

Insights

CFTC'S UPDATED LARGE TRADER REPORT RULE LEAVES IMPORTANT QUESTIONS UNANSWERED

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Last week, the CFTC updated its large trader position reporting rules for futures and options.^[1] First proposed in June 2023, this much-needed change modernizes a rule that had gone largely unchanged since the 1980s.^[2] Proponents claim it will streamline the data reporting process for reporting firms' daily reports, allow the CFTC to more efficiently utilize the incoming data, and improve the CFTC's market oversight and preparation of the Commitments of Traders (COT) reports.^[3]

Key updates to what has often been described as a cumbersome, archaic rule include: replacing the 80-character data submission standard with the Financial Information eXchange Markup Language (FIXML), replacing the data elements currently outlined in the CFTC's regulations with an appendix specifying applicable data elements, and the publication of a separate Part 17 Guidebook specifying the form and manner for reporting.^[4]

But skeptics, including Commissioners Mersinger and Pham, note that the rule change leaves important questions unanswered.^[5] Perhaps most problematic, as noted by Commissioner Pham in a surprising dissent, is the CFTC's delegation of decision-making authority to an office that no longer exists, the Office of Data and Technology (ODT).^[6] This leaves market participants left to wonder who will make decisions that, as Commissioner Pham explains, could cost reporting firms millions of dollars as they make significant technology and infrastructure changes to comply with the rule.^[7]

Commissioner Pham's dissent also alleges that the rule change "raises fair notice and due process issues for future regulatory changes."^[8] Specifically, Commissioner Pham is critical of the fact that the amendment does not include a notice requirement should the ODT choose to change the rules in the future, despite the fact that a notice requirement was requested by multiple comment letters.^[9] Beyond her concerns about the expenses associated with these future changes, Commissioner Pham also deems this lack of notice concerning "[c]onsidering the CFTC's aggressive enforcement

posture towards pursuing reporting violations with a strict liability standard and no materiality threshold”^[10]

Furthermore, the rule does not clarify the procedures for reporting additional data elements not currently required to be reported under the rule, nor does it explain how these new data elements will be interpreted.^[11]As Commissioner Mersinger noted, this is of great concern, as the Commission “can only justly enforce our rules when we have made our expectations clear to those who must comply with them.”^[12]

The CFTC’s new rules and Part 17 Guidebook make progress on fulfilling the CFTC’s desire to bring regulations and technology up to date. However, as the Commissioners themselves highlight, there are many unanswered questions and concerns that the CFTC must work to clarify in order to minimize the growing pains associated with implementing these new rules.^[13]

If you have questions or want to discuss how this rule change impacts you, please reach out directly to Renato Mariotti or Katherine Cooper.

KEY TAKEAWAYS

- Will provide the CFTC and market participants with access to more complete and reliable data, which should improve the CFTC’s preparation of the COT Report and its market monitoring and surveillance
- May require reporting firms to make costly updates to their technology and infrastructure, even amidst uncertainty with respect to reporting of certain additional data elements not previously required under the rule
- Does not include a notice process if there are changes to data standards, raising more concerns about costs associated with future changes.

FOOTNOTES

[1] Press Release Number 8902-24, Commodity Futures Trading Commission, [CFTC Approves Final Rules on Large Trader Reporting for Futures and Options](#) (April 30, 2024); Public Statements and Remarks, Kristin N. Johnson, Commissioner, Commodity Futures Trading Commission, [Statement of Commissioner Kristin N. Johnson In Support of Final Rule Adopting Amendments to Large Trader Position Reporting Requirements](#) (April 30, 2024).

[2] [Large Trader Reporting Requirements](#), 88 Fed. Reg. 41522 (June 27, 2023) (to be codified at 17 C.F.R. pt. 17) [hereinafter Large Trader Reporting Requirements]; Public Statements and Remarks, Summer K. Mersinger, Commissioner, Commodity Futures Trading Commission, [Statement of](#)

Commissioner Summer K. Mersinger in Support of Final Rulemaking Amending Part 17 Large Trader Position Reporting Rules (April 30, 2024).

[3] Large Trader Reporting Requirements, *supra* note 2; Public Statements and Remarks, Kristin N. Johnson, *supra* note 1.

[4] Commodity Futures Trading Commission, Guidebook for Part 17.00, *Reports by Reporting Markets, Futures Commission Merchants, Clearing Members, and Foreign Brokers* (April 16, 2024); Large Trader Reporting Requirements, *supra* note 2; Press Release Number 8902-24, Commodity Futures Trading Commission, *supra* note 1; Public Statements and Remarks, Kristin N. Johnson, Commissioner, *supra* note 1.

[5] See Public Statements and Remarks, Summer K. Mersinger, *supra* note 2; see also Public Statements and Remarks, Caroline D. Pham, Commissioner, Commodity Futures Trading Commission, *Dissenting Statement of Commissioner Caroline D. Pham on Large Trader Reporting Rule* (April 30, 2024).

[6] Public Statements and Remarks, Caroline D. Pham, *supra* note 5.

[7] *Id.*

[8] *Id.*

[9] *Id.* (citing to *Futures Industry Association, Large Trader Reporting Requirements (RIN 3038-AF27)*, 7 (Aug. 28, 2023); *ICE Futures U.S., Large Trader Reporting Requirements (RIN 3038-AF27)*, 2 (Aug. 28, 2023); *Options Clearing Corporation, RIN 3038-AF27 Large Trader Reporting Requirements*, 4 (Aug. 28, 2023)).

[10] *Id.*

[11] Public Statements and Remarks, Summer K. Mersinger, *supra* note 2.

[12] *Id.*

[13] *Id.*; Public Statements and Remarks, Caroline D. Pham, *supra* note 5.

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