

CLIENT ALERT

CFTC Proposes Changes to Large Trader Reporting Rules

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AUTHORS

Neal E. Kumar | Rita M. Molesworth | Margo A. Bailey | Paul J. Pantano, Jr.
Michael Hartz | Matthew Goldberg

On June 7, 2023, the Commodity Futures Trading Commission (“**CFTC**”) proposed amendments to its Part 17 large trader position reporting regulations for futures and options.¹ In the proposed amendments, the CFTC seeks to modernize the Part 17 reporting rules and align them with the reporting structures in the CFTC’s other regulations.

The proposed amendments would add new reportable data elements, and overhaul the format in which firms must submit reports. The CFTC has requested comment on all aspects of the proposed amendments, as well as the specific provisions discussed below. The public may submit comments for up to 60 days after the notice of proposed rulemaking is published in the Federal Register. Accordingly, we project that comments will be due sometime in August 2023.

Background

The CFTC’s Part 17 rules govern large trader reporting for futures and options. Part 17 requires futures commission merchants, foreign brokers, clearing members, and certain reporting markets² (collectively, “**reporting firms**”) to report, among other things, daily position information for certain futures and options.³ The CFTC uses large trader reports for a

¹ Commodity Futures Trading Commission, *Large Trader Reporting Requirements* (June 7, 2023), available [here](#).

² For exclusively self-cleared contracts, designated contract markets must report data required to be reported under CFTC Rule 17.00(a) on behalf of clearing members. See 17 C.F.R. § 17.00(i).

³ 17 C.F.R. § 17.00(a).

CFTC Proposes Changes to Large Trader Reporting Rules

number of purposes, including conducting market surveillance, undertaking market analysis and research, and generating the weekly Commitments of Traders report for the benefit of the industry and the public.

Currently, reporting firms submit large trader reports using an 80-character record format. According to the CFTC, that record format is outdated and cannot accommodate the information needed to report certain contracts. As a result, CFTC staff must manually validate and ingest certain data. Furthermore, the CFTC believes that the outdated record format has become prone to errors. Correcting those errors is time-consuming and inefficient. Finally, the CFTC notes that the large trader reporting standards are unique relative to other data reported to the CFTC, which complicates the agency's ability to integrate the various datasets.

CFTC Commissioner Kristin Johnson recently highlighted the importance of modernizing the Part 17 regulations, stating that the CFTC's large trader reporting system is "foundational to protecting market integrity and the price discovery and hedging utility of futures contracts for commercial end-users."⁴ In her statement, Commissioner Johnson recalled the 2006 collapse of Amaranth Advisors, which occurred before energy markets were subject to large trader reporting rules. She noted that large trader reporting would have allowed the Commission to enforce Amaranth's compliance with aggregate position limits, which could have potentially prevented the collapse.

Proposed Rules

The CFTC's notice of proposed rulemaking (the "**Proposal**") divides the proposed rule amendments into two sections—first, amendments that address the content of large trader reports, and second, amendments that address the format in which firms must submit reports. We discuss each in turn, below.

Data Elements

The Proposal introduces a new Appendix C to Part 17, which would set forth the data elements of large trader reports under the amended regulations. Appendix C would maintain certain elements currently captured by Part 17, revise certain existing elements, and add new elements.

First, Appendix C would include data elements that are captured by the current regulations. In some instances, the elements would be revised to account for the modernized data standard. For example, instead of using a single data element to report whether a position is long or short, that information would be reported using two separate elements.

Second, Appendix C would include new data elements necessary to facilitate an XML-based submission standard, which is a format that the CFTC requires for reporting under other CFTC regulations. The new data elements—such as

⁴ Statement of Commissioner Kristin N. Johnson in Support of Notice of Proposed Rulemaking on Large Trader Reporting Requirements (June 9, 2023), available [here](#).

CFTC Proposes Changes to Large Trader Reporting Rules

designation of the special account controller, and the date and time of the report—are designed to allow the CFTC to track and manage reporting firms' reports using the new submission standard.

Third, Appendix C would include new data elements that identify and distinguish the futures or option contract that is being reported. These data elements include:

- Elements that draw more granular distinctions between certain contracts, such as the “Product Type” and “Ticker Symbol” elements;
- Elements that accommodate reporting of positions in bounded or barrier contracts, such as the “Cap Level” and “Floor Level” elements;
- Elements that accommodate reporting of positions in options contracts with non-price or non-numeric strikes, *i.e.*, the “Alpha Strike” and “Strike Level” elements; and
- An element that accommodates reporting of positions in other innovative contracts, *i.e.*, the “Product-Specific Terms” element, which would reflect economically material terms that are not otherwise covered by the Appendix C elements. The CFTC stated that future editions of the Part 17 Guidebook, discussed further below, would provide additional clarity about reporting under the “Product-Specific Terms” element.

Fourth, Appendix C would include new data elements necessary to capture accurate information about changes in the positions of special accounts. These data elements include:

- Elements that capture the amount of buying and selling associated with a special account, *i.e.*, “Contracts Bought” and “Contracts Sold” elements;
- Elements that would provide more granular data to understand whether a position was exchanged for (i) a physical commodity, (ii) a swap or other derivative, (iii) an option, or (iv) some other position, and whether the position was bought or sold;
- Elements to capture expirations and settlements, such as the “Long Options Expired” and “Short Futures Assigned” elements;
- Elements to capture transfers of contracts that effect a change in position, such as the “Long Transfers Received” and “Short Transfers Sent” elements; and
- Elements reflecting counts of transactions that result in day-to-day changes in positions.

CFTC Proposes Changes to Large Trader Reporting Rules

In the Proposal, the CFTC requests comments on all aspects of proposed Appendix C, as well as specific comments addressing:

- Whether there are additional data elements that should be included in Appendix C, in order to obtain a complete and accurate picture of positions held by large traders;
- Whether there are transactions that would effect changes in positions, and that are not accounted for by the data elements in Appendix C; and
- Whether any of the new elements in proposed Appendix C are not necessary to obtain a complete and accurate picture of positions held by large traders.

Submission Standard

The Proposal would remove the current 80-character record format found in Part 17, and delegate authority to the Director of the Office of Data and Technology to designate a new submission standard. The Director would specify the form and manner of firms' reports and publish those details in a Part 17 Guidebook. The proposed Part 17 Guidebook is available for download [here](#). Publishing the form and manner requirements in a Guidebook, rather than embedding technical details into regulatory text, will allow the CFTC to respond to changes in market conventions and technological conditions. This approach is consistent with how the CFTC addresses reporting standards under Parts 16, 20, 43, and 45. One issue with utilizing a guidebook to describe the form and manner requirements is that the Office of Data and Technology may modify the guidebook with little to no notice to reporting firms.

In the Proposal, the CFTC requests comments on all aspects of the proposed changes to Part 17, as well as specific comments addressing:

- The advantages and disadvantages of adopting a FIXML submission standard for Part 17 reports;
- Whether firms should be able to submit large trader reports through the CFTC's web-based portal as an alternative to secure file transfer protocol submission; and
- The advantages and disadvantages of correcting errors in the manner provided in the proposed Part 17 Guidebook.

Conclusion

The Proposal offers a significant opportunity for industry participants to play a role in determining how the CFTC's large trader reporting rules will be implemented going forward. The proposed revisions to the reporting rules will impact both the information in each report and the manner in which large trader reports are submitted to the CFTC. Comments will likely be due in August, so firms would be well served by beginning to consider the CFTC's questions and their responses now.

CFTC Proposes Changes to Large Trader Reporting Rules

Please contact any of the authors, the team listed at the end of this client alert, or the Willkie attorney with whom you regularly work if you have questions about the proposed Part 17 amendments.

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

Gabriel Acri 212 728 8802 gacri@willkie.com	J. Christopher Giancarlo 212 728 3816 jcgiancarlo @willkie.com	Neal E. Kumar 202 303 1143 nkumar@willkie.com	Kari Larsen 212 728 3297 klarsen@willkie.com
Rita M. Molesworth 212 728 8727 rmolesworth@willkie.com	Paul J. Pantano Jr. 202 303 1211 ppantano@willkie.com	Deborah A. Tuchman 212 728 8491 dtuchman@willkie.com	Conrad G. Bahlke 212 728 8233 cbahlke@willkie.com
Margo Bailey 202 303 1178 mbailey@willkie.com	Michael Selig 212 718 3836 mselig@willkie.com	Steven C. Matos 212 728 8757 smatos@willkie.com	Michael Hartz 202 303 1161 mhartz@willkie.com

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