

CFTC FORM TO

Annual Notice Filing for Counterparties to Unreported Trade Options⁸⁸



NOTICE: Failure to file a report required by the Commodity Exchange Act (“CEA” or the “Act”)⁸⁹ and the regulations thereunder,⁹⁰ or the filing of a report with the Commodity Futures Trading Commission (“CFTC” or “Commission”) that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of section 6(c)(2) of the Act (7 USC 9, 15), section 9(a)(3) of the Act (7 USC 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 USC 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission’s authority for soliciting this information is granted in sections 4c(b) and 8 of the CEA and related regulations (see, e.g., 17 CFR § 32.3(b)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (see, e.g., 7 U.S.C. §§ 9 and 13a-1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission’s market and trade practice surveillance activities to provide information concerning the size and composition of the commodity derivatives markets. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public on an aggregate basis in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with, the CFTC System of Records Notices, available on www.cftc.gov.⁹¹

⁸⁸ A trade option is generally a commodity option purchased by a commercial party that, upon exercise, results in the sale of a physical commodity for immediate (spot) or deferred (forward) shipment or delivery. See CFTC regulation 32.3(a) (17 CFR 32.3(a)) for more details. An unreported trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission’s regulations (17 CFR 32.3(b)(1); 17 CFR part 45).

⁸⁹ 7 U.S.C. section 1, *et seq.*

⁹⁰ Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq.*

⁹¹ Note that, under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget.

GENERAL INSTRUCTIONS

Who Must File a Form TO – 17 CFR § 32.3(b)(2) requires every counterparty to an unreported trade option to submit an annual filing to the Commission for the purpose of providing notice that it has entered into one or more unreported trade options in the prior calendar year. As noted above, an unreported trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission's regulations.

When to file – Form TO is an annual filing requirement due to the Commission no later than March 1 for the prior calendar year. For example, if a market participant enters into one or more unreported trade options between January 1, 2013 and December 31, 2013, the market participant must submit a completed Form TO to the Commission on or before March 1, 2014.

Where to file – Generally, Form TO should be submitted via the CFTC's web based Form TO submission process at <http://www.cftc.gov/>, or as otherwise instructed by the Commission or its designee. If submission through the web-based Form TO is impossible, the reporting counterparty shall contact the Commission at [techsupport@cftc.gov] or 202-418-5000 for further instructions.

What to File – All reporting counterparties filing a Form TO must complete all questions.

Signature – Each Form TO submitted to the Commission must be signed or otherwise authenticated by either (1) the reporting counterparty submitting the form or (2) an individual that is duly authorized by the reporting counterparty to provide the information and representations contained in the form.

CFTC FORM TO

Name and Contact Information for Reporting Counterparty:

1. Reporting Counterparty

Name and Address (including City, State, Country, Zip/Postal Code):

Reporting Counterparty website (if any):

Reporting Counterparty Unique Identifier (if any):

<input type="checkbox"/> Legal Entity Identifier "LEI" (if any)	
<input type="checkbox"/> National Futures Association ID Number (if any)	
<input type="checkbox"/> Other Party Identifier (Please Specify)	

2. Reporting Counterparty Contact Person⁹²

Name and Job Title and/or Relationship with Reporting Counterparty:

Phone Number and Email Address:

Commodity Category Indication:

3. In the prior calendar year, the Reporting Counterparty entered into one or more unreported trade options in the following commodity categories:

Agricultural ⁹³	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Metals ⁹⁴	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Energy ⁹⁵	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Other (Please Specify)	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO

Approximate Size of Unreported Trade Options Exercised in the Prior Calendar Year:

4. Please indicate, by commodity category, the approximate total value (quantity received/delivered multiplied by price paid/received) of physical commodities that the reporting counterparty purchased and/or delivered in connection with the exercise of unreported trade options in the prior calendar year:⁹⁶

⁹² This should be an individual able to answer specific questions about the reporting counterparty's unreported trade options activity if contacted by Commission staff.

⁹³ Agricultural commodity is defined in the Commission's regulations at 17 CFR 1.3(zz).

⁹⁴ Including, but not limited to, gold, silver, platinum, palladium, copper, aluminum, and rare earth metals.

⁹⁵ Including, but not limited to, petroleum products, natural gas, and electricity.

⁹⁶ For the purposes of answering this question, a reporting counterparty should not include the value of commodities that were the subject of trade options that remained open at the end of the prior calendar year or any trade options that expired unexercised during the prior calendar year.

5.

Agricultural	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M
Metals	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M
Energy	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M
Other	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M

Signature/Authentication, Name, and Date

By checking this box and submitting this Form TO (or by clicking “submit,” “send,” or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by the reporting counterparty identified below to provide the information and representations submitted on this Form TO, and that the information and representations are true and correct.

Reporting Counterparty Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

Submitted on behalf of:

_____ (Reporting Counterparty)

Date of Submission:

BILLING CODE C

PART 33—REGULATION OF COMMODITY OPTION TRANSACTIONS THAT ARE OPTIONS ON CONTRACTS OF SALE OF A COMMODITY FOR FUTURE DELIVERY

■ 4. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, and 21, otherwise noted.

■ 5. Revise the part heading to read as set forth above.

■ 6. In § 33.2, revise paragraph (b) to read as follows:

§ 33.2 Applicability of Act and rules; scope of part 33.

* * * * *

(b) The provisions of this part apply to commodity option transactions that are options on contracts of sale of a

commodity for future delivery except for commodity option transactions that are options on contracts of sale of a commodity for future delivery conducted or executed on or subject to the rules of a foreign board of trade.

* * * * *

§ 33.4 [Amended]

■ 7. Amend § 33.4 as follows:

- a. Remove the words “or for options on physicals in any commodity regulated under the Act,” in the introductory text;
- b. Remove and reserve paragraphs (a)(4) and (a)(5)(iv);
- c. Remove the phrase “or underlying physical” from paragraph (b)(1)(iii); and
- d. Remove the phrase “, options on physicals,” from paragraph (d)(3).

■ 8. In § 33.7:

- a. Amend paragraph (b) introductory text by revising the second paragraph of the Options Disclosure Statement;

■ b. Remove the phrase “or underlying physical commodity” wherever it appears in paragraph (b)(1) including its undesignated paragraphs;

■ c. Remove the phrase “(e.g., commitment to sell the physical)” from the fourth undesignated paragraph under paragraph (b)(1);

■ d. Revise the fifth undesignated paragraph under paragraph (b)(1);

■ e. Remove the phrase “or physical commodity” from paragraph (b)(2) introductory text and paragraph (b)(2)(i);

■ f. Remove the phrase “or underlying physical commodity” from paragraph (b)(5) both times it appears;

■ j. Revise the undesignated paragraph following paragraph (b)(5);

■ k. Remove the phrase “or underlying physical commodity” from paragraph (b)(6);

■ l. Remove the phrase “or the physical commodity” and the phrase “or underlying physical commodity” from paragraph (b)(7)(ii);