

account.⁴ This information identifies persons who have a financial interest in or trading control of a special account, informs the Commission of the type of account that is being reported, and gives preliminary information whether positions and transactions are commercial or non-commercial in nature.⁵ The form must be filed when the account first becomes reportable and updated when information concerning financial interest in or control of the special account changes.⁶ In addition to its use by the Commission, the Form 102 is used by the exchanges to identify accounts reported through their large trader reporting systems for both futures and options.⁷

Effective August 16, 1993, the Commission adopted amendments to part 17 of the regulations which clarified the reporting of futures positions of commodity pools, certain commodity trading advisors and accounts controlled by two or more persons.⁸ These amendments primarily addressed the reporting of accounts controlled by independent account controllers for eligible entities, conforming this reporting to the same method used by the Commission to determine compliance with speculative limits.⁹ Although certain amendments were made to Rule 17.01, the Commission did not change its Form 102. Rather, Commission staff at that time began a review of the Form 102 in relation to the newly amended Rule 17.01 and to changes in the nature of accounts carried and reported by firms since the last substantive revision of the form by the Commission.¹⁰

Staff review of this matter concluded that there are generally three types of special accounts reported to the Commission where information requirements differ: House and customer omnibus accounts; accounts

controlled by independent account controllers; and accounts generally owned and controlled by the same entity or an employee of the entity. The current Form 102 and Rule 17.01 require the same information for all accounts. Since all of the information is not pertinent for each of the different types of special accounts, the form is subject to varying interpretations and may be confusing for both the persons filing the form and those who receive it.

In view of this, Commission staff interviewed their counterparts at the exchanges in order to develop a new Form 102 which resolves some of the ambiguities in the present form making it more useful to both the exchanges and the Commission. The views of the operations committees of the Futures Industry Association ("FIA") were also sought and are discussed below. Persons on these committees represent the back office staff of clearing members and FCMs generally responsible for completing and filing the Form 102.

The proposed, modified Form 102 is included as an attachment to this notice. The amendments to Rule 17.01 conform the information required in the proposed regulations to that asked on the form.¹¹ In this respect, the rule amendments will not increase the information currently required under the rule for various types of accounts.

The New Form 102 and Proposed Amendments to Rule 17.01

As noted above, Commission staff have identified three types of special accounts that firms generally report: Omnibus accounts; accounts controlled by an independent account advisor; and accounts owned and controlled by the same entity or employee of the entity.

Item 1 on the proposed Form 102 requires that the firm classify the special account as one of the three types (Sec. 1(a), 1(b) or 1(c)) and give identifying information concerning the person or legal entity holding and/or controlling the account in item 1(d). In addition, if the account is not an omnibus account, the firm must report whether the person or legal entity identified in item 1(d) is a Commodity Trading Advisor ("CTA")

or a Securities Investment Advisor ("SIA"). See proposed §§ 17.01(b)(1), (b)(1) (i), (ii), (ii)(A), and (iii)(A).

The reason for identifying SIAs is that many of the participants in stock index futures are SIAs. Exchanges that trade stock index futures have created exclusions from certain of their rules for SIAs. The exchanges therefore believe it is important to identify such persons for enforcement purposes. The Commission also believes this information may be important to determine if investigations or studies should be conducted in cooperation with the Securities and Exchange Commission. Other information required for each type of special account is discussed below.¹²

Omnibus Accounts

For reporting purposes an omnibus account is considered an account carried on the books of an FCM (carrying firm) for and in the name of another FCM, clearing member, or foreign broker (originating firm) where trading in the account may be conducted for two or more persons at the originating firm and the traders are not separately identified to the carrying firm. Since the Commission will contact the originating firm to file the necessary reports required by part 17 of the regulations, the carrying firm need only identify the account as a house or customer omnibus account (question 1(a) on the Form 102) and provide the identifying information specified in item 1(d) of the form. See proposed §§ 17.01(b)(1), and (b)(1)(i).

Accounts Controlled by Independent Account Advisors

In pertinent part, an independent account advisor is a person who specifically is authorized by an FCM or eligible entity, as defined in part 150, to control trading decisions on behalf of, but without the day-to-day direction of, the FCM or eligible entity and over whose trading the FCM or eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities to supervise diligently the trading done on its behalf.¹³ As noted above, the Commission amended Rule 17.00 in 1993 to provide that all accounts controlled by independent account advisors for FCMs and eligible

⁴ 17 CFR 17.01 (1994).

⁵ Account types are shown on the CFTC Form 102 as house or customer omnibus, individual, partnership, corporation, etc.

⁶ 17 CFR 17.02 (1994).

⁷ Part 17 of the regulations requires that firms identify large traders in options on the Form 102 and transmit the form to the appropriate exchange in accordance with their rules. Those exchanges that maintain a futures large trader reporting system also use the CFTC Form 102 for identifying futures large traders.

⁸ 58 FR 33327 (June 17, 1993).

⁹ Eligible entities are defined in Commission Rule 150.1 as commodity pool operators, operators of a trading vehicle which is excluded or who themselves have qualified for the exclusion from the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this chapter or a commodity trading advisor.

¹⁰ These changes occurred in September of 1982 when the form was revised to include instructions for reporting option large trader information to the exchanges.

¹¹ On a related issue, the Commission is also proposing to amend Rule 17.01 to require that option and futures accounts be reported using the same designator. This may be any string of alphanumeric characters up to the maximum number permitted. Currently, Rule 17.01 specifies that a designator for a futures account be numeric while that for an option account can be alphanumeric. The restrictions on the use of alphanumeric characters for futures accounts is no longer necessary. Using the same designator for both types of accounts for the same persons will reduce the number of Form 102s that firms must file and that the Commission must process.

¹² Items 6 through 12 on the proposed Form 102 must be provided for all special accounts. This concerns information about the associated person handling the account and the firm filing the report.

¹³ The Commission has specified other indices of control to determine if certain accounts should be considered separate from other accounts owned or controlled by an FCM or eligible entity. See, for example the Commission's "Statement of Policy on Aggregation" (44 FR 33839, June 13, 1979) and Rule 150.1 (17 CFR 150.1, 1994).