



Futures Industry Association

2001 Pennsylvania Ave. NW
Suite 600
Washington, DC 20006-1823

202.466.5460
202.296.3184 fax
www.futuresindustry.org

By Electronic Mail

REVISED

December 23, 2010

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Account Ownership and Control Report, 75 Fed.Reg. 41775 (July 19, 2010)

Dear Mr. Stawick:

This letter supplements and replaces the October 7, 2010 letter that the Futures Industry Association (“FIA”)¹ filed in response to the Commodity Futures Trading Commission’s (“Commission’s”) request for comment on its proposed rules requiring designated contract markets and other “reporting entities,” as defined in the proposed rules,² to submit certain ownership and control reports (“OCR”) to the Commission weekly (“OCR Rules”). The OCR Rules would require each reporting entity to provide the Commission detailed information, consisting of approximately 28 separate data points, with respect to each account reported in its trade register. “The OCR will necessitate each reporting entity to collate and correlate these and other data points into a single record for trading accounts active on its trading facility, and to transmit such record to the Commission for regulatory purposes.”³

¹ FIA is a principal spokesman for the commodity futures and options industry. FIA’s regular membership is comprised of approximately 30 of the largest futures commission merchants (“FCMs”) in the United States. Among FIA’s associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets.

² A “reporting entity” is defined as “any registered entity required to provide the Commission with trade data on a regular basis, where such data is used for the Commission’s trade practice or market surveillance programs.” Reporting entities include, but are not limited to, designated contract markets and exempt commercial markets with significant price discovery contracts. Proposed Commission Rule 16.03(a). In addition, the Commission anticipates that it would also collect ownership and control information from swap execution facilities and foreign boards of trade operating in the US pursuant to staff direct access no-action letters, provided such letters are conditioned on the regular reporting of trade data to the Commission. FIA is concerned that efforts to extend the OCR Rules to foreign boards of trade may conflict with the laws and regulations of the jurisdiction of that board of trade. Significantly, the definition does not contemplate that FCMs would be designated as “reporting entities.”

³ 75 Fed.Reg. 41775, 41776, fn. 1 (July 19, 2010).

As the Commission further explains in the Federal Register release accompanying the proposed OCR Rules:

The OCR will serve as an ownership, control, and relationship directory for every trading account number reported to the Commission through reporting entities' trade registers. The data points proposed for the OCR have been specifically selected to achieve four Commission objectives. These include: (1) identifying all accounts that are under common ownership or control at a single reporting entity; (2) identifying all accounts that are under common ownership or control at multiple reporting entities; (3) identifying all trading accounts whose owners or controllers are also included in the Commission's large trader reporting program (including Forms 40 and 102); and (4) identifying the entities to which the Commission should have recourse if additional information is required, including the trading account's executing firm and clearing firm, and the name(s) of the firm(s) providing OCR information for the trading account.⁴

Broadly, the Commission asserts that the information collected will: (i) enhance market transparency; (ii) increase the Commission's trade practice and market surveillance capabilities; (iii) leverage existing market surveillance systems and data; and (iv) facilitate the Commission's enforcement and research programs.

Although reporting entities would be responsible for submitting the OCR, the Commission acknowledges that these entities do not currently collect a significant amount of this information. The "root sources" for much of the information required rests instead with others. As discussed below, clearing member FCMs will be the primary source of this information. They, in turn, will be required to rely on their customers to provide, and keep current, the required information.⁵

⁴ 75 Fed.Reg. 41775, 41783 (July 19, 2010).

⁵ In the Federal Register release accompanying the OCR Rules, the Commission implies that it would expect a reporting entity to prohibit members from trading on or through the entity, unless the member complies with any applicable reporting requirements the reporting entity may impose: "Successful implementation of the OCR will require reporting entities to offer their services only on the condition that ownership and control information be provided upon request by the relevant party in possession of such information." *Id.* at 41785. Presumably, member FCMs, in turn, would be prohibited from carrying accounts on behalf of customers that fail to provide, and keep current, the information required with respect to each account. As discussed below, FCMs must rely almost entirely on customers to provide and keep current, information with respect to data such as: (i) beneficial owners; (ii) account controllers; (iii) dates of birth; (iv) primary residence addresses; and (v) date accounts are assigned to current controllers. Although FCMs can advise customers of the information required and contract with their customers to provide such information, FCMs cannot be placed in the position of being guarantors of the information that their customers provide, or fail to provide.

In our October 7, 2010 letter, we advised the Commission that, to assure that both the feasibility of the proposed OCR Rules and their potential impact on the industry were properly assessed, FIA had formed an OCR Working Group, comprised of individuals with significant experience in operations from (i) 16 FCMs, both large and small, with both retail and institutional customers, (ii) the several US exchanges, (iii) the principal back office service providers, and (iv) other experts.⁶ The group carefully analyzed each of the data points to be collected under the OCR Rules and identified: (1) the required data that is currently collected; (2) the required data that is not collected; and (3) the required data that would be difficult, if not impossible, to collect. The group then estimated the cost of implementing and maintaining the proposed database.

After fully analyzing the Commission's proposal, the OCR Working Group concluded that the financial and operations burdens imposed by the OCR Rules would be overwhelming. In addition, the OCR Rules would force an unwarranted structural change in the conduct of business among US futures markets participants, especially among clearing member and non-clearing member FCMs, foreign brokers, and their respective customers. In particular, the proposed requirement that clearing member FCMs know and report to the relevant clearing organization the identity of each customer that comprises an omnibus account and their respective positions will disrupt, if not destroy, the regulatory and operational synergies among market participants that have developed over decades and are essential to the efficient operation of the markets.

Equally important, the OCR Rules would impose on such FCMs substantial increased regulatory and concomitant financial obligations. As a result, a number of FCMs could be compelled to withdraw from registration and the barrier to entry for potential new registrants will be raised. In addition, a significant number of foreign customers will effectively be denied access to US markets.

Consequently, we advised the Commission that we cannot support the adoption of the OCR Rules as currently proposed. We further advised the Commission, however, that the OCR Working Group was working on an OCR alternative that we would submit to the Commission for its review.

Since the proposed OCR Rules were published in July, and since we undertook to submit an OCR alternative, the regulatory landscape has shifted dramatically. The Commission has published (or shortly will publish) for comment a myriad of proposed rulemakings that, collectively, contemplate a complete overhaul of the recordkeeping and reporting requirements to which FCMs, US exchanges and clearing organizations are subject. These proposals include: (i) the advance notice of proposed rulemaking regarding the protection of cleared swaps customers before and after commodity broker bankruptcies; (ii) core principles and other requirements for designated contract markets; (iii) risk management requirements for derivatives

⁶ Several members of the group participated in the Commission's September 16, 2010 roundtable on the proposed OCR Rules.

clearing organizations; (iv) information management requirements for derivatives clearing organizations; (v) position limits for derivatives; (vi) core principles and other requirements for swap execution facilities; and (vii) swap data recordkeeping and reporting requirements.

We respectfully submit that these various rulemakings cannot be considered in isolation. All of the pending recordkeeping and reporting requirements, and the estimated costs and benefits of each, must be analyzed and evaluated collectively, not individually. In the absence of such a coordinated analysis, it is impossible to determine whether the pending rules, including the OCR Rules and alternative set out herein, are complementary or conflicting. Neither is it possible to calculate the aggregate financial and operational burdens these various proposals will have on the industry.⁷

In order to assure an efficient and competitive futures industry, it is essential that the financial and operational burdens imposed by a revised recordkeeping and reporting system are necessary and proportionate to benefits realized. In this regard, therefore, we are prepared to expand both the charter and the composition of the OCR Working Group to undertake the necessary analysis. We encourage the participation of the Commission staff in any manner the Commission deems appropriate.

In light of the foregoing, the OCR alternative included herein at Appendix A and Appendix B should not be viewed as an industry-approved alternative, but solely as a basis for further discussions among the Commission, the futures industry and other interested parties. Consistent with the Commission's request, the estimated costs of implementing this OCR alternative are also set out in Appendix A. Although these costs are significantly less than the estimated costs of implementing the OCR Rules, they are substantial nonetheless (even without taking into account the other rule proposals summarized above) and emphasize the importance of analyzing the Commission's proposed recordkeeping and reporting requirements as integrated parts of a single unit rather than distinct requirements.

For the convenience of the Commission, set out below, with certain non-substantive revisions, is the body of our October 7, 2010 letter on the OCR Rules.

The OCR Rules would impose substantial costs on FCMs

Because the OCR Rules would require FCMs to collect and report a substantial amount of information that either is not collected in the manner the Commission may anticipate or is not collected at all, the proposed rules would require a complete redesign of the procedures, processes and systems pursuant to which FCMs create and maintain records with respect to their customers and customer transactions. Such redesign would take far longer and be far more expensive than the Commission suggested in the Federal Register release accompanying the proposed rules.

⁷ Among other burdens, these various proposal, if promulgated, are likely to severely strain the resources of FCMs' information technology staffs as well as the staffs of the principal back-office software vendors.

In this latter regard, we respectfully submit that the Commission erred in basing its cost analysis under the Paperwork Reduction Act only on anticipated costs to be incurred by registered entities.⁸ FCMs are the root source of approximately one-half of the data points the Commission is proposing to collect. The cost to FCMs of building an OCR database, collecting the required information and transmitting it to the relevant exchange will be substantially greater than the Commission's estimate of the costs that will be incurred by the exchanges alone. Such costs will be particularly burdensome on smaller FCMs, which frequently carry a proportionately higher number of accounts, comprised of non-institutional hedgers and individual traders.⁹

We are concerned that the cost of opening and maintaining these smaller accounts in compliance with the OCR Rules may result in certain FCMs withdrawing from registration, raising the bar to entry, and denying certain customers, including certain non-institutional hedgers, access to the futures markets. To obtain and maintain the required information, an FCM would be required to: (i) re-negotiate all active customer agreements to require customers to provide and routinely update the necessary data points; (ii) build systems to enter the data; (iii) manually enter the data for each active account; (iv) put in place resources and processes to maintain the data; (v) provide it to the reporting entity on a weekly basis; and (vi) monitor changes daily in order to update the database.

FIA received cost estimates for building and maintaining an OCR database from 12 FIA member firms. The cost analysis included:

- operational costs, such as notifying beneficial owners and account controllers, collecting and recording data;
- technology costs of building databases, developing user interfaces, storing additional data, and developing a transmission mechanism; and
- legal costs of client notification, and re-executing client agreements.

These cost estimates do not include rebuilding systems/processes to manage account numbers, including vendor costs, which will be passed on to each FCM. They also do not include the cost of tracking beneficial owner and account controller information through the omnibus chain.

Our sample of 12 firms represents approximately 16 percent of the approximately 70 FCMs that execute and clear customer accounts. These firms handle in excess of \$83.8 billion of customer funds, or approximately 62 percent of customers' segregated funds (as of July 31, 2010, according to monthly financial reports filed with the Commission). We found that the median firm would face total costs of roughly \$18.8 million per firm, including implementation costs of

⁸ We take no view on the analysis presented in the Federal Register release of the costs to be incurred by exchanges. We anticipate that the designated contract markets will submit comments in this regard.

⁹ Implementation of the OCR Rules would also place smaller exchanges and potential new exchange entrants at a significant disadvantage.

roughly \$13.4 million, and ongoing costs of \$2.6 million annually. On a per account basis, the median cost would be \$623 per account.¹⁰

FCMs' CFTC Proposed Rule Cost Estimates¹

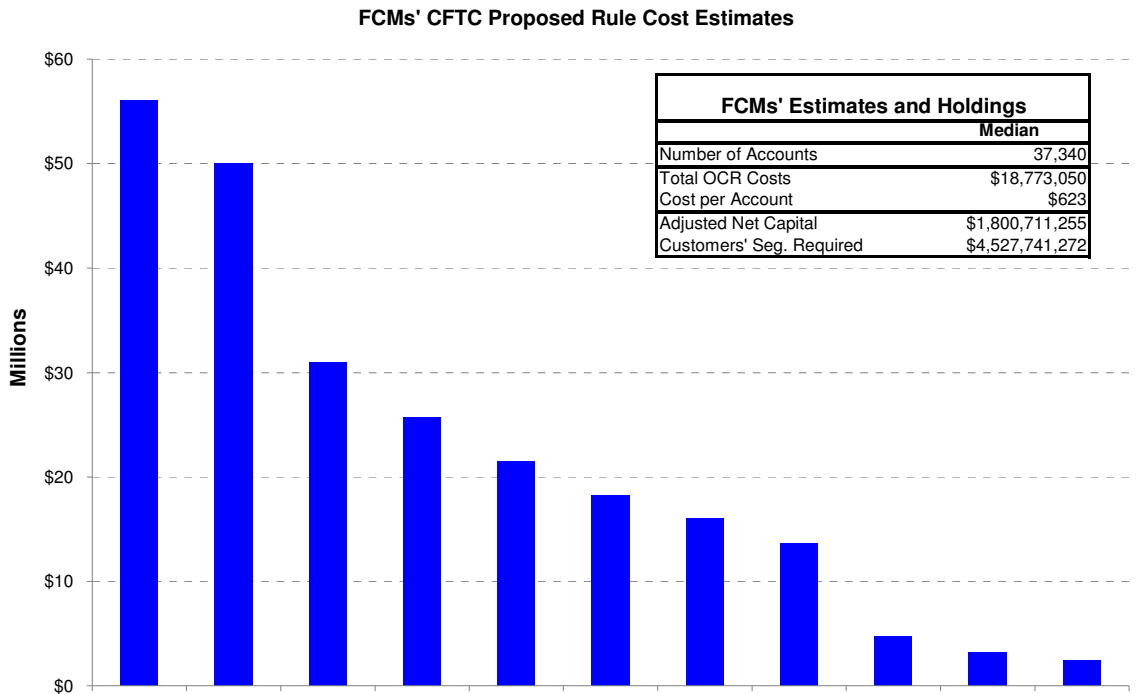
	Affected Accounts	Start-up	Ongoing	Total Start-up and Ongoing/ First-Year Costs	First-Year Costs Per Account
Firm A	90,000	\$49,280,000	\$6,768,844	\$56,048,844	\$623
Firm B	75,300	\$13,395,600	\$2,625,500	\$16,021,100	\$213
Firm C	50,000	\$28,000,000	\$3,000,000	\$31,000,000	\$620
Firm D ²	39,979	N/A	N/A	\$18,208,863	\$455
Firm E	34,700	\$22,000,000	\$3,750,000	\$25,750,000	\$742
Firm F ³	30,000	\$10,000 - \$35,000	\$540,000	\$560,000 - \$575,000	N/A
Firm G	19,473	N/A	N/A	\$50,000,000	\$2,568
Firm H	14,000	N/A	N/A	\$21,525,000	\$1,538
Firm I	250	\$50,000 +	\$150,000 +	\$200,000 +	\$800 +
Firm J*	130,000	\$2,000,000 - \$2,500,000	\$200,000	\$2,200,000 - \$2,700,000	\$19
Firm K*	40,000	\$2,900,000	\$280,000	\$3,180,000	\$80
Firm L*	550	\$3,600,000	\$1,150,000	\$4,750,000	\$8,636

Notes:

- 1 The 12 firms in the sample handle in excess of \$83.8 billion, or almost 62% of customers' segregated funds (as of July 31, 2010, according to monthly financial reports filed with the CFTC).
- 2 Total cost estimate is based on estimate for affected accounts and average cost per account.
- 3 Firm's estimates exclude IT costs.
- * Firm did not provide cost estimates for the Industry Solution.

¹⁰ We understand that the Commission requested that cost data be presented with respect to specific firms and not on an aggregate basis. However, because this cost data constitutes confidential business information, the firms that provided the data have not been identified by name.

Cost Analysis



Notes and Sources: Data from estimates provided to the FIA by 12 FCMs. Not every FCM provided an estimate for each field. Adjusted net capital and customers' segregated funds data are from monthly financial reports filed with the CFTC for the period ended July 31, 2010. Total customers' segregated funds for this period for all reporting FCMs was \$136.5 billion.

Based on the foregoing, we submit that the cost of building and maintaining a database to comply with the OCR Rules is overly burdensome for FCMs and some reporting entities. This is particularly true, since FIA found that the size of the FCM had little to do with the projected costs. As noted earlier, smaller FCMs may have a large number of retail accounts, *i.e.*, non-institutional hedgers and individual traders. Taking into consideration today's extremely low commission rates, it could take years for firms to recoup the cost of OCR implementation and maintenance. Most firms will certainly elect to pass on those costs to end-users. FCMs may avoid smaller accounts altogether, since the commissions earned would be far less than the cost of establishing and maintaining the account.

In addition, although the costs for a reporting entity may not seem significant for the larger, well-established exchanges, they are significant for the smaller exchanges and other entities such as swap execution facilities that the Commission has indicated may be required to be reporting entities. At a time when legislators and regulators are trying to encourage transparent execution venues and centralized clearing, the scope of the OCR seems counterproductive.

The Commission and the industry must work together.

Notwithstanding the foregoing, and as noted earlier, FIA supports the Commission's goals. We are committed to working with the Commission and the other futures market participants to develop a meaningful alternative to the proposed OCR Rules. To this end, FIA is submitting herein for the Commission's review an alternative proposal that has been developed by FIA's OCR Working Group.¹¹

The alternative seeks to maximize the use of existing data; automate and enhance the current, largely manual, large trader reporting system;¹² provide the Commission with an efficient means of monitoring trading behavior based on volume thresholds; and linking ownership data to the trade registers. The large trader reporting system already provides the Commission the ability to aggregate certain customer activities across clearing firms. In addition to automating the large trader system, the OCR Working Group's alternative would enhance this system, in part, by extending reporting requirements to traders that engage in a certain volume of transactions without regard to their open positions. As under the proposed rules, the Commission would remain responsible for linking accounts across exchanges and FCMs.

The OCR alternative would achieve the essential regulatory purposes underlying the proposed OCR Rules, while reducing the regulatory, operational and financial costs that would be imposed by the OCR Rules.¹³ Importantly, these costs would be distributed more fairly across the industry, thereby easing the potentially adverse competitive impact of the OCR Rules.

The alternative represents our best collective efforts to date. However, we must emphasize here, as we did at the staff roundtable on September 16, the importance of Commission participation in this project. We submit that nothing is gained by the Commission and the industry working on parallel yet separate tracks. Without the active participation of Commission staff, the industry runs the considerable risk of expending substantial time and resources developing an alternative that the Commission will ultimately conclude does not achieve its goals. FIA, therefore, encourages the Commission to authorize the staff to meet with industry representatives (and

¹¹ As discussed above, the OCR Working Group that FIA formed includes (i) 16 FCMs, both large and small, representing retail and institutional customers, (ii) exchanges, (iii) back office service providers and (iv) other experts.

¹² Currently, once an account becomes reportable, the carrying FCM assigns it a "special account number" and submits ownership and control data to the Commission and the exchanges on Commission Form 102. This form is submitted by facsimile or e-mail, and the Commission staff then enters the information into its systems. (We understand that some exchanges, but not all, enter this information into an exchange database.) At the request of the Commission, a customer may be required to file a separate report effectively confirming and supplementing the information provided on the Form 102. This Statement of Reporting Trader, Commission Form 40, is also filed with the Commission by facsimile or email. The carrying FCM frequently does not receive a copy of the Form 40.

¹³ To the extent the OCR Working Group alternative would not provide the Commission the full scope of information contemplated under the proposed OCR Rules, the Commission would be able to use its special call authority to obtain such information.

other participants as the Commission may select) to develop a mutually acceptable alternative to the OCR Rules or, at the very least, to provide necessary feedback to the industry's initiative.¹⁴

Proposed Data Points

The balance of this letter will first discuss each of the data points that the proposed OCR Rules would require FCMs and reporting entities to collect and maintain. We will describe (i) the data that is currently collected, (ii) the data that is not currently collected, and (iii) the data that the OCR Working Group has concluded would be difficult, if not impossible, to collect.¹⁵ We conclude with a discussion of the tremendous structural changes the OCR Rules would impose.

In general. Because FCMs, not reporting entities, establish and maintain the customer relationship, much of the information that would be required to be collected and reported under the OCR Rules would be collected in the first instance by FCMs. Of the approximately 28 data points listed in OCR Rules, FCMs are the root source for 10-12.

Exhibit A, set out on the following page, identifies the data points that the Commission is proposing to be collected and reported in the OCR for which FCMs would be the root source. The exhibit identifies the data points that currently: (i) are captured electronically; (ii) are captured in hard copy; and (iii) are not captured at all. To the extent these data points are currently captured, they reside in a variety of systems and formats. Importantly, no system consolidates this information in a single location, where it can be easily reported to an exchange. Rather, FCMs use mapping tables and a variety of reconciliation tools to manage the accounts they carry or for which they act as an executing broker.

In order to collect the information as proposed in the OCR Rules, therefore, an FCM would have to overhaul completely its existing procedures, processes and systems. As noted earlier, an FCM would be required to: (i) re-negotiate all active client agreements to require a customer to provide and routinely update the necessary data points; (ii) build systems to enter the data; (iii) manually enter the data for each active account; (iv) put in place resources and processes to maintain the data; (v) provide it to the reporting entity on a weekly basis; and (vi) monitor changes daily in order to update the database.

¹⁴ FIA has no objection to opening these meetings to the public, if the Commission were to determine that it would be necessary or appropriate to do so.

¹⁵ The information with respect to the proposed data points is based in substantial part on information that was provided to FIA by 13 of its member FCMs. In the aggregate, these FCMs carry approximately 530,000 accounts. As noted earlier, the number of accounts carried by an FCM is not necessarily proportional to the FCM's size, *i.e.*, its adjusted net capital. Several smaller FCMs carry significantly more accounts on behalf of non-institutional hedgers and individual traders.

Exhibit A
Proposed OCR Data Elements

Proposed OCR Data elements			Front Office					Back office	
			Client documents	Form 102	Form 40	Order routing platform	Exchange Trading platform	Other internal IT systems	3 rd Party Vendors
1.	Trading Account #		X	X		X	X	X	X
2.	i. Trading account's ultimate beneficial owner who is a natural person	a. First and last name	X	X					X
		b. Middle name							
		c. Date of birth							
		d. Address of primary residence	X	X	X			X	X
	ii. Trading account's ultimate beneficial owner who is NOT a natural person	a. Name and primary business address	X	X	X			X	X
		b. NFA identification (if any)							
3.	i. Trading account controllers (must be natural persons)	a. First and last name	X	X	X				
		b. Middle name							
		c. Date of birth							
		d. Name and primary business address of the entity that employs each controller	X	X	X				
		e. NFA ID							
4.	Date on which trading account assigned to current controller								
5.	Designation of trading account used exclusively or partially by a natural trading system								
6.	Special account number associated with trading account		X				X	X	
7.	Indicator whether trading account is part of a reportable account under the Commission's large trader reporting system		X				X	X	
	For a trading account that becomes part of a reportable account under the large trader reporting system after 12/31/2011, the date on which the trading account first becomes part of a reportable account								
8.	Omnibus account indicator and if so, name of firm		X				X	X	
9.	Name of the executing firm for the trading account and its unique ID reported in the reporting entity's trade register						X	X	
10.	Name of the clearing firm for the trading account and its unique ID reported in the reporting entity's trade register		X		X	X	X	X	
11.	Name of each root data source providing the reporting entity with information with respect to the trading								

	account							
12.	Name of the reporting entity submitting the OCR to the Commission	X						
13.	OCR transmission date	X	X			X	X	

Data Captured In Hardcopy
 Data Captured Electronically
 Data Not Captured

We now turn to a discussion of the various data points identified in the OCR Rules. As indicated above, we will identify those data points that currently are not collected and would be particularly difficult to obtain.

Account numbers. Account numbers are the key to identifying trading activity but present significant challenges in tying account ownership and control information to the trade register, as proposed in the OCR Rules. Account numbers assigned by FCMs when the account is opened are not standardized across the industry. The field that carries account numbers varies from system to system, firm to firm and exchange to exchange. Some fields allow six characters; others allow nine characters. Some justify left; others justify right. Some recognize spaces; others do not.

In addition, a customer may have multiple account numbers, representing various trading strategies, funds, or traders. For example, FIA understands that one major fund manager has 1,500 account numbers at a single FCM. Further, certain customers may have their own account numbers, which they provide to their carrying FCM. The FCM assigns an account number that follows the FCM’s account number conventions, which it then maps to the customer provided account number.

Critically, the account numbers reflected in the trade register will not always match the account numbers assigned by the carrying FCM. Among other reasons, these differences arise from the use of: (i) give-up transactions; (ii) short codes; and (iii) average pricing. Give-up transactions and average price transactions, for example, are often allocated to suspense accounts using short codes, pending completion of the trade and allocation among the receiving customers and carrying FCMs.¹⁶ FCMs use mapping tables and reconciliation tools extensively to manage account numbers.

In many cases, of course, the ownership information can be tied to the trade register through the account number (Diagram 1). “Trade Order Routing Flow” shows at a high level how orders are initiated from a customer or trader, either directly or through an executing broker, and are processed through the various systems in the trade management chain of systems. An account identifier is used by the executing firm and clearing firm to identify the customer account

¹⁶ The use of short codes is consistent with Commission Rule 1.35(a-1), which does not require that an FCM record the customer’s account number when submitting an order for execution. The rule simply requires that the order include an account identification.

associated with the individual trades/positions. The account identifier is entered into trade management systems by the customer or traders (directly), or by the executing broker trading on behalf of the customer. The account identifier is captured in trade management interfaces, passed through to the exchange trading platforms and is stored in the exchange/clearinghouse clearing systems. These same account identifiers are reported to regulatory agencies through trade register files.

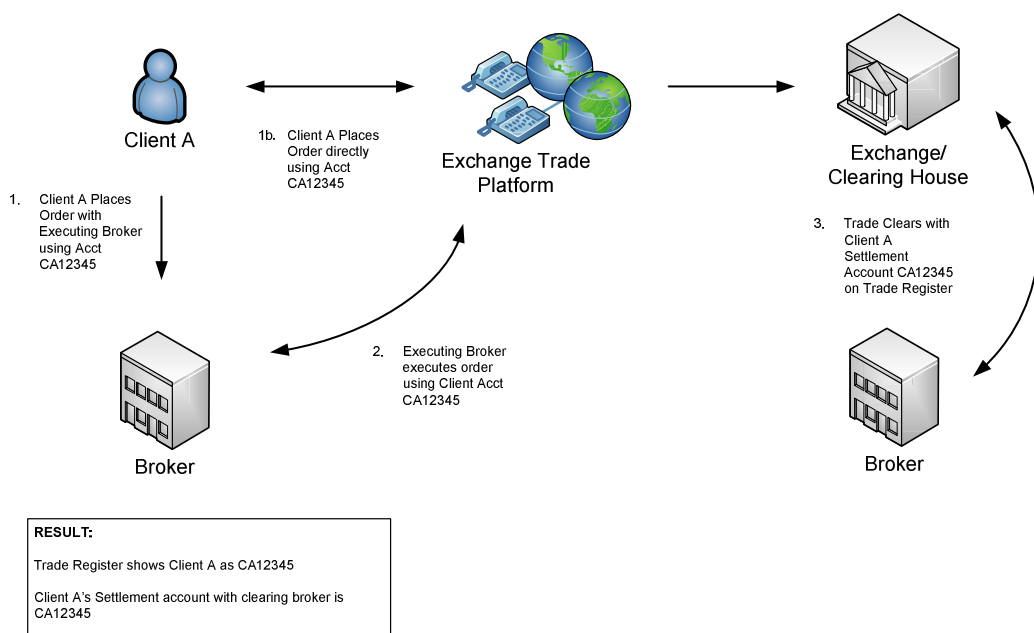


Diagram 1: Trade Order Routing Flow

Account identifiers are maintained in firm accounting systems. As FCMs allocate trades to different customer accounts, their account systems notify clearing systems of these changes to keep the trade register synchronized with the FCMs' books.

There are several instances, however, when the account identifiers recorded on the trade register do not reflect the actual customer or traders (Diagrams 2-4). In these instances, the account identifiers on the trade register cannot be used to identify trade account ownership.

In Diagram 2, Client A places an order with the executing broker. The executing broker enters the order using account identifier "12345," which represents the company making the trade and not the individual executing the trade. The order is given up to the clearing broker, which

assigns the account identifier “ABCDE,” which is a short code that allows the clearing broker to tie the trade back to the individual trader at Client A. The clearing broker converts the short code to the Client A settlement account identifier in its internal system. The trade register contains the short codes used by both the executing and clearing brokers, but not the client’s settlement account number (123-ABCDE).

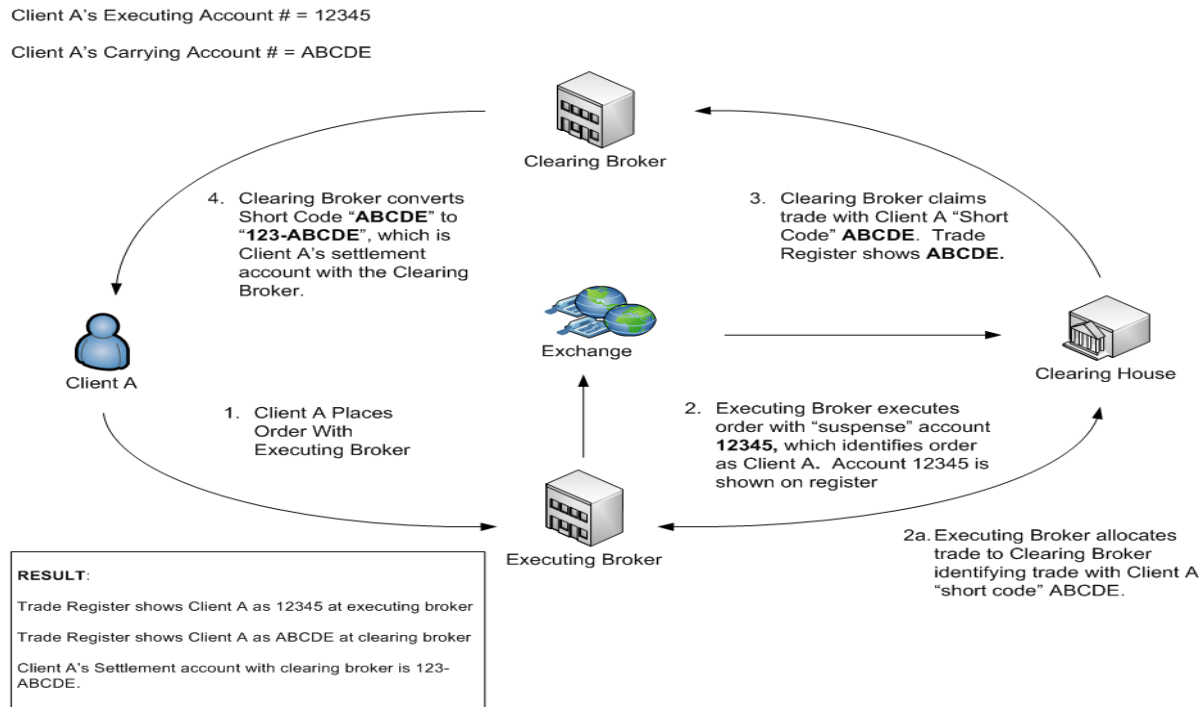


Diagram 2—Give-Ups

Executing broker records client order using “short code” and allocates give-up to Clearing Broker. Clearing broker claims give-up using short code, and converts to firm client settlement account identifier. Settlement account number differs from account number on original execution and give-up allocation.

Diagram 3 describes how the use of “short codes” adversely impacts the ability of the trade register to identify account ownership. In this diagram, the customer/trader executes a trade using the short code “ABCDE”. The executing broker also executes a trade for a client using the short code “UVXYZ.” The clearing broker receives both the client executed trade (ABCDE) and the broker-executed trade (UVXYZ) for Client A. The clearing broker then converts both short codes to Client A’s settlement account 123-ABCDE. As in the previous example, the trade register does not contain Client A’s settlement account identifier.

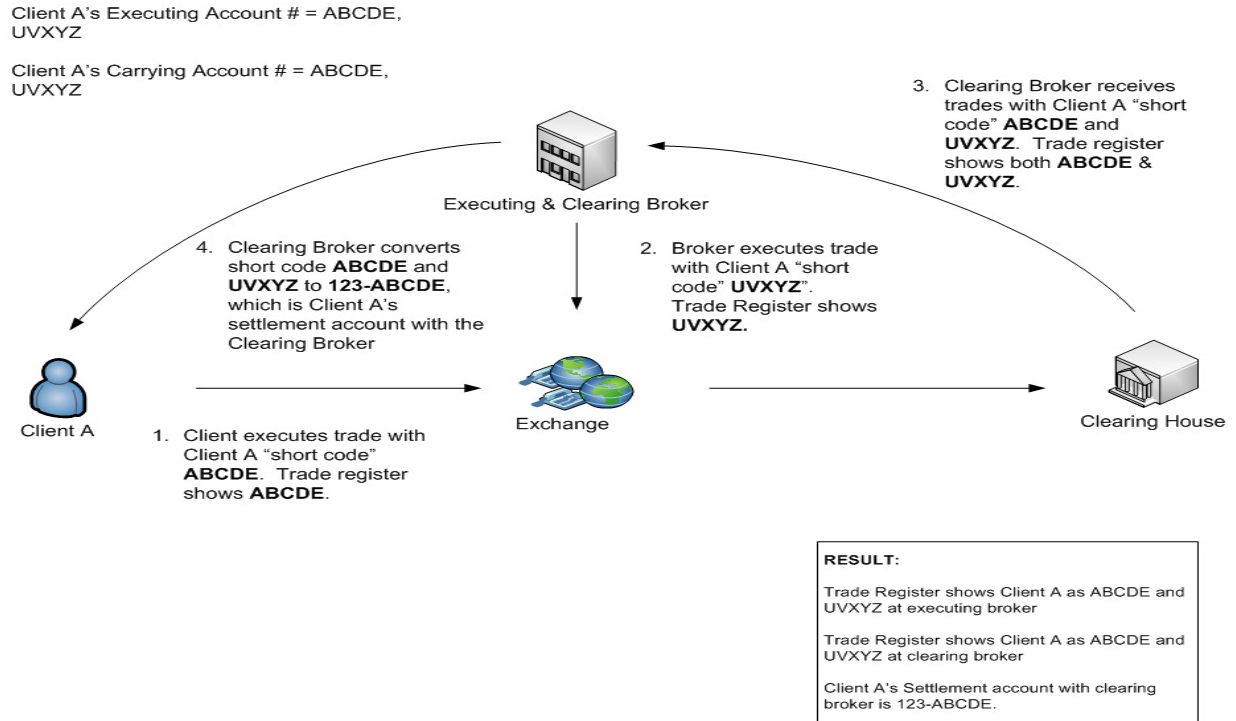


Diagram 3—Broker and Self-Executed Trades

Client "self executes" a trade and the executing broker records transaction under a short code. Executing broker executes a trade for same client using a different short code and gives up both trades to clearing broker with both short codes. Clearing broker converts both short codes to same client settlement account.

Diagram 4 shows processing for average priced transactions executed by one firm and given-up to the carrying FCM. Average priced trades represent transactions traded as a group with an average price applied to them. In many cases, they are given up using an account identifier for the average priced group. In the diagram, an average priced trade for account "APS12" is executed. The trade is then given up to the clearing broker using the clearing broker's short code 123-APS12. The clearing broker subsequently allocates the trades into Client A's settlement account 123-ABCDE, which is not represented on the executing firm's records or on the trade register.

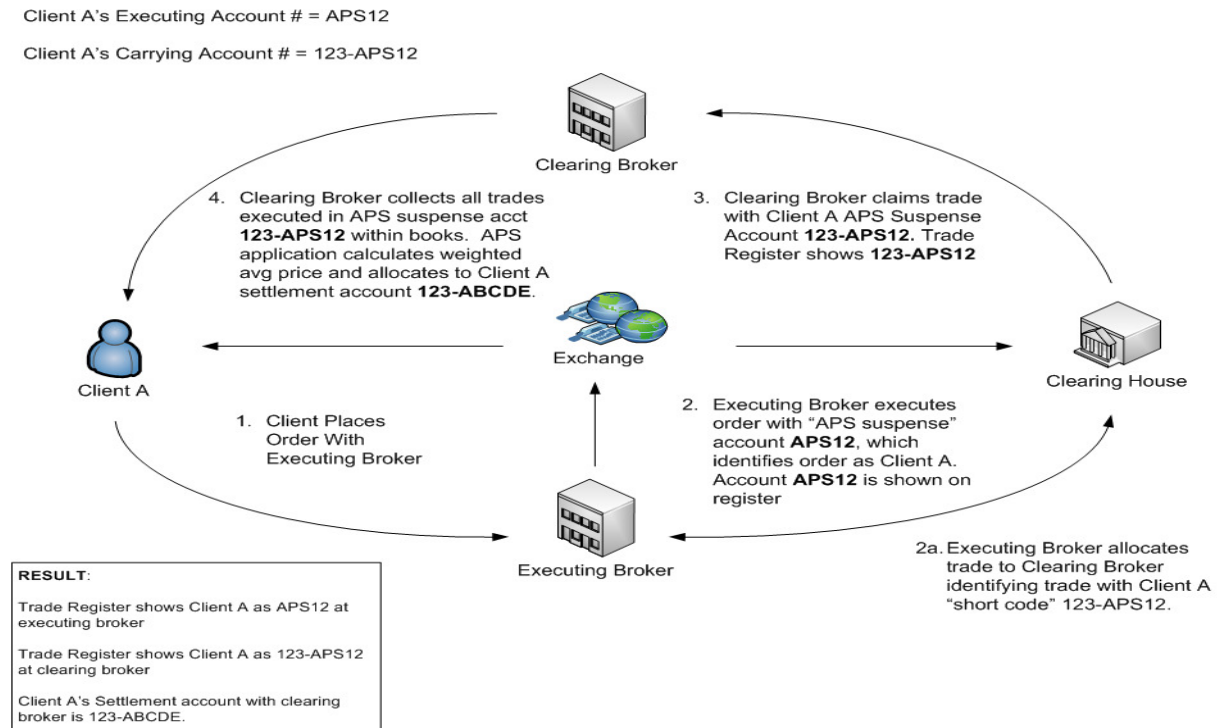


Diagram 4—Average Price Trade

Executing broker executes Client A's order and books the trade to an "APS short code" or suspense account. Executing broker allocates client's trade to clearing broker using a short code. Clearing broker claims APS transaction to its own short code, and then calculates weighted average price and allocates to its own Client A settlement account identifier.

Ultimate beneficial owners. An FCM currently collects only limited information on certain ultimate beneficial owners of an account. This information is obtained only when the account is opened and is generally not updated. For example, when an account is opened for a managed fund (e.g., a commodity pool), the FCM generally will ask the fund manager for the identity of any investor that holds more than a 10 percent interest in the fund. The FCM employs its customer identification program to verify the identity of these investors. However, FCMs have no means to independently verify the fund's beneficial owners and rely completely on the fund manager to identify these investors.

Moreover, investors may increase or decrease their investment throughout the life of the fund (or may withdraw entirely), and new investors will be accepted on a regular basis. FCMs generally do not receive information with respect to changes in the composition of the investors in a fund once an account is opened. Although FCMs will ask for a copy of the fund's annual report, this report does not reflect changes in the composition of investors.

When a corporate account is opened, FCMs will obtain information on the parent company, if any, and on the individual or entity that controls the trading in the account. However, once the account is opened, FCMs generally do not monitor the customer for changes in its organizational structure and relies on the customer to inform the FCM of any changes. As a practical matter, FCMs do not receive updates to this information on a regular basis.

Owner's Name. While an individual account owner's name is certainly kept within a firm's books and records, it can be difficult to compare names across systems. One firm may enter a customer name in full while another may use a version of the customer name. For example, the name for John Smith could be entered in an FCM's records as follows: (i) John Smith; (ii) John R. Smith; (iii) John Ronald Smith; (iv) John R Smith; (v) J R Smith; or (vi) J. R. Smith. Each variation of this name refers to the same individual account owner. However, because of manner in which names are stored electronically, electronic systems cannot detect that each of the six names refers to the same account owner.

The same is true for accounts that are owned by entities. For example, when setting up a database for give-up agreements, FIA found 52 versions of the name ABN Amro.

Date of birth. An FCM generally does not record the date of birth of a customer or account controller that is an individual. An FCM may be required to confirm the age/date of birth of the customer for purposes of NFA Compliance Rule 2-30¹⁷ or compliance with anti-money laundering rules, but neither rule requires an FCM to capture that information in its systems. Therefore, an individual's date of birth generally is not stored electronically. When it exists in the records maintained by the FCM, it is stored in the form of a paper copy of a driver's license or passport.¹⁸

¹⁷ NFA Compliance Rule 2-30, Customer Information and Risk Disclosure, requires NFA member firms to obtain certain information about its customers who are individuals, including the customer's approximate age. The rule does not require member firms to pierce through a customer that is an entity and collect information regarding the beneficial owners of the customer. Further, a customer may decline to provide certain information.

Effective January 3, 2011, NFA Compliance Rule 2-30, has been amended to provide, in relevant part: "For an active customer who is an individual, the FCM Member carrying the customer account shall contact the customer, at least annually, to verify that the information obtained from that customer under Section (c) of this Rule [*i.e.*, name, address, occupation, estimated income and net worth, approximate age, and previous investment experience] remains materially accurate, and provide the customer with an opportunity to correct and complete the information."

¹⁸ FIA further understands that it is considered a violation of privacy to ask for date of birth in certain countries, including Germany and Canada. We understand that privacy laws in foreign jurisdictions generally may prevent the routine disclosure of other proposed data points relating to individuals.

Primary residence. An FCM may collect the residential address of its individual customers. However, in some cases this information is subject to data privacy laws. Further, residential address information is not routinely updated, particularly when customer statements are delivered electronically). Moreover, if the beneficial owner participates in a fund or is part of an omnibus account, FCMs would not have the individual's primary residence address. In any event, primary address information is entered in a free form field in the FCM's system and is not standardized. Therefore, to the extent this information is collected to meet the OCR Rules, it would have to be re-entered in a standardized format.

NFA identification number. Not all entities or individuals are registered with the Commission and members of NFA. Subject to NFA Bylaw 1101, FCMs generally do not request or record this information. If the Commission were to insist on this data point, an FCM would be required to separately confirm with NFA whether each account owner, beneficial owner or account controller had an NFA identification number (or whether the number provided was accurate).

Account controllers (who must be natural persons). Our comments with respect to the difficulty in obtaining and maintaining records with respect to name, address, date of birth and NFA identification number of account owners (and beneficial owners) of accounts apply equally to account controllers. More important, the broad definition of an account controller is troubling. The OCR Rules define an account controller as "a natural person, or a group of natural persons, with the legal authority to exercise discretion over trading decisions by a trading account, with the authority to determine the trading strategy of an automated trading system, or responsible for the supervision of any automated system or strategy."¹⁹

This definition cuts too broad a swath and would require information on individuals that never actually exercise trading authority over an account but, because of their position with the customer, as a owner or officer, would be deemed to have this authority.²⁰ FCMs do not collect information on officers or employees of a customer who place orders for the customer's account.²¹

¹⁹ The authority to exercise discretion is sufficient, regardless of whether such authority is actually exercised. Proposed Rule 16.03(c).

²⁰ Although certain exchanges have adopted programs that require customers afforded direct access to the exchange trading platform be identified to the exchange (*e.g.*, CME Tag 50), the individual responsible for data input may not be the account controller. Correspondingly, account controllers are not always identified through such programs.

²¹ At one point, FCMs collected this information but stopped this practice many years ago after finding that a customer's authorized traders changed frequently, but customers advised FCMs of such changes infrequently, if at all. As a result, FCMs were placed in the untenable position of either refusing to accept an order from an individual that was not on the approved traders list, potentially adversely affecting the customer's trading strategy, or accepting a trade from an individual with apparent authority, potentially exposing the FCM to liability for accepting an order from an unauthorized individual. FCMs generally concluded that the responsibility for maintaining control of an account belonged to the customer, not the FCM.

FIA believes the definition of an account controller should be consistent with the Commission's definition of control as set out in Commission Rule 1.3(j) and generally applied at exchanges. That is, unless a customer specifically provides discretionary trading authority to a third party that is either registered with the Commission as a commodity trading advisor or is excluded or exempt from registration, the account controller should be deemed to be the owner of the account.

Date account is assigned to the current controller. This information is not captured by FCMs. The cost of capturing this information would outweigh the regulatory benefit.

Designation of the manner in which the trade is executed. FCMs do not currently capture information with respect to whether a trade is executed by a natural person, automated trading system or both. We believe any effort to do so would be difficult at best. Many account controllers, as broadly defined in the OCR Rules, input orders in a variety of ways for a variety of reasons. Simply because an account controller generally executes trades through an automated trading system does not mean that certain trades will not be executed manually.

Special account number. Special account numbers associated with an account are generally assigned by an FCM's compliance or operations department. The number is not included with the customer information that is submitted with a trade and, therefore, is not included on the trade register. Rather, the special account number is added to the position file at the end of the day.

Date the account becomes reportable. FCMs currently do not record when an account becomes reportable, since this information appears to be of limited regulatory value.²²

Omnibus accounts. Although FCM systems identify accounts as omnibus accounts, the name of the account may be different at each carrying FCM, making it difficult to compare names across systems.

Name of the executing firm and its unique identifier reported in the reporting entity's trade register. This information is not included in the trade register. A customer may use a variety of executing brokers and the carrying firm does not record this information at the account level.

Name of the clearing firm for the trading account and its unique identifier reported in the reporting entity's trade register. This information is contained in the trade register and carried at the account level.

Name of root data source. Providing the reporting entity with information with respect to the trading account. This point needs additional clarification. The root data source is typically the beneficial owner or account controller. The FCM, however, would provide the data to the

²² Since the alternative described below will effectively automate the Form 102, information with respect to all reportable accounts will be provided to the Commission weekly.

reporting entity. This data point appears to be unnecessary and would add complexity to the OCR database.

Reporting entity. Name of the reporting entity would be added when submitted to the Commission.

OCR transmission date. The OCR transmission date would be added automatically upon transmission of the data to the Commission.

The OCR Rules Would Force a Structural Change in the Conduct of Business

As we noted at the outset of this letter, implementation of the OCR Rules would force an unwarranted structural change in the conduct of business among US futures markets participants, especially among clearing member and non-clearing FCMs, foreign brokers, and their respective customers. Because the proposed rules would require clearing member FCMs to know and report to the relevant clearing organization the identity of each customer that comprises an omnibus account and their respective positions, the ability to maintain omnibus accounts would be significantly impaired, if not eliminated.

Omnibus accounts, which are treated as the account of a single customer for all purposes on the books and records of the carrying FCM or clearing organization, have been an integral part of the futures markets since well before the Commission was created in 1974. Foreign brokers and FCMs that are not members of a particular clearing organization maintain omnibus accounts with clearing members; clearing member FCMs, in turn, maintain omnibus accounts with the relevant clearing organization.

Omnibus accounts serve both a practical and regulatory purpose. FCMs, whether clearing members or non-clearing members of a particular clearing organization, compete for customers.²³ Non-clearing FCMs, therefore, do not want to disclose the names of their customers to the FCM that clears their customers' accounts. The same practical considerations lead foreign brokers to open customer omnibus accounts with the FCMs that clear their customers' positions.²⁴

²³ An FCM may choose to become, or elect not to become, a member of a particular clearing organization for a number of reasons. For example, the cost of becoming a member of a clearing organization may be too high or the volume of business that the FCM would clear through the clearing organization may not justify the operational and financial costs.

²⁴ The Commission's recognition of the essential purpose of omnibus accounts was described in a 1984 exchange of correspondence between the Commission's Division of Trading and Markets (now the Division of Clearing and Intermediary Oversight) and the Federal Deposit Insurance Corporation ("FDIC"), in which the FDIC confirmed that, provided that the books and records of bank and the relevant FCMs properly indicate that the funds in the account are being held in a custodial capacity, FDIC insurance would be afforded each ultimate customer's interest in an omnibus account in which the transactions of two or more persons are carried by a carrying FCM in the name of an originating FCM. Interpretative Letter No. 84-14, [1984-1986 Transfer Binder] Comm.Fut.L.Rep. ¶22,311.

For their part, clearing member FCMs may not want to incur the operational expense of maintaining an extensive branch office network. They rely instead on non-clearing FCMs that are often physically closer to their customers and, as result, are better able to serve them and evaluate more fully any credit risk they may pose.²⁵ In these circumstances, the non-clearing FCM is the clearing member FCM's customer, and the clearing member FCM will conduct due diligence on the non-clearing FCM to be certain that it understands the nature of the business in which the non-clearing FCM is engaged, the types of customers that non-clearing FCM serves and the non-clearing FCM's risk management practices. Because non-clearing FCMs stand between their customers and the clearing member FCM, the clearing member FCM has to consider only the credit of the non-clearing FCM.

From a regulatory perspective, omnibus accounts facilitate the conduct of business by a clearing member FCM, in particular, in connection with customers located outside of the US. A clearing member FCM's ability to carry an omnibus account of a foreign broker allows the FCM to carry the accounts of foreign customers without having to be registered in the home jurisdiction of each customer.

The Commission historically has taken the position that a firm acting in the capacity as an FCM is required to be registered as such if either the firm is located in the US or the firm's customers are located in the US. Under the Commission's Part 30 rules, the only exception to this requirement the Commission has made is with respect to foreign firms that carry a customer omnibus account on behalf of a US-registered FCM.²⁶

Foreign jurisdictions generally take the same position. That is, a US FCM would be prohibited from soliciting or accepting orders directly from a foreign person for execution on a US contract market, unless the FCM were properly registered in the foreign person's home jurisdiction. A US FCM, however, may carry the customer omnibus account of a foreign broker without being so registered.

More generally, because the omnibus account is treated as a single customer, a clearing member FCM's rights and responsibilities under the Act and Commission rules are solely with respect to the omnibus account. The clearing member FCM has no obligation to pierce through the omnibus account to know the identity of each of the customers that comprise the omnibus account.

Thus, the omnibus account is treated as a single account for purposes of compliance with: (i) the provisions of section 4d(a)(2) of the Act and Commission Rules 1.20-1.30, including the

²⁵ For these same reasons, a customer may prefer to deal with a non-clearing FCM that is able to provide more personal service and make an informed judgment concerning the credit risk the customer may pose. Alternatively, an institutional customer holding positions cleared through a smaller clearing organization may prefer to have its trades carried by a non-clearing FCM that has substantially greater capital than a clearing member FCM of that clearing organization.

²⁶ Commission Rule 30.4(a).

investment of customer funds under Rule 1.25; (ii) the early warning requirements under Rule 1.12(f)(3); (iii) the provisions of Rule 1.33 regarding confirmations and monthly statements; (iv) the provisions of Rule 1.35 regarding records of futures and options on futures transactions; (v) the provisions of Rule 1.36 regarding records of securities and property received from customers; (vi) the provisions of Rule 1.37 regarding the name, address and occupation of customers; (viii) the large trader reporting requirements of Part 17; and (ix) the provisions of Rule 166.3, which require an FCM to supervise diligently the handling of all commodity interest accounts carried, operated, advised or introduced by the FCM and all other activities relating to its business as a Commission registrant. Significantly, the omnibus account also is treated as a single account for purposes of compliance with the PATRIOT Act, including an FCM's anti-money laundering and suspicious activity reporting requirements.

If the Commission were to require clearing member FCMs to know and report to the relevant clearing organization the identity of each customer that comprises an omnibus account and their respective positions, the carefully crafted provisions of law and rules that have governed the conduct of omnibus accounts for decades would be destroyed. We do not believe—and more importantly, do not believe that the Commission has ever taken the position—that an FCM can know the identity of customers in an omnibus account, as well as the positions that are attributable to such customers, with incurring the concomitant obligations of treating those customers as customers of the FCM for all purposes.

In the absence of a Commission rule to the contrary,²⁷ which would specifically relieve a clearing member FCM of such obligations, once the FCM knows the identity of such customers, the FCM would have to assume that it would have the obligation with respect to each such customer, individually: (i) under Rule 166.3, to supervise the handling of each customer's accounts; (ii) under section 4d(a)(2) of the Act and Commission Rules 1.20-1.30, to segregate each customer's funds; (iii) under Rule 1.33, to provide each such customer with a confirmation of each trade and a monthly statement; (iv) under Rule 1.35, to make a record of each customer's transactions; (v) under Rule 1.36, make a record of the securities and property received from each customer; (vi) under Rule 1.37, record the name, address and occupation of each customer; and (vii) under Part 17, file a large trader report with respect to each customer.

The clearing member FCM would have no choice but to restructure completely the way in which it conducts business. It would be required to make each customer within the omnibus account a direct customer, thereby negating any need or reason for maintaining a relationship with the non-clearing member FCM. The result would be a further contraction of the number of FCMs able to compete for customer business. Further, without the intermediation of a non-clearing member FCM willing to assume the credit risk of customers not known to the clearing member FCM, those customers would probably not be able to maintain a trading account.

²⁷ The Treasury would also have to grant relief from the applicable PATRIOT Act requirements.

The abolition of omnibus accounts could have potentially serious effects as well on smaller exchanges and their affiliated clearing organizations. As noted earlier, an institutional customer holding positions cleared through a smaller clearing organization may prefer to have its trades carried by a non-clearing member FCM that has substantially greater capital than a clearing member FCM of that clearing organization. If the institutional customer is required to open an account directly with the smaller clearing member FCM, it may simply decline to trade on that smaller exchange.

Perhaps most severe could be the potential impact on the ability of foreign customers to trade on US markets. If US FCMs were required to be registered in the home country of each foreign customer whose account it carried, the FCM would be subject to potentially conflicting regulatory requirements. Even if the conflicting regulatory requirements could be managed, the operational and financial burdens would be such that only the most highly capitalized FCMs could even contemplate conducting business on behalf of foreign customers. The more likely result would be that foreign customers would be effectively shut out of the US markets.

Unique Account Identifier

The Commission has invited comment on how the futures industry could develop and maintain a system to assign unique account identification numbers (“UAIN”) to all account owners and account controllers. We do not believe such a project is feasible. On the surface, assigning each customer a unique identifier that would be used by all firms and exchanges would appear to solve many of the issues with creating an OCR database. However, UAINs would require a massive change in all systems in the trading cycle. Every system in the industry would have to be modified, including all front-end systems, customer order entry systems, middleware and back-end systems, as well as exchange trading and clearing systems. We have not computed this cost. The addition of a UAIN also adds data/risk to the clearing systems which are already facing capacity issues.

Mr. David A. Stawick
December 23, 2010
Page 23

Conclusion

For all of the above reasons, FIA regrets that we cannot support the OCR Rules as proposed. We nonetheless appreciate the deliberative manner in which the Commission has approached this project, and we look forward to having the opportunity to work with the Commission and staff in developing an OCR database and reporting system that will achieve the Commission's goals in an effective and efficient manner. In the meantime, if the Commission has any questions concerning the matters discussed in this letter, please contact Barbara Wierzynski, FIA's Executive Vice President and General Counsel.

Sincerely,



John M. Damgard
President

Enclosures

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner

Division of Market Oversight
Richard Shilts, Acting Director
Rachel Berdansky, Deputy Director
Sebastian Pujol Schott, Associate Deputy Director
Cody J. Alvarez, Attorney Advisor

Appendix A
Ownership and Control Reports
Proposed OCR Alternative

The Futures Industry Association (“FIA”) hereby submits for the Commission’s review the following OCR alternative, in lieu of the ownership and control reporting requirements that the Commission has proposed to impose on “reporting entities.” 75 Fed.Reg. 41775 (July 19, 2010) The OCR alternative was developed by the OCR Working Group, which was formed by FIA and is comprised of a broad cross-section of the futures industry. Its members include representatives from (i) 16 FCMs, both large and small, serving retail and institutional customers, (ii) the several US exchanges, (iii) back office service providers, and (iv) other experts. By no means perfect, the OCR alternative nonetheless presents a more cost effective and practical means to create an OCR database, which is user-friendly and familiar to the Commission staff and investigators. It should not be viewed as an industry-approved alternative, but solely as a basis for further discussions among the Commission, the futures industry and other interested parties.

Based on the Commission’s large trader reporting system, the OCR alternative may be implemented more effectively across multiple exchanges. The alternative integrates the existing trade register data generated by the exchanges with the fundamental OCR data collected by FCMs, thereby allowing the Commission to access the data more quickly and aggregate account-level information across multiple exchanges. Although the OCR alternative would require clearing-member FCMs to make significant changes in the collection, storage and transmission of customer and trade-related data, the alternative would be less costly and could be implemented more quickly. As important, the alternative would achieve the essential regulatory purposes underlying the proposed OCR Rules, as outlined in the Federal Register release accompanying the proposed rules.

Specifically, the OCR alternative would: (i) help integrate data found in the Integrated Surveillance System and the Trade Surveillance System by linking individual transactions reported on exchange trade registers with aggregate positions reported in large trader data; (ii) identify small and medium-sized traders whose open interest does not reach reportable levels, but whose intra-day trading may adversely affect markets during concentrated periods of intra-day trading; (iii) reduce the time-consuming process of requesting and awaiting information from outside the Commission to identify the entity associated with the account number and aggregate all identified entities that relate to a common owner; (iv) link traders’ intra-day transactions with their end-of-day positions; (v) calculate how different categories of traders contribute to market-wide open interest; and (vi) categorize market participants based on their actual trading behavior on a contract-by-contract basis, rather than on how they self-report to the Commission (*e.g.*, registration type or marketing/merchandising activity on Commission Form 40).

At a high level, the alternative proposes that clearing firms will provide a weekly OCR file to exchanges and the Commission that will facilitate the linking of trading activity to owners and controllers across firms and exchanges. This file would be provided for each trading account exceeding an agreed upon volume threshold. Much of the data currently

collected on Form 102 would be included in the OCR file, thereby automating the Form 102 process.

In developing this proposal, the OCR Working Group was guided by the principle that, to the extent practicable, the alternative should:

- extract certain data from existing systems to create and maintain an OCR file;
- rely on data currently available in existing systems;
- minimize new data recording requirements;²⁸
- confine collection of the data to the clearing-member FCM; and
- use volume thresholds to determine the accounts that should be subject to OCR.

The OCR alternative contains the following assumptions:

- The definition of “control” would be limited to that which is currently used for purposes of the large trader reporting system (*i.e.*, a person other than the account owner will be deemed to “control” an account only if the person is a third party with discretionary authority to trade the account; the account owner’s employees will not be deemed to “control” the owner’s account).
- Non-disclosed omnibus accounts would report the name of the omnibus account only; disclosure of all accounts within the omnibus will not be required.
- OCR data would be captured for end-of-day cleared accounts at the carrying broker level.²⁹
- The Commission will acquire additional information required for OCR that is not currently captured or stored by clearing member FCMs directly from account owners/controllers (*i.e.*, through Form 40 reporting).
- The OCR Working Group would work with the Commission to determine an appropriate volume threshold. For purposes of estimating costs, however, the OCR Working Group limited the number of accounts that would be reported to accounts that traded more than 250 contracts weekly.³⁰

²⁸ The new data required to be collected would be limited to the short codes employed in exchange trade registers and customer e-mail addresses.

²⁹ Executing brokers do not usually have, and should not be required to provide, account ownership and control information.

³⁰ The OCR Working Group also discussed pegging the volume threshold to current large trader position reporting levels.

Account Ownership Data

As indicated above, the alternative would leverage and automate the Form 102, which FCMs file with the Commission whenever a customer exceeds the large trader reporting thresholds.³¹ Form 102 would be updated to reflect the current trading environment, in particular, significant intraday trading activity, and collect information with respect to accounts that exceed either position or volume thresholds.

Although Form 40 provides more detail regarding account owners and account controllers, if any, this form is completed by customers and, in most cases, is forwarded directly to the Commission. FCMs generally do not receive a copy of the Form 40 and, in any event, do not record the information electronically. We appreciate that the Commission may want to amend the Form 40 to enhance the information that the Commission receives. However, the OCR alternative does not contemplate any change in the current procedures regarding the Form 40.

The OCR Alternative

The OCR alternative would require each FCM to develop and maintain an electronic reporting system containing the following fields of information. Appendix B hereto summarizes the data to be collected and identifies whether the information currently resides in FCM back-office systems or the Form 102.

Trading Account Number. Account numbers are the key to linking account ownership and control information to the information contained in the exchange trade registers. The OCR alternative overcomes the problems described earlier in our comment letter by providing the means to relate the trading account and short codes to the ownership and control information.

Special Account/Reportable Account Number. This field contains the large trader reportable position account number that the FCM assigns, if applicable.

Short Code. Exchange trade registers contain the account numbers submitted by both executing and carrying firms for each transaction executed on the relevant exchange. Although these account numbers can be used to identify account owners, as explained earlier, the account number in the trade register is often a “short code”, or proxy number, that does not tie directly to the account owner. FCMs maintain internal mappings for these account schemes, but these “short codes” are not always in the firm’s account reference file. Middleware systems are used to translate short codes to actual account numbers for firms’ internal books; these translation rules can be leveraged to create mapping tables for matching trades to the OCR. The alternative would require firms to

³¹ The Form 102 provides essential information about the account: (1) type of account, *e.g.*, house, customer omnibus, corporation, limited liability company, individual; (2) name of account owner; (3) address; (4) registration category, if any; (5) commodities hedged, if any; and (6) identity of account controller, if any. Certain information currently collected on the Form 102 would not be collected under the OCR alternative.

include the short code mappings in the back-office identification of the account ownership and control information.

Owner Name. This field will include owner first name and last name, and middle name as available, if the owner is a natural person.

Owner Organization. This field would include the name of the entity, if the owner is not a natural person.

Owner Address. Multiple address fields would include the street address, city, zip code and country for the account owner.

Owner E-mail Address. This field would include the e-mail address of the owner, if a natural person. E-mail addresses hold promise as a unique identifier for customer accounts. However, implementation and maintenance would have operational challenges as well as financial costs. At present, some FCMs have no robust process for collecting and maintaining customers' e-mail addresses and would need to upload (and update) e-mail addresses manually. Therefore, the customer's e-mail address initially would be a non-mandatory data field.

Controller Name. This field would include the first and last name of the controller, if the controller is a natural person.

Controller Organization. This field would include the name of the business or organization that controls the account if the controller is not a natural person.

Controller Address. Multiple address fields would include the street address, city, zip code and country for account controller.

Controller E-mail Address. This field would include the e-mail address of the account controller.

Controller Type. This field would indicate whether the customer represents a fund or a CTA/CPO.

FCM Identification Number. This field would include the number assigned to the clearing FCM by the Commission.

Omnibus Flag. This field would indicate whether the account is an omnibus account.

Trading Account Effective Date. This field would include the date on which the account was established in the clearing FCM's back office accounting system.

OCR Construction Work Effort

Although the alternative would use data that is currently stored in existing systems, those systems would be required to be modified to extract, report, and transmit OCR-related

information. In addition, it would be necessary to build certain databases to support the OCR.

Firms would be required to supply information to build the OCR file. Firms would need to:

- modify systems to build an OCR file for daily or weekly submission to the Commission;
- create processes to identify trading accounts that exceed volume thresholds;
- acquire ownership and control information for the initial construction of the OCR file; and
- create operational processes to maintain the OCR file on an ongoing basis.

Cost Analysis of OCR Alternative

The OCR Working Group estimates that, compared with the Commission's proposal, the OCR alternative would result in an average first-year cost saving of approximately \$18.8 million. As described in the charts at the end of this Appendix, the first year costs of the Commission proposal is four times greater than the median costs incurred by FCM's under the alternative.

The first-year cost estimates were collected from a sample of 12 FCMs.³² Three of the FCMs that responded to this survey were not among the 12 firms that provided estimates of the costs of implementing the Commission's proposed OCR Rules and the assumptions underlying one firm's estimates were inconsistent with the assumptions of the remaining nine FCMs. For comparison purposes, therefore, we used only the estimates provided by the eight FCMs that responded to both surveys applying comparable assumptions. The cost of building an OCR file containing the data elements identified above and in Appendix B ranges from \$400,000 to \$14,500,000, with the average estimated cost per firm being \$4,647,292. The estimated ongoing costs associated with operating and maintaining the OCR data files ranges from \$125,000 to \$7,000,000 on an annual basis, averaging \$1,337,292 per firm.

Each FCM's estimated costs would depend on the number of accounts for which the OCR data must be collected, with larger firms facing greater costs but also realizing economies of scale in implementation. Small FCMs that carry fewer than 250 accounts and would rely exclusively on vendors to implement the alternative may not realize economies of scale.

³² According to the FCM Financial Data reported on the Commission website, as of July 31, 2010, the 12 firms surveyed held segregated customer funds in excess of \$96.4 billion, approximately 71 percent of all customer funds.

Although the total costs small FCMs would incur appear reasonable, their first-year cost per account would be significantly greater than the FCMs that are able to rely to a lesser extent on vendors for developing the OCR. The average estimated first year cost for smaller FCMs is \$1,850 per account, while the average cost for other firms would be \$205 per account.³³ However, it is important to note that these estimates are not firm quotes on cost by the vendors, and the actual cost would depend on the size of the business, optional modules utilized, number of connectors from either vendor or third party back/middle office systems and whether or not the service is hosted by the vendor or deployed in-house at each firm.

Most FCMs found that adopting a volume threshold of 250 contracts per week would decrease significantly the costs of implementing the alternative, by reducing the amount of data required to be processed and the associated cost of transmitting large amounts of data to the exchanges and the Commission. The average estimated cost of populating the OCR database using a volume threshold of 250 contracts per week is \$1,783,750. In contrast, the estimated total cost for initially populating the OCR file based on a volume threshold that includes all accounts (referred to in our survey as option 1) is \$2,134,375.

Some FCMs suggested that a volume threshold could increase the cost of implementing the alternative initially. This is because processes would have to be developed to identify when customers exceed the threshold and logic code would have to be developed to pull the OCR data for transmission to the Commission. Regardless of the impact on the cost burden placed on the FCMs, however, a volume threshold would introduce efficiencies in processing and transmission, and will help avoid data overload for both the FCMs and the Commission.

As we found with the Commission's OCR proposal, the effort to automate the processes and develop the database would be challenging. However, most firms felt that the alternative would be a much more robust process and could be implemented within the 18 month timeframe envisioned by the Commission.

The end result of the developing the alternative system could ultimately save the firms (and the Commission) significant time and money by automating the current manual process for filing out and submitting Form 102 information. Implicit in the Working Group proposal and the related cost estimates is the assumption that the weekly OCR change files would replace the manual process of submitting Form 102 by hard copy. As we previously noted, these forms currently are updated as requested by the Commission, generally, annually or upon request. With OCR automation, FCMs would be providing weekly feeds that would include updated information on each account meeting the threshold (*e.g.*, changes in the customer's address and e-mail address, as well as changes in the identity of the account controller).

³³ While this amount is high, the estimated cost per account under the Commission's proposal was also on an order of magnitude greater than most other FCMs. These FCMs are largely dependent on the vendors and have used cost estimates provided by the vendors to formulate their estimates.

Once implemented, the average cost savings associated with automating the Form 102 was estimated to be \$33,300 per firm on an annual basis. This efficiency would also be realized by the Commission because of the decreased reliance on data entry, manual processing, recordkeeping, and document management in the current system of collecting and storing manual Forms 102.

Conclusion

For all of the above reasons, the OCR alternative described herein would achieve the essential regulatory purposes underlying the proposed OCR Rules and forms a basis for further discussion on the proper structure of an OCR report. As noted earlier, however, these discussions cannot take place in a vacuum. All of the pending recordkeeping and reporting requirements, and the estimated costs and benefits of each, must be analyzed and evaluated collectively, not individually. The OCR Working Group is anxious to work with the Commission and staff in developing and implementing an effective and efficient recordkeeping and reporting program.

FCMs' Industry Solution Cost Estimates¹

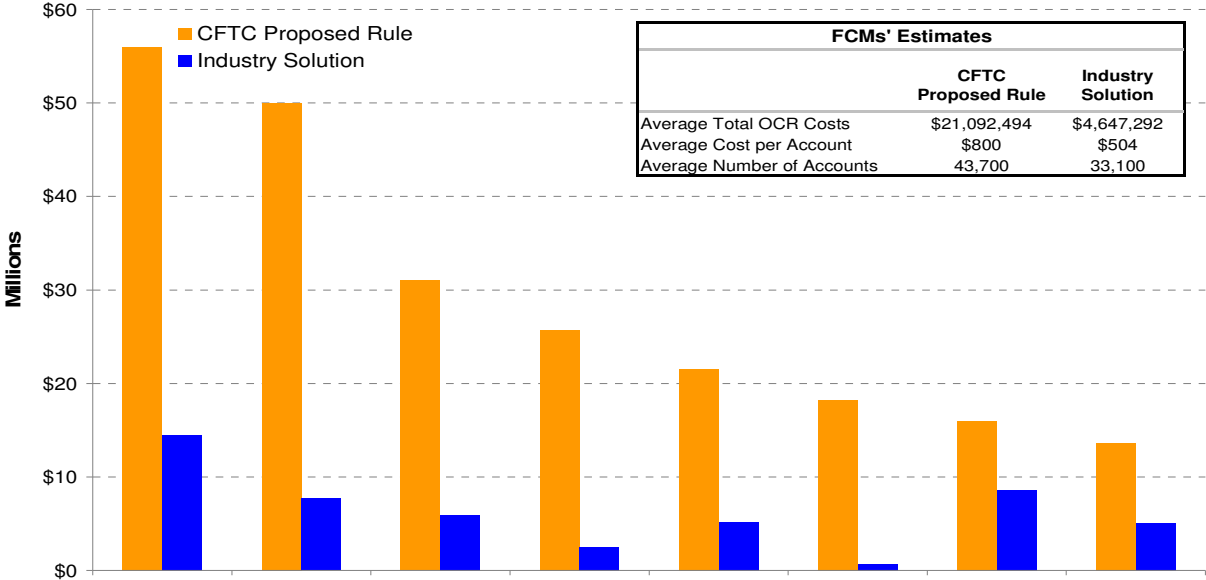
	Affected Accounts	Start-up	Ongoing	Total Start-up and Ongoing/ First-Year Costs	First-Year Costs Per Account
Firm A	90,000	\$7,500,000	\$7,000,000	\$14,500,000	\$161
Firm B	75,300	\$8,370,000	\$225,000	\$8,595,000	\$114
Firm C	50,000	\$2,935,000	\$3,000,000	\$5,935,000	\$119
Firm D	39,979	\$135,000	\$600,000	\$735,000	\$18
Firm E	34,700	\$2,000,000	\$500,000	\$2,500,000	\$72
Firm F	30,000	\$3,950,000	\$1,080,000 - \$1,095,000	\$5,037,500	\$168
Firm G	19,473	\$5,135,000	\$2,550,000	\$7,685,000	\$395
Firm H	14,000	\$5,050,000	\$125,000	\$5,175,000	\$370
Firm I	250	\$100,000	\$300,000	\$400,000	\$1,600
Firm M*	10,000	\$3,500,000 to \$4,000,000	\$500,000	\$4,250,000	\$425
Firm N*	N/A	\$650,000 - \$850,000	\$50,000 - \$150,000	\$850,000	N/A
Firm O*	50	\$45,000	\$60,000	\$105,000	\$2,100

Notes:

¹ The 12 firms in the sample handle in excess of \$96.4 billion, or nearly 71% of customers' segregated funds (as of July 31, 2010, according to monthly financial reports filed with the CFTC).

* Firm did not provide cost estimates for the CFTC Proposed Rule.

FCMs' OCR Implementation Cost Estimates CFTC Proposed Rule vs. Industry Solution



Notes and Sources: Data from estimates provided to the FIA. Only FCMs that provided cost estimates for both the CFTC Proposed Rule and the Industry Solution are shown on the chart.

**Appendix B
Proposed OCR File**

Below is a summary of the fields in the proposed OCR File that would be sent weekly from the clearing FCM to the Commission and/or exchanges. The file includes information that exists in current systems and on the Form 102.

Field Name	Exists in Firm Back-Office Systems	Form 102	Description and Comments	Values	Format	Size
Trading Account Number	X		Account for which trade was executed	Alphanumeric ID that identifies the customer(s) on the associated trade record	AN	20
Special Account/Reportable Account	X		Large Trader reportable position account, if assigned.	Alphanumeric ID used to aggregate trading accounts for large trader position reporting.	AN	12
Short Code Short codes must be accompanied by a trading account number but may not have a special account number.			Account identifier used upon execution that is translated into a trading account number by back office systems.	Alphanumeric ID that identifies the customer(s) on the associated trade record	AN	20
Owner Last Name (Person)	X		Last name of account owner, if the owner is a natural person.	Smith	AN	30
Owner First Name (Person)	X		First name of the account owner, if the owner is a natural person.	James	AN	30
Owner Name (Organization)	X		Name of the business or organization that owns the account, if the owner is not a natural person.	Proprietary Trading Firm Inc.	AN	60

Field Name	Exists in Firm Back-Office Systems	Form 102	Description and Comments	Values	Format	Size
Owner Address 1	X		Primary address of the account owner	123 Main St.	AN	40
Owner Address 2	X		Primary address of the account owner	#500	AN	40
Owner Address 3	X		Primary address of the account owner		AN	40
Owner City	X		City of the owner's primary address	Chicago	AN	25
Owner State/Province	X		State or province abbreviation for the owner's primary address.	IL	AN	5
Owner Zip/Postal Code	X		Zip code or postal code for the owner's primary address.	60601-9999	AN	10
Owner Country	X		Country code for the owner's primary address	US	AN	2
Owner Email Address (Person)			Email address of the account owner, if the account is owned by a natural person.	James.Smith@tradingfirm.com	AN	100
Controller Last Name (Person)		X	Last name of account controller, if the controller is a natural person.	Smith	AN	30

Field Name	Exists in Firm Back-Office Systems	Form 102	Description and Comments	Values	Format	Size
Controller First Name (Person)		X	First name of the account controller, if the controller is a natural person.	James	AN	30
Controller Name (Organization)		X	Name of the business or organization that controls the account, if the controller is not a natural person.	Proprietary Trading Firm Inc.	AN	60
Controller Address 1		X	Primary address of the account controller	123 Main St.	AN	40
Controller Address 2		X	Primary address of the account controller	#500	AN	40
Controller Address 3		X	Primary address of the account controller		AN	40
Controller City		X	City of the owner's primary controller	Chicago	AN	25
Controller State		X	State or province abbreviation for the controller's primary address.	IL	AN	5
Controller Zip Code		X	Zip code or postal code for the controller's primary address.	60601-9999	AN	10
Controller Country		X	Country code for the controller's primary address	US	AN	2

Field Name	Exists in Firm Back-Office Systems	Form 102	Description and Comments	Values	Format	Size
Controller Email Address (Person)		X	Email address of the account controller, if the account is controlled by a natural person.	James.Smith@tradingfirm.com	AN	100
Controller Type		X	Describes the type of controller(s) listed on the respective account.	F – Fund C – CTA/CPO	AN	1
CFTC Firm ID	X		CFTC provided firm identifier assigned to the firm.		AN	3
Omnibus Account Flag	X		Yes or No indicator to denote the type of account	Y – Omnibus N – Not Omnibus	AN	1
Trading Account Effective Date	X	X	The day account was established in the firm's back office system.	YYYYMMDD – Date on which the trading account is effective	N	8
Trading Account Expiration Date			Expiration date/end date of the trading account. Could have a default of 99991231, denoting no expiration.	YYYYMMDD – Date on which the trading account has expired	N	8
EFS Owner Exchange			For member accounts, the exchange at which the account owner holds a membership.	CME – Could optionally use ISO MIC.	AN	5

Field Name	Exists in Firm Back-Office Systems	Form 102	Description and Comments	Values	Format	Size
EFS Non-Member Owned Indicator			Indicator to denote if the account is fully member owned or if non-members are joint owners on the account.	Y – Indicates account is a joint account between a member and non-member N – Non-members do not exist on the account	AN	1
EFS Main Account Description			Description of the group of accounts which often includes the legal name of the 100% owned subsidiary. This is often referred to as “Account Title”.	Contains company name, trading group, partnership, etc.	AN	40
EFS Main Account Number			Grouping/roll up account that associates all trading accounts with the same account owners(s) and controller(s)	Alphanumeric ID that identifies the Fees grouping account.	AN	20
EFS Owner Type			Describes the type of owner(s) listed on the respective account.	I – Individual N – Non-Member F – Firm J – Joint Account	AN	1
EFS Owner Middle Name (Person) if available	X		Middle name or middle initial of the account owner, if the owner is a natural person.	R	AN	15

Field Name	Exists in Firm Back-Office Systems	Form 102	Description and Comments	Values	Format	Size
EFS Controller Middle Name (Person) if available		X	Middle name or middle initial of the account controller, if the controller is a natural person.	R	AN	15
EFS Exchange	X		Exchange Acronym	CBT – Could optionally use ISO MIC.	AN	5
EFS Clearing Firm Number	X		Clearinghouse assigned clearing firm number/firm number	999 – Existing 3-5 character firm code.	AN	5
EFS Clearing Firm Name	X		Clearing Firm Name	Name of the clearing firm	AN	60
EFS Main Account Effective Date			Effective date/start date of the main account. Could potentially be derived from the reporting of the change record.	YYYYMMDD – Date on which the main account is effective	N	8
EFS Main Account Expiration Date			Expiration date/end date of the main account. Could have a default of 99991231, denoting no expiration.	YYYYMMDD – Date on which the main account has expired	N	8
EFS Owner Effective Date			Effective date/start date of the owner relationship to the account. Could potentially be derived from the reporting of the change record.	YYYYMMDD – Date on which the owner was associated with the account	N	8

Field Name	Exists in Firm Back-Office Systems	Form 102	Description and Comments	Values	Format	Size
EFS Owner Expiration Date			Expiration date/end date of the owner relationship to the account.	YYYYMMDD – Date on which the owner relationship has expired.	N	8
EFS Controller Effective Date		X	Effective date/start date of the controller relationship to the account. Could potentially be derived from the reporting of the change record.	YYYYMMDD – Date on which the controller was associated with the account	N	8
EFS Controller Expiration Date			Expiration date/end date of the controller relationship to the account.	YYYYMMDD – Date on which the controller relationship has expired.	N	8