

in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, “no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.” 15 U.S.C. 1476(a). A state or local standard may be excepted from this preemptive effect if: (1) the state or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the state or political subdivision applies to the Commission for an exemption from the PPPA’s preemption clause and the Commission grants the exemption through a process specified at 16 CFR part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a state or local government, may establish and continue in effect a nonidentical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, state, or local government’s own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the rule exempting powder formulations of Welchol® and Renvela® from special packaging requirements preempts nonidentical state or local special packaging standards for the substances.

#### List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

#### PART 1700—[AMENDED]

- 1. The authority citation for part 1700 continues to read as follows:

**Authority:** 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

- 2. Section 1700.14 is amended by adding paragraphs (a)(10)(xxii) and (xxiii) to read as follows:

#### § 1700.14 Substances requiring special packaging.

- (a) \* \* \*

(10) \* \* \*

(xxii) Colesevelam hydrochloride in powder form in packages containing not more than 3.75 grams of the drug.

(xxiii) Sevelamer carbonate in powder form in packages containing not more than 2.4 grams of the drug.

\* \* \* \* \*

Dated: July 18, 2011.

**Todd A. Stevenson,**  
Secretary, Consumer Product Safety  
Commission.

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 15 and 20

RIN 3038–AD17

### Large Trader Reporting for Physical Commodity Swaps

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission is adopting reporting regulations (“Reporting Rules”) that require physical commodity swap and swaption (for ease of reference, collectively “swaps”) reports. The new regulations require routine position reports from clearing organizations, clearing members and swap dealers and also apply to reportable swap trader positions.

**DATES: Effective Dates:** This rulemaking shall become effective September 20, 2011.

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#### SUPPLEMENTARY INFORMATION:

#### I. Background and Summary of Comments

##### A. Background

On November 2, 2010, the Commission proposed Reporting Rules that, in addition to establishing recordkeeping requirements, require routine swaps position reports from clearing organizations, clearing members and swap dealers and apply non-routine reporting requirements to large swaps traders.<sup>1</sup> The Reporting

Rules, as finalized and adopted herein, will allow the Commission to administer its regulatory responsibilities under the Commodity Exchange Act (“CEA or Act”) by implementing and conducting effective surveillance of economically equivalent physical commodity futures, options and swaps. The Reporting Rules will directly support the Commission’s transparency initiatives such as its dissemination of Commitments of Traders and Index Investment Data Reports and will allow the Commission to monitor compliance with the trading requirements of the Act.<sup>2</sup>

The Commission currently receives and uses for market surveillance and enforcement purposes, data on large positions in all physical commodity futures and option contracts traded on designated contract markets (“DCMs”). Without the Reporting Rules, there would be no analogous reporting system in place for economically equivalent swaps, which until recently were largely unregulated financial contracts. The Reporting Rules, as discussed below, are reasonably necessary for the effective surveillance of economically equivalent futures and swaps.

#### B. Proposed Reporting Rules Summary of Comments

The Commission received approximately 130 comment letters, and engaged in several *ex parte* communications, for the proposed Reporting Rules. The Commission has carefully reviewed and considered the submitted comments. Substantive comments pertinent to specific provisions in the rulemaking are summarized and discussed below and in other sections of this notice.

The National Futures Association (“NFA”) submitted a comment<sup>3</sup> suggesting that its issuance of trader identifications should be a part of the position reporting process. Although beyond the scope of this rulemaking as proposed, the Commission may review the feasibility of adopting such an approach as a part of its ongoing updating and revision of other transaction and position reporting requirements.

The Air Transport Association (“ATA”), Better Markets Inc. (“Better Markets”), the Petroleum Marketers Association of America (“PMAA”) and New England Fuel Institute (“NEFI”), and Robert Pollin and James Heintz of the Political Economy Research Institute

<sup>1</sup> 75 FR 67258, November 2, 2010. Comments and *ex parte* communications list available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=889>.

<sup>2</sup> See 76 FR 4752, January 26, 2011.

<sup>3</sup> Letter from Thomas W. Sexton, Senior Vice President and General Counsel, NFA, to David A. Stawick, Secretary, CFTC (December 2, 2010).

(“PERI”) indicated support for the proposed regulations.<sup>4</sup> ATA supported the proposal as a practical solution to the Commission’s current lack of swaps position data. Better Markets stated its support for the use of futures equivalence and the assembly of data based on price relationships. PMAA and NEFI argued the regulations will provide for a solid foundation for position limits.

Bindicap Comster, the Futures Industry Association (“FIA”) and a working group of commercial energy firms (“Working Group”), meanwhile, opposed the proposed regulations,<sup>5</sup> arguing that an expanded special call reporting mechanism, similar to the special call that the Commission has issued to support its Index Investment Data and Commitments of Traders Reports, would be a better alternative to the proposed regulations while remaining consistent with the requirements of the Act.<sup>6</sup> The Commission notes that its current special call for Index Investment Data Reports is a targeted collection of data. It gathers information related to specific products from a limited set of market participants. The special call was not intended to function as a tool for general market surveillance, including compliance with section 4a of the Act. In order to be able to gather data of the quality needed to conduct market surveillance the special call would have to undergo substantial modifications, such as requiring much more granular data by counterparty in a data stream on or close to a next-day basis, which in effect would convert it into the Reporting Rules.

FIA and the Working Group also questioned whether the Commission has

sufficient authority to adopt such regulations. FIA argued that the Commission’s authority is not clear because of the CEA section 2(h) reporting exemption for swaps on exempt commodities. The Working Group argued that the proposal is not required by the Dodd-Frank Act and that it is not necessary to comply with CEA section 4a(a)(1). The Commission has requisite statutory authority for the Reporting Rules based on CEA sections 4a, 4t and 8a(5). Specifically, section 4a of the CEA, as amended by the Dodd-Frank Act, directs the Commission to establish position limits, as appropriate, for physical commodity swaps.<sup>7</sup> Section 737 of the Dodd-Frank Act, which amended section 4a to direct the Commission to impose these limits, became effective on the date of enactment of the Dodd-Frank Act—*i.e.*, July 21, 2010. Section 8a(5) of the CEA authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. In the Commission’s judgment, the Reporting Rules are reasonably necessary to implement the statutory mandate in section 4a for the Commission to establish position limits, as appropriate, on an expedited basis.

In addition, section 4t of the Act authorizes the Commission to establish a large trader reporting system for significant price discovery function swaps, of which economically equivalent swaps are a subset. Swaps position reports are a necessary component of an effective surveillance program. Accordingly, the Commission is adopting the subject swap reporting requirements pursuant to its authority in sections 4a and 4t of the CEA, as described above.

With regard to the future establishment of swap data repositories (“SDRs”) and whether the Commission

should wait for SDRs to provide swaps position data instead of adopting the regulations, ATA argued that the Commission should proceed with the regulations and not wait for SDRs to become operational. FIA and the Working Group, on the other hand, argued that the future role of SDRs makes adoption of the regulations unnecessary. The Commission has determined that the Reporting Rules are reasonably necessary for several reasons. It is likely that physical commodity SDRs will require the most time to become operational since, unlike for swaps in the interest rate, equity and credit default asset categories, there currently is no functional and accepted data repository for swaps in the energy, metal or agricultural commodity asset categories. In addition, even after SDRs have been established, because they are fundamentally transaction repositories, it may be a considerable time before SDRs are able to reliably convert transaction data into positional data. Thus, in view of the considerable time before physical commodity swap SDRs are likely to be operational and have the ability to convert transactions to positions, the Commission has determined to adopt the Reporting Rules. In order to address concerns raised about the possibility of redundant regulatory obligations, however, the Reporting Rules do include, in final regulation 20.9, a sunset provision.

Better Markets, FIA and the Working Group, as well as a not-for-profit electric end-user coalition (“Electric End User Coalition”),<sup>8</sup> argued that the proposed regulations should not be adopted by the Commission until regulations defining the terms “swap dealer” and “swap” are adopted first. As further explained below, the Commission has determined to tie the compliance date of the regulations for swap dealers that are not clearing members to the effective date of the “swap dealer” definition final rulemaking.<sup>9</sup> With regard to the “swap” definition, the Commission has determined to utilize, on a transitional basis and until final definitional regulations become effective, a definition of “swap” that is based on the

<sup>4</sup> Letter from David A. Berg, Vice President and General Counsel, ATA, to David A. Stawick, Secretary, CFTC (December 2, 2010); letter from Dennis M. Kelleher, President & CEO, and Wallace C. Turbeville, Derivatives Specialist, Better Markets Inc., to David A. Stawick, Secretary, CFTC (December 2, 2010); letter from Dan Gilligan, President, PMAA, and Shane Sweet, President & CEO, NEFI, to David A. Stawick, Secretary, CFTC (December 2, 2010); and letter from Robert Pollin, Professor of Economics and Co-Director, and James Heintz, Associate Research Professor and Associate Director, PERI, to David A. Stawick, Secretary, CFTC (December 2, 2010).

<sup>5</sup> Letter from Bindicap Comster to David A. Stawick, Secretary, CFTC (December 2, 2010); letter from John M. Damgard, President, FIA, to David A. Stawick, Secretary, CFTC (December 2, 2010); and letter from R. Michael Sweeney Jr., David T. McIndoe, and Mark W. Menezes, Counsel for the Working Group, to David A. Stawick, Secretary, CFTC (December 2, 2010).

<sup>6</sup> The Commission conducts its current special call pursuant to Commission regulation 18.05. Swap dealers and index traders that receive a special call file monthly reports with the Commission within five business days after the end of the month.

<sup>7</sup> Section 754 of the Dodd-Frank Act provides that, unless otherwise provided, the provisions of subtitle A of Title VII “shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provisions of this subtitle.” CEA section 4a, as amended by Dodd-Frank section 737, requires the Commission to establish position limits for exempt commodities within 180 days after the date of enactment, and position limits for agricultural commodities within 270 days after the date of enactment. The Commission is proceeding deliberately to meet this Congressional mandate. As previously noted, on November 2, 2010, the Commission proposed these Reporting Rules, and on January 26, 2011, the Commission proposed position limits, including aggregate limits, for 28 major physical commodity DCM contracts and economically equivalent swaps.

<sup>8</sup> Letter from Russell Wasson, Director, Tax, Finance and Accounting Policy, National Rural Electric Cooperative Association, Susan N. Kelly, Senior Vice President of Policy Analysis and General Counsel, American Public Power Association, and Noreen Roche-Carter, Chair, Tax & Finance Task Force, Large Public Power Council, to David A. Stawick, Secretary, CFTC (December 2, 2010).

<sup>9</sup> Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,” 75 FR 80174, December 21, 2010.

reference to “commodity swap” within the definition of “swap agreement” in part 35 of the Commission’s regulations. Swap market participants have relied on the definition of “swap agreement” for exempting transactions from the CEA since 1993. As a result, market participants have an understanding of the general nature of the definition of commodity swap. The swaps that would be subject to the Reporting Rules would be the same under both definitions.

With regard to the definition of “reporting entity,” FIA and the Working Group argued that it is overly broad. Bindicap Comster argued that the definition is appropriate. In the Commission’s judgment, the Reporting Rules have been narrowly tailored to obtain the information reasonably necessary from clearing organizations, clearing members and swap dealers in order to implement and conduct an effective initial surveillance program for swaps.

With regard to the proposed definition of “paired swaps,” the Working Group argued that it would not always appropriately capture the concept of economic equivalence because, for example, different delivery locations may have periods of high correlation followed by periods where such correlations break down. Better Markets argued that it was too narrow because it did not consider criteria such as market hedging practices, margin netting offered by clearing organizations or historical price correlation. The proposed regulations identified three categories of swaps that would be economically equivalent to DCM contracts and thereby subject to reporting under the proposed rules: (1) Swaps directly or indirectly linked to the price of a referenced DCM contract; (2) swaps directly or indirectly linked to the price of the same commodity for delivery at the same location as that of a referenced DCM contract; and (3) swaps based on the same commodity as that of a referenced DCM contract which are deliverable at different locations that nonetheless have the same supply and demand fundamentals as the referenced DCM contract’s delivery point. The first two categories of the definition of economically equivalent swaps are appropriately tailored and objectively defined, do not require case by case Commission analysis, and would provide sufficient data for the Commission to meet its responsibility under sections 4a and 4t of the Act. To further the objectives of clear applicability of the regulations and the submission of accurate reports, as well as to lower the burden on reporting entities by limiting the set of reportable

swaps, the Commission has amended the definition to remove the third category.

With regard to the reporting mechanics and data fields of the proposed regulations, Better Markets suggested additional reporting fields, arguing that reporting entities should be required to specify their role with respect to the execution of reported trades and that clearing organizations should be required to report net position information as well as gross positions and delta values. The Commission has determined that the data fields specified in the regulations will provide the Commission with sufficient data to begin its initial surveillance of the swaps markets for physical commodities, while minimizing the burden on reporting entities. Such identification data, including trader categorization, will be collected in 102S and 40S filings which include other trader identifying information and are submitted to the Commission much less frequently than positional data. The Commission can later broaden the scope of the reporting requirements or frequency of reporting identifying data if necessary based on its administrative experience.

The final Reporting Rules do, however, harmonize the data fields required to be reported by swap dealers for cleared and non-cleared swaptions. As proposed, certain fields were required for cleared swaptions that were not required for non-cleared swaptions and vice-versa. Although certain data fields may be more relevant for cleared or non-cleared swaptions, the harmonization of required data fields will simplify the reporting of swaptions and thereby will likely decrease (and not increase) any burden associated with reporting swaptions under the Reporting Rules as finalized.

FIA argued that reporting entities’ trade capture systems are not readily adaptable to the data fields specified in the proposed regulations. It also argued that data for cleared swaps should only be submitted by clearing members in order to prevent double counting. The reporting of cleared positions by swap dealers and clearing members was intentionally incorporated into the regulations. As with the collection of any data, there is a need to verify submitted information.

FIA also argued that reporting entities, because certain counterparty data may not be available to them or organized as described by the Reporting Rules, should only be required to report their positions and the names of counterparties, not all the specified data

related to consolidated accounts in the proposed regulations.

The Commission has amended the proposed regulations, which initially required a reporting entity to identify information about the controller of a reportable account, to partially address this concern by requiring that data be provided by a clearing member’s or swap dealer’s direct legal counterparty. Data is no longer required to be provided by account controller. In addition, the final Reporting Rules do not require reporting by actual swap and swaption accounts. All of these amendments will serve to streamline the reporting process while preserving the Commission’s regulatory interests.

With regard to the reporting threshold of futures equivalent contracts for economically equivalent swaps, Better Markets suggested that the threshold reporting level should be 25 contracts instead of the 50-contract threshold specified in the proposed regulations. Bindicap Comster stated that the threshold reporting level of 50 contracts is generally suitable while the FIA stated that the threshold reporting level for a particular swap should depend upon its liquidity.

The Commission determined the 50-contract threshold for reporting based on industry inquiries regarding a reporting level that would make 95% of the economically equivalent swaps markets visible to the Commission. In order to streamline reporting and give reporting entities the option of avoiding a complex reporting level calculation, however, the final Reporting Rules allow reporting entities to deem a reporting level of one or more swaps to be a reportable position. Thus the final Reporting Rules allow reporting entities the option of not conducting any potentially complex or costly reporting threshold analysis prior to transmitting reports to the Commission.

The Commission is aware that a reporting level of one contract could potentially expand the Reporting Rules’ books and records obligations to additional swap market participants. Therefore, final regulation 20.6 applies a books and records requirement to swap counterparties only if such persons’ swaps positions meet or exceed a simplified 50 futures contract equivalent reporting level. Also, final regulation 20.6 provides that persons with swaps positions meeting or exceeding the aforementioned threshold may keep and reproduce books and records for transactions resulting in such swaps positions in the record retention format that such person has developed in the normal course of business. Regulation 20.6 also provides

that such persons may keep and reproduce books and records for, among other things, the cash commodity underlying such swaps positions in accordance with the record retention format developed in the normal course of business.

In connection with the submission of swaps position data, FIA expressed concern about the confidential treatment of data submitted should the Commission determine to require the submission of data to third parties. This concern is not relevant as the regulations only involve the submission of position and identifying data to the Commission. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

FIA and the Working Group argued that the costs placed by the proposed regulations would be significant and that the Commission significantly underestimated the costs to clearing members and swap dealers. FIA stated that some of its members believe the costs to be very substantial and in some cases exceeding millions of dollars, while acknowledging that it is difficult to estimate costs with any precision. The Working Group stated that some of its members estimate the total compliance costs to range up to \$80,000 to \$750,000 per year, inclusive of capital costs, and that the upfront costs could be as high as \$1.5 million. The Commission has carefully considered the costs on market participants. In response, the Commission notes that the Reporting Rules are tailored to collect routine reports only from clearing organizations, clearing members, and swap dealers. Based on discussions with potential reporting entities, the Commission has determined that the costs that would be imposed by the regulations on reporting entities is reasonable given the trade capture and information technology resources of such entities and their familiarity with limiting and managing complex price risks. Clearing organizations and clearing members should have appropriate systems in place and

currently likely provide or collect market and large trader reports.

The compliance date for swap dealers that are not clearing members will be delayed until the Commission further defines the term swap dealer. In order to address concerns relating to the ability of reporting entities to comply with the requirements of part 20 by the compliance date set forth in final regulation 20.10(a), final regulation 20.10(c) authorizes the Commission (or staff members delegated with such authority) to permit, for a period not to exceed six calendar months following the effective date of the Reporting Rules, the submission of reports that differ in content, form, or manner from that mandated in part 20, provided that there is a good faith attempt at compliance with part 20.

In addition, in order to address the possibility of certain firms that may not be able to comply expediently with the requirements of part 20 should they fall within the definition of swap dealer, regulation 20.10(e) allows the Commission to defer compliance for such firms for a period not to exceed six calendar months following the effective date of final regulations further defining the term swap dealer. The Commission's consideration of costs and burdens is discussed in more detail below.

The Electric End User Coalition also argued that the recordkeeping burden imposed by the proposed regulations on commercial entities would be significant. In particular it argued that the recordkeeping requirements should not apply to end-users and that the Commission should defer to other regulators, specifically the Federal Energy Regulatory Commission ("FERC"), with regard to recordkeeping obligations. In the Commission's judgment, the recordkeeping requirements for end-users with swaps positions that meet or exceed the relevant thresholds are consistent with requirements under current Commission regulation 18.05. As described above, final regulation 20.6 generally permits such end-users to keep and reproduce records of swaps positions, as well as the underlying cash commodities, in the record retention format that such entities have developed in the normal course of business.

## II. The Final Reporting Rules

### A. Covered Contracts

With regard to the "swap" definition, the final part 20 regulations utilize a definition of "swap" that is based on the reference to "commodity swaps" within the definition of "swap agreement" in part 35 of the

Commission's regulations.<sup>10</sup> Swap market participants have relied on the definition of "swap agreement" for exempting transactions from the CEA since 1993. As a result, market participants have an understanding of the general nature of the definition of commodity swaps. The part 35 definition will become effective on the effective date of this final rulemaking and will operate until the effective date of any swap definitional rulemaking by the Commission under section 1a of the CEA. Under both definitions, the category of the swaps that would be subject to the Reporting Rules remains the same.<sup>11</sup> For further clarity, forwards as currently excluded from the CEA (*i.e.*, prior to the effective date of the Dodd-Frank Act) are also outside the scope of the definition of "swap" as used in this reporting scheme.

Regulation 20.2 lists the 46 DCM-listed futures contracts covered by the Reporting Rules ("Covered Futures Contracts"), as well as an additional line item for diversified commodity indices.<sup>12</sup> The Commission, through the definition of paired swap or paired swaption (for ease of reference, collectively "paired swaps") in regulation 20.1, defines a subset of swaps as economically equivalent to the Covered Futures Contracts. The definition of paired swaps (*i.e.*, economically equivalent swaps) identifies two distinct categories of instruments.

First, the definition includes those paired swaps that are directly or indirectly linked to the price of a Covered Futures Contract. This category includes swaps that are partially or fully settled or priced at a differential to a Covered Futures Contract. The following are examples of these types of paired swaps:

1. *Directly linked to a listed contract*—A swap settled to the price of the New York Mercantile Exchange ("NYMEX") Heating Oil Calendar Swap Futures Contract is directly linked to a Covered Futures Contract because the floating price of the futures contract is equal to the monthly average settlement price

<sup>10</sup> 17 CFR 35.1(b)(1).

<sup>11</sup> This definition of "swap" is also intended to be generally consistent with how swaps are defined in the Commission's Policy Statement Concerning Swap Transactions, 54 FR 30694, July 21, 1989. That is, a "swap" as used in this rulemaking refers to an agreement between two parties to exchange one or more cash flows measured by different rates or prices with payments calculated by reference to a principle base (notional amount).

<sup>12</sup> For the purpose of reporting in futures equivalents, paired swaps and swaptions using commodity reference prices that are commonly known diversified indices with publicly available weightings may be reported as if such indices underlie a single futures contract with monthly expirations for each calendar month and year.

of the first nearby contract month for the NYMEX New York Harbor No. 2 Heating Oil Futures Contract.

2. *Indirectly linked to a listed contract*—The ICE WTI Average Price Option is indirectly linked to a Covered Futures Contract because the floating price of the swap references the ICE WTI 1st Line Swap Contract which in turn is equal to the monthly average settlement price of the NYMEX Front Month WTI Crude Futures Contract.

3. *Partially settled to a listed contract*—A swap settled to the Argus Sour Crude Index (“ASCI”) (which also underlies the Chicago Mercantile Exchange (“CME”) Argus WTI Formula Basis Calendar Month Swap Futures Contract) is partially settled to a Covered Futures Contract.<sup>13</sup> Because the ASCI index uses both a physical cash market component and the NYMEX WTI Futures Contract to establish the level of the index, it would partially settle to a Covered Futures Contract and would be a paired swap under the first paragraph of the definition.<sup>14</sup>

4. *Priced at a differential to a listed contract*—The ICE Henry Physical Basis LD1 Contract is priced at a differential to a Covered Futures Contract because the settlement price is the final settlement price for natural gas futures (a Covered Futures Contract) as reported by NYMEX for the specified month plus the contract price.

The second category of swaps captured by the paired swap definition includes swaps that directly or indirectly link to, including being partially or fully settled or priced at a differential to, the price of the same commodity for delivery at the same location or locations as that of a Covered Futures Contract. As opposed to the first category of paired swaps, the second category looks to a swap’s connection to the commodity underlying a Covered Futures Contract, and to the delivery locations specified in a Covered Futures Contract, as opposed to the price of the contract itself. Therefore, the linkage for contracts in this second category is to the price of the underlying commodity and its physical marketing channels.

As proposed, a paired swap would have also included swaps that are based on the same commodity<sup>15</sup> as that of a Covered Futures Contract but deliverable at locations that are different than a Covered Futures Contract’s delivery locations, so long as such

locations have substantially the same supply and demand fundamentals as that of a Covered Futures Contract reference delivery location. In response to comments, the Commission has determined not to include this proposed category in the final definition of paired swaps. The final definition thereby narrows the scope of the swaps that are subject to position reporting.

## B. Reporting Under the Final Regulations

### 1. Clearing Organizations

Regulation 20.3 requires paired swap reports from clearing organizations. Clearing organizations are defined in regulation 20.1 as persons or organizations that act as a medium between clearing members for the purpose of clearing swaps or effecting settlements of swaps or swaptions. The definition is adopted as proposed and is modeled after the definition used in current Commission regulation 15.00 (the definitional section for the Commission’s large trader reporting rules) solely for the purposes of reporting under part 20. The definition is intended to cover entities that qualify as clearing organizations, regardless of their registration status with the Commission, should for example there exist a mutual recognition regime. It is not meant to apply to financial institutions or parties to swaps that provide counterparties with financing, credit support, or hold collateral to facilitate or to ensure that payments are made under the terms of a paired swap.

Pursuant to regulation 20.3, clearing organizations, for paired swap positions, are required to report the aggregate proprietary and aggregate customer accounts of each clearing member of that clearing organization. Regulation 20.1 defines clearing member as any person who is a member of, or enjoys the privilege of clearing trades in its own name through, a clearing organization. The paired swap positions must be reported to the Commission as futures equivalent positions in terms of a swap’s related Covered Futures Contract. Appendix A to this part provides several examples of the methods used for converting swap positions into futures equivalent positions. The regulations call for reporting in futures equivalents because such conversions are made by entities that deal in swaps to effectively manage residual price risks by entering into Covered Futures Contracts. Reporting in futures equivalents provides a measure of equivalency between positions in paired swaps and their related Covered Futures Contracts, which allows for

more effective market surveillance and the monitoring of trading across futures and swaps.

As required under paragraphs (a) and (b) of regulation 20.3, each clearing organization is required to submit to the Commission a data record that identifies either gross long and gross short futures equivalent positions if the data record corresponds to a paired swap position, or gross long and gross short futures equivalent positions on a non-delta-adjusted basis if the data record corresponds to a paired swaption position. A data record (for the purposes of this rulemaking) can be thought of as a grouped subset of data elements that communicates a unique (non-repetitive) positional message to the Commission.

Clearing organizations are required to report a data record for each clearing member for each reporting day, which is defined in regulation 20.1 as the daily period of time between a clearing organization or reporting entity’s usual and customary last internal valuation of paired swaps and the next such period. In order to provide clearing organizations with some flexibility in determining daily operational cycles that would coincide with their obligation to provide clearing member reports on a daily basis, the proposed definition would permit such cycles of time to vary for different clearing organizations, so long as the daily period of time is consistently observed and the Commission is notified, upon its request, of the manner by which a cycle is calculated. Data records would be reported electronically in a manner consistent with current Commission practice.

The positional data elements in paragraphs (a) and (b) of regulation 20.3 require daily reports for each aggregated proprietary account and each aggregated customer account, by each cleared product, and by each futures equivalent month. Each data record would indicate the commodity reference price with which each cleared product is associated. As defined in regulation 20.1, a commodity reference price is the price series used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of that swap or swaption. In addition, data records for swaptions are required to be broken down further by expiration date, put or call indicator, and strike price. Appendix B to part 20 includes examples of data records that would be required of clearing organizations.

In addition to reports for clearing members, clearing organizations are, pursuant to regulation 20.3(c), required to provide to the Commission, for each

<sup>13</sup> The floating price of the CME futures contract is equal to the arithmetic average of the ASCI (1st month) outright price from Argus Media for each business day that the ASCI is determined during the contract month.

<sup>14</sup> For a description of the ASCI methodology, see, e.g., <http://web04.us.argusmedia.com/ArgusStaticContent//Meth/ASCI.pdf>.

<sup>15</sup> A commodity is considered to be the same (for the purposes of reporting under these regulations) if such commodity has the same economic characteristics with respect to grade and quality specifications as those referenced by a Covered Futures Contract.

futures equivalent month, end of reporting day settlement prices for each cleared product and deltas for every unique swaption put and call, expiration date, and strike price. This second daily report will allow the Commission to assign an appropriate weight to unadjusted positions.

## 2. Reporting Entities

Regulation 20.4 requires reporting entities to report principal<sup>16</sup> and direct legal counterparty paired swap positions to the Commission when such positions become reportable. Reporting entities are required to follow the same procedure for determining if their principal or counterparty positions are reportable to the Commission. Regulation 20.1 identifies a reporting entity as a clearing member or a swap dealer as defined in section 1a of the CEA and as subject to definitional changes that will be made through Commission regulations further defining the term swap dealer. The compliance date of any provisions relating to swap dealers will be the effective date of a final swap dealer definition.<sup>17</sup>

Regulation 20.4 requires reporting entities to provide positional reports when reporting entities have principal and counterparty reportable paired swap positions. The final Reporting Rules amend regulation 20.1 to define a reportable position in two distinct ways. First, regulation 20.1, as proposed and finalized, defines a reportable position as a position, in any one futures equivalent month, comprised of 50 or more futures equivalent paired swaps or swaptions based on the same commodity. This proposed level is calibrated to capture data on a sufficiently large percentage of paired swap positions and was arrived at after consultation with multiple market participants.<sup>18</sup> Once a paired swap position attributable to the reporting entity as principal or to its counterparty meets or exceeds the 50 futures equivalent contract threshold, all other paired swaps in the same commodity attributable to such trader becomes part of that trader's reportable position.<sup>19</sup>

<sup>16</sup> The Reporting Rules, as proposed, used the term proprietary to refer to principal positions in the context of reporting by clearing members and swap dealers.

<sup>17</sup> The Reporting Rules render a swap dealer in any paired swap to be a reporting entity with the responsibility to provide data on all reportable positions, regardless of the specific types of paired swaps that render the entity a statutory swap dealer under the CEA.

<sup>18</sup> See <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=889>.

<sup>19</sup> In order to verify that a reporting entity's paired swap positions are no longer above the threshold, the proposed definition of reportable position

Alternatively the Reporting Rules, as amended and finalized, allow reporting entities to identify a reportable position as all positions on a gross basis in a consolidated account (as described in regulation 20.4(a)) that are based on the same commodity, so long as this approach is consistently applied to all consolidated accounts for reporting purposes. This amended definition of a reportable position allows reporting entities to forgo the 50-contract threshold calculation, which may be complex or costly, prior to submitting reports to the Commission.

As with reports that are required to be provided by clearing organizations to the Commission under regulation 20.3, regulation 20.4 requires paired swap positions to be represented and reported in futures equivalents. A common method of accounting for positions in swaps and futures allows for more effective market surveillance. The data collected by the Reporting Rules could be used to determine aggregate open interest levels for economically equivalent derivatives. For example, such "size-of-the-market" calculations could in turn serve as a basis for computing non-spot-month position limits, should the Commission determine to adopt such limits.

Under final regulation 20.11, for the purpose of reporting in futures equivalents, paired swaps and swaptions that are based on commonly known diversified indices with publicly available weightings must be reported as if such indices underlie a single futures contract with monthly expirations for each calendar month and year. Bespoke indices, however, must be decomposed into their futures equivalent components and reported along with a commodity reference price which allows the Commission to match such components to the bespoke index. The term commodity reference price is defined in regulation 20.1 as the price series (including derivatives contract and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of such contracts.

To determine what to report under regulation 20.4, reporting entities are required to separately consider principal and counterparty positions on a gross basis. Reporting entities are required to provide for each reporting day a data record that either identifies long and short paired swap positions (if

would also encompass positions in paired swaps held by the reporting entity on the first day after which the reporting entity's paired swap positions are no longer reportable.

the record pertains to swap positions) or long and short non-delta-adjusted paired swaption positions and long and short delta-adjusted swaption positions (if the record pertains to swaptions positions). For uncleared paired swaps, the regulations require a reporting entity to use economically reasonable and analytically supported deltas.

More specifically, regulation 20.4, as proposed and finalized, requires that this information be grouped separately by principal or counterparty positions, by futures equivalent month, by cleared or uncleared contracts, by commodity reference price, and by clearing organization if the data record pertains to cleared swaps. Data records pertaining to swaption positions under the final regulations are to be further grouped by put or call, expiration date, and strike price. The reports provided under regulation 20.4 are required to also include identifiers for the commodity underlying the reportable position, the counterparties of the account and the 102S filing identifier, as described in more detail below, assigned by the reporting entity to its counterparty.

## 3. Series S Filings

Regulation 20.5(a) requires a 102S filing for the identification of a reporting entity's counterparty when such counterparty holds a reportable position. The 102S filing consists of the "name, address, and contact information of the counterparty with the reportable account" and a "brief description of the nature of such person's paired swaps and swaptions' market activity." The reporting entity is required to submit a 102S filing only once for each person associated with a reportable account unless prior filed information is no longer accurate.

Once an account counterparty is reportable, the Commission may contact the trader directly and require that the trader file a more detailed identification report, a 40S filing. The Commission would require a 40S filing if a trader has become reportable for the first time and is not known to the Commission. A 40S filing consists of the submission of a CFTC Form 40 "Statement of Reporting Trader." As the current version of Form 40 covers information on positions in futures and options, traders would be required to complete the form as if the form covered information related to positions in paired swaps and swaptions.

The 102S filing and the 40S filing together would allow the Commission to identify the person(s) owning or controlling the trading of a reportable account, the person to contact regarding

trading, the nature of the trading, whether the reportable account is related—by financial interest or control—to another account, and the principal occupation or business of the account owner. The filings also would provide the Commission information on whether the account is being used for hedging cash market exposure.

Commission staff would use the information in these two filings to determine if the reported account corresponds to a new trader or is an additional account of an existing trader. If the account is an additional one of an existing trader, it would then be aggregated with that of other related accounts currently being reported.

The Commission plans to update, streamline and make electronic its current Form 102 and Form 40 in the near term. The Commission intends for such revised forms to include sections specifically for swap and swaptions. When updated, regulation 20.5 will be amended to reflect these revisions and to require reports electronically through updated Forms 102 and 40.

#### 4. Maintenance of Books and Records

Regulation 20.6 imposes recordkeeping requirements on clearing organizations, reporting entities, and persons with positions in paired swaps above a certain futures equivalent threshold. Regulations 20.6(a) and 20.6(b) require clearing organizations and reporting entities, respectively, to keep records of transactions in paired swaps or swaptions as well as methods used to convert paired swaps or swaptions into futures equivalents. In addition, regulation 20.6(c) requires every person with greater than 50 all-months-combined futures equivalent positions on a gross basis in paired swaps or swaptions on the same commodity to keep books and records for transactions resulting in such swap positions and, among other things, the cash commodity underlying such positions. In general, such person may keep and reproduce such books and records in the record retention format that such person has developed in the normal course of business. Furthermore, in order to clarify the Commission's authority to issue special calls for books and records, the Commission is including an explicit special call provision with respect to reportable positions in regulation 20.6(d).

The recordkeeping duties imposed by regulations 20.6(a) and 20.6(b) are in accordance with the requirements of regulation 1.31. Regulation 1.31(a)(1) requires that these transaction records be kept for five years, the first two of which they "shall be readily

accessible." Such books and records "shall be open to inspection by any representative of the Commission."

These recordkeeping requirements allow the Commission to have ready access to records that would enable Commission staff to reconstruct the transaction history of reported positions. These requirements would ensure that data records submitted to the Commission could be audited. In addition, these records enable Commission staff to better reconstruct trading activity that may have had a material impact on the price discovery process.

The recordkeeping burden imposed by regulation 20.6 is not anticipated to be unduly significant. These requirements are not unlike the recordkeeping requirements imposed by Congress in new CEA section 4r(c)(2) on all swap market participants, and by the Commission on those entities with reportable futures accounts under the existing recordkeeping provision of regulation 18.05.

#### 5. Form and Manner of Reporting

Regulation 20.7(a) provides that the Commission would specify, in writing to persons required to report, the format, coding structure, and electronic data transmission procedures for these reports and submissions. The purpose of this provision is to provide notice on how the Commission would determine the means by which the part 20 reports are to be formatted and submitted. The Commission notes that subsequent to the commencement of reporting, and from time to time thereafter, it will provide standardized codes for data elements such as commodity reference prices and require that submitted position reports use such standard codes instead of proprietary codes. Such information will be disseminated on the Commission's Web site.<sup>20</sup>

#### 6. Delegation of Authority

Regulation 20.8, as proposed and finalized, delegates certain of the Commission's part 20 authorities to the Director of the Division of Market Oversight and through the Director to other employee or employees as designated by the Director. The delegated authority extends to: (1) Issuing a special call for a 40S or 102S filing and books and records; (2) providing instructions or determining the format, coding structure, and

<sup>20</sup> As section II.(B).(8) herein describes, the Commission anticipates consulting with clearing organizations and reporting entities before determining the format, coding structure, and electronic data transmission procedures referenced in final regulation 20.7.

electronic data transmission procedures for submitting data records and any other information required under this part; and (3) determining the compliance schedules described in regulation 20.10. The purpose of these delegations 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.

#### 7. Sunset Provision

Regulation 20.9, as proposed and finalized, includes a sunset provision that would render the Reporting Rules ineffective and unenforceable upon the Commission's finding (through the issuance of an order) that operating SDRs are capable of processing positional data in a manner that would enable the Commission to effectively oversee and surveil paired swaps trading and paired swap markets. Regulation 20.9 also states that the Commission may retain the effectiveness and enforceability of any or all requirements in part 20, such as the reporting of deltas for uncleared paired swaps or the reporting of paired swap positions in futures equivalents, should the Commission determine through an order that such reporting is of material value to conducting market surveillance.

#### 8. Compliance Schedule

Under regulation 20.10, the compliance date for reporting requirements for clearing organizations under regulation 20.3 and clearing members under regulation 20.4 is sixty days after the publication of this notice in the **Federal Register**. The compliance date with regulation 20.4 for swap dealers that are not clearing members is the effective date of final regulations defining the term swap dealer.<sup>21</sup> All special call provisions must be complied with sixty days following the date of publication of this notice in the **Federal Register**.

Regulation 20.10 also allows the Commission to permit for a period, not to exceed six calendar months following the effective date of this part, during which a clearing organization or reporting entity or trader may provide reports that differ in content or are submitted in a form and manner which is other than prescribed by the provisions of part 20, provided that the submitter coordinates with the Commission and is making a good faith attempt to comply with all of the provisions of part 20. Furthermore, upon the passage of the full compliance

<sup>21</sup> See 75 FR 80174, December 21, 2010.



schedule outlined above, all paired swaps and swaptions position and market reports that are currently reported under a Commission order or parts 15 through 19 and 21 of the Commission's regulations must instead be reported exclusively under part 20.

In order to address the possibility of certain firms that may not be able to comply expediently with the requirements of part 20 should they fall within the definition of swap dealer, regulation 20.10(e) allows the Commission to defer compliance for such firms for a period not to exceed six calendar months following the effective date of final regulations further defining the term swap dealer.

A deferred compliance period of six months is appropriate to reduce potential compliance costs for such reporting entities because they may not have procedures in place for routine reporting of swaps data as they currently are not regulated as financial firms. The deferred compliance period would provide these affected entities with additional time to determine whether they need to make any arrangements to implement the reporting regime, and to make any such arrangements. Once the swap dealer definition is final, a party that is uncertain as to whether or not they are a swap dealer would not be foreclosed from asking CFTC staff or the Commission for additional relief under the CEA or Commission regulations.

The Commission also notes that it expects to consult with clearing organizations and reporting entities with respect to the manner of reporting before determining the format, coding structure, and electronic data transmission procedures that must be used to transmit information to the Commission pursuant to regulation 20.7.

### III. Related Matters

#### A. Cost-Benefit Analysis

##### 1. Introduction

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, CEA section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs. Rather, CEA section 15(a) requires the Commission to "consider the costs and benefits" of its action.

CEA section 15(a) specifies that costs and benefits shall be evaluated in light of the following considerations: (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. Accordingly, the Commission could, in its discretion, give greater weight to any of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was 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.

##### 2. Costs

As mentioned above, under CEA section 4a(a)(2), the Commission has been directed to establish position limits for exempt and agricultural commodities, as appropriate. Section 4t of the Act authorizes the Commission to establish a large trader reporting system for significant price discovery function swaps, of which economically equivalent swaps are a subset. As discussed in more detail above, swaps position reports are a necessary component of an effective surveillance program, including monitoring compliance with any limits that may be established by the Commission under section 4a of the Act.

Through the public comment process, alternatives to the Reporting Rules were presented to and reviewed by the Commission. Some commenters indicated that their respective alternatives would provide the Commission with the data it needs and would be less burdensome than the Reporting Rules. Bindicap Comster, the FIA, and the Working Group opposed the proposed regulations, and suggested an expanded special call reporting mechanism would be a better alternative. The Commission's current Index Investment Data Reports special call is a targeted collection of data. It gathers information related to specific products from a limited set of market participants. The special call was not intended to function as a tool for general market surveillance. In order to be able to gather positional data of the quality needed to conduct market surveillance, the special call would have to undergo substantial modifications which in effect would convert it into the Reporting Rules. In light of the broad areas of cost and benefit evaluation specified by CEA section 15(a), in particular section 15(a)(2)(B), the Commission has determined that the alternative presented by Bindicap Comster, FIA, and the Working Group is less viable than the Reporting Rules and

would not reduce costs to persons subject to this part or provide additional benefits.

With regard to the future establishment of SDRs and whether the Commission should wait for SDRs to provide swaps position data instead of adopting the regulations, ATA argued that the Commission should proceed with the regulations and not wait for SDRs to become operational. FIA and the Working Group, meanwhile, argued that the future role of SDRs makes adoption of the regulations unnecessary. The Commission has determined that the Reporting Rules are necessary for several reasons. It is likely that physical commodity SDRs will require the most time to become operational since, unlike for swaps in the interest rate, equity and credit default asset categories, there currently is no functional and accepted data repository for energy, metal and agricultural commodities. In addition, even after SDRs have been established, because they are fundamentally transaction repositories, it may be a considerable amount of time before SDRs are able to reliably convert transaction data into positional data. Thus, in view of the considerable time before physical commodity swap SDRs are likely to be operational and have the ability to convert transactions to positions, the Commission has determined to adopt the Reporting Rules instead of the proposed alternative, consistent with the objectives outlined in CEA section 15(a)(2). Without a comprehensive and operational market surveillance system in the near term, the Commission would not be able to administer the CEA as amended by the Dodd-Frank Act.

The Electric End User Coalition also argued that the recordkeeping burden imposed by the proposed regulations would be significant. In particular it argued that the recordkeeping requirements should not apply to end-users and that the Commission should defer to other regulators, specifically FERC, with regard to recordkeeping obligations. In the Commission's judgment, the recordkeeping requirements of the regulations are not unduly burdensome and are consistent with the recordkeeping requirements of current Commission regulations 1.31 and 18.05. In addition, as the regulations have been narrowly tailored to collect routine data only from clearing organizations, clearing members and swap dealers, the Reporting Rules will not have a significant negative impact on a substantial number of end-users. The Commission has thus determined to proceed with the Reporting Rules.



In developing the Reporting Rules, the Commission has aimed to minimize the cost and burden associated with reporting positional data to the Commission. As discussed above, the Commission has tailored the Reporting Rules to conform to the market structure for cleared and uncleared paired swaps. The cost of the part 20 regulations will be borne by firms that are clearing organizations reporting under regulation 20.3 and reporting entities reporting under regulation 20.4. For such firms, the additional cost to implement a reporting system is expected to be reasonable since the Commission understands these firms track their counterparties' positions for risk management purposes.

Although the Reporting Rules establish a reporting system for cleared paired swaps that resembles the large trader reporting system, they establish a structurally different reporting system for uncleared paired swaps. The structure of the uncleared paired swaps market is not as centralized as the cleared paired swaps market: there is no central counterparty that corresponds to a clearing organization in the uncleared paired swaps market. The Commission believes that swap dealers may be counterparties to a significant portion of the market for uncleared paired swaps and swaptions.

Accordingly, the Reporting Rules require position reporting from swap dealers. These firms are to report their reportable positions as well as those of their counterparties. As is the case for clearing member reporting entities, it is likely that creating or purchasing an information technology system that can present such a firm's net position exposures on a daily basis will not be an overly burdensome marginal expense, since the Commission understands swap dealers track their exposures for risk management purposes.

For counterparties that will be subject to the recordkeeping requirements of regulation 20.6, it should be noted that these requirements will place new burdens (in terms of reporting and retaining information on cash market transactions) only on persons that are reportable solely in paired swaps. This is because Congress, in new CEA section 4r(c)(2), has extended recordkeeping requirements to all swaps irrespective of any reporting requirement. Likewise, counterparties that hold reportable futures positions (in addition to reportable paired swaps positions) are currently subject to existing recordkeeping requirements under regulation 18.05. Thus, the Commission believes that these additional burdens,

in marginal terms, are not expected to be overly burdensome, given that firms collect information on their commercial activities in the normal course of business operations. The Commission also notes its adoption of regulation 20.10, which staggers implementation of the Reporting Rules. The flexible implementation process should reduce compliance costs in general.

As described in detail below, the Commission held several meetings with potential reporting entities and conducted analysis to estimate the reporting and recordkeeping burdens imposed by the Reporting Rules annually for the next five years. For clearing organizations, the reporting burden is estimated to be approximately 950 hours and \$100,000 spread across 5 entities, or 190 hours and \$20,000 per entity. The recordkeeping burden for clearing organizations is estimated to be 100 hours and \$100,000 spread across 5 entities, or 20 hours and \$20,000 per entity. Each clearing organization, then, is estimated to have a total annual burden of 207 hours and \$40,000.

For clearing members, the reporting burden is estimated to be 25,000 hours and \$6,000,000 spread across 100 entities (80 swap dealers and 20 non-swap dealers), or 250 hours and \$60,000 per entity. The recordkeeping burden for clearing members is estimated to be 2,000 hours and \$2,000,000 spread across 100 entities, or 20 hours and \$20,000 per entity. In addition, clearing members have a burden in connection with 102S submissions. The burden for 102S submissions is estimated to be 1,800 hours and \$1,000,000 spread across 200 entities (of which 100 are clearing members), or 9 hours and \$5,000 per entity. Each clearing member, then, is estimated to have a total annual burden of 279 hours and \$85,000.

For non-clearing member swap dealers, the reporting burden is estimated to be 37,500 hours and \$8,000,000 spread across 100 entities, or 375 hours and \$80,000 per entity. The recordkeeping burden for non-clearing member swap dealers is estimated to be 2,000 hours and \$2,000,000 spread across 100 entities, or 20 hours and \$20,000 per entity. In addition, non-clearing member swap dealers have a burden in connection with 102S submissions. The burden for 102S submissions is estimated to be 1,800 hours and \$1,000,000 spread across 200 entities (of which 100 are non-clearing member swap dealers), or 9 hours and \$5,000 per entity. Each non-clearing member swap dealer, then, is estimated to have a total annual burden of 404 hours and \$105,000.

For persons with reportable positions, the reporting burden in connection with 40S submissions is estimated to be 165 hours and \$4,500,000 spread across 500 entities, or .33 hours and \$9,000 per entity. The recordkeeping burden for persons with reportable positions is estimated to be 10,000 hours and \$11,500,000 spread across 500 entities, or 20 hours and \$23,000 per entity. Each person with reportable positions, then, is estimated to have a total annual burden of 20.33 hours and \$32,000.

Two commenters to the proposing release, FIA and the Working Group, argued that the Commission underestimated the costs imposed by the Reporting Rules. FIA stated that some of its members believe the costs to be very substantial and in some cases exceeding millions of dollars. The Working Group stated that some of its members estimate the total compliance costs to range up to \$80,000 to \$750,000 per year, inclusive of capital costs, and that the upfront costs could be as high as \$1.5 million. In light of these comments, the Commission has carefully reviewed its analysis and estimates, and it has determined its estimates to be reasonable and satisfactory in accordance with CEA section 15(a)(2) for the purpose of cost-benefit analysis of the Reporting Rules.

### 3. Benefits

In addition to providing increased market transparency through the reporting of paired swap positions to the Commission, the Commission will be better able to first, protect market participants and the public (CEA section 15(a)(2)(A)) and second, increase the efficiency and competitiveness of the markets (CEA section 15(a)(2)(B)). The extension of the Commission's surveillance activities to these paired swap markets will enhance the deterrence and detection of problematic activities and, thus, help ensure the integrity of these markets and protect market participants and the public from disruptive trading, price manipulation, and the effects of market congestion. Further, with this extension, the Commission will be able to expand its Commitments of Traders Reports, for example, to include aggregate position data on the paired swaps markets, and thus will provide the public, including market participants, greater transparency into the constitution of markets covered by part 20. This increased transparency may reduce the informational asymmetries in the paired swap markets and thereby improve the efficiency of the market and promote competition.

As discussed above, implementing part 20 will enable the Commission to monitor and enforce position limits, if established by the Commission, to diminish, eliminate, or prevent excessive speculation; to deter and prevent market manipulation; ensure sufficient market liquidity for *bona fide* hedgers; and to ensure that the price discovery function of the underlying market is not disrupted. By enabling the Commission to monitor compliance with position limits, if established by the Commission, to address these concerns, the Commission would be better able to protect the price discovery process (CEA section 15(a)(2)(C)) and market participants and the public from the threats of excessive speculation and price manipulation (CEA section 15(a)(2)(A)).

#### 4. Conclusion

The Commission, after considering the CEA section 15(a) factors, finds that the Reporting Rules are reasonably necessary and appropriate to protect the public interest and effectuate and accomplish purposes and goals of the CEA. The Commission also finds that the expected incremental cost imposed by part 20 is outweighed by the expected benefit. Accordingly, the Commission has determined to adopt the Reporting Rules.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires Federal agencies, in proposing regulations, to consider the impact of those regulations on "small entities."<sup>22</sup> In response to the Reporting Rules, the Electric End User Coalition argued that the recordkeeping burden imposed by the proposed regulations would be significant. In particular it argued that the recordkeeping requirements should not apply to end-users and that the Commission should defer to other regulators, specifically FERC, with regard to recordkeeping obligations. In the Commission's judgment, the recordkeeping requirements of the regulations are consistent with the recordkeeping requirements of current Commission regulations 1.31 and 18.05. In addition, as the regulations have been narrowly tailored to collect routine data only from clearing organizations, clearing members and swap dealers, the Commission has determined that the Commission does not expect the Reporting Rules to have a significant impact on a substantial number of small entities. The Commission has thus

determined to proceed with the Reporting Rules.

The Reporting Rules will affect organizations including registered derivatives clearing organization ("DCOs"), clearing members (many of whom are registered with the Commission already as futures commission merchants ("FCMs")), swap dealers, and persons who have books and records obligations under regulation 20.6.

The Commission has previously determined that DCOs<sup>23</sup> and FCMs<sup>24</sup> are not "small entities" for purposes of the RFA. As noted above, a person with non-discretionary reporting or books and records obligations under final regulations 20.3, 20.4 and 20.6 will either be a clearing organization, clearing member, swap dealer, or a person with at least 50 or more gross paired swaps positions in the same commodity on a futures equivalent and all-months-combined basis. The Commission notes this threshold is comparable to the minimum 25-contract reporting levels in effect for futures positions under regulation 15.03. Previously, the Commission had determined that the reporting levels in regulation 15.03, which determine which positions are reportable, would not affect small entities.<sup>25</sup> The Commission does not believe that entities who meet the Reporting Rules' non-discretionary quantitative threshold will constitute small entities for RFA purposes.

Accordingly, the Commission does not expect the Reporting Rules to have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the Reporting Rules will not have a significant economic impact on a substantial number of small entities.

#### C. Paperwork Reduction Act

##### 1. Overview

The Paperwork Reduction Act ("PRA")<sup>26</sup> imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Reporting Rules will result in new collection of information requirements within the meaning of the PRA. The

<sup>23</sup> 66 FR 45604, 45609, August 29, 2001.

<sup>24</sup> Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619, April 30, 1982.

<sup>25</sup> *Id.* at 18620 (excluding large traders from the definition of small entity).

<sup>26</sup> 44 U.S.C. 3501 *et seq.*

Commission submitted the proposing release to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission requested that OMB approve, and assign a new control number for, the collections of information covered by the proposing release. The information collection burdens created by the Commission's proposed rules, which were discussed in detail in the proposing release, are identical to the collective information collection burdens of the final rules.

The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comments in order to: (i) Evaluate whether the proposed collections of information were necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Commission received two comments on the burden estimates and information collection requirements contained in its proposing release. FIA and the Working Group argued that the costs placed by the proposed regulations would be significant and that the Commission significantly underestimated the costs to clearing members and swap dealers. FIA stated that some of its members believe the costs to be very substantial and in some cases exceeding millions of dollars, while acknowledging that it is difficult to estimate costs with any precision. The Working Group stated that some of its members estimate the total compliance costs to range up to \$80,000 to \$750,000 per year, inclusive of capital costs, and that the upfront costs could be as high as \$1.5 million. The Commission has carefully considered the costs on market participants. Some comments regarding significant industry burdens assumed that a substantial number of end-users would be swept up into the definition of swap dealer. In response, the Commission notes that the Reporting Rules are tailored to collect routine reports only from clearing

<sup>22</sup> 5 U.S.C. 601 *et seq.*

organizations, clearing members, and swap dealers. In addition, based on numerous meetings with potential reporting entities, the Commission has determined that the costs that would be imposed by the proposed regulations on reporting entities is reasonable given the trade capture and information technology resources of such entities.

The title for this collection of information is "Part 20—Large Trader Reporting for Physical Commodity Swaps." OMB has approved assigned OMB control number 3038-[ ] to this collection of information.

## 2. Information Provided and Recordkeeping Duties

Part 20 establishes reporting requirements for clearing organizations and reporting entities and recordkeeping requirements for these firms in addition to firms that become reportable because of a reportable paired swap or swaption positions. Accordingly, the Commission is seeking a new and separate control number for reporting from clearing organizations and reporting entities (collectively "respondents") and recordkeeping for firms that become reportable because of a reportable paired swap or swaption position operating in compliance with the requirements of part 20.

Part 20 will result in the collection of information on "paired swaps and swaptions" positions as defined in regulation 20.1. Specifically, part 20 provides for three new kinds of reports:

1. Under regulation 20.3, swap clearing organizations will provide daily reports of relevant position and clearing data.

2. Under regulation 20.4, reporting entities will produce daily position reports on a second-day basis on their own and individual counterparty accounts. There are two categories of reporting entities: (a) Clearing members and (b) swap dealers that are not clearing members. The former category, clearing members, will include many firms that are currently registered as FCMs with the Commission. The Commission estimates that a total of 180 swap dealers transact in physical commodity swaps and thereby may be reporting entities under part 20 (clearing members and non-clearing members combined).

3. Finally, under regulation 20.5, all reporting entities will submit identifying information to the Commission on new reportable accounts through a 102S filing.

In addition to creating these reporting requirements, regulation 20.6 imposes recordkeeping requirements for (1) clearing organizations, (2) reporting

entities, and (3) persons with paired swaps positions as specified in regulation 20.6(c). The Commission estimates that the recordkeeping requirements of regulation 20.6 will not be overly burdensome. For the firms subject to the reporting and recordkeeping requirements of regulation 20.6, it should be noted that these requirements are not unlike the recordkeeping requirements imposed by Congress in new CEA section 4r(c)(2) and by existing recordkeeping regulation 18.05. If a firm subject to these recordkeeping requirements was previously reportable due to a futures position in the relevant commodity above the "reporting level" (see regulation 15.03), then the regulation 20.6(b) recordkeeping burdens would not be new, as that firm would already be subject to these requirements under regulation 18.05. If a firm becomes subject to the regulation 20.6 recordkeeping requirements only because of a reportable paired swaps position (and not because of a futures position above the reportable level), then the requirements contained in the Reporting Rules add only the duty to keep records on all commercial activities that a reporting entity or person hedges to the swaps-related recordkeeping duties imposed by CEA section 4r(c)(2). These additional burdens are not expected to be substantial, given that in the normal course of business firms would collect this information on their commercial activities.

The Commission estimates that implementing part 20 will create a total annual reporting and recordkeeping hour burden of 79,503 hours across 705 firms. Based on a weighted average wage rate of \$74.36,<sup>27</sup> this will amount to an annualized labor cost of \$5.9 million. In addition, the Commission estimates that total annualized capital/start-up, operating, and maintenance costs<sup>28</sup> will amount to a combined

<sup>27</sup> The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The \$74.36 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2009, modified to account for an 1,800-hour work year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): "programmer (senior)" (60% weight), "compliance advisor (intermediate)" (20%), "systems analyst" (10%), and "assistant/associate general counsel" (10%).

<sup>28</sup> The capital/start-up cost component of "annualized capital/start-up, operating, and

\$35.2 million (a typographical error in the proposed Reporting Rules indicated a \$32.7 cost). This overall total reporting and recordkeeping hour burden is the sum of estimated burdens for the three reporting categories and the three recordkeeping categories mentioned above.

### Reporting burdens:

1. Regulation 20.3 clearing organization reports will account for 938 of these annual reporting and recordkeeping hours. These hours will be spread across 5 respondents. Annualized capital/start-up, operating, and maintenance costs for all affected clearing organizations combined will be approximately \$100,000.<sup>29</sup>

2. Regulation 20.4 reporting entity reports will have two separate burden estimates based on the kind of reporting entity providing the report:

a. Clearing member (80 clearing member/swap dealers plus 20 clearing member/non-swap dealers) reporting entity reports will create an annual reporting and recordkeeping burden of 25,000 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category combined will be approximately \$6 million.

b. Swap dealer non-clearing member reporting entity reports will create an annual reporting and recordkeeping burden of 37,500 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category combined will be approximately \$8 million.

3. Regulation 20.5 reporting entity 102S submissions will create an annual reporting and recordkeeping burden of 1,800 hours spread across 200 firms. Annualized capital/start-up, operating, and maintenance costs for all reporting entities combined providing these reports will be approximately \$1 million.

4. 40S submissions by persons with reportable positions under regulation 20.5(b) in paired swaps will create an annual reporting and recordkeeping burden of 165 hours and will affect 500 firms. Annualized capital/start-up, operating, and combined maintenance costs for all firms providing 40S filings will be approximately \$4.5 million.

### Recordkeeping burdens:

1. Regulation 20.6(a) recordkeeping duties for clearing organizations will account for 100 of these annual

maintenance costs" is based on an initial capital/start-up cost that is straight-line depreciated over five years.

<sup>29</sup> All of the capital cost estimates in these estimates are based on a five-year, straight-line depreciation.

reporting and recordkeeping hours. These hours will be spread across 5 firms. Annualized capital/start-up, operating, and maintenance costs to meet the recordkeeping requirements of regulation 20.6(a) will be approximately \$100,000.

2. Regulation 20.6(b) reporting entity recordkeeping duties will have two separate burden estimates based on the kind of reporting entity providing the report:

a. Clearing member (80 clearing member/swap dealers plus 20 clearing member/non-swap dealers) reporting entity recordkeeping will create an annual reporting and recordkeeping burden of 2,000 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category of recordkeeping reporting entities will be approximately \$2 million.

b. Swap dealer non-clearing member reporting entity recordkeeping will create an annual reporting and recordkeeping burden of 2,000 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category of recordkeeping reporting entities will be approximately \$2 million.

3. Regulation 20.6(c) recordkeeping duties for persons with paired swaps and recordkeeping burden of 10,000 hours spread across 500 firms. Annualized capital/start-up, operating, and maintenance costs for all traders in this category combined will be approximately \$11.5 million.

### 3. Confidentiality

The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."<sup>30</sup> The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

### List of Subjects

#### 17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

#### 17 CFR Part 20

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

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

### PART 15—REPORTS—GENERAL PROVISIONS

■ 1. The authority citation for part 15 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

■ 2. Revise the heading and introductory text in § 15.00 to read as follows:

#### § 15.00 Definitions of terms used in parts 15 to 19, and 21 of this chapter.

As used in parts 15 to 19, and 21 of this chapter:

\* \* \* \* \*

■ 3. Add part 20 to read as follows:

### PART 20—LARGE TRADER REPORTING FOR PHYSICAL COMMODITY SWAPS

#### Sec.

- 20.1 Definitions.
- 20.2 Covered contracts.
- 20.3 Clearing organizations.
- 20.4 Reporting entities.
- 20.5 Series S filings.
- 20.6 Maintenance of books and records.
- 20.7 Form and manner of reporting and submitting information or filings.
- 20.8 Delegation of authority to the Director of the Division of Market Oversight.
- 20.9 Sunset provision.
- 20.10 Compliance schedule.
- 20.11 Diversified commodity indices.
- Appendix A to Part 20—Guidelines on Futures Equivalency
- Appendix B to Part 20—Explanatory Guidance on Data Record Layouts

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

#### § 20.1 Definitions.

As used in, and solely for the purposes of, this part:

*Business day* means "business day" as that term is defined in § 1.3 of this chapter.

*Cleared product* means a paired swap or swaption that a clearing organization offers or accepts for clearing.

*Clearing member* means any person who is a member of, or enjoys the privilege of, clearing trades in its own name through a clearing organization.

*Clearing organization* means the person or organization that acts as a medium between clearing members for the purpose of clearing swaps or swaptions or effecting settlements of swaps or swaptions.

*Closed swap or closed swaption* means a swap or swaption that has been settled, exercised, closed out or terminated.

*Commodity reference price* means the price series (including derivatives contract and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of the contracts.

*Counterparty* means, from the perspective of one side to a contract, the person that is the direct legal counterparty corresponding to the other side of the contract.

*Clearing member customer* means any person for whom a reporting entity clears a swap or swaption position.

*Futures equivalent* means an economically equivalent amount of one or more futures contracts that represents a position or transaction in one or more paired swaps or swaptions consistent with the conversion guidelines in Appendix A of this part.

*Open swap or swaption* means a swap or swaption that has not been closed.

*Paired swap or paired swaption* means an open swap or swaption that is:

(1) Directly or indirectly linked, including being partially or fully settled on, or priced at a differential to, the price of any commodity futures contract listed in § 20.2; or

(2) Directly or indirectly linked, including being partially or fully settled on, or priced at a differential to, the price of the same commodity for delivery at the same location or locations.

*Person* means any "person" as that term is defined in § 1.3 of this chapter.

*Reportable account or consolidated account that is reportable* means a consolidated account that includes a reportable position.

*Reportable position* means:

(1)(i) A position, in any one futures equivalent month, comprised of 50 or more futures equivalent paired swaps or swaptions based on the same commodity underlying a futures contract listed in § 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;

(ii) For a consolidated account (described in § 20.4(a)) that includes a reportable position as defined in paragraph (1)(i) of this definition, all other positions in that account that are

<sup>30</sup> 7 U.S.C. 12(a)(1).

based on the commodity that renders the account reportable; and

(iii) The first reporting day on which a consolidated account (described in § 20.4(a)) no longer includes a reportable position as described in paragraph (1)(i) of this definition (because on such day, the reporting entity's consolidated account shall continue to be considered and treated as if it in fact included reportable positions as described in paragraph (1)(i) of this definition); or

(2) At the discretion of a reporting entity, and as an alternative to paragraph (1) of this definition, so long as the same method is consistently applied to all consolidated accounts (as described in § 20.4(a)) of the reporting entity, all positions on a gross basis in a consolidated account that are based on the same commodity.

*Reporting day* means the period of time between a clearing organization or reporting entity's usual and customary last internal valuation of paired swaps or swaptions and the next such period, so long as the period of time is consistently observed on a daily basis and the Commission is notified, upon its request, of the manner by which such period is calculated and any subsequent changes thereto.

*Reporting entity* means:

(1) A clearing member; or  
(2) A swap dealer in one or more paired swaps or swaptions as that term is defined in section 1a of the Act and any Commission definitional regulations adopted thereunder.

*Swap* means:

(1) Until the effective date of any definitional rulemaking regarding "swap" by the Commission under section 1a of the Act, an agreement (including terms and conditions incorporated by reference therein) which is a commodity swap (including any option to enter into such swap) within the meaning of "swap agreement" under § 35.1(b)(1) of this chapter, or a master agreement for a commodity swap together with all supplements thereto; or

(2) "Swap" as defined in section 1a of the Act and any Commission definitional regulations adopted thereunder, upon the effective date of such regulations.

*Swaption* means an option to enter into a swap or a swap that is an option.

## § 20.2 Covered contracts.

The futures and option contracts listed by designated contract markets for the purpose of reports filed and information provided under this part are as follows:

## COVERED AGRICULTURAL AND EXEMPT FUTURES CONTRACTS

Chicago Board of Trade ("CBOT") Corn.  
CBOT Ethanol.  
CBOT Oats.  
CBOT Rough Rice.  
CBOT Soybean Meal.  
CBOT Soybean Oil.  
CBOT Soybeans.  
CBOT Wheat.  
Chicago Mercantile Exchange ("CME") Butter.  
CME Cheese.  
CME Dry Whey.  
CME Feeder Cattle.  
CME Hardwood Lumber.  
CME Lean Hogs.  
CME Live Cattle.  
CME Milk Class III.  
CME Non Fat Dry Milk.  
CME Random Length Lumber.  
CME Softwood Pulp.  
COMEX ("CMX") Copper Grade #1.  
CMX Gold.  
CMX Silver.  
ICE Futures U.S. ("ICUS") Cocoa.  
ICUS Coffee C.  
ICUS Cotton No. 2.  
ICUS Frozen Concentrated Orange Juice.  
ICUS Sugar No. 11.  
ICUS Sugar No. 16.  
Kansas City Board of Trade ("KCBT") Wheat.  
Minneapolis Grain Exchange ("MGEX") Wheat.  
NYSELife ("NYL") Gold, 100 Troy Oz.  
NYL Silver, 5000 Troy Oz.  
New York Mercantile Exchange ("NYMEX") Cocoa.  
NYMEX Brent Financial.  
NYMEX Central Appalachian Coal.  
NYMEX Coffee.  
NYMEX Cotton.  
NYMEX Crude Oil, Light Sweet.  
NYMEX Gasoline Blendstock (RBOB).  
NYMEX Hot Rolled Coil Steel.  
NYMEX Natural Gas.  
NYMEX No. 2 Heating Oil, New York Harbor.  
NYMEX Palladium.  
NYMEX Platinum.  
NYMEX Sugar No. 11.  
NYMEX Uranium.  
Diversified Commodity Index (See § 20.11).

## § 20.3 Clearing organizations.

(a) *Reporting data records.* For each reporting day, with respect to paired swaps or swaptions, clearing organizations shall report to the Commission, separately for each clearing member's proprietary and clearing member customer account, unique groupings of the data elements in paragraph (b) of this section (to the extent that there are such corresponding elements), in a single data record, so that each reported record is distinguishable from every other reported record (because of differing data values, as opposed to the arrangement of the elements).

(b) *Populating reported data records with data elements.* Data records reported under paragraph (a) of this section shall include the following data elements:

- (1) An identifier assigned by the Commission to the clearing organization;
- (2) The identifier assigned by the clearing organization to the clearing member;
- (3) The identifier assigned by the clearing organization for a cleared product;
- (4) The reporting day;
- (5) A proprietary or clearing member customer account indicator;
- (6) The futures equivalent month;
- (7) The commodity reference price;
- (8) Gross long swap positions;
- (9) Gross short swap positions;
- (10) A swaption put or call side indicator;
- (11) A swaption expiration date;
- (12) A swaption strike price;
- (13) Gross long non-delta-adjusted swaption positions; and
- (14) Gross short non-delta-adjusted swaption positions.

(c) *End of reporting day data.* For all futures equivalent months, clearing organizations shall report end of reporting day settlement prices for each cleared product and deltas for every unique swaption put and call, expiration date, and strike price.

## § 20.4 Reporting entities.

(a) *Consolidated accounts.* Each reporting entity shall combine all paired swap and swaption positions:

- (1) That are principal positions (swaps and swaptions to which the reporting entity is a direct legal counterparty), in a single consolidated account that it shall attribute to itself; and
- (2) That are positions of the reporting entity's counterparty in a single consolidated account that it shall attribute to that specific counterparty.

(b) *Reporting data records.* Reporting entities shall report to the Commission, for each reporting day, and separately for each reportable position in a consolidated account described in paragraphs (a)(1) and (a)(2) of this section, unique groupings of the data elements in paragraph (c) of this section (to the extent that there are such corresponding elements), in a single data record, so that each reported record is distinguishable from every other reported record (because of differing data values, as opposed to the arrangement of the elements).

(c) *Populating reported data records with data elements.* Data records reported under paragraph (b) of this

section shall include the following data elements:

- (1) An identifier assigned by the Commission to the reporting entity;
- (2) An identifier indicating that a principal or counterparty position is being reported;
- (3) A 102S identifier assigned by the reporting entity to its counterparty;
- (4) The name of the counterparty whose position is being reported;
- (5) The reporting day;
- (6) If cleared, the identifier for the cleared product assigned by the clearing organization;
- (7) The commodity underlying the reportable positions;
- (8) The futures equivalent month;
- (9) A cleared or uncleared indicator;
- (10) A clearing organization identifier;
- (11) The commodity reference price;
- (12) An execution facility indicator;
- (13) Long paired swap positions;
- (14) Short paired swap positions;
- (15) A swaption put or call side indicator;
- (16) A swaption expiration date;
- (17) A swaption strike price;
- (18) Long non-delta-adjusted paired swaption positions;
- (19) Short non-delta-adjusted paired swaption positions;
- (20) Long delta-adjusted paired swaption positions (using economically reasonable and analytically supported deltas);
- (21) Short delta-adjusted paired swaption positions (using economically reasonable and analytically supported deltas);
- (22) Long paired swap or swaption notional value; and
- (23) Short paired swap or swaption notional value.

#### **§ 20.5 Series S filings.**

(a) *102S filing.*

(1) When a counterparty consolidated account first becomes reportable, the reporting entity shall submit a 102S filing, which shall consist of the name, address, and contact information of the counterparty and a brief description of the nature of such person's paired swaps and swaptions market activity.

(2) A reporting entity may submit a 102S filing only once for each counterparty, even if such persons at various times have multiple reportable positions in the same or different paired swaps or swaptions; however, reporting entities must update a 102S filing if the information provided is no longer accurate.

(3) Reporting entities shall submit a 102S filing within three days following the first day a consolidated account first becomes reportable or at such time as instructed by the Commission upon special call.

(b) *40S filing.* Every person subject to books or records under § 20.6 shall after a special call upon such person by the Commission file with the Commission a 40S filing at such time and place as directed in the call. A 40S filing shall consist of the submission of a Form 40, which shall be completed by such person as if any references to futures or option contracts were references to paired swaps or swaptions as defined in § 20.1.

#### **§ 20.6 Maintenance of books and records.**

(a) Every clearing organization shall keep all records of transactions in paired swaps or swaptions, and methods used to convert paired swaps or swaptions into futures equivalents, in accordance with the requirements of § 1.31 of this chapter.

(b) Every reporting entity shall keep all records of transactions in paired swaps or swaptions, and methods used to convert paired swaps or swaptions into futures equivalents, in accordance with the requirements of § 1.31 of this chapter.

(c) Every person with equal to or greater than 50 gross all-months-combined futures equivalent positions in paired swaps or swaptions on the same commodity shall:

(1) Keep books and records showing all records for transactions resulting in such positions, which may be kept and reproduced for Commission inspection in the record retention format that such person has developed in the normal course of its business operations; and

(2) Keep books and records showing transactions in the cash commodity underlying such positions or its products and byproducts, and all commercial activities that are hedged or which have risks that are mitigated by such positions, which may be kept in accordance with the recordkeeping schedule and reproduced for Commission inspection in the record retention format that such person has developed in the normal course of its business operations.

(d) All books and records required to be kept by paragraphs (a) through (c) of this section shall be furnished upon request to the Commission along with any pertinent information concerning such positions, transactions, or activities.

#### **§ 20.7 Form and manner of reporting and submitting information or filings.**

Unless otherwise instructed by the Commission, a clearing organization or reporting entity shall submit data records and any other information required under this part to the Commission as follows:

(a) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission;

(b) For clearing organizations, not later than 9:00 a.m. eastern time on the next business day following the reporting day or at such other time as instructed by the Commission; and

(c) For clearing members and swap dealers, not later than 12:00 p.m. eastern time on the second (T+2) business day following the reporting day or at such other time as instructed by the Commission.

#### **§ 20.8 Delegation of authority to the Director of the Division of Market Oversight.**

(a) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(1) In § 20.5(a)(3) for issuing a special call for a 102S filing;

(2) In § 20.5(b) for issuing a special call for a 40S filing;

(3) In § 20.6(d) for issuing a special call;

(4) In § 20.7 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; and

(5) In § 20.10 for determining the described compliance schedules.

(b) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(c) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

#### **§ 20.9 Sunset provision.**

(a) Except as otherwise provided in paragraph (b) of this section, the sections of this part shall become ineffective and unenforceable upon a Commission finding that, through the issuance of an order, operating swap data repositories are processing positional data and that such processing will enable the Commission to effectively surveil trading in paired swaps and swaptions and paired swap and swaption markets.

(b) The Commission may determine, in its discretion, to maintain the effectiveness and enforceability of any section of this part, or any requirement therein, in an order issued under paragraph (a) of this section, upon finding that such sections, or requirements therein, provide the

Commission with positional data or data elements that materially improves the accuracy and surveillance utility of the positional data processed by swap data repositories.

**§ 20.10 Compliance schedule.**

(a) Clearinghouses, clearing members and persons with books and records obligations shall comply with the requirements of this part upon the effective date of this part.

(b) Swap dealers that are not clearing members shall comply with the requirements of this part upon the effective date of final regulations further defining the term swap dealer.

(c) The Commission may permit, for a period not to exceed six calendar months following the effective date specified in paragraph (a) of this section, the submission of reports pursuant to §§ 20.3 and 20.4 that differ in content, or are submitted in a form and manner which is other than prescribed by the provisions of this part, provided that the submitter is making a

good faith attempt to comply with all of the provisions of this part.

(d) Unless determined otherwise by the Commission, paired swap and swaption position and market reports submitted under parts 15 through 19, or 21 of this chapter, or any order of the Commission, shall continue to be submitted under those parts or orders until swap dealers are required to comply with § 20.4.

(e) The Commission may extend the compliance date established in paragraph (b) of this section by an additional six calendar months based on resource limitations or lack of experience in reporting transactions to the Commission for a swap dealer that is not an affiliate of a bank holding company and:

(1) Is not registered with the Commission as a futures commission merchant and is not an affiliate of a futures commission merchant;

(2) Is not registered with the Securities and Exchange Commission as a broker or dealer and is not an affiliate of a broker or dealer; and

(3) Is not supervised by any Federal prudential regulator.

**§ 20.11 Diversified commodity indices.**

For the purpose of reporting in futures equivalents, paired swaps and swaptions using commodity reference prices that are commonly known diversified indices with publicly available weightings may be reported as if such indices underlie a single futures contract with monthly expirations for each calendar month and year.

**Appendix A to Part 20—Guidelines on Futures Equivalency**

The following examples illustrate how swaps should be converted into futures equivalents. In general the total notional quantity for each swap should be apportioned to referent futures months based on the fraction of days remaining in the life of the swap during each referent futures month to the total duration of the swap, measured in days. The terms used in the examples are to be understood in a manner that is consistent with industry practice.

**EXAMPLE 1—FIXED FOR FLOATING WTI CRUDE OIL SWAP LINKED TO A DCM CONTRACT**

Reference Price .....	Daily official next to expire contract price for the NYMEX Light Sweet Crude Oil Futures Contract ("WTI") in \$/bbl through the NYMEX spot month.
Fixed Price .....	\$80.00 per barrel.
Floating Price .....	The arithmetic average of the reference price during the pricing period.
Notional Quantity .....	100,000 bbls/month.
Calculation Period .....	One month.
Fixed Price Payer .....	Company A.
Floating Price Payer .....	Company B.
Settlement Type .....	Financial.
Swap Term .....	Six full months from January 1 to June 30.
Floating Amount .....	Floating Price * Notional Quantity.
Fixed Amount .....	Fixed Price * Notional Quantity.

NYMEX WTI trading in the next to expire futures contract ceases on the third business day prior to the 25th of the calendar month preceding the contract month. For simplicity in this example, the last trading day in each

WTI futures contract is shown as the 22nd of the month.

*Futures Equivalent Position on January 1*

Total Notional Quantity = 6 months \*  
100,000 bbls/month = 600,000 bbls

1,000 bbl = 1 futures contract  
Therefore 600,000 bbls/1,000 bbls/contract =  
600 futures equivalent contracts  
Total number of days in swap term = 31 +  
28 + 31 + 30 + 31 + 30 = 181

**FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1**

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 1—January 22 .....	February .....	22/181	73	-73
January 23—February 22 .....	March .....	31/181	103	-103
February 23—March 22 .....	April .....	28/181	93	-93
March 23—April 22 .....	May .....	31/181	103	-103
April 23—May 22 .....	June .....	30/181	99	-99
May 23—June 22 .....	July .....	31/181	103	-103
June 23—June 30th .....	August .....	8/181	27	-27
<b>Total .....</b>		<b>181/181</b>	<b>601</b>	<b>-601</b>

† Contracts rounded to the nearest integer.



*Futures equivalent position on January 2*      1,000 bbl = 1 futures contract      Total number of days = 30 + 28 + 31 + 30  
 Total Notional Quantity = Remaining swap      Therefore 596,685 bbls/1,000 bbls/contract =      + 31 + 30 = 180  
 term \* 100,000 bbls/month = 596,685      597 futures equivalent contracts

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 2 (EXAMPLE 1 CONTINUED)

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 2—January 22 .....	February .....	21/180	70	- 70
January 23—February 22 .....	March .....	31/180	103	- 103
February 23—March 22 .....	April .....	28/180	93	- 93
March 23—April 22 .....	May .....	31/180	103	- 103
April 23—May 22 .....	June .....	30/180	99	- 99
May 23—June 22 .....	July .....	31/180	103	- 103
June 23—June 30th .....	August .....	8/180	27	- 27
Total .....	.....	180/180	597	- 597

† Contracts rounded to the nearest integer.

EXAMPLE 2—FIXED FOR FLOATING CORN SWAP

Reference Price .....	Daily official next to expire contract price for the CBOT Corn Futures Contract in \$/bushel through the CBOT spot month.
Fixed Price .....	\$5.00 per bushel per month.
Floating Price .....	The arithmetic average of the reference price during the pricing period.
Calculation Period .....	One month.
Notional Quantity .....	1,000,000 bushels/month.
Fixed Price Payer .....	Company A.
Floating Price Payer .....	Company B.
Settlement Type .....	Financial.
Swap Term .....	Six full months from January 1 to June 30.
Floating Amount .....	Floating Price * Notional Quantity.
Fixed Amount .....	Fixed Price * Notional Quantity.

Last trading day in the nearby CBOT Corn futures contract is the business day preceding the 15th of the contract month. For simplicity in this example, the last trading day in each Corn futures contract is shown as the 14th of the month. Futures contract months for corn

are March, May, July, September, and December.

*Futures Equivalent Position on January 1*  
 Total Notional Quantity = 6 contract months \* 1,000,000 bushels/month = 6,000,000 bushels

5,000 bushels = 1 futures contract  
 Therefore 6,000,000 bushels/5,000 bushels/contract = 1,200 futures equivalent contracts  
 Total days = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 1—March 14 .....	March .....	73/181	483	- 483
March 15—May 14 .....	May .....	61/181	404	- 404
May 15—June 30 .....	July .....	47/181	311	- 311
Total .....	.....	181/181	1,198	- 1,198

† Contracts rounded to the nearest integer.

EXAMPLE 3—FIXED FOR FLOATING NY RBOB (PLATTS) CALENDAR SWAP FUTURES

Reference Price .....	Platts Oilgram next to expire contract Price Report for New York RBOB (Barge) through the NYMEX spot month.
Fixed Price .....	\$1.8894 per gallon.
Floating Price .....	For each contract month, the floating price is equal to the arithmetic average of the high and low quotations from Platts Oilgram Price Report for New York RBOB (Barge) for each business day that it is determined during the contract month.
Calculation Period .....	One quarter.
Notional Quantity .....	84 million gallons/quarter.
Fixed Price Payer .....	Company A.
Floating Price Payer .....	Company B.
Settlement Type .....	Financial.
Swap Term .....	Six full months from January 1 to June 30.

EXAMPLE 3—FIXED FOR FLOATING NY RBOB (PLATTS) CALENDAR SWAP FUTURES—Continued

Floating Amount .....	Floating Price * Notional Quantity.
Fixed Amount .....	Fixed Price * Notional Quantity.

NYMEX NY RBOB (Platts) Calendar Swap Futures Contract month ends on the final business day of the contract month. For simplicity in this example, the last trading day in each futures contract is shown as the final day of the month.

*Futures Equivalent Position on January 1*  
 Total Notional Quantity = 2 quarters \* 84 million = 168 million gallons  
 42,000 gallons = 1 futures contract

Therefore 168 million/42,000 gallons/futures contract = 4,000 futures equivalent contracts  
 Total number of days = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 1–March 31 .....	April .....	90/181	1989	– 1989
April 1–June 30 .....	July .....	91/181	2011	– 2011
Total .....	.....	181/181	4000	– 4000

† Contracts rounded to the nearest integer.

EXAMPLE 4—CALENDAR SPREAD SWAP

Reference Price .....	The difference between the next to expire contract price for the NYMEX WTI Futures contract and the deferred contract price for the NYMEX WTI Futures contract.
Fixed Price .....	\$80 per barrel.
Floating Price .....	The arithmetic average of the reference price during the pricing period.
Calculation Period .....	One month.
Notional Quantity .....	100,000 bbls/month.
Fixed Price Payer .....	Company A.
Floating Price Payer .....	Company B.
Settlement Type .....	Financial.
Swap Term .....	Six full months from January 1 to June 30.
Floating Amount .....	Floating Price * Notional Quantity.
Fixed Amount .....	Fixed Price * Notional Quantity.

NYMEX WTI trading in the next to expire futures contract ceases on the third business day prior to the 25th of the calendar month preceding the contract month. For simplicity in this example, the last trading day in each

WTI futures contract is shown as the 22nd of the month.  
*Futures Equivalent Position on January 1*  
 Total Notional Quantity = 6 months \* 100,000 bbls/month = 600,000 bbls

1,000 bbl = 1 futures contract  
 Therefore 600,000 bbls/1,000 bbls/contract = 600 futures equivalent contracts  
 Total number of days = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Fraction of days	Applicable next to expire futures month	Company A position (long) †	Company B position (short) †	Applicable deferred futures month	Company A position (short) †	Company B position (long) †
January 1–January 22 ....	22/181	February .....	73	– 73	March .....	– 73	73
January 23–February 22	31/181	March .....	103	– 103	April .....	– 103	103
February 23–March 22 ....	28/181	April .....	93	– 93	May .....	– 93	93
March 23–April 22 .....	31/181	May .....	103	– 103	June .....	– 103	103
April 23–May 22 .....	30/181	June .....	99	– 99	July .....	– 99	99
May 23–June 22 .....	31/181	July .....	103	– 103	August .....	– 103	103
June 23–June 30th .....	8/181	August .....	27	– 27	September ..	– 27	27
Total .....	181/181	.....	601	– 601	.....	– 601	601

† Contracts rounded to the nearest integer.

EXAMPLE 5—COLUMBIA GULF, MAINLINE MIDPOINT (“MIDPOINT”) BASIS SWAP

Reference Price .....	The Platts Gas Daily Columbia Gulf, Mainline Midpoint (“Midpoint”) and the next to expire NYMEX (Henry Hub) Natural Gas Futures contract.
Fixed Price .....	\$0.05 per MMBtu.
Floating Price .....	The Floating Price will be equal to the arithmetic average of the daily value of the Platts Gas Daily Columbia Gulf, Mainline Midpoint (“Midpoint”) minus the NYMEX (Henry Hub) Natural Gas Futures contract daily settlement price.
Calculation Period .....	Monthly.
Notional Quantity .....	10,000 MMBtu/calendar day.
Fixed Price Payer .....	Company A.
Floating Price Payer .....	Company B.
Settlement type .....	Financial.
Swap Term .....	One month from January 1 to January 31.
Floating Amount .....	Floating Price * Notional Quantity * calendar days in the month.
Fixed Amount .....	Fixed Price * Notional Quantity * calendar days in the month.

NYMEX Henry Hub Natural Gas Futures Contract trading ceases three business days prior to the first day of the delivery month. For simplicity in this example, the last trading day in the futures contract is shown as the 28th of the month.

*Futures Equivalent Position on January 1*  
 Total Notional Quantity for each leg = 1 month \* 31 days/month \* 10,000 MMBtu/day = 310,000 MMBtu  
 10,000 MMBtu = 1 futures contract

Therefore 310,000 MMBtu/10,000 MMBtu/contract = 31 futures equivalent contracts  
 Total number of days = 31

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Fraction of days	Referent futures month	Company A position in Columbia Gulf, Mainline Midpoint (“Midpoint”) natural gas (long) MMBtu	Company A Position in NYMEX (Henry Hub) natural gas futures (short)	Company B position in Columbia Gulf, Mainline Midpoint (“Midpoint”) natural gas (short) MMBtu	Company B position in NYMEX (Henry Hub) natural gas futures (long)
January 1—January 28 .....	28/31	February .....	†††	-28	†††	28
January 29—January 31 .....	3/31	March .....	.....	-3	.....	3
Total .....	31/31	.....	.....	-31	.....	31

††† Note: Because there is no underlying position taken in a basis contract, for reporting purposes, only enter the futures equivalent contract quantities into the corresponding futures.

EXAMPLE 6—WTI SWAPTION (CALL)

Swaption Style .....	American.
Option Type .....	Call.
Swaption Start Date .....	Jan 1 of the current year.
Swaption End Date .....	June 30 of the current year.
Strike Price .....	\$80.50/bbl.
Notional Quantity .....	100,000 bbl/month.
Calculation Period .....	One month.
Reference Price .....	Daily official next to expire contract price for WTI NYMEX Crude Oil Futures Contract in \$/bbl through the NYMEX spot month.
Fixed Price .....	\$80.00 per barrel per month.
Floating Price .....	The arithmetic average of the reference price during the pricing period.
Settlement Type .....	Financial.
Swap Term .....	One month from July 1 to July 31 of the current year.
Floating Amount .....	Floating Price * Notional Quantity.
Fixed Amount .....	Fixed Price * Notional Quantity.

NYMEX WTI trading ceases on the third business day prior to the 25th of the calendar month preceding the delivery month. For simplicity in this example, the last trading

day in each WTI futures contract is shown as the 22nd of the month.  
*Futures Equivalent Position on January 1*  
 Total Notional Quantity = 1 month\*100,000 bbls/month=100,000 bbls

1,000 bbl = 1 futures contract  
 Therefore 100,000 bbls/1,000 bbls/contract = 100 futures equivalent contracts  
 Total number of days = 31

GROSS POSITION ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) <sup>†</sup>	Company B position (short) <sup>†</sup>
July 1—July 22 .....	August .....	22/31	70	-70
July 23—July 31 .....	September .....	9/31	29	-29
Total .....	.....	31/31	99	-99

<sup>†</sup> Contracts rounded to the nearest integer.

DELTA<sup>††</sup> ADJUSTED POSITION AND FUTURES EQUIVALENT POSITION ON JANUARY 1

Date	August		September	
	Delta	Position	Delta	Position
January 1 .....	.2 .....	14	.2	5

<sup>††</sup> Deltas should be calculated in an economically reasonable and analytically supportable basis.

EXAMPLE 7—WTI COLLAR SWAP

Swaption Style .....	American.
Swaption Start Date .....	Jan 1 of the current year.
Swaption End Date .....	June 30 of the current year.
Call strike Price .....	\$70.00 per bbl.
Put strike price .....	\$90.00 per bbl.
Notional Quantity .....	100,000 barrels per month.
Calculation Period .....	One month.
Reference Price .....	Daily official next to expire contract price for WTI NYMEX Crude Oil in \$/bbl through the NYMEX spot month.
Fixed Price .....	\$80.00 per barrel.
Floating Price .....	The arithmetic average of the reference price during the pricing period.
Settlement Type .....	Financial.
Swap Term .....	One month from July 1 to July 31 of the current year.
Floating Amount .....	Floating Price * Notional Quantity.
Fixed Amount .....	Fixed Price * Notional Quantity.

NYMEX WTI trading ceases on the third business day prior to the 25th of the calendar month preceding the delivery month. For simplicity in this example, the last trading

day in each WTI futures contract is shown as the 22nd of the month.

*Futures Equivalent Position on January 1*  
 Total Notional Quantity = 1 month \* 100,000 bbls/month = 100,000 bbls

1,000 bbl = 1 futures contract  
 Therefore 100,000 bbls/1,000 bbls/contract = 100 futures equivalent contracts  
 Total number of days = 31

GROSS POSITION ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position		Company B position	
			Call	Put	Call	Put
July 1—July 22 .....	August .....	22/31	70.97	70.97	-70.97	-70.97
July 23—July 31 .....	September .....	9/31	29.03	29.03	-29.03	-29.03
Total .....	.....	31/31	100	100	-100	-100

COMPANY (A) DELTA<sup>†</sup> ADJUSTED POSITION ON JANUARY 1

Date	August				September			
	Long call		Short put		Long call		Short put	
	Delta	Position	Delta	Position	Delta	Position	Delta	Position
January 1 .....	.7	49	.3	-21	.7	20	.3	-8

<sup>†</sup> Deltas should be calculated in an economically reasonable and analytically supportable basis.

FUTURES EQUIVALENT POSITION ON JANUARY 1

Date	August <sup>††</sup>		September <sup>††</sup>	
	Long	Short	Long	Short
January 1 .....	70	0	28	0

†† Contracts rounded to the nearest integer.

**Appendix B to Part 20—Explanatory Guidance on Data Record Layouts**

**Record Layout Examples for § 20.3**

The following example (in Tables 1, 2 and 3) covers reporting for a particular clearing organization. “Clearing Organization One” would report, for the 27th of September 2010, the following eleven unique data record submissions. Each data record submission represents a unique position, as indicated by § 20.3, held by a clearing member of Clearing Organization One. Paragraph (a) of § 20.3 broadly outlines the data elements that determine unique positions for reports on clearing member positions. Paragraphs (b) of § 20.3 present all of the data elements that should be submitted in reference to a particular data record for a particular clearing member (in Table 1). Paragraph (c) identifies data elements that would comprise end of

day record data on cleared products (in Tables 2 and 3). Therefore, paragraphs (b) and (c) of § 20.3 present all of the data elements that should be submitted in reference to a particular data record.

Because CFTC designated Clearing Organization One (in this example) currently has two clearing members, “Clearing Member One” and “Clearing Member Two,” positions cleared for these two distinct clearing members would be subdivided.

In the following example it is assumed that the clearing member accounts are either proprietary or customer (but not both) and therefore data record submissions do not have to be delineated by these account types. However, if clearing members did have both proprietary and customer accounts, then a clearing organization would have to further subdivide these clearing member data records by these two account types.

Clearing Member One currently has five positions with multiple cleared product IDs and futures equivalent months/years, and therefore these positions also constitute separate data records.

Clearing Member Two currently has six positions with the following varying characteristics: Cleared product IDs; futures equivalent months/years; commodity reference prices; swaption positions that involve both puts and calls; and multiple strike prices. Accordingly, these positions must be reported in separate data records. An illustration of how these records would appear is included in Table 1 below. Clearing Organization One would also have to report the corresponding swaption position deltas, strike prices, expiration dates, and settlement prices and swap settlement prices. An illustration of these submissions is included in Tables 2 and 3 below.

TABLE 1—DATA RECORDS REPORTED UNDER PARAGRAPHS (a) AND (b) OF § 20.3

Data records	CFTC clearing org ID	Clearing org clearing member ID	Clearing org cleared product ID	Reporting day	Proprietary/customer account indicator	Futures equivalent month and year	Commodity reference price
Data record 1 .....	CCO_ID_1 ....	CM_ID_2 .....	CP_04 .....	9/27/2010 .....	C .....	Nov-10 .....	NYMEX NY Harbor No.2.
Data record 2 .....	CCO_ID_1 ....	CM_ID_2 .....	CP_04 .....	9/27/2010 .....	C .....	Oct-10 .....	NYMEX NY Harbor No.2.
Data record 3 .....	CCO_ID_1 ....	CM_ID_2 .....	CP_02 .....	9/27/2010 .....	C .....	Nov-10 .....	NYMEX Henry Hub.
Data record 4 .....	CCO_ID_1 ....	CM_ID_2 .....	CP_02 .....	9/27/2010 .....	C .....	Oct-10 .....	NYMEX Henry Hub.
Data record 5 .....	CCO_ID_1 ....	CM_ID_2 .....	CP_02 .....	9/27/2010 .....	C .....	Nov-10 .....	NYMEX Henry Hub.
Data record 6 .....	CCO_ID_1 ....	CM_ID_2 .....	CP_02 .....	9/27/2010 .....	C .....	Oct-10 .....	NYMEX Henry Hub.
Data record 7 .....	CCO_ID_1 ....	CM_ID_1 .....	CP_03 .....	9/27/2010 .....	P .....	Mar-11 .....	NYMEX Light Sweet.
Data record 8 .....	CCO_ID_1 ....	CM_ID_1 .....	CP_03 .....	9/27/2010 .....	P .....	Feb-11 .....	NYMEX Light Sweet.
Data record 9 .....	CCO_ID_1 ....	CM_ID_1 .....	CP_01 .....	9/27/2010 .....	P .....	Mar-11 .....	NYMEX Light Sweet.
Data record 10 .....	CCO_ID_1 ....	CM_ID_1 .....	CP_01 .....	9/27/2010 .....	P .....	Feb-11 .....	NYMEX Light Sweet.
Data record 11 .....	CCO_ID_1 ....	CM_ID_1 .....	CP_01 .....	9/27/2010 .....	P .....	Jan-11 .....	NYMEX Light Sweet.
NDR .....	Yes .....	Yes .....	Yes .....	Yes .....	Yes .....	Yes .....	No.
Data records	Long swap position	Short swap position	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position
Data record 1 .....	0 .....	5000					
Data record 2 .....	0 .....	2000					
Data record 3 .....			C .....	7/29/2011 .....	5.59 .....	2000 .....	0

TABLE 1—DATA RECORDS REPORTED UNDER PARAGRAPHS (a) AND (b) OF § 20.3—Continued

Data records	CFTC clearing org ID	Clearing org clearing member ID	Clearing org cleared product ID	Reporting day	Proprietary/customer account indicator	Futures equivalent month and year	Commodity reference price
Data record 4 .....	.....	.....	C .....	7/29/2011 .....	5.59 .....	18000 .....	0
Data record 5 .....	.....	.....	P .....	7/29/2011 .....	5.50 .....	100 .....	30
Data record 6 .....	.....	.....	P .....	7/29/2011 .....	5.50 .....	900 .....	270
Data record 7 .....	5000 .....	0					
Data record 8 .....	5000 .....	0					
Data record 9 .....	429 .....	1286					
Data record 10 .....	2281 .....	6843					
Data record 11 .....	1290 .....	3871					
NDR .....	No .....	No .....	Yes .....	Yes .....	Yes .....	No .....	No.

**Note:** The bottom row of Table 1 indicates whether data elements for which any difference in one of the elements constitutes a reason for a new data record (NDR).

TABLE 2—EXAMPLE OF DATA RECORDS REQUIRED UNDER § 20.3(C) FOR CLEARED SWAPTION PRODUCTS

Data records	CFTC clearing org ID	Clearing org cleared product ID	Reporting day	Futures equivalent month and year	Commodity reference price	Swaption expiration date	Swaption strike price	Put/call indicator	Delta	Swaption daily settlement price
Data record 1 .....	CCO_ID_1	CP_02	9/27/2010	Nov-10 .....	NYMEX Henry Hub.	7/29/2011	5.59	C	.5	6.25
Data record 2 .....	CCO_ID_1	CP_02	9/27/2010	Oct-10 .....	NYMEX Henry Hub.	7/29/2011	5.59	C	.5	5.50
Data record 3 .....	CCO_ID_1	CP_02	9/27/2010	Nov-10 .....	NYMEX Henry Hub.	7/29/2011	5.50	P	.2	4.53
Data record 4 .....	CCO_ID_1	CP_02	9/27/2010	Oct-10 .....	NYMEX Henry Hub.	7/29/2011	5.50	P	.2	4.78

TABLE 3—EXAMPLE OF DATA RECORDS REQUIRED UNDER § 20.3(C) FOR CLEARED SWAP PRODUCTS

Data records	CFTC clearing org ID	Clearing org cleared product ID	Reporting day	Futures equivalent month and year	Commodity reference price	Swap daily settlement price
Data record 1 .....	CCO_ID_1	CP_04	9/27/2010	Nov-10 .....	NYMEX NY Harbor No. 2 ...	20.35
Data record 2 .....	CCO_ID_1	CP_04	9/27/2010	Oct-10 .....	NYMEX NY Harbor No. 2 ...	10.50
Data record 3 .....	CCO_ID_1	CP_03	9/27/2010	Mar-11 .....	NYMEX Light Sweet .....	15.00
Data record 4 .....	CCO_ID_1	CP_03	9/27/2010	Feb-11 .....	NYMEX Light Sweet .....	21.00
Data record 5 .....	CCO_ID_1	CP_01	9/27/2010	Mar-11 .....	NYMEX Light Sweet .....	17.50
Data record 6 .....	CCO_ID_1	CP_01	9/27/2010	Feb-11 .....	NYMEX Light Sweet .....	21.65
Data record 7 .....	CCO_ID_1	CP_01	9/27/2010	Jan-11 .....	NYMEX Light Sweet .....	12.50

#### First Record Layout Example for § 20.4:

This first example shows the data records generated under § 20.4 by a single reporting firm for report date September 27, 2011. Each data record represents a unique part of a reportable position in heating oil and natural gas by the reporting entity and its counterparties. Paragraph (b) of § 20.4 outlines the data elements that determine unique positions.

In this example, the reporting entity clears with one clearing organization and therefore the data records do not have to be delineated by clearing organization (there is a reportable position stemming from an uncleared

transaction included as well). However, if the reporting entity in this example used multiple clearing organizations, then it would have to further subdivide its data submissions by each clearing organization.

The reporting entity reports fifteen records; six principal positions and nine counterparty positions. The reported positions constitute separate data records because they vary by the following characteristics: swap counterparties; futures equivalent months/years; clearing organization cleared products; swaptions that were either cleared or uncleared; commodity reference prices; and whether the trade was entered into on or off

execution facilities. An illustration of how these records would be reported is included in Table 4 below.

For the calculation of notional values, assume for simplicity that the price of heating oil, for all contract months and for both reference prices, is \$3/gal. Similarly, assume that the price of natural gas for all contract months is \$4.25/MMBtu.

**Note:** The bottom two rows in Table 4 indicate whether, for uncleared and cleared swaps and swaptions, data elements for which any difference in one of the elements constitutes a reason for a new data record (NDR).

TABLE 4—EXAMPLE OF DATA RECORDS REPORTED UNDER § 20.4(C)

Data records	Commission reporting entity ID	Principal/counterparty position indicator	102S Swap counterparty ID	Counterparty name	Reporting day	Clearing org cleared product ID	Commodity code	Futures equivalent month and year
Data record 1	CRE_ID_1	PRIN			9/27/2011	CPID_05	HO	Jan-12
Data record 2	CRE_ID_1	COUNT	CP_01	Energy_Firm_1	9/27/2011	CPID_05	HO	Jan-12
Data record 3	CRE_ID_1	COUNT	CP_02	Energy_Firm_2	9/27/2011	CPID_05	HO	Jan-12
Data record 4	CRE_ID_1	PRIN			9/27/2011	CPID_04	HO	Feb-12
Data record 5	CRE_ID_1	COUNT	CP_03	Energy_Firm_3	9/27/2011	CPID_04	HO	Feb-12
Data record 6	CRE_ID_1	PRIN			9/27/2011	CPID_04	HO	Mar-12
Data record 7	CRE_ID_1	COUNT	CP_04	ABC_Firm	9/27/2011	CPID_04	HO	Mar-12
Data record 8	CRE_ID_1	PRIN			9/27/2011	CDIP_07	NG	Mar-12
Data record 9	CRE_ID_1	COUNT	CP_05	XYZ_Firm	9/27/2011	CDIP_07	NG	Mar-12
Data record 10	CRE_ID_1	COUNT	CP_06	WVU_Firm	9/27/2011	CDIP_07	NG	Mar-12
Data record 11	CRE_ID_1	COUNT	CP_01	Energy_Firm_1	9/27/2011	CDIP_07	NG	Mar-12
Data record 12	CRE_ID_1	PRIN			9/27/2011	CDIP_07	NG	Mar-12
Data record 13	CRE_ID_1	COUNT	CP_07	MNO_Firm	9/27/2011	CDIP_07	NG	Mar-12
Data record 14	CRE_ID_1	PRIN			9/27/2011	UNCL	NG	Jan-12
Data record 15	CRE_ID_1	COUNT	CP_02	Energy_Firm_2	9/27/2011	UNCL	NG	Jan-12
NDR Uncleared	Yes	Yes	Yes	Yes	Yes	N/A	No	Yes
NDR Cleared	Yes	Yes	Yes	No	Yes	Yes	No	Yes

Data records	Cleared/uncleared indicator	CFTC clearing org identifier	Commodity reference price	Execution facility	Long swap position	Short swap position
Data record 1	C	CCO_ID_1	Platts Oilgram Price Report for New York No. 2 (Barge).	EX1	200	
Data record 2	C	CCO_ID_1	Platts Oilgram Price Report for New York No. 2 (Barge).	EX1		50
Data record 3	C	CCO_ID_1	Platts Oilgram Price Report for New York No. 2 (Barge).	EX1		150
Data record 4	C	CCO_ID_1	NYMEX NY Harbor No.2	EX2	350	
Data record 5	C	CCO_ID_1	NYMEX NY Harbor No.2	EX2		350
Data record 6	C	CCO_ID_1	NYMEX NY Harbor No.2	EX1	100	
Data record 7	C	CCO_ID_1	NYMEX NY Harbor No.2	EX1		100
Data record 8	C	CCO_ID_1	NYMEX Henry Hub	EX3	200	100
Data record 9	C	CCO_ID_1	NYMEX Henry Hub	EX3		125
Data record 10	C	CCO_ID_1	NYMEX Henry Hub	EX3		75
Data record 11	C	CCO_ID_1	NYMEX Henry Hub	EX3	100	
Data record 12	C	CCO_ID_1	NYMEX Henry Hub	EX1		
Data record 13	C	CCO_ID_1	NYMEX Henry Hub	EX1		
Data record 14	U	U	NYMEX Henry Hub	NOEX		
Data record 15	U	U	NYMEX Henry Hub	NOEX		
NDR Uncleared	Yes	N/A	Yes	Yes	No	No
NDR Cleared	Yes	Yes	No	Yes	No	No

Data records	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position	Delta adjusted long swaption position	Delta adjusted short swaption position	Long swap or swaption notional value position	Short swap or swaption notional value position
Data record 1								\$25,200,000	
Data record 2									\$6,300,000
Data record 3									\$18,900,000
Data record 4								\$44,100,000	
Data record 5									\$44,100,000
Data record 6								\$12,600,000	
Data record 7									\$12,600,000
Data record 8								\$8,500,000	
Data record 9									\$4,250,000
Data record 10									\$5,312,500
Data record 11								\$4,250,000	
Data record 12	C	2/27/2012	4.00	100		80		\$3,400,000	
Data record 13	C	2/27/2012	4.00		100		80		\$3,400,000
Data record 14	C	12/27/2011	4.25	100		95		\$4,037,500	
Data record 15	C	12/27/2011	4.25		100		95		\$4,037,500
NDR Uncleared	Yes	Yes	Yes	No	No	No	No	No	No
NDR Cleared	Yes	Yes	Yes	No	No	No	No	No	No

**Second Record Layout Example for § 20.4:**

In this second example, the data records generated by § 20.4(c) are displayed for a hypothetical swap, as detailed in Example 1 of Appendix A. In contrast to the above example, this second example of a § 20.4(c)

data record is simplistic in that it displays a situation where the position records arise from a single swap transaction, in one commodity, with a single counterparty.

For the sake of this example, assume the swap dealer gained long exposure from the swap, and that the swap was cleared. The

price of crude is assumed to be \$100/bbl for all contract months on January 1 and \$95/bbl for all contract months on January 2. An illustration of the data records generated for January 1, 2011 and January 2, 2011 as a result of this hypothetical swap can be found in Tables 5 and 6, respectively.



TABLE 5—EXAMPLE OF DATA RECORDS REPORTED UNDER § 20.4(c) FOR JANUARY 1, 2011 (APPX A, EXAMPLE 1)

Data records	Commission reporting entity ID	Principal/counterparty position indicator	102S swap counterparty ID	Counterparty Name	Reporting day	Clearing org cleared product ID	Commodity code	Futures equivalent month and year
Data record 1	SD_1	PRIN			1/1/2011	CPID_03	CL	Feb-11
Data record 2	SD_1	PRIN			1/1/2011	CPID_03	CL	Mar-11
Data record 3	SD_1	PRIN			1/1/2011	CPID_03	CL	Apr-11
Data record 4	SD_1	PRIN			1/1/2011	CPID_03	CL	May-11
Data record 5	SD_1	PRIN			1/1/2011	CPID_03	CL	Jun-11
Data record 6	SD_1	PRIN			1/1/2011	CPID_03	CL	Jul-11
Data record 7	SD_1	PRIN			1/1/2011	CPID_03	CL	Aug-11
Data record 8	SD_1	COUNT	CP_01	Energy Firm 1	1/1/2011	CPID_03	CL	Feb-11
Data record 9	SD_1	COUNT	CP_01	Energy Firm 1	1/1/2011	CPID_03	CL	Mar-11
Data record 10	SD_1	COUNT	CP_01	Energy Firm 1	1/1/2011	CPID_03	CL	Apr-11
Data record 11	SD_1	COUNT	CP_01	Energy Firm 1	1/1/2011	CPID_03	CL	May-11
Data record 12	SD_1	COUNT	CP_01	Energy Firm 1	1/1/2011	CPID_03	CL	Jun-11
Data record 13	SD_1	COUNT	CP_01	Energy Firm 1	1/1/2011	CPID_03	CL	Jul-11
Data record 14	SD_1	COUNT	CP_01	Energy Firm 1	1/1/2011	CPID_03	CL	Aug-11

Data records	Cleared/uncleared indicator	CFTC clearing org identifier	Commodity reference price			Execution facility	Long swap position	Short swap position
Data record 1	C	CCO_ID_1	NYMEX	Light	Sweet	EX1	73	
Data record 2	C	CCO_ID_1	NYMEX	Light	Sweet	EX1	103	
Data record 3	C	CCO_ID_1	NYMEX	Light	Sweet	EX1	93	
Data record 4	C	CCO_ID_1	NYMEX	Light	Sweet	EX1	103	
Data record 5	C	CCO_ID_1	NYMEX	Light	Sweet	EX1	99	
Data record 6	C	CCO_ID_1	NYMEX	Light	Sweet	EX1	103	
Data record 7	C	CCO_ID_1	NYMEX	Light	Sweet	EX1	27	
Data record 8	C	CCO_ID_1	NYMEX	Light	Sweet	EX1		73
Data record 9	C	CCO_ID_1	NYMEX	Light	Sweet	EX1		103
Data record 10	C	CCO_ID_1	NYMEX	Light	Sweet	EX1		93
Data record 11	C	CCO_ID_1	NYMEX	Light	Sweet	EX1		103
Data record 12	C	CCO_ID_1	NYMEX	Light	Sweet	EX1		99
Data record 13	C	CCO_ID_1	NYMEX	Light	Sweet	EX1		103
Data record 14	C	CCO_ID_1	NYMEX	Light	Sweet	EX1		27

Data records	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position	Delta adjusted long swaption position	Delta adjusted long swaption position	Long swap or swaption notional value position	Short swap or swaption notional value position
Data record 1								\$7,300,000	
Data record 2								\$10,300,000	
Data record 3								\$9,300,000	
Data record 4								\$10,300,000	
Data record 5								\$9,900,000	
Data record 6								\$10,300,000	
Data record 7								\$2,700,000	
Data record 8									\$7,300,000
Data record 9									\$10,300,000
Data record 10									\$9,300,000
Data record 11									\$10,300,000
Data record 12									\$9,900,000
Data record 13									\$10,300,000
Data record 14									\$2,700,000

TABLE 6—EXAMPLE OF DATA RECORDS REPORTED UNDER § 20.4(c) FOR JANUARY 2, 2011 (APPX A, EXAMPLE 1)

Data records	Commission reporting entity ID	Principal/counterparty position indicator	102S Swap counterparty ID	Counterparty name	Reporting day	Clearing org cleared product ID	Commodity code	Futures equivalent month and year
Data record 1	SD_1	PRIN			1/2/2011	CPID_03	CL	Feb-11
Data record 2	SD_1	PRIN			1/2/2011	CPID_03	CL	Mar-11
Data record 3	SD_1	PRIN			1/2/2011	CPID_03	CL	Apr-11
Data record 4	SD_1	PRIN			1/2/2011	CPID_03	CL	May-11
Data record 5	SD_1	PRIN			1/2/2011	CPID_03	CL	Jun-11
Data record 6	SD_1	PRIN			1/2/2011	CPID_03	CL	Jul-11
Data record 7	SD_1	PRIN			1/2/2011	CPID_03	CL	Aug-11
Data record 8	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Feb-11
Data record 9	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Mar-11
Data record 10	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Apr-11
Data record 11	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	May-11
Data record 12	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Jun-11
Data record 13	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Jul-11
Data record 14	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Aug-11

Data records	Cleared/uncleared indicator	CFTC clearing org identifier	Commodity reference price			Execution facility	Long swap position	Short swap position
Data record 1	C	CCO_ID_1	NYMEX	Light	Sweet	EX1	70	

Data records	Cleared/ uncleared indicator	CFTC clearing org identifier	Commodity reference price	Execution facility	Long swap position	Short swap position
Data record 2	C	CCO_ID_1	NYMEX Light Sweet	EX1	103	
Data record 3	C	CCO_ID_1	NYMEX Light Sweet	EX1	93	
Data record 4	C	CCO_ID_1	NYMEX Light Sweet	EX1	103	
Data record 5	C	CCO_ID_1	NYMEX Light Sweet	EX1	99	
Data record 6	C	CCO_ID_1	NYMEX Light Sweet	EX1	103	
Data record 7	C	CCO_ID_1	NYMEX Light Sweet	EX1	27	
Data record 8	C	CCO_ID_1	NYMEX Light Sweet	EX1		70
Data record 9	C	CCO_ID_1	NYMEX Light Sweet	EX1		103
Data record 10	C	CCO_ID_1	NYMEX Light Sweet	EX1		93
Data record 11	C	CCO_ID_1	NYMEX Light Sweet	EX1		103
Data record 12	C	CCO_ID_1	NYMEX Light Sweet	EX1		99
Data record 13	C	CCO_ID_1	NYMEX Light Sweet	EX1		103
Data record 14	C	CCO_ID_1	NYMEX Light Sweet	EX1		27

Data records	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position	Delta adjusted long swaption position	Delta adjusted long swaption position	Long swap or swaption notional value position	Short swap or swaption notional value position
Data record 1								\$6,650,000	
Data record 2								\$9,785,000	
Data record 3								\$8,835,000	
Data record 4								\$9,785,000	
Data record 5								\$9,405,000	
Data record 6								\$9,785,000	
Data record 7								\$2,565,000	
Data record 8									\$6,650,000
Data record 9									\$9,785,000
Data record 10									\$8,835,000
Data record 11									\$9,785,000
Data record 12									\$9,405,000
Data record 13									\$9,785,000
Data record 14									\$2,565,000

Issued by the Commission this 7th day of July, 2011 in Washington, DC.

**David Stawick,**  
*Secretary of the Commission.*

**Appendices to Large Trader Reporting for Physical Commodity Swaps—Commission Voting Summary and Statements of Commissioners**

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

**Appendix 1—Commission Voting Summary**

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, O'Malia and Chilton voted in the affirmative; no Commissioner voted in the negative.

**Appendix 2—Statement of Chairman Gary Gensler**

I support the final rulemaking to establish large trader reporting for physical commodity swaps. This is a significant rulemaking that, for the first time, enables the CFTC to receive data from large traders in the commodity swaps markets.

The American public has benefited for decades by the Commission's ability to gather large trader data in the futures market and use that data to police the markets. Today's large trader reporting rulemaking establishes that clearinghouses and swap dealers will have to report to the CFTC about the swaps activities of large traders in the physical swaps markets.

Over time, as a result of the Dodd-Frank Act, the markets will benefit from swap data

repositories. Today's rulemaking will enable the Commission to gather important swaps data until there are robust, well-regulated swap data repositories. This data will be useful for the Commission to monitor and police the markets, including establishing and enforcing position limits.

[FR Doc. 2011-18054 Filed 7-21-11; 8:45 am]

**BILLING CODE P**

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 160**

**RIN 3038-AD13**

**Privacy of Consumer Financial Information; Conforming Amendments Under Dodd-Frank Act**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending its rules implementing new statutory provisions enacted by titles VII and X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Section 1093 of the Dodd-Frank Act provides for certain amendments to title V of the Gramm-Leach-Bliley Act (the "GLB Act"). The GLB Act sets forth certain protections for the privacy of

consumer financial information and was amended by the Dodd-Frank Act to affirm the Commission's jurisdiction in this area. The Commission's amendments to its regulations, inter alia, broaden the scope of part 160 to cover two new entities created by title VII of the Dodd-Frank Act: swap dealers and major swap participants.

**DATES:** *Effective date:* September 20, 2011.

**Compliance dates:** Futures commission merchants, commodity pool operators, commodity trading advisors, introducing brokers, and retail foreign exchange dealers shall be in compliance with these rules not later than November 21, 2011. Swap dealers and major swap participants shall be in compliance with these rules not later than 60 days after the effective date of the final entities definition rulemaking, which the Commission will publish in the **Federal Register** at a future date.

**FOR FURTHER INFORMATION CONTACT:** Carl E. Kennedy, Counsel, Office of General Counsel, (202) 418-6625, e-mail: *c\_kennedy@cftc.gov*, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 5g(b) of the CEA provides the Commission with the authority to