

CLIENT ALERT

CFTC Grants No-Action Relief From Certain OCR Filing Requirements and Deadlines

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On September 25, 2017, the Division of Market Oversight of the Commodity Futures Trading Commission issued time-limited no-action relief that continues to delay implementation of certain aspects of the CFTC's ownership and control reporting rules.¹ The no-action relief addresses the obligation for market participants to submit a Form 40/40S in response to a special call from the CFTC, and the obligations for futures commission merchants, clearing members, foreign brokers, and swap dealers to report information to the CFTC about their customers and counterparties on the Forms 102 and 71. This latest no-action relief continues the delay, but also provides relief related to the Form 40/40S for the first time. Importantly, any market participant relying on the Form 40/40S relief must, as a condition of the relief, provide to its applicable Reporting Entity, promptly upon its request, data sufficient to allow the Reporting Entity to make a Form 102 filing. The relief also notes that to the extent a Reporting Entity's customer or counterparty fails to provide the Reporting Entity with OCR data necessary to file an update, the affected Reporting Party should flag this issue for CFTC Staff.

The no-action relief (the "Relief") remains in place until the CFTC amends the ownership and control reporting rules in Parts 17, 18 and 20 of its regulations or September 28, 2020, whichever is earlier.

¹ See CFTC letter No. 17-45 (Sept. 25, 2017), available [here](#).

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By way of background, in November of 2013 the CFTC revamped its OCR rules.² In particular, the CFTC increased the amount of information and accelerated the time frame for Reporting Entities to report ownership and control information about their customers and counterparties on the Form 102. The 2013 OCR Rules also added new Form 71, which requires a futures commission merchant, clearing member, or foreign broker to identify customers with a reportable position within a customer omnibus account. Furthermore, the 2013 OCR Rules expanded the scope of information that market participants must provide to the CFTC on the Form 40 and Form 40S. Finally, the CFTC moved all of its OCR forms to an electronic format.

During the implementation process of the 2013 OCR Rules, Reporting Entities encountered substantial difficulty reporting the expanded scope of ownership and control information on the Form 102, in part because they were not receiving the necessary data from their customers and/or counterparties. As a result, the CFTC Staff issued no-action relief delaying certain aspects of the requirements associated with Form 102.

I. No-Action Relief for Form 40 and 40S

As noted above, market participants who receive a special call to respond to a Form 40/40S request must respond to the CFTC within the time frame specified in the request. As a matter of practice, the CFTC Staff typically provide market participants with two weeks to respond. A person who receives a Form 40/40S request is referred to as a “Reporting Trader.” The Relief addresses the following aspects of Form 40/40S:

- The 2013 OCR Rules included an obligation for Reporting Traders to update a Form 40/40S if information on the form changes. Pursuant to the Relief, Reporting Traders are obligated to update the information on a Form 40/40S only in response to a special call.
- Reporting Traders need not respond to Question 12 regarding persons who directly or indirectly “influence” trading decisions.
- For Question 13 regarding whether the derivatives trading of the Reporting Trader is subject to an express or implied agreement or understanding with another person, the Staff clarified that the Question refers to aggregation requirements in the CFTC’s position limits rules.³ The Relief provides examples of when the CFTC found that persons traded pursuant to an “implied agreement or understanding.”
- Question 8 requests information regarding parents and subsidiaries of the Reporting Trader. The no-action Relief allows a market participant to provide limited contact information (i.e., a single set of contact information for all parents and subsidiaries listed in response to Question 8). As a condition to the Relief, the

² See *Ownership and Control Reports, Forms 102/102S, 40/40S, and 71*, 78 Fed. Reg. 69178 (Nov. 18, 2013).

³ See Commodity Exchange Act Section 4a(a)(1) and CFTC Rule 150.4(a).

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Reporting Party must monitor during business hours the contact phone number and email address provided, and the person monitoring must promptly provide to CFTC Staff upon request the contact information for a person authorized to speak with the CFTC Staff regarding OCR matters on behalf of any particular parent or subsidiary. For each parent/subsidiary listed, a Reporting Trader must still identify all parents and subsidiaries by name, list a legal entity identifier (if any), website, and national futures association identifier (if any).

II. No-Action Relief for Form 102A – FCMs, Clearing Members, and Foreign Brokers

FCMs, clearing members, and foreign brokers must submit a Form 102A to the CFTC for trading accounts under common control that have an end-of-day reportable futures position above a threshold specified in CFTC Rule 15.03. A trading account, or group of trading accounts under common control, that exceeds an end-of-day reportable level is collectively referred to as a “Special Account.” The Relief addresses the following aspects of the Form 102A requirements:

- FCMs, clearing members, and foreign brokers need not report the name and other identifying information for the Special Account controller specified in Question 10(iii). The Relief from responding to Question 10(iii) is premised on the CFTC being able to otherwise identify and contact the Special Account controller using the information specified in response to Question 7.
- If an FCM, clearing member, or foreign broker identifies the trading account owner(s) on the business day after an account becomes reportable (R+1), the Reporting Entity may amend the information up until three business days after the account becomes reportable (R+3). This Relief applies to new filings and updates.
- Under prior Relief, the CFTC Staff required that FCMs, clearing members, and foreign brokers flag whether data reported about the trading account controller is complete, may not be complete, or the client did not provide the data. In this latest no-action relief, the CFTC Staff removed this condition.

III. No-Action Relief for Form 102B – Clearing Members

The 2013 OCR Rules require clearing members to submit a Form 102B for a trading account that exceeds an intra-day volume threshold of 50 contracts in any one product on any one designated contract market or swap execution facility. A trading account that exceeds the intra-day volume threshold is referred to as a “Volume Threshold Account.” The Relief addresses the following aspects of the Form 102B requirements:

- Clearing members need not report Volume Threshold Accounts that stem from contracts executed on a SEF.

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- For volume that stems from DCM-executed contracts, clearing members must submit a Form 102B for trading accounts that exceed a volume threshold of 250 contracts as opposed to the 50 contract threshold specified in the 2013 OCR Rules.
- Similar to Form 102A, clearing members need not report the Volume Threshold Account controller information requested in Question 6. The Relief from responding to Question 6 is premised on DMO being able to identify and contact the Volume Threshold Account owner using the contact information set forth in Question 5 and/or the Reporting Firm using the Reporting Firm Contact Information set forth on the Cover Sheet.
- Similar to Form 102A, if a clearing member identifies the trading account owner(s) on R+1, the clearing member may amend the information up until R+3. This no-action Relief applies to new filings and updates.
- Similar to Form 102A, the latest no-action Relief removes the condition that clearing members designate the accuracy of the trading account controllers provided on Form 102B.

IV. No-Action Relief for Form 102S – Swap Dealers and Clearing Members

Swap dealers and clearing members must submit a Form 102S for customers or counterparties that hold an end-of-day futures equivalent position in certain physical commodity swaps in excess of 50 contracts in any one futures equivalent month. A customer or counterparty that exceeds the 50 futures equivalent contract threshold is referred to as a “Consolidated Account.” The no-action Relief provides that swap dealers and clearing members that identify the Consolidated Account counterparty need not identify the:

- Omnibus account originator in response to Question 3(ii);
- Consolidated Account owner in response to Question 3(iii); and
- Consolidated Account controller in response to Question 3(iv).

V. Refresh Updates for Forms 102A/B/S

The no-action Relief eliminates the requirement for Reporting Entities to file an annual refresh update for Form 102A/B/S. However, Reporting Entities are still required to update Form 102A/B/S as the information changes. As noted above, the Relief indicates that an affected Reporting Party should alert the CFTC Staff when a Reporting Entity’s customer or counterparty fails to provide the Reporting Entity with OCR data necessary to file an update.

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