

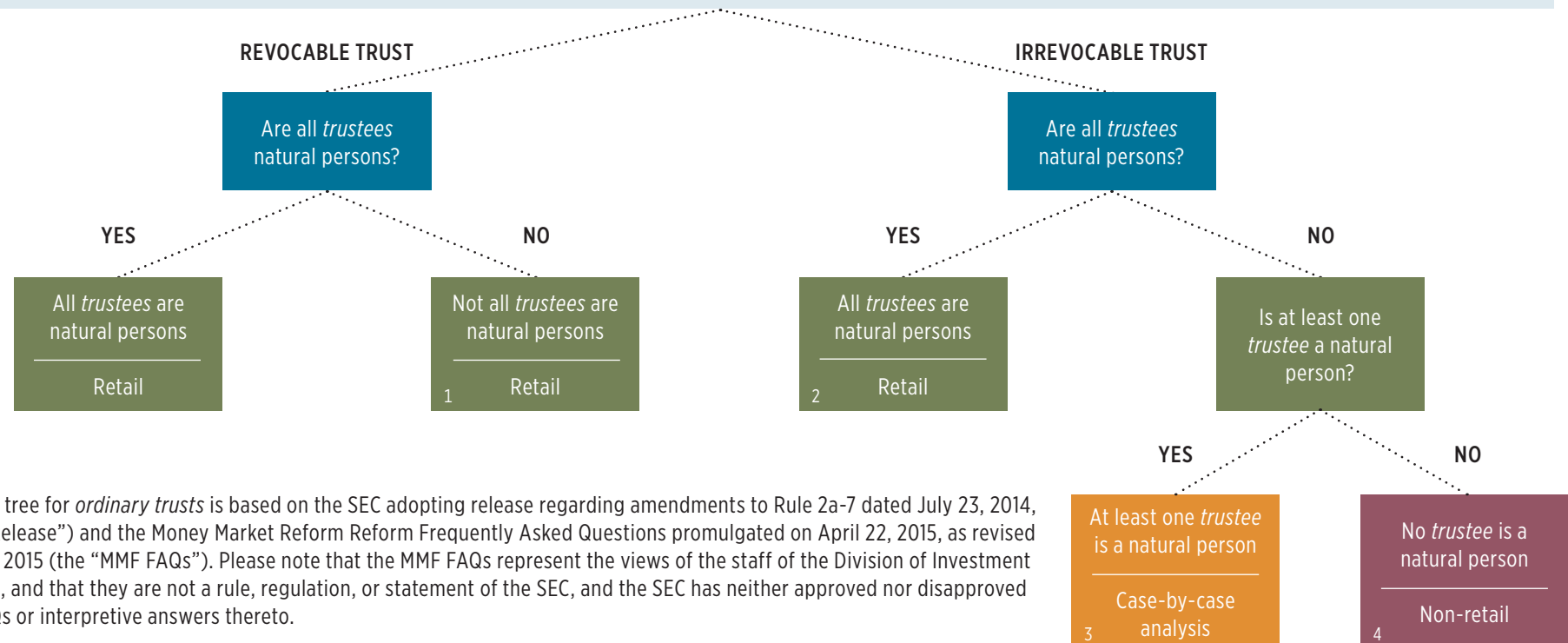
# Treatment of Ordinary Trusts Under the Retail Money Market Fund Definition

## Decision Tree to Analyze Whether Ordinary Trusts Are Beneficially Owned by Natural Persons

### Is the trust a revocable trust or an irrevocable trust?

**Revocable trust:** A trust is revocable if it can be wholly amended or revoked by the *grantor* without the consent of any other person or entity, or if all of the assets can be withdrawn by the *grantor* without the consent of any other person or entity. A trust also is revocable if any other individual (such as a *beneficiary*) may withdraw all of the trust assets without the consent of any other person or entity. If the *grantor* of a revocable trust dies, or if the individual with a withdrawal right dies, the trust may become irrevocable.

**Irrevocable trust:** A trust is irrevocable if it cannot be amended or revoked by the *grantor* once created.



This decision tree for *ordinary trusts* is based on the SEC adopting release regarding amendments to Rule 2a-7 dated July 23, 2014, (“Adopting Release”) and the Money Market Reform Reform Frequently Asked Questions promulgated on April 22, 2015, as revised on August 4, 2015 (the “MMF FAQs”). Please note that the MMF FAQs represent the views of the staff of the Division of Investment Management, and that they are not a rule, regulation, or statement of the SEC, and the SEC has neither approved nor disapproved the MMF FAQs or interpretive answers thereto.

### FACTORS

- » *Ordinary trusts* are established by individuals (i.e., the *grantor* is an individual).
- » The Adopting Release and Question 16 of the MMF FAQs provide that beneficial ownership by a natural person is determined based on *investment power* as set forth in Rule 13d-3 under the Securities Exchange Act of 1934, as amended.
- » The MMF FAQs clarified that a *beneficiary’s* pecuniary interest in a trust is not relevant in determining beneficial ownership of a trust for purposes of this analysis.
- » Italicized terms not defined on this page are defined in the definitions section on the next page, together with the footnotes.

## DEFINITIONS

- Beneficiary:** A beneficiary is a person or entity who has a present or future interest in the trust property; the trust property is held for the benefit of a beneficiary or beneficiaries. The MMF FAQs clarified that a beneficiary's pecuniary interest in a trust is not relevant in determining beneficial ownership of a trust for purposes of this analysis.
- Grantor:** Also known as the *settlor*, the grantor is the person who creates and/or funds a trust. If more than one person contributes property to a trust, each person who makes a contribution is a grantor of that trust.
- Investment power:** Rule 13d-3(a)(2) under the Securities Exchange Act of 1934 provides that investment power includes the power to dispose, or to direct the disposition of, a security.
- Ordinary trust:** An ordinary trust, as defined in Section 7701 of the Internal Revenue Code of 1986, as amended (the Code), is one that is created by will or lifetime declaration by which trustees take title to property to conserve it for the beneficiaries under the ordinary rules of state chancery or probate courts. Ordinary trusts do not include business trusts, investment trusts, liquidating trusts, or environmental remediation trusts, as those terms are defined in Section 7701 of the Code.
- Trustee:** A trustee is the person or entity legally responsible for managing the investments and controlling distributions from a trust. The trustee typically has the power to invest and/or change or dispose of an investment (although this may be modified by the grantor, as in a directed trust). A trust may have one or more trustees. If there is a change in trustee, this analysis must be reviewed.
- Directed trust:** A trust in which the grantor has appointed an individual or entity other than all the trustees to control investment decisions.

## NOTES

1. The grantor of a revocable trust has the absolute right to terminate the trust and reacquire trust assets (i.e., the power to dispose of investments made by the trust). Therefore, because the grantor of an ordinary trust is an individual, a natural person has investment power regardless of whether the trustee is a natural person. Similarly, if another individual (such as a beneficiary) has the right to withdraw all of the trust assets (i.e., a withdrawal right), a natural person has investment power regardless of whether the trustee is a natural person.
2. An irrevocable trust whose trustee or trustees are all natural persons who have investment power (unless it is a directed trust for which an entity has investment power).
3. If an irrevocable trust has multiple trustees, at least one of whom is an individual, absent additional information, a natural person may not have investment power. These trusts can be reviewed on a case-by-case basis as there are many circumstances when it would be reasonable to conclude that such a trust is beneficially owned by natural persons. For example, if a majority of the trustees are individuals, natural persons may have investment power by virtue of their majority action. Similarly, if a directed trust has a corporate trustee that cannot invest without direction from individuals, a natural person has investment power.
4. An irrevocable trust without individual trustees does not have a natural person controlling investment power (unless it is a directed trust for which an individual has investment power).

*This decision tree is designed to provide guidelines for determining whether a trust is beneficially owned by a natural person. Because trusts are established under state law and the terms of trusts can vary significantly, each trust must be examined individually. You should consult with legal counsel before designing any policies and procedures reasonably designed to determine whether a particular trust is beneficially owned by a natural person.*