

CLIENT ALERT

CFTC Extends Relief on Certain Ownership and Control Reports of Large Traders

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In a welcome development for so-called “large traders” in the futures and swaps markets, the Division of Market Oversight of the Commodity Futures Trading Commission issued Letter 20-30 on September 25, 2020 to extend the conditional relief issued by DMO in 2017 with respect to market participant reporting obligations. Letter 20-30 addresses the obligations of market participants to submit a Form 40/40S in response to a special call from the CFTC, and the obligations for futures commission merchants, clearing members, foreign brokers, and swap dealers to report information to the CFTC about their customers and counterparties on Forms 102 and 71. Letter 20-30 was in response to a joint request submitted by the Futures Industry Association, the Commodity Markets Council and the International Swaps and Derivatives Association, which collectively represent most of the reporting parties and market participants impacted by the data reporting requirements of Sections 17, 18, and 20 of the CFTC’s regulations implemented pursuant to the Ownership and Control Reports Final Rule (the “OCR Final Rule”).¹ Letter 20-30 generally extends the relief granted by DMO on September 25, 2017 in Letter 17-45 and may be relied upon by all parties required to report pursuant to the OCR Final Rule on Form 102A, Form 102B, Form 40 or Form 40S (collectively, “Reporting Parties”).

By way of background, the OCR Final Rule updated the CFTC’s existing OCR rules in November of 2013. Under the OCR Final Rule, the CFTC increased the amount of information and accelerated the time frame for Reporting Parties to report ownership and control information about their customers and counterparties on Form 102. In addition, the OCR Final Rule also added a new Form 71, which requires that a futures commission merchant, clearing member, or foreign

¹ Ownership and Control Reports, Forms 102/102S, 40/40S, and 71; Final Rule, 78 FR 69178 (November 18, 2013).

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broker identify customers with a reportable position within a customer omnibus account. The relief issued in 2017 was intended to address the difficulty that Reporting Parties faced in situations where they do not receive necessary data from their customers and/or counterparties. Our prior client alert on the relief issued in 2017 can be found [here](#).

Because the challenges to comply with the OCR Final Rule continue to exist today, the CFTC issued Letter 20-30 to extend the no-action relief until the earlier of: (1) September 29, 2023 or (2) such CFTC action addressing the requirements of the OCR Final Rule. Letter 20-30 notes that the Futures Industry Association and Commodity Markets Council had previously filed a petition to amend the OCR Final Rule, but because the CFTC had yet to act upon the petition, the CFTC Staff viewed it as necessary to extend the existing no-action relief. Clients should continue to monitor CFTC proposed rules to see if and when the CFTC proposes changes to the OCR Final Rule to address the issues that necessitated no-action relief. A summary of the relief provided in Letter 20-30 is provided below.

I. No-Action Relief

Pursuant to Letter 20-30, DMO continues to provide the time-limited no-action relief granted in Letter 17-45 and will not recommend an enforcement action against a Reporting Party relying on this relief.

a. Form 102A Relief

- Question 10(ii): Relief from Requirement to Accurately Report Trading Account Owner's Name by the Next Business Day after Reporting is Triggered.

Under Section 17.02(b)(2)(i) of the CFTC's regulations, a Reporting Party must report to the CFTC the names of trading account owners in question 10(ii) by 9:00 a.m. ET on the business day following the day on which the account becomes reportable. Letter 20-30 continues to permit a Reporting Party to modify such names until 9:00 a.m. on the third business day following the day on which the account becomes reportable.

- Question 10(iii): Relief from Requirement to Report Trading Account Controller Identifying Information.

Question 10(iii) of Form 102A requires the reporting of various contact fields related to the trading account controller. Letter 20-30 continues to relieve a Reporting Party from the obligation to report certain details in question 10(iii), such as the account controller's phone number, employer, NFA ID and legal entity identifier, job title, relationship to account owner and email address.

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- Question 10(iii): Relief from Requirement to Detail the Specifics of Client Reporting Issues.

The OCR Technical Guidance requires a Reporting Party to indicate whether or not the trading account controller has provided all of the necessary information or whether the information provided meets the CFTC's definition of trading account controller. DMO indicated that it may directly contact the trading account controller to obtain such information. Thus, a Reporting Party will be able to submit a Form 102A without completing the account controller field.

b. **Form 102B Relief**

- Relief from 50 Contract Designated Contract Market ("DCM") Volume Threshold Account Reporting Trigger.

Section 17.01(b) generally employs a reportable trading volume level of 50 contracts. Letter 20-30 will continue to permit a reporting trader to instead use 250 or more contracts as the reportable trading level.

- Relief from Reporting SEF Volume Threshold Accounts.

DMO acknowledged the practical limitations regarding the reportable trading volume level for Swap Execution Facility ("SEF") volume threshold accounts reported in Form 102B. Letter 20-30 will continue to waive the requirement to report SEF volume threshold accounts via Form 102B.

- Question 6: Relief from Reporting Volume Threshold Account Controller Identifying Information.

DMO will continue to waive the requirement for a Reporting Party to report any of the information required by question 6, provided that the Reporting Party has completed the information in question 5 and the reporting firm contact information is accurate and complete.

- Question 6: Relief from Detailing the Specifics of Client Reporting Issues.

A Reporting Party need not indicate whether or not the volume threshold account controller has provided all of the necessary information and whether the information provided meets the CFTC's definition of volume threshold account controller, as otherwise required by the OCR Technical Guidance. DMO noted that it may contact the volume threshold account controller directly to confirm or obtain such data.

- Question 5: Relief from Requirement to Accurately Report Volume Threshold Account Owner's Name by the Next Business Day after Reporting is Triggered.

Under Section 17.02(c)(2)(i), the names of DCM volume threshold account owners in question 5 must be reported by 9:00 a.m. on the business day following the day on which the volume threshold account becomes reportable ("VTA R+1").

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Letter 20-30 continues to grant time-limited no-action relief permitting a Reporting Party to modify such names until 9:00 a.m. on the third business day following the day on which the volume threshold account becomes reportable, provided that the Reporting Party initially reported such owners by no later than VTA R+1.

c. Relief from Submitting Certain Information via Form 102S

Letter 20-30 continues to treat the following data points as optional reporting items on Form 102S: the name of omnibus account originators and all related address and contact fields, all consolidated account owner fields and all consolidated account controller fields. A Reporting Party relying on this relief may instead identify the consolidated account counterparty and also report the required 102S information via the new automated methods introduced by the OCR Final Rule.

d. Relief from Form 102A, Form 102B and Form 102S Refresh Update Requirements

Form 102A, Form 102B and Form 102S all require a Reporting Party to conduct periodic refresh updates of the applicable data. Letter 20-30 continues to relieve a Reporting Party from the annual refresh update requirements set forth in Sections 17.02(b)(4) (Form 102A), 17.02(c)(4) (Form 102B), and 20.5(a)(5) (Form 102S), as applicable. This relief is conditioned upon a Reporting Party meeting the update requirements under Sections 17.02(b)(3) (Form 102A), 17.02(c)(3) (Form 102B), or 20.5(a)(4) (Form 102S), except under the circumstances where a change update is incomplete solely due to an uncooperative customer or counterparty.

II. No-Action Relief for Form 40 and Form 40S Relief

One important aspect to rely upon the relief for Forms 40 and 40S is that a party reporting Forms 40 and 40S must provide its future commission merchant, clearing member, foreign broker or swap dealer with sufficient information to allow entities to comply with their obligations to report Forms 102A, 102B and 102S. This same condition was part of the no-action relief in 2017, and remains a condition in Letter 20-30.

a. Relief from Requirement to Provide Certain Information Required by Question 8

Question 8 on Forms 40 and 40S requires a Reporting Party to list all parents of the reporting trader and all persons with a 10% or greater ownership interest in the reporting trader. In recognition of the fact that gathering the information necessary to complete question 8 may be burdensome, Letter 20-30 continues to permit a Reporting Party to provide a single set of certain contact information for question 8 for all Identified Parties. The relief is conditioned upon (i) the phone number and email address provided by the Reporting Party being monitored regularly during business hours, and (ii) there being available promptly upon request by CFTC staff a person authorized to speak about OCR matters on behalf of each identified party.

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b. Relief from the Requirement to Answer Question 12

Question 12 on Forms 40 and 40S requires a Reporting Party to list any other persons that directly or indirectly influence, or exercise authority over, some or all of the trading of the reporting trader, but who do not exercise “control” as defined in Forms 40 and 40S. Letter 20-30 continues to waive the requirement to answer question 12 for a Reporting Party.

c. Relief from the Requirement to Update Forms 40 and 40S

Letter 20-30 continues to permit a Reporting Party to update a previously filed Form 40 or Form 40S solely in response to an additional call from the CFTC.

If you have any questions regarding this client alert, please contact one of the authors, any member of our CFTC team listed below, or the Willkie attorney with whom you regularly work.

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Willkie has a dedicated team of attorneys with extensive knowledge and experience in all aspects of the Commodity Exchange Act and the CFTC regulatory regime. We would be pleased to assist on your matters.

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