

**Financial Crimes Enforcement Network
Commodity Futures Trading Commission**

Guidance

FIN-2006-G004

Issued: February 14, 2006

**Subject: Frequently Asked Question regarding Customer Identification Programs for
Futures Commission Merchants and Introducing Brokers (31 CFR 103.123)**

Q. Futures commission merchants engage in transactions through omnibus accounts and sub-accounts established by financial intermediaries. In these situations, (1) the omnibus account or relationship is established by or on behalf of a financial intermediary for the purpose of executing transactions that will clear or settle at another financial institution, or the omnibus account holder provides limited information to the futures commission merchant solely for the purpose of delivering assets to the custody account of the beneficial owner at another financial institution; (2) the limited information given to the futures commission merchant about the beneficial owner is used primarily to assist the financial intermediary with recordkeeping or to establish sub-accounts that hold positions for a limited duration to facilitate the transfer of assets to another financial institution; (3) all transactions in the omnibus account or sub-accounts at the futures commission merchant are initiated by the financial intermediary; and (4) the beneficial owner has no direct control over the omnibus account or sub-accounts at the futures commission merchant. In the circumstances described above, must the futures commission merchant treat the beneficial owners as "customers" for purposes of the rule?

A. No. In paragraph (a)(5) of the rule, a "customer" is defined as "[a] person that opens a new account." According to the rule's preamble (68 FR 25149 (May 9, 2003)), this means the "person identified as the account holder." The preamble states further that "[i]f the intermediary is the account holder, such as in the case of an omnibus account, an FCM is not required to look through the intermediary to the underlying beneficiaries." Even if the futures commission merchant has some information about a beneficial owner of assets in an omnibus account (e.g., batch execution account) or a sub-account, under the circumstances described above, the financial intermediary (not the beneficial owner) should be treated as the customer for purposes of the rule.