



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 16-33
No-Action
April 8, 2016
Division of Market Oversight

Conditional Time-Limited No-Action Relief Under Part 17 of the Commission's Regulations Regarding Identifying Information Reportable on Form 102A and Form 102B

Allison Lurton
Senior Vice President and General Counsel
The Futures Industry Association
2001 Pennsylvania Avenue NW
Suite 600
Washington, DC 20006

Dear Ms. Lurton:

This letter is in response to FIA's request dated February 24, 2016 (the "February 2016 FIA Letter"), to the Division of Market Oversight ("DMO" or "Division") of the Commodity Futures Trading Commission ("Commission"), on behalf of the members of the Futures Industry Association ("FIA") that are required to submit certain reports under Part 17 of the Commission's regulations. In the February 2016 FIA Letter, FIA requested no-action relief from certain data reporting requirements of Part 17 of the Commission's regulations that were implemented pursuant to the Ownership and Control ("OCR") Final Rule (the "OCR Final Rule").¹

¹ Commission, Ownership and Control Reports, Forms 102/102S, 40/40S, and 71; Final Rule, 78 FR 69178 (November 18, 2013). Terms not otherwise defined in this letter shall have the meaning assigned to them in the OCR Final Rule or in the Commission's regulations. The Commission adopted the OCR Final Rule in 2013 to enhance its identification of futures and swap market participants.

I. Background; OCR Final Rule²

The OCR Final Rule requires the electronic submission of trader identification and market participant data on updated Form 102 and new Form 102B. Form 102B is an entirely new form, introduced by the OCR Final Rule. Among other fields, the new and updated forms require the reporting of the following information:

- Form 102A: a position-based reporting form, which requires the reporting of both special accounts and the trading accounts that comprise special accounts.
- Form 102B: requires the reporting of trading accounts that exceed a stated volume threshold during a single trading day (“volume threshold accounts”), regardless of whether these positions remain open at the end of the day.

II. February 2016 FIA Letter; April 2016 CFTC NAL

FIA asserted in the February 2016 FIA Letter that, “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.”

In response to the February 2016 FIA Letter, the Division is providing relief, via this no-action letter (the “April 2016 CFTC NAL”), from reporting certain identifying information on Form 102A and Form 102B that may be subject to privacy statutes or regulations in non-U.S. jurisdictions.³ Relief will be available from the date of this April 2016 CFTC NAL until **March 1, 2017**,⁴ subject to certain conditions more fully described below.

The additional no-action relief described in this April 2016 CFTC NAL may be relied upon by all parties that are obligated to report pursuant to the OCR Final Rule on either Form 102A or Form 102B (collectively, “Reporting Parties”).⁵

² Important information related to the implementation of the OCR Final Rule, including the Technical Guidance Document discussed herein, is available on the Commission’s “Ownership and Control Reporting (OCR)” homepage at: <http://www.cftc.gov/Forms/OCR>

³ The Division is providing no-action relief with respect to other items raised by FIA in the February 2016 FIA Letter via a separate no-action letter (CFTC Letter No. 16-32), issued on April 8, 2016.

⁴ At 11:59 p.m. Eastern Time.

⁵ See CFTC Letter No. 16-03 (Jan. 15, 2016) for a discussion of the procedure for seeking relief from the requirement to report identifying information, via Form 102S, pursuant to Part 20 of the Commission’s regulations. While the relief offered in this April 2016 CFTC NAL is largely based upon the relief offered under CFTC Letter No. 16-03, Reporting Parties seeking to mask Form 102A Identifying Information or Form 102B Identifying Information must refer to the terms and conditions of this April 2016 CFTC NAL. Reporting Parties may seek relief from the requirement to report the Form 102S fields that remain reportable pursuant to this April 2016 CFTC NAL in accordance with the procedure outlined in CFTC

III. Summary of Upcoming No-Action Relief Addressing Privacy Issues.

Based on the FIA's representations in the February 2016 FIA Letter, the Division believes that time-limited relief for Reporting Parties from the requirement to report Form 102A Identifying Information and Form 102B Identifying Information (as such terms are defined in Appendix A hereto) is warranted under specific conditions. The relief offered in this April 2016 CFTC NAL with respect to Form 102A Identifying Information and Form 102B Identifying Information does not otherwise impact Report Parties' continuing obligations to submit Form 102A and Form 102B pursuant to the Commission's regulations.⁶

Accordingly, the Division will not recommend that the Commission commence an enforcement action against a Reporting Party for failure to report Form 102A Identifying Information or Form 102B Identifying Information for any submission of Form 102A or Form 102B for which the Reporting Party has:

- (1) Formed a reasonable belief⁷ that statutory or regulatory prohibitions in a non-U.S. jurisdiction preclude the Reporting Party from reporting Form 102A Identifying Information or Form 102B Identifying Information;
- (2) Submitted a formal written request (a "Request")⁸ to the relevant non-U.S. regulator or governing authority⁹ that:
 - A. describes the Reporting Party's reporting obligations with respect to the Form 102A Identifying Information or Form 102B Identifying Information at issue in the Request;

Letter No. 16-03, available at:

<http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/16-03.pdf>

⁶ Reporting Parties are required to submit Form 102A in accordance with Commission regulation 17.01(a) and Form 102B in accordance with Commission regulation 17.01(b). Nothing in this April 2016 CFTC NAL should be interpreted as altering the responsibility of a Reporting Party to submit Form 102A or Form 102B, even if Form 102A Identifying Information or Form 102B Identifying Information is masked pursuant to this April 2016 CFTC NAL.

⁷ The Division notes that this no-action letter does not require any particular means of forming the requisite "reasonable belief."

⁸ The Division notes that a Reporting Party may submit a request individually or rely on a request made by a group of market participants or an industry association on behalf of similarly situated entities, provided that such request addresses all fields of Form 102A Identifying Information and/or Form 102B Identifying Information that such Reporting Party proposes to mask.

⁹ The Division notes that the relevant regulator or governing authority is one that enforces the regulations or statutes that the Reporting Party reasonably believes precludes it from reporting Form 102A Identifying Information or Form 102B Identifying Information. In circumstances where more than one statute or regulation may govern, the Reporting Party must submit requests to each relevant non-U.S. regulator or governing authority.

- B. requests that the non-U.S. regulator or governing authority specifically identify any statutes or regulations that would prohibit the Reporting Party from reporting Form 102A Identifying Information or Form 102B Identifying Information in connection with a Form 102A or Form 102B submission; and
 - C. requests that the non-U.S. regulator or governing authority specifically address the applicability of such statutes or regulations under the circumstances listed below, or any other circumstances relevant to the Reporting Party:
 - i. the Reporting Party is located and registered in the non-U.S. jurisdiction;
 - ii. the Reporting Party is located in the non-U.S. jurisdiction as a branch, including as a branch of a U.S. person; or
 - iii. the Reporting Party is located in the United States, but the legal entity or natural person to which the Form 102A Identifying Information or Form 102B Identifying Information relates is located in the non-U.S. jurisdiction.
- (3) Obtained a formal response to the Request¹⁰ from the relevant non-U.S. regulator or governing authority.¹¹ Responses must specifically address items (2)(B) and (2)(C) above. **A Reporting Party may mask Form 102A Identifying Information or Form 102B Identifying Information only to the extent that the non-U.S. regulator or governing authority has specifically indicated that reporting such information in connection with a Form 102A or Form 102B submission would violate the law of the non-U.S. jurisdiction.**¹²

The Division will extend this relief from the date of this April 2016 CFTC NAL until the earlier of: (a) such time that the Reporting Party no longer holds a reasonable belief that a regulatory or statutory prohibition precludes it from reporting Form 102A Identifying Information or Form

¹⁰ The Division notes that a Reporting Party may rely on a formal response letter from a relevant non-U.S. regulator or governing authority that results from a Request made by group of market participants or by an industry association on behalf of similarly situated entities, so long as the content of the formal response letter addresses the facts and circumstances that pertain to the Reporting Party as it intends to rely on the relief in this April 2016 CFTC NAL. In circumstances where more than one statute or regulation governs, the Reporting Party must receive responses from each relevant non-U.S. regulator or governing authority.

¹¹ The non-U.S. regulator's or governing authority's formal response must be in English or English translation.

¹² For example, if the law of the non-U.S. jurisdiction prohibits reporting only with respect to natural persons, then a Reporting Party may mask information only with respect to a reportable owner or controller that is a natural person. Similarly, if the law of the non-U.S. jurisdiction states that reporting is permissible with the consent of the reportable legal entity or natural person, then Reporting Parties would be expected to obtain such consent and report Form 102A Identifying Information or Form 102B Identifying Information when submitting Form 102A or Form 102B.

102B Identifying Information; and (b) **March 1, 2017**.¹³ Such no-action relief is subject to the following conditions:¹⁴

- i. The Reporting Party shall submit, to PrivacyLawReporting@cftc.gov (with the acronym “OCR” in the email subject line), copies of the Request described in clause (2) above submitted by the Reporting Party or on its behalf, as well as responses received from the relevant non-U.S. regulator or governing authority;¹⁵
- ii. The Reporting Party shall submit a Form 102A or Form 102B, as applicable, which shall include the country of the reportable owner or controller, and an indication of the Form 102A Identifying Information or Form 102B Identifying Information masked pursuant to this April 2016 CFTC NAL. Reporting Parties should refer to the Technical Guidance Document, available on the Commission’s “Ownership and Control Reporting (OCR)” homepage, for more detailed instructions on masking such information;¹⁶
- iii. The Reporting Party shall report that information has been masked due to privacy law for each field of Form 102A Identifying Information or Form 102B Identifying Information not reported pursuant to this April 2016 CFTC NAL, in accordance with the instructions provided in the Technical Guidance Document, available on the Commission’s “Ownership and Control Reporting (OCR)” homepage; and
- iv. Upon the expiration of the relief pursuant to either clause (a) or (b) above, a Reporting Party shall make a corrective Form 102A or Form 102B submission for all Form 102A Identifying Information or Form 102B Identifying Information that was previously submitted in a masked form pursuant to this April 2016 CFTC NAL, by no later than **30 days** from the date of such expiration. The Reporting Party shall contact the Commission’s Office of Data and Technology (“ODT”) prior to making such corrective Form 102A or Form 102B submission. Such submission shall be in a form and manner acceptable to ODT.

¹³ At 11:59 p.m. Eastern Time.

¹⁴ A Reporting Party may not continue to rely on the relief provided in this April 2016 CFTC NAL if a formal response letter outlined in clause (3) above is not issued to the Reporting Party or to a group of market participants or an industry association on its behalf and sent to the Commission in accordance with condition i below.

¹⁵ Reporting Parties shall retain such documents as part of their compliance with Commission recordkeeping requirements.

¹⁶ See <http://www.cftc.gov/Forms/OCR>

This letter, and the no-action position taken herein, which is based on FIA's representations, represents the views of the Division only, and does not necessarily represent the position or views of the Commission or of any other division or office of the Commission's staff. The no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements of the Commodity Exchange Act or the regulations thereunder. As with all no-action letters, the Division retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

If you have any questions concerning this correspondence, please contact Sebastian Pujol Schott, Associate Director, DMO, at (202) 418-5641, or Mark Schlegel, Special Counsel, DMO, at (202) 418-5055.

Sincerely yours,

Vincent McGonagle
Director
Division of Market Oversight

Information That May Be Masked in Accordance With This April 2016 CFTC NAL

“Form 102A Identifying Information” means the following information required on Questions 10(ii) (Trading Account Owner(s)) and 10(iii) (Trading Account Controller(s)) on Form 102A:

Question 10(ii):

- i. Name of Trading Account Owner(s)
- ii. Street Address (except that the country of the trading account owner(s) shall be provided)
- iii. City
- iv. State
- v. Zip/Postal Code
- vi. Phone Number
- vii. Email Address
- viii. Contact Name
- ix. Contact Job Title
- x. Contact Relationship to Owner
- xi. Contact Phone Number
- xii. Contact Email Address
- xiii. Owner Website (if any)
- xiv. Owner NFA ID (if any)
- xv. Owner Legal Entity Identifier (if any)

Question 10(iii):

- i. Name of Trading Account Controller(s)
- ii. Street Address (except that the country of the trading account controller(s) shall be provided)
- iii. City
- iv. State
- v. Zip/Postal Code

“Form 102B Identifying Information” means the following information required on Questions 5 (Volume Threshold Account Owner(s)) and 6 (Volume Threshold Account Controller(s)) on Form 102B:

Question 5:

- i. Name of Volume Threshold Account Owner(s)
- ii. Street Address (except that the country of the volume threshold account owner(s) shall be provided)
- iii. City
- iv. State
- v. Zip/Postal Code
- vi. Phone Number
- vii. Email Address
- viii. Contact Name
- ix. Contact Job Title

- x. Contact Relationship to Owner
- xi. Contact Phone Number
- xii. Contact Email Address
- xiii. Owner Website (if any)
- xiv. Owner NFA ID (if any)
- xv. Owner Legal Entity Identifier (if any)

Question 6:

- i. Name of Volume Threshold Account Controller(s)
- ii. Street Address (except that the country of the volume threshold account controller(s) shall be provided)
- iii. City
- iv. State
- v. Zip/Postal Code