

## **Appendix A - Anti-Money Laundering Questionnaire**

Each National Futures Association (“NFA”) futures commission merchant (FCM) and introducing broker (IB) Member firm must adopt a written anti-money laundering (“AML”) program tailored to its operations. NFA has developed the following questionnaire to assist firms in meeting that requirement.

The firm should maintain its AML program with other firm procedures. Having a written program is not enough to meet your regulatory requirements, however. You must also implement and follow the program and communicate it to your employees.

Please also consult the following NFA Rule and Interpretive Notice when designing your AML program:

<https://www.nfa.futures.org/rulebook/rules.aspx?Section=4&RuleID=RULE%202-9>

<https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9045>

A Member firm’s written AML program should answer all of the following questions as completely as possible. Although you may answer “not applicable” to particular questions, you should carefully consider the firm’s operations before doing so.

### **General Questions**

- What is the firm’s policy statement regarding money laundering and terrorist financing?
- What are the consequences if an employee does not follow the firm’s AML policy?
- Who in senior management is responsible for giving written approval of the firm’s AML program?
- Has the firm designated one or more individuals to be responsible for overseeing the day to day operations of the firm’s AML compliance program? Who has the firm designated?
- Does the AML Compliance officer/department report to senior management? If so, who do they report to?
- What are the AML Compliance Officer’s duties and responsibilities?

### **Customer Identification Program (CIP)**

- What identifying information (e.g., name, address, date of birth, tax identification number) does the firm obtain from its new customers?
- Does the firm rely on documentary methods to verify identity? If so:
  - What documents does the firm accept to verify the identity of new customers who are individuals? Be specific.
  - What documents does the firm accept to verify the identity of new customers that are not individuals (e.g., corporations, partnerships, trusts)? Be specific.
- Does the firm rely on non-documentary methods to verify identity? If so, what non-documentary methods does the firm use to verify a customer’s identity? Be specific.
- Under what circumstances will the firm verify identity:

- Using documentary methods alone?
- Using non-documentary methods alone?
- Using a combination of both methods?
- Does the firm require non-documentary methods in the following situations:
  - The customer is unable to present a current government ID with a photograph or similar safeguard (e.g., a thumbprint)?
  - The firm is not familiar with the documents the customer provides?
  - The firm opens an account without obtaining documents from the customer?
  - A customer opens an account without appearing in person?
  - Other circumstances that increase the risk that the firm will be unable to verify the identity of the customer through documents?

If the firm does not use non-documentary methods in one or more of these situations, why has the firm concluded that non-documentary methods are not necessary?

- What is the firm's deadline for completing the verification process? How does the firm ensure that the customer's identity is verified within a reasonable time before or after the account is opened?
- Does the firm accept individual accounts from people who are applying for taxpayer identification numbers? If so, how does the firm confirm that an application for taxpayer identification number has been filed? How does the firm ensure that it obtains the taxpayer identification number within a reasonable period of time?
- Under what circumstances will the firm require customers that are not individuals (e.g., corporations, partnerships, trusts) to provide information about the account controller in order to verify the customer's identity?
- How does the firm handle an account if the firm does not have a reasonable belief that it knows the customer's identity? Specifically:
  - When will the firm refuse to open an account?
  - What restrictions does the firm place on customer transactions while the firm is still verifying the customer's identity?
  - Under what circumstances will the firm close an account after the firm's attempts to verify the customer's identity have failed?
  - In what situations will the firm file a suspicious activity report?
- Does the firm rely on other financial institutions to carry out its CIP requirements? If so, answer the following questions for each financial institution the firm intends to rely upon:
  - What is the financial institution's name?
  - When will your firm rely on that financial institution to perform some or all elements of the CIP for your firm? If it will perform only some elements, which ones are they?

- What steps did your firm take to ensure that the financial institution is required to have an AML Compliance program under the Bank Secrecy Act?
- What Federal agency regulates the financial institution?
- When did your firm enter into a written agreement with the financial institution requiring it to certify annually that it has implemented an AML program and that it will perform the specified requirements of its own CIP or perform the CIP functions described in the agreement? (You should attach the agreement to the firm's AML procedures.)
- How does your firm ensure that it obtains a copy of the annual certification?
- Does the firm contractually delegate its CIP functions to other entities? If so, answer the following questions for each entity (including any financial institution not included above) that the firm intends to contractually delegate those functions to:
  - What is the entity's name?
  - What elements of the firm's CIP are delegated to that entity?
  - When did you enter into a written agreement outlining each party's responsibilities? (You should attach the agreement to the firm's AML procedures.)
  - What does your firm do to monitor how the other entity implements the CIP and how effective the CIP is?
  - How does your firm ensure that regulators are able to obtain information and records relating to the CIP performed by that entity?
- How does your firm notify customers about why the firm requests information to verify identity before opening an account? What does the notice say?
- Where, in what form, and for what time period does the firm keep the following information:
  - Identifying information collected from customers (e.g., name, address, date of birth, tax identification number)?
  - Documents used to verify identity? Does the firm keep a copy of the documents or does it record the necessary information (e.g., identification number, place issued, date issued, expiration date)?
  - Descriptions of the methods used and results obtained when non-documentary methods are used to verify identity?
  - Descriptions of how discrepancies in particular customers' verifying information are resolved?

**Identifying and Verifying Beneficial Owners (Effective May 11, 2018)**

- For all new accounts for legal entity customers, does the firm identify all individuals who directly or indirectly own more than 25% of the legal entity and an individual with significant authority to control, manage or direct the legal entity customer (account controller)?
- Does the firm obtain the following for each beneficial owner and the account controller?
  - Name
  - Title (for account controllers only)

- Date of Birth
  - Residential or Business Address
  - For U.S. Person – Social Security Number
  - For Non-U.S. Person – Passport Number and Country of Issuance or other similar Identification Number
- Does the firm obtain a certification signed by the natural person opening an account for a legal entity indicating the above information is complete and accurate and include:
  - Name and title of natural person opening the account
  - Name and address of legal entity
  - Name
  - Signature
  - Date
  - Legal Entity Identifier (Optional)
- Does the firm verify the identity of each beneficial owner and account controller that, at a minimum, contains the same elements the firm employs to verify the identity of customers under its CIP procedures?
- Where, in what form, and for what time period does the firm keep the following information:
  - Identifying information collected on beneficial owners and account controllers (e.g., name, address, date of birth, tax identification number)?
  - Documents used to verify identity? Does the firm keep a copy of the documents or does it record the necessary information (e.g., identification number, place issued, date issued, expiration date)?
  - Descriptions of the methods used and results obtained when non-documentary methods are used to verify identity?
  - Descriptions of how discrepancies in a particular beneficial owner or account controller's verifying information are resolved?
- Does the firm rely on other financial institutions to carry out its beneficial ownership requirements? If so, answer the following questions for each financial institution the firm intends to rely upon:
  - What is the financial institution's name?
  - When will your firm rely on that financial institution to perform some or all elements of the beneficial ownership requirements for your firm? If it will perform only some elements, which ones are they?
  - What steps did your firm take to ensure that the financial institution is required to have an AML Compliance program under the Bank Secrecy Act?
  - What Federal agency regulates the financial institution?
  - When did your firm enter into a written agreement with the financial institution requiring it to certify annually that it has implemented an AML program and that it will perform the specified requirements of its own beneficial ownership requirements or perform the

beneficial ownership functions described in the agreement? (You should attach the agreement to the firm's AML procedures.)

- How does your firm ensure that it obtains a copy of the annual certification?
- Does the firm contractually delegate its beneficial ownership functions to other entities? If so, answer the following questions for each entity (including any financial institution not included above) that the firm intends to contractually delegate those functions to:
  - What is the entity's name?
  - What elements of the firm's beneficial ownership requirements are delegated to that entity?
  - When did you enter into a written agreement outlining each party's responsibilities? (You should attach the agreement to the firm's AML procedures.)
  - What does your firm do to monitor how the other entity implements the beneficial ownership requirements and how effective the beneficial ownership requirements is?
  - How does your firm ensure that regulators are able to obtain information and records relating to the beneficial ownership requirements performed by that entity?

### **Identifying High-Risk Accounts**

- How does the firm identify potentially high-risk accounts?
- What types of accounts does the firm characterize as high risk?
- How does the firm determine whether a customer/prospective customer appears on OFAC's list of Specially Designated Nationals and Blocked Persons (SDN list) identifying known or suspected terrorists and terrorist organizations?
- How does the firm determine whether a customer is located in a country on OFAC's list of sanctioned countries?
- How does the firm determine whether a customer appears on any list of known or suspected terrorists or terrorist organizations that is issued by the Federal Government and designated by the Treasury Department? How does the firm ensure that it follows all Federal directives issued in connection with the list? (Note: No other lists or federal directives have yet been issued).
- How does the firm determine whether a customer is from a country that appears on FATF's Public Statement of jurisdictions with AML/CFT deficiencies?
- What type of ongoing monitoring does the firm do to ensure that existing customers don't subsequently appear on the SDN list or come from a country on OFAC's sanctioned country list or FATF's Public Statement of jurisdictions with AML/CFT deficiencies?
- What kind of due diligence does the firm perform to determine whether to accept a high risk account?
- How does the firm determine whether additional monitoring of account activity is necessary for a high risk account?
- What additional monitoring does the firm perform for account activity in high risk accounts?

- What special steps will the firm take if the customer/prospective customer or its country appears on the following lists:
  - OFAC's SDN list?
  - OFAC's list of sanctioned countries?
  - A list of known or suspected terrorists or terrorist organizations issued by the Federal Government?
  - FATF's Public Statement of jurisdictions with AML/CFT deficiencies?

### **Ongoing Customer Due Diligence and Detection and Reporting of Suspicious Activity**

- What systems and procedures does the firm use to detect and report suspicious activity:
  - During the account opening process?
  - While an account is open?
  - When an account closes?
- What risk-based ongoing customer due diligence (CDD) procedures does the firm employ to:
  - Understand the nature and purpose of customer relationships for purposes of developing a customer risk profile
  - Conduct ongoing monitoring to identify and report suspicious transactions, and on a risk basis, maintain and update customer information, including beneficial ownership information
- What type of transactions will require the firm to file a form SAR?
- How does the firm ensure that a form SAR is filed for a transaction or series of transactions that are conducted, attempted by, at or through the firm, involve an aggregate of at least \$5,000 in funds or other assets and the firm knows, suspects or has reason to suspect that transactions or pattern of transactions (1) Involves funds that come from illegal activity or are part of a transaction designed to conceal that the funds are from illegal activity; (2) Are designed, such as through structuring, to evade the reporting requirements of BSA; (3) Do not appear to serve any business or apparent lawful purpose; (4) Use the firm to facilitate a criminal transaction? Generally, a SAR is due within 30 days after the firm becomes aware of the suspicious transaction.
- How does the firm monitor wire transfer activity for unusual transfers (e.g., unexpected or unusually frequent or large transfers by a particular account during a particular period, transfers involving certain countries identified as high risk or having AML/CFT deficiencies)?
- What examples of "red flags" does the firm provide its employees to alert them to suspicious activity?
- What kind of investigation does the firm do when a red flag occurs? Who does it?
- How promptly must employees report potential suspicious activity and who do they report it to?
- What are the firm's procedures for filing a form SAR with FinCEN after the firm becomes aware of a suspicious transaction or if identity is unknown? Specifically, how promptly does the firm file a form SAR with FinCEN?

- Which supervisory personnel evaluate the activity and determine whether the firm is required to file a SAR with FinCEN?
- How does your firm ensure the confidentiality of SAR filings or any information that would reveal the existence of a SAR?
- Where, and in what form, does the firm keep the form SAR and any supporting documentation which must be maintained for five years from the date the SAR was filed?
- How does the firm maintain the confidentiality of the form SAR?
- If your firm shares a SAR with a parent entity (or entities) does it have a written confidentiality agreement or other arrangement in place specifying that the parent (or parent entities) must protect the confidentiality of the SAR through appropriate internal controls?
- If your firm shares a SAR, or any information that might reveal the existence of a SAR, with an affiliate, does it have policies and procedures, as part of its internal controls, which ensure that its affiliate protects the confidentiality of the SAR? Note that any affiliate receiving a SAR from your firm must be subject to a SAR regulation and cannot share the SAR with another affiliate.
- What kind of due diligence does the firm do to ensure that any requests for SARs or SAR supporting documentation come from a representative of FinCEN or an appropriate law enforcement or supervisory agency? What procedures will the firm use to complete this verification?
- Does the firm have additional risk-based measures to help ensure the confidentiality of SARs, including limiting access to "need-to-know" basis, establishing restricted areas for reviewing SARs, maintaining a log of access to the SARs, using cover sheets for notices that highlight confidentiality concerns before a person may access or disseminate the information? Does the firm include information on SAR confidentiality and the penalties associated with unauthorized disclosure in its ongoing training of employees?
- Does the firm obtain a written request from a law enforcement agency when the agency is requesting that the firm keep a particular account open? If so, what type of documentation is maintained and for what time period does the firm keep the documentation?

#### **Other**

- If your firm is an FCM, what steps does the firm take to respond to FinCEN information requests (e.g., 314(a) biweekly request)?
- If responsibilities for conducting AML compliance, other than CIP responsibilities, are divided between your firm and an FCM or IB, what documentation does your firm maintain to indicate how those responsibilities are divided? How does the firm ensure the other firm is adhering to the AML procedures?
- If your firm is an FCM that guarantees introducing brokers ("GIB"), how does it ensure that the firm's GIBs are adhering to their AML procedures?

- If your firm is an FCM, how does your firm comply with the currency transaction reporting and funds transfer recordkeeping requirements set forth in the Bank Secrecy Act?
- Does your firm accept private banking accounts maintained for non-U.S. persons? If so, what kind of special due diligence does the firm perform for those accounts? If not, how does the firm screen new accounts to ensure that it does not accept this type of account?
- Does your firm accept private banking accounts maintained by or on behalf of senior political figures? If so, what enhanced scrutiny does the firm conduct for private banking accounts maintained by or on behalf of senior political figures? If not, how does the firm screen new accounts to ensure that it does not accept this type of account?
- Does your firm have a procedure to file the required FBAR report if it has a financial interest or signature authority over any financial accounts which exceed \$10,000 in a foreign country at any time during the calendar year?
- Does your firm (only FCMs) have a procedure to file a Report of International Transportation of Currency or Monetary Instruments (CMIR) if your firm transports amounts exceeding \$10,000 internationally under certain circumstances?
- Does the firm accept correspondent accounts established, maintained or administered by the firm in the US for a foreign financial institution. If so, what procedures or controls have the firm established over the account that will allow the firm to reasonably detect and report any known suspected money laundering activity conducted through or involving the correspondent account? If not, it is sufficient to indicate that the firm will not open any correspondent accounts.
- What are the firm's procedures regarding Section 311 Special Measures? Do the procedures require the firm to monitor FinCEN's website for information on foreign jurisdictions, institutions, classes of transactions, or types of account that have been designated as a primary money laundering concern and any special measures that have been imposed? Does the firm's procedure require the firm to follow any special measures that have been imposed?
- Which individuals or departments are trained, at least every 12 months, on the firm's overall AML program?
- Which individuals or departments are trained to monitor unusual trading activity to detect suspicious activity? How often do these employees take the training?
- Who conducts the training and what areas does it cover? Be specific for each group of employees who receive training.
- Other than documents obtained or made during the CIP process, what AML documents and records does the firm maintain? How long are they maintained? Be specific.
- Which independent firm personnel or experienced outside party will conduct annual testing on the adequacy of the firm's anti-money laundering program at least every 12 months?
- What areas are reviewed in the annual audit?

- Who in senior management or on the audit committee receives the results of the independent audit?
- Who in senior management or on the audit committee reviews and signs off in writing on the independent audit report?
- How will the firm address deficiencies noted in the annual AML audit report?