



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
Telephone: (202) 418-5000
Facsimile: (202) 418-5521

Division of
Market Oversight

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Division of Market Oversight Guidance Regarding the Terms “Owner” and “Controller” in the Ownership and Control Reporting (OCR) Final Rule

I. Background

The OCR Final Rule was unanimously approved by the Commodity Futures Trading Commission (“Commission” or “CFTC”) in October 2013, and published in the Federal Register in November 2013 with an effective date of February 18, 2014.¹ In the preamble to the OCR Final Rule, the Commission explained that the regular collection of ownership and control information would significantly enhance the Commission’s surveillance practices, including by improving the detection and deterrence of market manipulation and disruptive practices.² The Commission further explained that the OCR Final Rule would, for the first time, require the identification of trading accounts based solely on their trading volume.³ This would enable the Commission to review the growing activity of market participants who trade frequently and often represent large volume, but do not trigger the Commission’s traditional, position-based reporting rules.⁴

Since the adoption of the OCR Final Rule, the Commission’s Division of Market Oversight (“Division”) has continued to work with reporting parties to facilitate compliance and an effective transition to the OCR reporting regime. For example, the Division has held regularly scheduled conference calls since January 2014 with reporting parties to provide technical guidance on implementation of the OCR Final Rule. The Division has also published and periodically updated a detailed Technical Guidance Document setting forth the information technology standards for the automated reporting of OCR information.⁵

¹ See Commission, Final Rule: Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 78 FR 69178 (November 18, 2013) (hereinafter, “OCR Final Rule”). Terms not otherwise defined in this Guidance shall have the meaning assigned to them in the OCR Final Rule or in the Commission’s regulations.

² See *id.* at 69179.

³ *Id.*

⁴ See *id.* at 69180.

⁵ Information on the Technical Guidance Document and instructions for participating in the conference calls is available on the Commission’s website: <http://www.cftc.gov/Forms/OCR/index.htm>

The Division has issued several no-action letters (“NALs”) to provide reporting parties with additional time to complete technology builds, obtain customer data, and comply with the requirements of the rule. As a further step, the Division is issuing this Guidance to provide reporting parties with greater clarity regarding the terms “owner”⁶ and “controller”⁷ as used in Forms 102A and 102B in the OCR Final Rule (“102 Forms”).

The remainder of this Guidance reproduces the ownership and control questions asked in Form 102A and 102B, responds directly to questions presented by reporting parties regarding the terms “owner” and “controller,” and provides additional guidance regarding the interpretation of these terms. See Commission no-action letter 16-32 for a discussion of the fields shown in grey in section V of this Guidance.

II. Guidance on Form 102A, Question 6: “special account owner”

Text of Question 6:

Special Account Owner(s) Contact Information.

Provide the following information regarding the owner of this special account. Owners may be natural persons or any type of legal entity.

Indicate whether the owner is a legal entity or a natural person:

Legal entity:

Natural person:

Name of Special Account Owner: [For each field, check box if field reported to LEI provider in lieu of reported on this form

Street Address:

City:

State:

Country:

Zip/Postal Code:

Phone Number:

Email Address:

Contact Name (if owner not a natural person):

Contact Job Title:

Contact Relationship to Owner:

⁶ See Question 6 on Form 102A (special account owners), Question 10(ii) on Form 102A (trading account owners), and Question 5 on Form 102B (volume threshold account owners). While the term “owner” is not defined in the OCR Final Rule, the term is discussed on page 69194 of the OCR Final Rule.

⁷ See Question 7 on Form 102A (special account controller), Question 10(iii) on Form 102A (trading account controllers), and Question 6 on Form 102B (volume threshold account controllers).

Contact Phone Number:
Contact Email Address:
Owner Website (if any):
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):

Guidance in Response to Questions from Reporting Parties (102A, Question 6):

A. Who is an “owner” for purposes of Question 6?

1. The special account “owners” reportable in Question 6 are the **direct owners** of special accounts. If a person or entity is not a direct owner, such person or entity does **not** need to be reported as a special account owner in Question 6.
2. Reporting parties are **not** required to perform an ownership look-through past the direct owners, and therefore do not need to obtain and report information on items such as: (1) parent(s) of a corporate owner of an account; (2) investors in funds or co-ops; (3) limited partners of an investment vehicle; (4) stock owners of a corporation; or (5) any similar look-through past the direct owners.
3. The legacy 102 included a question (#2d) asking for all persons or entities who have a 10 percent or more “financial interest” in a special account.⁸ Because there is no longer a look-through past direct owners, the “10 percent or more” test is **not** used on the new 102 Forms. Only direct owners must be reported.

B. In the case of a special account reported on Form 102A, can the owner(s) of the associated trading account(s) also be reported as the owner(s) of the special account?

1. Yes. The Division recognizes that the special account owner(s) identified in Question 6 of Form 102A will typically be the same as the trading account owner(s) identified in Question 10(ii) of Form 102A.

Additional Information Previously Provided in the OCR Final Rule:⁹

1. Question 6 will only be completed by parties reporting a special account on the basis of both ownership and control of a reportable position.¹⁰
2. Question 6 is asking for the direct owner(s) of the special account, which in this context means the direct owner(s) of the reportable position referenced in Question 2 of Form 102A.¹¹

⁸ The legacy 102 is available on the Commission’s website at:
<http://www.cftc.gov/idc/groups/public/@forms/documents/file/cftcform102.pdf>

⁹ This “Additional Information” section reiterates information provided in the 102 Forms. The information is reproduced here for the avoidance of doubt rather than in response to questions from reporting parties.

¹⁰ See Question 2 on Form 102A.

III. Guidance on Form 102A, Question 7: “special account controller”

Text of Question 7:

Special Account Controller(s) Contact Information.

Provide the following information regarding the controller of this special account. Controllers may be natural persons or any type of legal entity.

Indicate whether the controller is a legal entity or a natural person:

Legal entity:

Natural person:

Name of Special Account Controller: [For each field, check box if field reported to LEI provider in lieu of reported on this form

Street Address:

City:

State:

Country:

Zip/Postal Code:

Phone Number:

Email Address:

Contact Name (if controller not a natural person):

Contact Job Title:

Contact Relationship to Controller:

Contact Phone Number:

Contact Email Address:

Controller Website (if any):

Controller NFA ID (if any):

Controller Legal Entity Identifier (if any):

Guidance in Response to Questions from Reporting Parties (102A, Question 7):

A. When a reporting party reports a special account on the basis of control of a reportable position (or ownership and control of a reportable position), and the special account controller to be reported in Question 7 is a legal entity that is a joint account, is it acceptable to combine the names making up the joint account in order to report a single special account controller?

1. Yes, this is acceptable, provided that the reporting party reports a combined name for the joint account that is reasonably descriptive and detailed.

¹¹ See the discussion of “special account” and “reportable position” (defined in § 15.00(r) and § 15.00(p)(1) of the Commission’s regulations, respectively) in OCR Final Rule at 69183.

IV. Guidance on Form 102A, Question 10(ii): “trading account owner”

Text of Question 10(ii):

Trading Account Owner(s).

For each trading account identified in question 9 that is not an omnibus account, provide the requested information for each owner (“owner”).

Indicate whether the owner is a legal entity or a natural person:

Legal entity:

Natural person:

Name of Trading Account Owner(s): [For each field, check box if field reported to LEI provider in lieu of reported on this form

Follow-On Information:

<p><i>Street Address:</i></p> <p><i>City:</i></p> <p><i>State:</i></p> <p><i>Country:</i></p> <p><i>Zip/Postal Code:</i></p> <p><i>Phone Number:</i></p> <p><i>Email Address (if owner(s) a natural person):</i></p> <p><i>Contact Name (provide only if owner is not a natural person):</i></p> <p><i>Contact Job Title:</i></p> <p><i>Contact Relationship to Owner:</i></p> <p><i>Contact Phone Number:</i></p> <p><i>Contact Email Address:</i></p> <p><i>Owner Website (if any):</i></p> <p><i>Owner NFA ID (if any):</i></p> <p><i>Owner Legal Entity Identifier (if any):</i></p>

Guidance in Response to Questions from Reporting Parties (102A, Question 10(ii)):

A. In the case of a trading account owner that is a joint account, is it permissible to report the legal name of the joint account, rather than the individuals holding the joint account, as the trading account owner?

1. Yes, in the case of a trading account owner that is a joint account, it is permissible to report the legal name of the joint account rather than the individuals holding the joint account as the trading account owner—e.g., “Peter and Mary Smith JTWROS” would be an acceptable trading account owner, in lieu of “Peter Smith” and “Mary Smith.”

B. If the trading account owner has no employees, is it acceptable for a reporting party to provide a natural person contact of an entity that is connected with the administration of the trading account owner?

1. Yes. As background, if the trading account owner reported in Question 10(ii) is not a natural person (i.e., it's a legal entity), then the question also asks for a natural person contact. If the trading account owner is a legal entity with no employees, a reporting party may provide a natural person contact of an entity that is connected with the administration of the trading account owner. The Division will not deem such a contact person, or the entity by which the contact person is employed, to be the owner of the trading account solely due to the fact that the person is identified as a contact. (For example, the Division would not deem a trustee to own a trading account solely because a reporting party identifies an employee of the trustee as the natural person contact in Question 10(ii).)
2. As a related matter, if a reporting party uses a trading manager or a trustee, the reporting party may provide a natural person contact of the trading manager or trustee in Question 10(ii), if the individual is authorized by the reporting party to provide information to the CFTC and is sufficiently knowledgeable about the reporting party's trading activity.

C. If a government sets up a wholly-owned investment vehicle to conduct trading, which entity should be reported as the trading account owner—the government, or the investment vehicle?

1. In the event that a government sets up a wholly-owned investment vehicle to conduct trading, the Division would typically consider the investment vehicle to be the owner of the trading account; a look-through to the government that owns the investment vehicle would not be required.

D. In the case of a special account reported on Form 102A, can the owner(s) of the special account also be reported as the owner(s) of the associated trading account(s) in Question 10(ii)?

1. The Division recognizes that the special account owner(s) identified in Question 6 of Form 102A will typically be the same as the trading account owner(s) identified in Question 10(ii) of Form 102A.

V. Guidance on Form 102A, Question 10(iii): “trading account controller”

Text of Question 10(iii):

Trading Account Controller(s).

For each trading account identified in question 9 that is not an omnibus account, provide the requested information for each controller (“controller”). NOTE: As defined in §15.00, the controller identified for a trading account that comprises or pertains to a special account must be a natural person.

Name of Trading Account Controller(s):

Follow-On Information:

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number: ¹²
Name of Employer:
Employer NFA ID (if any):
Employer Legal Entity Identifier (if any):
Job Title:
Relationship to Owner:
Email Address:
Controller NFA ID (if any):

Guidance in Response to Questions from Reporting Parties (102A, Question 10(iii)):¹³

A. Who is a “trading account controller” for purposes of Question 10(iii)?

1. “Trading account controller” is defined in § 15.00(bb) as a natural person who by power of attorney or otherwise **actually directs** the trading of a trading account.
2. A natural person who makes specific decisions to place, cancel or modify orders for a trading account, for example, would be considered to “actually direct” the account.
3. ‘Directing trading’ could also include situations in which a controller exercises discretion over the trading of a trading account, either directly or indirectly. In the case of indirect control, a controller might provide instructions to another person regarding trading decisions. If person A gives specific instructions to person B regarding trading decisions, and person B then implements those instructions, both person A and person B should be reported as trading account controllers.
4. Persons whose authority in the hierarchy of an organization would permit them to direct the trading of an account if they so choose are **not** account controllers unless they actually direct such account.

¹² See Commission no-action letter 16-32 for a discussion of the fields shown in grey in this section V.

¹³ The guidelines below for identifying trading account controllers in Question 10(iii) of Form 102A are also applicable to identifying volume threshold account controllers in Question 6 of Form 102B. “Volume threshold account controller” is defined in § 15.00(cc) as a natural person who by power of attorney or otherwise actually directs the trading of a volume threshold account. A volume threshold account may have more than one controller.

5. The Division would not expect to see an organization's CEO or CCO identified as a trading account controller, unless such person actually directs the trading of the account.
6. Similarly, persons whose responsibilities in an organization would make them responsible for the financial performance of an account are not trading account controllers, unless they also actually direct the account.

B. Who is a “controller” when trading for an account is conducted by an automated trading system (“ATS”)?

1. If control over an ATS is divided among different individuals over the course of a trading day, all the individuals would be considered controllers of the trading account, assuming they met the “controller” definition.
2. As a general matter, all individuals who qualify as trading account controllers should be reported in Question 10(iii).¹⁴ The preamble of the OCR Final Rule offers additional guidance on completing Question 10(iii):

“The instructions for Form 102A and Form 102B... state that respondents should report all individuals who qualify as ‘trading account controllers’ or ‘volume threshold account controllers,’ as defined in §§ 15.00(bb) and 15.00(cc), respectively.¹⁵ The Commission notes that regardless of whether the trading is carried out in whole or in part through an automated trading system or direct human initiation, the underlying analysis remains the same. When completing Form 102A and Form 102B, reporting parties should identify each person that satisfies the definition of ‘trading account controller’ or ‘volume threshold account controller,’ as defined in §§15.00(bb) and 15.00(cc), respectively. Once respondents have identified all individuals meeting the applicable controller definition in a Form 102A or Form 102B submission, they will not be required to submit change updates to the submission if one previously identified controller takes the place of another previously identified controller.”¹⁶

¹⁴ See directions, Question 10(iii) of Form 102A.

¹⁵ The Commission recognizes that, for some respondents that conduct trading in a reportable trading account or volume threshold account in whole or in part through an ATS, the individuals involved in the administration of such ATS may not qualify as trading account controllers or volume threshold account controllers.

¹⁶ See OCR Final Rule at 69223-69224.