



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight
Division of Swap Dealer and
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CFTC Staff Advisory No. 15-14
Other Written Communication
March 23, 2015
Division of Market Oversight
Division of Swap Dealer and Intermediary Oversight

Subject: Ownership and Control Reporting

To: Futures commission merchants, clearing members, foreign brokers, swap dealers, certain reporting markets (collectively, “Reporting Parties”).

I. Summary

The Division of Market Oversight (“DMO”) and Division of Swap Dealer and Intermediary Oversight (“DSIO”) of the Commodity Futures Trading Commission (“CFTC” or the “Commission”) issue this advisory to Reporting Parties. The purpose of this advisory is to remind Reporting Parties of their obligation to obtain information on a timely basis from their customers or counterparties in order to comply with the OCR Final Rule (as defined below). Reporting Parties may deem it advisable to furnish this advisory to their customers and counterparties as a tool to ensure that such customers and counterparties provide the timely cooperation needed for Reporting Parties to comply with the OCR Final Rule.

II. Background

On November 18, 2013, the Commission adopted new rules concerning the Commission’s identification of futures and swap market participants (the “OCR Final Rule”).¹ The OCR Final Rule requires the electronic submission of trader identification and market participant data on new and updated forms 102A, 102B and 102S, among other forms.² Section IV below summarizes these forms, including the ownership and control information related to customers and counterparties of Reporting Parties that is required by the forms. Reporting Parties must begin submitting the forms electronically by the reporting deadlines set forth in staff no-action letter 15-03 (the “NAL”), published on February 10, 2015. Those reporting deadlines are summarized in

¹ Commission, Ownership and Control Reports, Forms 102/102S, 40/40S, and 71; Final Rule, 78 FR 69178 (November 18, 2013). A copy of the OCR Final Rule is available on the Commission’s website at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-26789a.pdf>

² Section IV below lists the applicable reporting parties for each form. The OCR Final Rule also requires the collection of information via new and amended Forms 40/40S and 71, which are sent by the Commission via special call. These forms are discussed in detail in the OCR Final Rule, but are not discussed in this advisory.

Section IV below.³ The relief is subject to certain terms and conditions outlined in the NAL. Reporting Parties are also expected to work with Commission staff, during the period of no-action relief, to submit test files containing accurate and complete ownership and control information.⁴

III. Requests for Information From Reporting Parties

Reporting Parties must obtain from their customers or counterparties the information necessary for Reporting Parties to submit Forms 102A, 102B and 102S by the reporting deadlines specified below. To meet this requirement, it may be advisable for Reporting Parties to take steps to ensure that their customers and counterparties: respond promptly to requests from Reporting Parties for OCR information; promptly notify Reporting Parties of any subsequent updates to the information, in order to enable Reporting Parties to comply with their obligation to provide change updates and refresh updates;⁵ and otherwise assist Reporting Parties in fulfilling their reporting obligations under the OCR Final Rule. Staff reminds Reporting Parties that they are subject to examination with respect to their obligations under the OCR Final Rule by the National Futures Association and/or the Chicago Mercantile Exchange (in their capacity as Reporting Parties' designated self-regulatory organizations or "DSROs"), as applicable, or by the Commission. Failure to comply with all applicable statutory and regulatory requirements (including the OCR Final Rule) could result in disciplinary action by a Reporting Party's DSRO and other measures.⁶

The ability of Reporting Parties to submit complete and accurate forms within the reporting deadlines, as required by the OCR Final Rule, depends upon Reporting Parties receiving the required information on a timely basis from customers and counterparties. Reporting Parties should manage their customer relationships appropriately in order to secure such information. DMO and DSIO expect that during the relief period described in the NAL, Reporting Parties will contact customers and counterparties who have not yet provided complete OCR information to request that they provide the information as soon as possible.

IV. Reporting Forms Requiring Ownership and Control Information

The OCR Final Rule requires Reporting Parties to submit ownership and control information about their customers or counterparties to the Commission on the following forms:

Form 102A: This is an updated version of current Form 102. Form 102A collects information with respect to position-based special accounts in the futures market. Special account, defined in part 15 of the Commission's regulations, refers to any commodity futures or option account with a reportable position. Form 102A also requires identifying information with respect to the owners and controllers of the individual trading accounts underlying these special accounts. Futures commission merchants (FCMs), clearing members, foreign brokers, and certain reporting markets may have reporting obligations on Form 102A. This form is due by 9

³ See CFTC Letter No. 15-03, dated February 10, 2015, available on the Commission's website at: <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/15-03.pdf>

⁴ Additional information on the OCR Final Rule and the testing process is available on the Commission's website at: <http://www.cftc.gov/Forms/OCR/index.htm>

⁵ See parts 17.02(b)(3)-(4), 17.02(c)(3)-(4) and 20.5(a)(4)-(5) of the Commission's regulations for requirements on change and refresh updates.

⁶ See section 6c of the Commodity Exchange Act, 7 USC § 13a-1.

a.m. the business day after the special account becomes reportable.⁷ The NAL extends relief from electronically reporting via Form 102A until September 30, 2015.

Form 102B: This is a new form. Form 102B requires the transaction-based reporting of trading accounts that have daily trading volume that exceeds a specified level on a designated contract market (“DCM”) or swap execution facility (“SEF”) in a single trading day (defined as “volume threshold accounts”), regardless of whether the accounts maintain positions at the end of the day. Form 102B also requires identifying information with respect to the owners and controllers of these volume threshold accounts. Clearing members and certain reporting markets may have reporting obligations on Form 102B. This form is due by 9 a.m. the business day after the volume threshold account becomes reportable.⁸ The NAL extends relief from electronically reporting via Form 102B until dates ranging from September 30, 2015 to February 13, 2017.

Form 102S: This is an updated version of the 102S filing required under part 20.5 of the Commission’s regulations. Form 102S collects information regarding position-based counterparty consolidated accounts with respect to certain physical commodity swaps and swaptions. Swap dealers and clearing members may have reporting obligations on Form 102S. This form is due by 9 a.m. on the third business day after the consolidated account becomes reportable.⁹ The NAL extends relief from electronically reporting via Form 102S until September 30, 2015.

Change updates and refresh updates: Reporting Parties must submit change updates to the Commission if information previously reported on Form 102A, 102B or 102S changes. On an annual basis, Reporting Parties must also submit refresh updates of forms previously submitted to the Commission.¹⁰

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⁷ See parts 17.01-17.02 of the Commission’s regulations.

⁸ Id.

⁹ See part 20.5 of the Commission’s regulations.

¹⁰ See parts 17.02(b)(3)-(4), 17.02(c)(3)-(4) and 20.5(a)(4)-(5) of the Commission’s regulations for requirements on change and refresh updates.