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Via FedEx and Electronic Submission

Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Petition for Amendment of the Ownership and Control Reports Rule

Dear Mr. Kirkpatrick:

The Futures Industry Association ("**FIA**") respectfully submits this petition (the "**Petition**") to amend the U.S. Commodity Futures Trading Commission's ("**CFTC**" or the "**Commission**") Ownership and Control Reports ("**OCR**") Rule.[1] FIA is the leading trade organization for the futures, options, and over-the-counter cleared derivatives markets. Its members are active users of the commodity futures markets and include derivatives clearing firms of all sizes, as well as leading derivatives exchanges and large commodity firms. Many FIA members are reporting entities that are directly impacted by the OCR Rule.[2] FIA has participated actively in the OCR rulemaking process by: (1) serving as a liaison between the Commission and the industry; (2) assisting with industry implementation efforts; and (3) filing comments to the proposed rules.

I. Summary of FIA's Petition

The Commission designed the OCR Rule to automate and enhance the OCR data that it collects regarding futures and swaps market participants so the Commission can conduct more effective and robust market surveillance.[3] FIA members support the Commission's surveillance goals and have worked diligently to comply for the past 18 months. However, the current OCR Rule has created a number of regulatory gaps and conflicts that effectively prevent reporting

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[1] CFTC Rule 13.2, 17 C.F.R. § 13.2, provides, in part, that "[a]ny person may file a petition with the Secretariat of the Commission for issuance, amendment or repeal of a rule of general application. The petition . . . shall set forth the text of any proposed rule or amendment or shall specify the rule the repeal of which is sought. The petition shall further state the nature of the petitioner's interest and may state arguments in support of the issuance, amendment or repeal of the rule."

[2] Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 78 Fed. Reg. 69178 (Nov. 18, 2013) ("**OCR Rule**" or the "**Rule**").

[3] OCR Rule at 69179.

entities from complying with the Rule. FIA's goal in submitting this Petition is to enhance the quality of the OCR data that the CFTC receives and the ability of reporting entities to comply by:

- Making a limited number of changes to Form 102A/B/S and Form 71;
- Modifying the definitions to provide additional clarity about the data that should be reported; and
- Amending the reporting process to address challenges identified during implementation.

We have worked with a large cross-section of reporting entities to propose language in an amended OCR Rule that would still comport with the CFTC's surveillance goals. FIA's proposed amendments are designed to make the OCR Rule more effective by streamlining and enhancing the collection, processing, and quality of OCR data.[4] The proposed amendments would make relatively minor modifications to the Rule that are designed to retain the benefits of automated OCR reporting.[5] Furthermore, the proposed amendments would leverage the significant time, money, and resources that the Commission and reporting entities have devoted to the development of OCR data collection and reporting systems. They also would eliminate redundant reporting obligations that impose substantial compliance obstacles for reporting entities.

As a consequence of the OCR implementation issues outlined in this Petition, reporting entities have incurred considerable costs, and will continue to incur costs associated with the OCR Rule that substantially exceed the costs projected by the Commission when it issued the Rule. The Commission projected that each reporting entity would spend approximately $18,500 to develop systems to report each category of Form 102 (A/B/S) and approximately $3,700 per year to report each category of Form 102 (A/B/S).[6] FIA and its members have spent the past two years developing systems reasonably designed to come into compliance with the OCR Rule. Based on the implementation efforts to date, FIA estimates that the average start-up costs per entity is approximately $500,000, which is more than 800 percent higher than the Commission's combined projected start-up costs for Forms 102A/B/S.[7] Furthermore, FIA's projects average

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[4] FIA's proposed amendments to the rule text of the OCR Rule are set forth herein, and cumulatively, in **Exhibit A** to this Petition. FIA's proposed amendments to the OCR Forms are also described herein, and set forth cumulatively in **Exhibits B-E** to this Petition.

[5] FIA believes that the modifications requested in the Petition would be consistent with the Commission's efforts to improve swap reports to swap data repositories ("**SDRs**"). *See* Remarks of Chairman Timothy G. Massad before the FIA International Derivatives Conference (London) (June 9, 2015) ("We are also taking steps at home to improve our reporting framework. Later this summer, I expect that we will propose some changes to our swap reporting rules for cleared swaps designed to clarify reporting obligations and improve the quality and usability of data in the data repositories. We are looking at other possible changes as well.").

[6] OCR Rule at 69215-20.

[7] The start-up costs consist of systems and operational investments, vendor costs, legal expenses, customer/counterparty outreach and training to obtain OCR data, and project management costs.

annual ongoing costs per entity to be more than $140,000 per year, which is more than 1,200 percent higher than the Commission's combined projected on-going cost for Forms 102A/B/S.

FIA believes that the problems with the OCR Rule outlined in this Petition cannot be resolved by reporting entities dedicating additional resources to attempted compliance. The considerable resources reporting entities have devoted to customer outreach thus far have not improved customer response rates to reporting entities. The issues hindering compliance are caused by the structure of the OCR Rule itself; mainly, the fact that the OCR Rule requires reporting entities to submit OCR data that is not in their possession or control, or that they are legally prohibited from providing.

The problematic aspects of the OCR Rule, and FIA's recommended solutions, include the following:

- **Persons Possessing or Controlling OCR Data:** The Rule imposes an obligation on reporting entities (*e.g.*, futures commission merchants ("**FCMs**"), clearing members, foreign brokers, and swap dealers) to report to the Commission information about customers and counterparties that reporting entities do not possess or control.[8] Reporting entities have no practical means to obtain much of the required OCR data because their customers and counterparties have no regulatory obligation to provide the data to the reporting entities and are reluctant or refuse to do so. To address this regulatory gap, the Commission should rely on the data requested in the Form 40/40S rather than request the same data on the 102A/B/S. As explained further below, FIA's proposed framework would eliminate duplicative reporting but would not increase the burden on reportable traders because a reportable trader possesses and controls its own OCR data and already reports this information in response to Form 40/40S special calls.

  - The Commission also should require customers and counterparties to provide reporting entities with the requisite OCR data for Forms 102A/B/S and Form 71, as those forms are modified herein by the Petition. Such a regulatory obligation should significantly increase response rates and mitigate against the possibility that reporting entities may need to terminate services if customers/counterparties do not provide reporting entities with OCR data.

- **Foreign Privacy Laws:** The Rule mandates, in some instances, the unlawful disclosure of data covered by foreign privacy-protection laws. The OCR Rule does not take into account the conflicting legal obligations imposed on reporting entities by the OCR Rule and foreign privacy laws. The Commission should provide data masking protection for certain data fields, as necessary, on all OCR Forms where there is a reasonable belief that foreign privacy law prevents the disclosure.

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[8] For example, the OCR Rule obligates reporting entities to report natural person controllers for trading accounts that comprise a special account and volume threshold accounts.

- **Technologically Impractical Reporting Deadlines:** The Rule does not provide reporting entities with a reasonable amount of time to submit the required data on Forms 102A/B. It is technologically impracticable for reporting entities to address file rejections and ensure the submission of data within the timeframes specified by the Rule. FIA proposes to amend the Rule to require reporting entities to submit Forms 102A/B by 9:00 A.M. on the business day after the account becomes reportable, but provide reporting entities with an opportunity to finalize the report within three business days after the account becomes reportable.

- **Aggregation of SEF Transactions:** It is impossible for reporting entities to aggregate swap transactions executed on swap execution facilities ("**SEF**") for purposes of completing Form 102B because SEFs have not set and published product identifiers. Moreover, the OCR Rule does not impose an obligation on SEFs to create product identifiers, so product identifiers may not exist in the future. If the Commission expects reporting entities to include SEF-executed transactions in an aggregated volume threshold, the Commission should require SEFs to set product identifiers in an amended rule. It appears that CFTC Staff acknowledged the impossibility of aggregating SEF-executed transactions when Staff issued no-action relief extending the OCR compliance date for aggregating SEF-executed transactions until February 13, 2017.[9]

- **Reporting Threshold:** The 50-contract threshold for Form 102B will result in massive amounts of data being filed with the Commission. Collecting this volume of data will not tangibly benefit the Commission's ability to surveil the market. FIA's proposal would amend the reportable threshold for Form 102B to 250 contracts, which would align the obligations of reporting entities with the Commission's market surveillance objectives.

- **Inapplicable Terms on Form 102S:** Form 102S uses terms, such as "house" and "customer" account, that are generally used in the context of futures contracts and cleared swaps, but do not apply in the context of the over-the-counter swaps market. The use of inapplicable terms has inhibited the ability of swap dealer counterparties to input information responsive to the questions on Form 102S. The inapplicable terminology may also lead to the submission of inconsistent data to the extent different reporting entities interpret Form 102S in different ways. FIA's proposed amendments to Form 102S would eliminate inapplicable terminology.

- **Appropriate Instructions for Form 40S:** Forms 40 and 40S, despite their different titles, use the same document to ask about a reportable trader's futures, options on futures, and swaps activity. However, the instructions on Form 40S include references to terms such as "special account" and "volume threshold account" that are only relevant for Form 40 and may confuse reportable traders reading the instructions

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9 *See* CFTC No-Action Letter No. 15-03 (Feb. 10, 2015).

in advance of completing Form 40S. In addition, CFTC Rule 20.5 still states that a Form 40S shall be completed via the submission of a Form 40 "as if any references to futures or option contracts were references to paired swaps or swaptions." This instruction is outdated and creates confusion because Form 40, as amended by the OCR Rule, already asks for information about swaps. FIA proposes to establish a stand-alone Form 40S and also amend CFTC Rule 20.5 to eliminate the outdated instructions regarding how to complete Form 40S.

Absent Commission action, the problematic aspects of the OCR Rule will make it extremely difficult, if not impossible, for reporting entities to comply fully with the Rule.[10] Additional delays will not correct the inherent deficiencies in the Rule. In the face of unworkable obligations to collect OCR data and conflicting legal obligations to protect the privacy of their customers and counterparties, reporting entities often will be forced to decide between providing insufficient OCR reports or potentially terminating clearing and/or counterparty relationships. If the latter occurs, there may be significant disruptions to the volume of trading and amount of liquidity in the derivatives markets. To avoid these adverse consequences, we urge the Commission to consider the targeted amendments proposed by FIA. Those amendments would not materially affect the CFTC's surveillance goals.

II. The Commission Should Amend the Rule to Establish a Workable Structure for Reporting OCR Data

A. Problem: The Rule obligates reporting entities to report information that is not in their possession

The OCR Rule requires reporting entities to report certain information to the Commission about customers and counterparties that reporting entities do not possess or control. This is not workable for several reasons. For example, reporting entities have been unable to collect a significant amount of the OCR data being sought on Forms 102A/B/S and Form 71, despite substantial customer/counterparty outreach. Reporting entities cannot fulfill their obligation to report customer/counterparty OCR data if they cannot obtain that data because customers and counterparties have no obligation to provide the OCR data to reporting entities. Commenters brought this issue to the Commission's attention during the notice and comment period.[11] For example, the CME stated: "for FCMs to create automated methods to populate this data, it is important that the fields be limited to those records that an FCM obtains in its regular onboarding processes."[12] The Commission cannot correct this problem with additional delays to the compliance date. Rather, it should make the modifications recommended herein, which FIA designed to make the OCR Rule more effective.

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[10] FIA appreciates Staff providing additional time for reporting entities to come into compliance with the Rule, and continuing to work with market participants on implementation. CFTC No-Action Letter No. 15-03.

[11] *See, e.g.*, FIA Comment Letter at 5-6 & n.10 (Oct. 15, 2012).

[12] CME Group Comment Letter at 2 (Oct. 16, 2012).

The reluctance of market participants to provide reporting entities with a substantial amount of data is not a systems problem. Reporting entities have been unable to convince their clients to provide the information that would allow reporting entities to comply with the OCR Rule. For example, it appears that the Commission's request for the account controller is no longer limited to the legal entity that controls the account, but rather could be read to request a customer's roster of individual traders who may trade for an account.[13] This includes information such as title, address, phone number, email, and relationship to the entity. It is impossible for reporting entities to report and continuously update this level of OCR data because the information relates to the internal workings of customers and is outside the possession and control of reporting entities.[14]

1. The compliance date for the Rule likely will result in significant market disruptions.

Under the OCR Rule, if a market participant does not provide its own OCR data to a reporting entity, a reporting entity must decide between: (1) providing insufficient OCR reports; or (2) potentially (a) terminating clearing services or (b) refusing to act as a counterparty to the market participant. This Hobson's choice likely will result in significant disruptions to trading volume and liquidity as the market reacts to a reduction in clearing and counterparty relationships. Rather than continue to delay a rule that creates practical problems that could lead to significant market disruptions, the Commission should require reporting directly from the persons in possession or control of the information sought by the Rule.

2. Obligating reporting entities to keep a substantial amount of customer and counterparty OCR data current is not practical.

The current reporting structure presents unworkable obstacles to maintaining updated OCR data. The OCR Rule obligates reporting entities to update Forms 102A/B/S through both change updates and the annual refresh process. Specifically, reporting entities must file change updates to OCR data by 9:00 A.M. on the business day following the change. Given that there is no obligation for customers and counterparties to provide OCR data in the first instance, FIA anticipates that reporting entities will continue to experience low customer/counterparty cooperation to help reporting entities keep OCR data current through change updates. It is impossible for reporting entities to keep existing OCR data current without updated information from their customers and counterparties.

The process for reporting entities to file an annual refresh of the OCR data for each Form 102A/B/S is similarly problematic because there is no regulatory obligation for the customer/counterparty to assist with this process. As with change updates, FIA anticipates that reporting entities will continue to experience low customer/counterparty cooperation to help reporting entities file an annual refresh of OCR data with the Commission. Again, without the

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[13] CFTC Rule 15.00(t), (bb), (cc), (dd).

[14] This type of customer information also triggers privacy law concerns, discussed below.

OCR data, it is impossible for reporting entities to perform an annual refresh, so the Commission should not require reporting entities to refresh data that they do not possess or control.

3. The recent CFTC Staff Advisory regarding the Rule did not address FIA's concerns about practical problems created by the Rule.

In FIA's most recent request for no-action relief from the OCR Rule, it requested that the Commission or Staff issue an advisory to encourage customers and counterparties to provide OCR data to reporting entities. In particular, FIA requested that the Commission advisory state that the Commission "expects" *customers and counterparties* to provide reporting entities with the OCR data necessary for the reporting entity to file Forms 102A/B/S. On March 23, 2015, Staff issued an advisory ("**Advisory**") that emphasized the regulatory obligation for *reporting entities* to report OCR data about their customers and counterparties and encouraged *reporting entities* to contact their customers and counterparties to acquire the necessary OCR data in a timely manner.

The Advisory focused on the existing obligations for reporting entities and appears to assume that continued requests for OCR data eventually will address the low response rates. Unfortunately, the difficulty in collecting OCR data is due largely to the lack of response to outreach efforts, not the lack of outreach. As a result, FIA does not expect the Advisory to improve customer response rates. After the first phase of the Commission's testing, CFTC Staff reported that they had received just 30% of the data they expected to receive on Form 102A. This was due, in part, to the inability of the CFTC to accept large files. FIA Technology Services reports on behalf of more than 30 reporting parties and, as of the end of May 2015, it received only 50% of the data. These testing results indicate a continued lack of client cooperation following the Advisory.[15]

B. Solution: Obligate Reporting Entities to Submit OCR Data in their Possession

The Commission should amend Forms 102A/B/S, and the associated rule text to collect a more limited set of OCR data for reportable accounts. The Commission similarly should require clearing members to submit a more limited set of OCR data when responding to a request for a Form 71 regarding customer omnibus accounts. After a reporting entity files a Form 102A/B/S or responds to a Form 71, the Commission should, to the extent it deems necessary, obtain additional detailed OCR data about the market participant with a reportable account by issuing a Form 40/40S directly to the market participant.[16]

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[15] We also are aware that, in at least some cases, reporting entities may submit data to comply with the condition in the current OCR no-action relief to submit test data, but this test data may not be sufficient to comply with the OCR Rule.

[16] The Commission already imposes an obligation on market participants to respond to special calls, such as Form 40/40S, pursuant to CFTC Rules 18.05 and 20.5(b).

1. The proposed amendments would eliminate impractical and redundant reporting requirements.

Under the OCR Rule, the Commission receives detailed OCR data about a market participant through Forms 102A/B/S and Form 71. It also receives similar OCR data when market participants respond to a CFTC special call for a Form 40/40S. Given that the CFTC will receive detailed information directly from a market participant in a Form 40/40S, imposing a regulatory obligation on reporting entities to collect and submit the same detailed OCR data imposes an unnecessary cost and creates significant compliance obstacles because there is no obligation on the customer/counterparty to provide it.

FIA's proposed amendments would significantly mitigate against the commercially impractical and potentially market-harming need for reporting entities to contemplate refusing to provide clearing services or to act as a counterparty if the customer/counterparty does not provide detailed OCR data to the reporting entity. In the same regard, the CFTC reducing the number of data fields on Forms 102A/B/S and Form 71 to those in Exhibits B and C would have the same effect. FIA's proposed framework would impose the regulatory obligation on the person in possession or control of the OCR data. The reporting entity's customers/counterparties are in the best position to provide (and file) change updates for the OCR data that FIA proposes to remove from Form 102A/B/S and Form 71.

2. The Commission would continue to receive the same level of OCR data under FIA's framework.

FIA's requested amendments do not modify the scope of OCR data the Commission would receive under the current OCR Rule. The Commission would continue to receive detailed OCR data about reportable traders through the Form 40/40S process. Furthermore, FIA supports the Commission's move to electronic OCR Forms and FIA's proposed amendments retain the electronic format in the OCR Rule.

3. FIA's proposed amendments to OCR Form 102A and the accompanying rule text.

As noted above, Exhibit A to FIA's Petition incorporates FIA's proposed modifications to the OCR rule text and Exhibit B proposes FIA's modifications to OCR Forms 102A/B/S. FIA recommends that the Commission modify Form 102A and the accompanying rule text in the following manner:

- **Remove question 6 regarding the request for "Special Account Owner(s)."** As the Commission is aware, a "special account" is not a single account, but rather a collection of several trading accounts. At present, reporting entities group trading accounts into a special account based on the common controller for the various trading accounts, not common ownership. Furthermore, the OCR Rule already obligates reporting entities to report the trading account owner on Form 102A for

each trading account that comprises the special account, so it is unclear why reporting entities should attempt to identify a special account owner.

- **Clarify the definition of the "Trading Account Owner."** FIA recommends that the Commission clarify in new CFTC Rule 15.00(ee) the definition of a trading account owner. Specifically, the reporting entity should provide the Commission with the holder of the account on the reporting entity's books and records. This information should provide the Commission with sufficient contact information so that the Commission can issue a Form 40 for additional information about the reportable trader.

- **Remove question 10(iii) regarding the request for "Trading Account Controller(s)."** Form 102A obligates reporting entities to collect information about the natural person(s) that control specific trading accounts. There is little to no benefit to the Commission collecting natural person controllers information on Form 102A because the Commission already requests this information directly from the reportable trader through the issuance of a Form 40. As noted above, it is impossible for reporting entities to report and continuously update this level of OCR data because the information relates to the internal workings of customers and is outside the possession and control of reporting entities. This amendment also would address, to a certain extent, some of the privacy law concerns addressed below because the reporting of controller information may conflict with data privacy laws in foreign jurisdictions.[17]

4. FIA's proposed amendments to OCR Form 102B and the accompanying rule text.

As set forth in detail in Exhibits A and B to the Petition, FIA recommends that the Commission modify Form 102B and the accompanying rule text in the following manner:

- **Clarify the definition of the "Volume Threshold Account Owner."** FIA recommends that the Commission clarify in new CFTC Rule 15.00(ff) the definition of a volume threshold account owner. A clearing member should provide the Commission with the holder of the account on its books and records. This information should provide the Commission with sufficient contact information such that the Commission can issue a Form 40 for additional information about the reportable trader.

- **Remove question 6 regarding the request for "Volume Threshold Account Controller(s)."** Form 102B, like Form 102A, obligates clearing members to collect information about the natural person(s) that control specific trading accounts. There is little to no benefit to the Commission collecting natural person controllers on Form

[17] *See* Section III below.

102B because the Commission already requests this information directly from the reportable trader through the issuance of a Form 40. In addition, as noted above, it is impossible for reporting entities to report and continuously update this level of OCR data because the information relates to the internal workings of customers and is outside the possession and control of reporting entities.

5. FIA's proposed amendments to OCR Form 71 and the accompanying rule text.

As set forth in detail in Exhibit A and C to the Petition, FIA recommends that the Commission modify Form 71 and the accompanying rule text in the following manner:

- **Clarify the definition of the "Reportable Sub-Account Owner."** FIA recommends that the Commission clarify in new CFTC Rule 15.00(gg) the definition of a reportable sub-account owner. Omnibus account originators should provide the Commission with the holder of the accounts on their books and records. This information should provide the Commission with sufficient contact information about a reportable sub-account so that the Commission can issue a Form 40 for additional information about the reportable trader.

- **Remove the request for "Reportable Sub-Account Controller(s)."** Form 71, like Form 102A/B, obligates omnibus account originators to collect information about the natural person(s) that control specific sub-accounts. There is little to no benefit to the Commission collecting natural person controllers on Form 71 because the Commission already requests this information directly from the reportable trader through the issuance of a Form 40. In addition, as noted above, it is impossible for reporting entities to report and continuously update this level of OCR data because the information relates to the internal workings of customers and is outside the possession and control of reporting entities.

C. Solution: Obligate Customers and Counterparties to Provide Reporting Entities with OCR Data

In addition to FIA's proposed changes to the Form 102A/B/S and Form 71, the Commission should amend CFTC Rules 18.05 and 20.5(c) to require customers and counterparties to provide reporting entities with the requisite OCR data. Absent an obligation for customers/counterparties to provide information to reporting entities, FIA remains concerned about low response rates. This regulatory obligation should significantly increase response rates and mitigate the possibility that reporting entities may need to terminate services if customers/counterparties do not provide reporting entities with OCR data. FIA also requests that the Commission clarify in the preamble to the proposed rules that reporting entities can reasonably rely on information provided by customers/counterparties and that the Commission will not commence an enforcement action if a reporting entity has no reason to believe that the information provided was incorrect.

III. The Commission Should Amend the Rule to Resolve Foreign Privacy Law Conflicts

A. Problem: The OCR Rule Conflicts with Foreign Privacy Laws

As the Commission is aware, foreign privacy laws make it illegal for reporting entities to provide certain CFTC-required OCR data regarding customers and counterparties.[18] For example, reporting a customer's name and contact information may be prohibited by the laws of foreign jurisdictions. CFTC Staff provided industry-wide no-action relief for only one of the OCR Forms (Form 102S), to permit masking certain swap data reported to the CFTC.[19] The no-action relief does not address the fact that other OCR-related forms, such as Form 102A/B and Form 71, raise similar privacy law conflicts. Furthermore, no-action relief does not address the fact that the OCR Rule places reporting entities in the impossible position of having to decide whether to comply with either the laws of another jurisdiction or the Rule.

B. Solution: Codify and Expand Existing No-Action Relief to Permit Data Masking

As FIA previously requested, the Commission should permit reporting entities to mask OCR data for all OCR-related forms.[20] The Commission should codify these masking provisions in an amended rule so that market participants would have legal certainty for data masking as opposed to uncertainty regarding whether CFTC Staff will continue to provide no-action relief. Staff previously acknowledged that foreign privacy laws may conflict with the Commission's swap reporting requirements and granted no-action relief to permit market participants to mask certain swap data reported to the Commission or to an SDR.[21] Although the no-action relief permits data masking for one of the OCR Forms, Form 102S, there is no relief for Forms 102A/B or Form 71.

The Commission should propose rules to make clear that data masking is permitted for OCR Forms 102A/B/S and 71 where reporting entities have a reasonable basis to believe that foreign privacy law prohibits the disclosure. Each of these forms requests information that could be governed by foreign privacy laws. For example, the natural person and legal entity contact information requested on Forms 102A and B, including name, address, and phone number, often falls within the scope of protected data. There is no policy rationale to permit data masking for some but not all OCR forms. The Commission should also permit data masking where a foreign privacy law conditions disclosure upon receipt of a waiver from the customer/counterparty, but the necessary waiver has not been obtained or may be impractical.[22]

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[18] Foreign privacy laws include, among others, data privacy, bank secrecy, state secrecy, and blocking statutes.

[19] CFTC No-Action Letter No. 15-01 (Jan. 8, 2015).

[20] *See* FIA No-Action Request to Vincent A. McGonagle, Request to Extend and Expand Existing No-Action Relief for Data Masking Due to Privacy Concerns (Dec. 8, 2014).

[21] No-Action Letter No. 15-01.

[22] For example, where consent is revocable or is required for each individual disclosure, it is of little practical assistance for a reporting entity.

The Commission should also remove some of the impractical conditions to the existing no-action relief. For instance, the Commission should not require an entity to request that a foreign regulatory authority confirm the application of foreign privacy laws and provide a written confirmation of the law's application. Non-U.S. regulatory authorities may not have a process through which to handle these requests or may not respond to requests in a timely manner. As with recent CFTC proposed rules that address conflicts with foreign laws, the Commission should permit reporting entities to rely upon the written advice of internal or external counsel in advance of masking any data.[23]

FIA understands that the Commission is currently considering how to address data masking more broadly within the context of its swap reporting rules. The Commission should incorporate the OCR reporting rules into its consideration of data privacy issues. FIA would like to work with the Commission to develop an appropriate reporting framework so that reporting entities no longer need to decide whether to comply with either the laws of another jurisdiction or the OCR Rule.

IV. The Commission Should Extend the Timeframe for Reporting Entities to Report Forms 102A/B

A. Problem: The Rule Imposes a Technologically Impractical Timeframe to Submit Forms 102A/B and Change Updates to Form 102A/B/S

The OCR Rule requires reporting entities to submit Forms 102A and B by 9:00 A.M. on the business day following the day that an account becomes reportable.[24] Prior to the OCR Rule, reporting entities were obligated to submit a Form 102 within three business days after an account became reportable. The timeframe to submit a Form 102A/B under the OCR Rule exacerbates the problem of requiring reporting entities to submit significant OCR data about their customers. Reporting entities process their large trader reporting files to identify reportable accounts at the end of the business day. The deadline of 9:00 A.M. the following business day likely means that reporting entities will need 24-hour operations support to address any issues in the data collection or errors in the submission of a Form 102A/B.[25] That would exacerbate the already high compliance costs imposed by the Rule.

B. Solution: Establish a Reasonable Timeframe to Submit Forms 102A/B and Change Updates to Form 102A/B/S

As set forth in Exhibit A to this Petition, the Commission should amend CFTC Rule 17.02(b), and (c) to require reporting entities to file a Form 102A/B by 9:00 A.M. the business

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[23] In the CFTC's proposed position limits rule, the Commission acknowledged that its rules may conflict with foreign and state laws, which led it to propose an exemption from the proposed position limits aggregation rule. Aggregation of Positions, 78 Fed. Reg 68946, 68950, 68977 (Nov. 15, 2013) (proposed rule).

[24] *See* CFTC Rule 17.02(b)(2)(i) & (c)(2)(i).

[25] FIA previously raised this problem with the CFTC in its comments to the proposed rule. FIA Comment Letter at 7.

day following the date the account first becomes reportable, but provide reporting entities with the opportunity to re-submit, correct, or otherwise modify the report within three business days after the special account or volume threshold account becomes reportable. Similarly, the Commission should amend CFTC Rules 17.02(b), and (c), along with CFTC Rule 20.5, to require reporting entities to file a change update with the CFTC by 9:00 A.M. the business day following when a change occurs, but provide reporting entities the opportunity to finalize the change update within three business days after the change occurs. This modification would provide reporting entities with time to address technical issues such as the correction of files that were rejected by the CFTC's reporting system.

Finally, the Commission should clarify in the preamble to the proposed rule that it will not commence an enforcement action against a reporting entity for failure to report a change update if the customer/counterparty did not notify the reporting entity of the applicable change. To the extent that the Commission decides not to receive the majority of OCR data from the customers and counterparties directly on a Form 40/40S, as requested above, FIA and its members nevertheless request that the Commission amend the OCR Rule to provide additional time to report.

V. The Commission Should Require SEFs to Establish Product Identifiers

A. Problem: A Lack of SEF Product Identifiers Prohibits Reporting Entities from Aggregating SEF-Executed Contracts Toward the Reportable Volume Threshold for Form 102B

Under the OCR Rule, a clearing member must file a Form 102B where a trading account carries a trading volume of 50 or more contracts with the same product identifier, in a single day, on a single designated contract market or SEF.[26] To determine whether the 50-contract threshold has been reached, a reporting entity must aggregate instruments with the same product identifier.

The OCR Rule *assumes*, without factual basis, that SEFs will create and publish product identifiers for products traded on their respective markets, but neither it nor any other Commission rule *requires* SEFs to do so. Without swap product identifiers, a clearing member cannot aggregate contracts toward the 50-contract threshold for purposes of Form 102B. Even after SEFs create product identifiers for swaps, a clearing member will need to expend significant time and resources to develop systems that recognize and collate each SEF product identifier.

No amount of delay will enable clearing members to aggregate SEF-executed transactions without a product identifier. Staff's recognition of this issue in the most recent OCR no-action relief does not address the fact that SEFs are under no regulatory obligation to set SEF product identifiers. This leaves open the likelihood that the February 13, 2017 compliance date to aggregate SEF-executed transactions may arrive without SEFs adopting product identifiers to resolve the issue.

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[26] CFTC Rule 15.04.

B. Solution: Obligate SEFs to Create Product Identifiers

It is unclear whether the recent extension until February 13, 2017 to report SEF-executed trades is intended to give Staff sufficient time to develop a methodology, and impose an obligation on SEFs, to establish product identifiers. FIA encourages the Commission and Staff to coordinate with SEFs to create a general framework to set product identifiers, and to codify that framework in a proposed modification to CFTC Rule 15.04 set forth in Exhibit A to this Petition.

VI. The Commission Should Increase the Reportable Volume Threshold

A. Problem: The Current Reportable Volume Threshold Triggers Form 102B Filings for Market Participants With Immaterial Positions

If the CFTC maintains the current 50-contract reportable volume threshold defined in CFTC Rule 15.04, FIA is concerned that reporting entities will report an excessive amount of data to the Commission. This data appears to relate to small accounts that are attributable to an immaterial amount of intraday volume. Based on discussions with CME, FIA understands that the 50-contract threshold should result in approximately 99% of CME volume being reportable. Even if the Commission increased the threshold to 500 contracts, the Commission should expect approximately 96% of the volume on CME to be reportable. Although the 50-contract threshold amounts to a very minor increase in volume that is attributable to a reportable account compared to a 500-contract threshold, the 50-contract threshold greatly increases the burden on clearing members to collect, maintain, and report Form 102B to the Commission.

B. Solution: Increase the Form 102B Reporting Threshold

As set forth in Exhibit A to this Petition, FIA requests that the Commission modify the reportable volume threshold in CFTC Rule 15.04 from 50 to 250 contracts. This amended threshold still would enable the Commission to conduct robust market oversight because a very high degree of volume would be attributable to reportable accounts. Given the marginal increase to reportable volume under the 50-contract threshold, the threshold appears to sweep in accounts that do not trade meaningful volume. Rather than attempt to collect OCR data about all market participants, the Commission should focus its surveillance efforts on accounts attributable to the overwhelming majority of trading volume.

VII. The Commission Should Amend Form 102S and Publish a Stand-Alone Form 40S to Limit Confusing References to Futures-Related Terminology

A. Problem: Form 102S Relates to Cleared and Uncleared Swaps Activity, But Utilizes Futures-Related Terminology that is Only Relevant for Cleared Swaps

Because Form 102S reporting entities include swap dealers and clearing members, Form 102S relates to both cleared and uncleared swaps activity. In designing Form 102S, the Commission borrowed language from existing futures-related OCR Forms (*e.g.*, Form 102A).

Although the futures-related terminology applies within the context of cleared swaps, the same terminology does not apply within the context of uncleared swaps. As a result, Form 102S utilizes terminology that is ambiguous and confusing for uncleared swap activity. For example, Form 102S refers to "omnibus" accounts. This term may be relevant to clearing members completing Form 102S for cleared swaps, but it has no meaning within the context of swap dealers reporting a Form 102S for uncleared swaps. A reporting form that does not use language relevant to swap positions and counterparty relationships creates confusion when market participants attempt to input responsive information. Because Form 102S requests information regarding cleared and uncleared swap activity, the Commission should incorporate the language used in both markets. Otherwise, there is a significant risk that the current questions will elicit inaccurate or incomplete OCR data from customers and counterparties.

B. Solution: Amend Form 102S to Differentiate Between Cleared and Uncleared Swaps and Streamline the Form

For Form 102S, the Commission should adopt FIA's requested amendments and only obligate swap dealers and clearing members to report certain OCR data about their customers and counterparties. The Commission should also modify Form 102S to incorporate language applicable to clearing members and their customers, as well as swap dealers and their counterparties. FIA recommends that the Commission make the following modifications to Form 102S, which FIA incorporates into the proposed Form 102S in Exhibit B and the accompanying rule text in Exhibit A to this Petition:

- **Question 3(i) regarding the consolidated account type, should differentiate between a reporting clearing member and a reporting swap dealer.** A reporting clearing member should be required to identify the consolidated account as "house," "clearing customer," "principal," or "counterparty." However, a reporting swap dealer only should identify the consolidated account as "principal," or "counterparty." Through these amendments, reporting entities submitting a Form 102S in their role as a swap dealer would no longer be obligated to interpret terms such as "house" account, which are relevant to cleared swaps, but are not relevant to uncleared swaps.

- **Only a reporting clearing member should respond to question 3(ii) regarding omnibus account information.** Omnibus account information is not relevant to uncleared swaps. Accordingly, the Commission should only require reporting clearing members to respond to question 3(ii).

- **Clarify the definition of the "Consolidated Account Owner."** FIA recommends that the Commission clarify in new CFTC Rule 20.1 the definition of a consolidated account owner. Reporting entities should provide the Commission with the person attributed to a consolidated account as indicated in the reporting entity's records. This information should provide the Commission with sufficient contact information about a consolidated account such that the Commission can issue a Form 40S for additional information about the reportable trader.

- **Question 3(iv) should only be required if the consolidated account controller information is different than the consolidated account owner information.** At present, the request for the consolidated account owner and controller information creates confusion within the context of the over-the-counter swaps markets because the account owner and controller is oftentimes the counterparty. To limit the potential for confusion, Form 102S should only require account controller information if it is different than the account owner information.

- **The Commission should eliminate questions added after the Commission finalized Form 102S.** Question 4 requests a brief description of the nature of the counterparty's or customer's paired swaps and swaptions activity. Many reporting entities did not read this question also to require reporting entities to identify whether each particular activity is associated with paired swaps, paired swaptions, or both. In an update to the CFTC's technical guidance, Staff clarified that reporting entities must identify whether the nature of the each particular activity on the Form 102S is associated with paired swaps and/or paired swaptions. This additional request imposes a significant burden on a reporting entity to categorize the nature of the activity and continuously to update whether that activity is associated with paired swaps and/or paired swaptions. The burden on reporting entities does not appear to provide the Commission with a corresponding surveillance benefit. Therefore, the Commission should remove the additional data and require reporting entities only to identify the nature of the customer's or counterparty's activity.

C. Problem: The Instructions to Form 40/40S Create Confusion

Despite their different titles, Forms 40 and 40S use the same document to ask about a reportable trader's futures, options on futures, and swaps activity. However, the instructions include references to "special account" and "volume threshold account" that only apply to a Form 40 and may confuse reportable traders reading the instructions to complete a Form 40S. Furthermore, CFTC Rule 20.5 still states that a Form 40S shall be completed via the submission of a Form 40 "as if any references to futures or option contracts were references to paired swaps or swaptions." This instruction is outdated because Form 40, as amended by the OCR Rule, already asks for information about swaps activity, so any instruction to replace futures references with swap references is not accurate.

D. Solution: Establish a Stand-Alone Form 40S Rather than Incorporate Form 40 and Form 40S into the Same Form

The Commission should establish a stand-alone Form 40S, removing references and definitions that relate only to Form 40. In addition, because the Commission requests information regarding swaps activity on Form 40, the Commission should remove the outdated instruction in CFTC Rule 20.5(b) to complete Form 40S as if it were a Form 40, and replace references to futures or options with references to paired swaps or swaptions. Therefore, FIA requests that the Commission modify CFTC Rule 20.5(b) as set forth in Exhibit A to this Petition.

VIII. Conclusion

For the foregoing reasons, FIA respectfully requests that the Commission publish for notice and comment FIA's requested amendments to the OCR Rule and, thereafter, adopt them as appropriate. Please contact FIA if the Commission or Staff have any questions about our Petition.

Respectfully submitted,

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Enclosures

cc: Honorable Timothy G. Massad, Chairman
Honorable Mark P. Wetjen, Commissioner
Honorable Sharon Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner
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