power of attorney or otherwise, the trading of an account. Accordingly, an account may have more than one controller.

¹⁴ The Final OCR Rules provide that Form 102A Reporting Entities may stop providing Form 102A change updates and refresh updates for a Special Account if the account is no longer reportable as a Special Account and has not been reportable as a Special Account for the past six months.

¹⁵ For purposes of the reporting thresholds for Form 102B, reporting entities must combine all instruments that the relevant reporting market designates with the same product identifier, even if that is more than one type of contract. See 17 C.F.R. § 15.04.

¹⁶ See 17 C.F.R. § 17.02(c).

¹⁷ See Final OCR Rules, 78 Fed. Reg. at 69212.

¹⁸ See 17 C.F.R. § 20.1.

¹⁹ Although Form 102S Reporting Entities will be required to submit additional ownership and control information about their counterparties, there does not appear to be any rule requiring that those counterparties provide such information.

²⁰ See 17 C.F.R. § 17.00(i).

²¹ See Final OCR Rules, 78 Fed. Reg. at 69212.

²² See Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swaps Regulations, 78 Fed. Reg. 4529, 45338 (July 26, 2013).

²³ The CFTC stated that this was necessary in light of the anticipated impediments to obtaining directly comparable positional data through any foreign swap data reporting regime “including the time and resources expended by the [CFTC]” in conversion of that positional data into futures contract equivalents in a prompt and efficient manner. See *id.* at 45350.

²⁴ It does not appear that SEFs will be required to comply with the new reporting requirements imposed on them by the Final OCR Rules, although this is somewhat unclear under NAL 14-95. The Final OCR Rules redefined the term “reporting market” to include SEFs that list exclusively self-cleared contracts (in addition to DCMs that list such contracts). By virtue of being “reporting markets,” SEFs that list exclusively self-cleared contracts must submit new Forms 102A and 102B under the Final OCR Rules. NAL 14-05 provided relief from these requirements, but one of the conditions to that relief is that “reporting markets” (which is not defined therein) that list exclusively self-cleared contracts submit and update legacy Form 102 (but not legacy Form 102S). Therefore, although NAL 14-95 does not clarify that the requirements imposed therein for “reporting markets” does not include SEFs, SEFs will not have any reporting obligations so long as reporting markets are only required to submit legacy Form 102, and not legacy Form 102S, since SEFs only list swaps and not futures or options on futures.

²⁵ See 17 C.F.R. § 18.05(a).

²⁶ As noted above, Reporting Markets listing “exclusively self-cleared contracts” are those cleared contracts for which no persons, other than a reporting market and its clearing organization, are permitted to accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade. See 17 C.F.R. § 15.00(h).