NATIONAL FUTURES ASSOCIATION®

Forex Transactions

A Regulatory Guide

January 2016 Revisions: Removed references to "January 4, 2016" effective date as amendments to NFA Compliance Rule 2-36, Financial Requirements Sections 11 and 12, and the adoption of the Interpretive Notice entitled "NFA Compliance Rule 2-36: Risk Management Program for Forex Dealer Members" are now effective.

January 2016

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Introduction

The Commodity Exchange Act (Act) gives the Commodity Futures Trading Commission (CFTC) jurisdiction over off-exchange (also called over-the-counter or OTC) foreign currency futures and options transactions as well as certain leveraged foreign currency transactions offered to or entered into with retail customers. Under the Act, only certain regulated entities may be counterparties to these off-exchange trades with retail customers. These regulated entities are certain registered futures commission merchants (FCMs) and registered Retail Foreign Exchange Dealers (RFEDs). All other off-exchange futures and options transactions with U.S. retail customers are unlawful unless done on or subject to the rules of a regulated exchange.

Before going on, you should understand two of the terms that we will use throughout this Guide.

- For our purposes, a **customer** is any party to a forex trade who is not an eligible contract participant as defined in the Act. This includes individuals with assets of less than $10 million and most small businesses.

- As used in this Guide, **forex** transactions are leveraged off-exchange foreign currency transactions where one party is a customer (as defined in the previous bullet), except that the term does not include transactions that result in actual delivery within two days or that create an enforceable obligation to deliver between parties who are capable of making and taking delivery for business purposes.

NFA's forex requirements apply to all NFA Members that engage in forex activities with customers. This Guide should help our Members who are subject to NFA's forex requirements understand those requirements. This Guide does not, however, include every requirement that may apply and does not deal with every detail of the requirements it does include. In addition to this Guide, you should read NFA's rules and interpretive notices and the CFTC's rules, interpretive notices and letters regarding forex transactions. NFA's most significant rules and interpretive notices regarding forex transactions are included in Appendices 1 and 2.

Registration

Counterparties

A firm may not act as a counterparty, or offer to act as a counterparty, to any forex transaction unless the firm is one of the regulated entities listed in the Act. These entities (authorized counterparties) are:

- U.S.-based financial institutions (e.g., banks and savings associations);
- financial holding companies;
- registered broker-dealers;
- certain affiliated entities of registered broker-dealers;
- registered FCMs that are primarily or substantially engaged in on-exchange futures activities;
- RFEDs.

FCMs and RFEDs must be NFA Members and approved as a forex firm by NFA.

Associated Persons

Individuals employed by an FCM, RFED, Introducing Broker (IB) Commodity Pool Operator (CPO) or Commodity Trading Advisor (CTA) who solicit or accept retail forex customer orders or supervise any person who solicits or accepts retail forex customer orders must register as an associated persons and be approved as a forex AP by NFA. No Member may be approved as a forex firm unless at least one of its principals is registered as an AP and approved as a forex AP.

Introducing Entities

Except for otherwise regulated U.S.-based financial institutions, registered broker-dealers and certain affiliates, and financial holding companies, entities or individuals that introduce forex customers to registered FCMs or RFEDs must register as IBs and be NFA Members.

Account Managers

Except for otherwise regulated U.S.-based financial institutions, registered broker-dealers and certain affiliates, and financial holding companies, a person or entity exercising trading authority over a customer's forex account must register as a CTA. A person exercising trading authority over a customer's account may not receive or hold the customer's funds. Those funds must be held by the FCM or RFED counterparty.

Pool Operators

Except for otherwise regulated U.S.-based financial institutions, registered broker-dealers and certain affiliates, and financial holding companies, a person or entity who operates a pooled investment vehicle that is not an eligible contract participant that trades forex must register as a CPO.

Members Subject to the Forex Requirements

All NFA Members that engage in forex activities with customers are subject to NFA's forex requirements, although some of those requirements apply only to Forex Dealer Members (FDMs). A Member is an FDM if it acts as counterparty to or offers to act as counterparty to at least one customer. (See NFA Bylaw 306). Pursuant to the Act and CFTC regulations, FDMs must be registered as either an FCM or an RFED.

Members that do not act as counterparties are subject to various anti-fraud, ethical conduct, and supervision requirements if they solicit customers, introduce customers to a counterparty, or manage accounts on behalf of customers. Additionally, Members that manage forex accounts on behalf of customers or offer pools that trade forex must provide prospective clients and pool participants with a disclosure document (DD) and file it with NFA prior to use. This DD must include the disclosure language proscribed by the CFTC. Additionally, any trading program or pool that includes forex trading must provide certain disclosures and provide periodic (monthly or quarterly) account statements and an annual report to the pool participants.

Soliciting Customers

Customer Information and Risk Disclosure

Members or their Associates are required to obtain certain personal and financial information from a customer. At a minimum, Members or their Associates must obtain the customer's true name, address, principal occupation or business, and previous investment, futures trading and forex trading experience. For customers who are individuals, the Member or Associate must obtain the customer's net worth or net assets and current estimated annual income or the previous year's annual income.

Based on this information, Members or their Associates must determine the appropriate risk disclosure to provide the customer. At a minimum, FDMs and IBs must provide retail customers with understandable and timely written risk disclosure on essential features and risks of forex trading prior to opening the account. The written risk disclosure must include the disclosure language prescribed in CFTC Regulation 5.5(b). In addition, immediately following the prescribed disclosure, the risk disclosure statement must also include: (1) the total number of non-discretionary retail forex customer accounts maintained by the FDM, (2) the percentage of such accounts that were profitable in the quarter and (3) the percentage of such accounts that were not profitable during the quarter. In determining whether each account was or was not profitable, FDMs must follow the formula set forth in CFTC Rule 5.18(i). This section should also include the legend that PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS. IBs are required to provide this information for the FDM to whom they are introducing the account. Members are required to obtain a signed and dated acknowledgment from the retail customer that the customer received and understood the disclosure statement prior to opening the account. Members must update this disclosure prior to entering into new forex transactions with current customers if failing to update the information would make it misleading. CPO and CTA Members must provide the disclosure required by CFTC Regulation 4.34.

The Member or their Associate may decide that additional risk disclosure for a particular customer is appropriate. For example, if a customer does not have experience trading forex, the Member or their Associate must determine what additional information the customer needs to make an informed decision on whether to enter into forex transactions. In some circumstances (e.g., if the customer is living on social security or is looking for a safe investment), the Member or Associate may even have to tell the customer that forex trading is too risky for that particular customer. A Member, however, is not required to reject the account if a customer, after receiving the additional disclosure, still insists on trading forex.

Members and Associates, however, are prohibited from making individualized recommendations to any customer for which the Member or Associate has or should have advised that forex trading is too risky for that customer.

NFA does not require Members to provide their Associates with any grid-like formula to identify those customers who require additional risk disclosure. Your firm should, however, be able to articulate the general factors its Associates consider when deciding whether to give additional risk disclosure.

Each Member must make a record containing the customer information obtained. If the customer declines to provide the required information, the Member or Associate must make a record that the customer declined. A record does not need to be made in the case of a non-U.S. customer. Members must keep copies of all information records for the period of time set forth in CFTC Regulation 1.31.

For all active customers who are individuals, Members who act as the counterparty are required to contact the customer annually to verify that the information remains materially accurate and provide the customer with the opportunity to update the information. If the customer notifies the Member who is acting as the counterparty of any material changes to the information, the Member must determine whether the Member must provide the customer with additional risk disclosure based on the changed information. However, if another Member, such as an IB or CTA currently solicits and communicates with the customer, the Member acting as a counterparty must notify the IB or CTA of the changed information and the IB or CTA must determine if additional risk disclosure is necessary.

Communications with the Public and Promotional Materials

Members should adopt and enforce written procedures regarding communications with the public. These procedures should address oral sales solicitations as well as promotional material, and they should be reasonably designed to prevent your firm and its Associates from making any communication with potential or current customers that operates as a fraud or deceit, uses a high-pressure approach, or implies that forex transactions are appropriate for all customers. For example, you may not represent that forex funds deposited with a Member are "segregated" or given special protection under the bankruptcy laws. If an FDM or an IB represents that its services are commission free, it must prominently disclose how it is compensated in near proximity to this representation. Additionally, an FDM or an IB may not represent that it offers "no-slippage" or guarantee fills unless it can demonstrate that all orders on its platform have been executed at the price initially quoted when the order was placed on the platform <u>and</u> it does not have the authority to adjust customer accounts so as to have the effect of changing the price at which the order was executed. In other words, if an

FDM "re-quotes" prices or has the contractual right to make adjustments that directly or indirectly change the price of an order after it is executed, it cannot claim to have no slippage.

If a Member mentions the possibility of profit, it must include an equally prominent statement of the risk of loss. In addition, any references to actual past trading profits or testimonials must also mention that past results are not necessarily indicative of future results. You should also ensure that the communication does not discuss past performance or include a testimonial unless the performance is similar to the actual performance of the firm's reasonably comparable accounts for the same time period. Any reference to hypothetical performance results that could have been achieved using your trading system must comply with NFA Compliance Rule 2-29(c) and the related Interpretive Notice as if the performance results were for on-exchange transactions. Finally, promotional materials may never guarantee against loss.

A supervisory employee who is also a listed principal of the firm and an NFA Associate must approve all promotional materials before they are used to ensure that they do not deceive the public or contain any material misstatements of fact. The firm's written procedures should say who will be responsible for reviewing and approving the promotional material. The review and approval must be documented in writing.

Your firm must maintain all promotional material for five years from the date of last use and must keep it readily accessible for the first two years. Furthermore, Members must maintain supporting documentation for all statements, claims and performance results included in promotional materials.

Customer Orders

Managing Customer Accounts

FDMs, and their Associates, may not exercise trading authority over a customer account for which the FDM is, or is offering to be the counterparty.

Offsetting Transactions

An FDM may not carry offsetting positions in a customer account and must offset the positions on a first-in, first-out basis. A customer may, however, direct the FDM to offset same-size transactions even if there are older transactions of a different size, but the transaction must be offset against the oldest transaction of that size.

Price Adjustments

An FDM is prohibited from directly or indirectly canceling or adjusting the price of executed customer orders, with two exceptions.

The first exception is where the adjustment is done to settle a customer complaint in the favor of the customer. An FDM may also adjust orders even in the absence of individual customer complaints if the customer were adversely affected by a technical problem with the Member's trading platform. However, an FDM may not adjust prices on customer orders that benefitted from the error and may not cherry-pick which account to adjust.

The second exception is where the FDM uses exclusively "straight-through processing" such that it automatically (without human intervention and without exception) enters into an offsetting position in its name with another counterparty and that counterparty cancels or adjusts the price at which the position was executed.

An FDM that adjusts an executed customer order based on an adjustment by a counterparty must provide notice to the affected customer within fifteen minutes of the customer order having been executed. The notice must state that the Member intends to cancel or adjust the price of the order to reflect the adjusted price provided by the Member's counterparty and must include documentation of the cancelation or price adjustment from the counterparty.

The Member must either cancel or adjust all customer orders executed during the same time period and in the same currency pair or option regardless of whether they were buy or sell orders. All cancellations or adjustments of executed customer orders must be reviewed and approved in writing by a listed principal of the Member who is also an associated person. Such review must include the documentation from the counterparty and must be provided to NFA. Finally, any Member that may elect to cancel or adjust executed customer orders based upon liquidity provider price changes must

provide customers with written notice of that fact prior to the time the customer first engage in forex transactions with the Member.

Price Slippage

In the context of FDM trading systems, price slippage sometimes occurs between the time a customer first submits an order until the time the order reaches the FDM's system. When this occurs, some FDMs immediately requote the customer the current price and require the customer to confirm that it still wants to place the order at the requoted price. Other FDMs have built in slippage parameters that permit execution of the order if the slippage is within the established parameters. FDMs that use slippage parameters must apply the slippage settings uniformly regardless of the direction the market has moved. If the FDM requotes prices when the market moves against it, it must requote prices when the market moves in its favor. In addition, FDMs must ensure that the customer is aware of how the FDM handles these price change circumstances prior to trading with the FDM by providing full written disclosure of its policy, including the information outlined in NFA's Interpretive Notice, "NFA Compliance Rule 2-36: Requirements for Forex Transactions".

Electronic Funding of Customer Accounts

FDMs are prohibited from permitting customers to fund their forex (and futures) accounts with a credit card or other electronic funding mechanisms that draw funds from to a credit card. FDMs may accept customer deposits from electronic payment mechanisms that draw funds directly from a customer's account at a financial institution provided that the FDM is able to distinguish, prior to accepting funds, between an electronic funding method that draws funds from a customer's account at a financial institution and a traditional credit card, and be able to reject the credit card before accepting customer funds. See Notice to Members I-14-33.

Recordkeeping and Reporting

Each Member must maintain books and records necessary to conduct their business and FDMs must provide forex customers with timely and accurate notice of the status of their accounts. FDMs are required to maintain an office in the continental United States, Alaska, Hawaii or Puerto Rico that is responsible for preparing and maintaining CFTC and NFA required financial records and reports and be under the supervision of a listed principal and registered AP of the FDM who resides in that office.

Customer Statements

Written Confirmations

NFA Compliance Rule 2-36(k) requires Members and Associates to provide daily and monthly written confirmations of all account activity to customers that comply with CFTC Regulation 5.13. Account activity includes offsetting transactions, rollovers, deliveries, option exercise, option expirations, trades that have been reversed or adjusted, and monetary adjustments. In those cases where a customer's account had either no open positions at the end of the monthly statement or any changes to the account balance since the prior statement, the Member is must still provide a monthly statement at least once every three months.

The monthly confirmation must clearly show the following:

- The open retail forex transactions with prices at which acquired;
- The net unrealized profits or losses in all open retail forex transactions marked to the market;
- Any money, securities or other property carried with the FDM; and
- A detailed accounting of all financial charges and credits to such retail forex accounts during the monthly reporting period, including money, securities or property received from or disbursed to such customer and realized profits and losses.

If the customer engages in forex options transactions, the monthly confirmations must also show:

- All forex options purchased, sold, exercised, or expired during the monthly reporting period, identified by the underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;
- All open forex option positions marked to the market and the amount each position is in the money, if any;
- Any money, securities or other property carried with the FDM; and

- A detailed accounting of all financial charges and credits to such retail forex account(s) during the monthly reporting period, including money, securities and property received from or disbursed to such customer, premiums charged and received, and realized profits and losses.

Daily Confirmation Statements

Each FDM must, not later than the next business day after any retail forex or forex option transaction, furnish the retail customer with the following:

For retail forex transactions:

- A written confirmation, including all offsetting transactions executed during the same business day and the rollover of an open retail forex transaction to the next business day;

For retail forex option transactions:

- The retail forex customer's account identification number;
- A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the forex transaction;
- The strike price, the underlying retail forex transaction or underlying currency, the final exercise date of the forex option purchased or sold, the date the forex option transaction was executed; and
- Upon the expiration or exercise of any forex option, the date of such occurrence, a description of the forex option involved, and in the case of exercise, the details of the retail forex or physical currency positions which resulted, including, if applicable, the final trading date of the retail forex transaction underlying the option.

Members may provide confirmations and monthly/quarterly statements on-line or by other electronic means with the customer's prior consent and after obtaining a signed acknowledgement from the customer that it received the prescribed disclosure regarding, among other things, the electronic medium to be used, the duration of the effectiveness of the consent, and any fees associated with such delivery. The FDM should maintain a hard copy of the customer's signed consent and acknowledgement.

Supervision

Members and their Associates that have supervisory responsibilities must diligently supervise the Member's forex business. This includes supervising the activities of the Member's employees and agents.

FDM Chief Compliance Officer Requirement

Each FDM must designate one person who must be a principal to serve as Chief Compliance Officer ("CCO"). Additionally, each FDM must prepare an annual report that meets the requirements of CFTC Regulation 3.3(e). Each FDM must provide the annual report to the FDM's Board of Directors or Senior Officer and must submit the annual report to NFA within 60 days after the FDM's fiscal year end. The annual report must include a certification by the FDM's CCO or chief executive officer that to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete.

Members must establish, maintain, and enforce written supervisory procedures reasonably designed to detect and prevent violations of NFA rules. NFA has provided Members with guidance on minimum standards of supervision through interpretive notices issued under NFA Compliance Rule 2-9(a), which are listed at the end of this Guide. While these interpretive notices do not directly apply to forex transactions, the principles included in them are equally applicable to those transactions.

NFA recognizes that, given the differences in the size and complexity of the operations of NFA Members, there must be some degree of flexibility in determining what constitutes "diligent supervision" for each firm. Your firm should tailor its procedures to its unique circumstances as long as they meet certain minimum requirements.

All Members subject to NFA's forex requirements should have procedures to address the following:

- Screening prospective Associates to ensure that they are qualified and to determine the extent of the supervision the person would require if hired;
- Screening persons with whom the Member intends to do forex business to determine if they are required to be registered with the Commission and, if so, to ensure they are Members of NFA;
- Monitoring communications with the public, including sales solicitations and web sites, and approving promotional material;
- Reviewing disclosures provided to customers to ensure that they are understandable, timely, and provide sufficient information;

- Reviewing the information obtained from and provided to customers solicited by the firm and its employees to ensure that the appropriate information has been obtained and provided;
- Handling and resolving customer complaints;
- Reviewing and analyzing the forex activity in customer accounts, including discretionary customer accounts; and
- Handling customer funds, including accepting security deposits.

An adequate supervisory program also includes annual on-site visits to branch offices and guaranteed IBs that conduct forex business on behalf of the Member. Your firm should consider the characteristics of the branch office or guaranteed IB when deciding how often to visit it and what the visit should cover. These characteristics include the amount of business it generates; the number of customer complaints; the training and experience of its personnel; and the frequency and nature of the problems that originate from that office or IB.

Members must also ensure that their employees are properly trained to perform their duties, to abide by CFTC and NFA requirements, and to handle customer accounts. How formal the training program is will depend on the size of the firm and the nature of its business.

Electronic Trading Systems

The NFA Interpretive Notice entitled "Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems" provides guidance as to what steps an FDM must take to fulfill its supervisory responsibilities with regard to the firm's electronic trading system. CFTC Rule 5.18 also provides certain trading and operational standards that must be followed by FDMs.

The requirements also apply to an FDM that uses another entity's trading system through a "white-labeling" agreement.

An FDM must adopt and enforce written procedures to address security, capacity, credit and risk-management controls, recordkeeping, and trade integrity with regard to its electronic trading platform. Each year, a principal who is also registered as an associated person of the Member must certify that the firm has met the relevant standards for their electronic trading system.

<u>Security</u>
Members must protect the reliability and confidentiality of customer orders and account information, and the procedures must assign responsibility for overseeing the process to one or more individuals who understand how it

works and who are capable of evaluating whether the process complies with the firm's procedures.

Capacity

Members must maintain adequate personnel and facilities for the timely and efficient delivery of customer orders and reporting of executions and for the timely and efficient execution of customer orders. In addition, the procedures must be designed to handle customer complaints about order delivery, execution, and reporting and to handle those complaints in a timely manner.

Credit and Risk-Management Controls

Members must have procedures reasonably designed to prevent customers from entering into trades that create undue financial risks for the Member or the Member's other customers. FDMs who have trading platforms that claim to automatically liquidate positions before an account goes into a deficit must set the automatic liquidation levels high enough so that positions will be closed out at prices that will prevent the account from going into a deficit position under all but the most extraordinary market conditions.

Recordkeeping

The Member's trading system must record and maintain essential information regarding customer orders and account activity. The electronic system must record and maintain information regarding:

- Transaction records for orders (which must include the types of information contained on orders for exchange-traded commodities, such as the date and time an order was received) and rollovers;
- Account records showing the financial status of each account; and
- Time and price records similar to those maintained by the futures exchanges.

The Member's trading system must also produce daily exception reports showing price adjustments and orders filled outside of the price range displayed by the system when the customer order reached the platform. The Member should review these reports for suspicious or unjustifiable activity.

The Member's trading system must also produce daily reports showing each price change on the platform, the time of the change to the nearest second, and the trading volume at that time and price as well as the method used to determine the price for any forex transactions.

Trade Integrity

Members must have in place procedures reasonably designed to ensure the integrity of trades placed on their trading platforms. Including three areas of particular concern:

- Pricing. Trading platforms must be designed to provide bids and offers that are reasonably related to current market prices and conditions. Customer market or limit orders must be executed at or near the price at which orders of other customers during the same time period have been executed.

- Slippage. Electronic trading platforms should be designed to ensure that any slippage is based on real market conditions. FDMs that utilize slippage parameters to execute orders must ensure that the slippage settings are applied uniformly regardless of the way the market has moved. In addition, the FDM must have written procedures that outline the manner it applies any slippage parameters and requoting practices. Furthermore, if an FDM advertises "no slippage," the platform should be designed to execute a market order at the price displayed when the order is entered and to execute a stop order at the stop price.

- Rollovers. The platform should be designed to ensure that automatic rollovers comply with the terms disclosed in the customer agreement.

Trading Standards

FDMs must have in place and enforce procedures to ensure that:

- Executable customer orders are executed before proprietary orders of the FDM or related persons (see CFTC Regulation 5.18(a)(2) for further information on related persons);

- The Member does not disclose that it is holding the order of another person, unless necessary to execute the order;

- The Member does not carry a forex account for persons related to another FDM, nor do persons related to the Member have forex accounts with other FDMs, unless the related persons have written authorization from their firm and their firm receives certain records regarding their trading.

Dues

For FDMs, NFA Bylaw 1301(e) imposes a surcharge that is graduated according to the firm's gross annual revenue from forex transaction. Profits and losses from proprietary trades are **not** to be included in gross revenue for this purpose.

A Member becomes responsible for these dues when it first offers to be a counterparty to a forex transaction or accepts a forex trade. NFA will send the member an invoice for the minimum dues ($125,000) minus any amount already paid for that year. Thereafter, NFA assesses dues on the firm's membership renewal date and will base them on the FDM's most recent certified financial statement. All FDMs must file their certified financial statements with NFA even if NFA is not the firm's designated self-regulatory organization (DSRO). If NFA is not the DSRO, the firm may file the statement either in hard copy or through Winjammer, in which case the firm will need to contact NFA for a personal identification number. All other FDMs must file through Winjammer.

The following table should help you determine how much your firm will owe in annual dues.

Amount of Annual Gross Revenue from Forex Transactions	Annual Dues if NFA is the DSRO	Annual Dues if NFA is not the DSRO*
$5 million or less	$125,000	$25,000
More than $5 million but not more than $10 million	$250,000	$25,000
More than $10 million, but not more than $25 million	$500,000	$25,000
More than $25 million but not more than $50 million	$750,000	$25,000
More than $50 million	$1,000,000	$25,000

*Provided the FDM's DSRO has agreed to examine the FDM's forex activities.

Annual membership dues of non-FDM NFA Members (i.e., IBs, CPOs and CTAs that are designated as a forex firm) is $2,500.

The final component of Bylaw 1301(e) is an assessment fee of $.002 on all order segments processed through NFA's Forex Transaction Reporting Execution Surveillance System (FORTRESS). An "order segment" is a record of any line of data associated with an order. Each of these is a separate segment: (1) an order is added, (2) an order is modified, (3) an

order is cancelled or filled. In addition, any unfilled open orders that are carried over by the system are considered a new order segment the next day.

Security Deposits

FDMs must collect security deposits from customers. FDMs also must collect deposits from their ECP counterparties. These security deposits help protect FDMs against losses from defaulting customers and ECP counterparties, which, if significant enough, could cause an FDM to become insolvent and put the funds of its other, non-defaulting customers and ECP counterparties at risk. The security deposit must be at least:

(i) Two percent of the notional value of transactions in the British pound, the Swiss franc, the Canadian dollar, the Japanese yen, the Euro, the Australian dollar, the New Zealand dollar, the Swedish krona, the Norwegian krone, and the Danish krone (the ***major currency*** group);
(ii) Five percent of the notional value of other currency transactions;
(iii) For short options, the above amount plus the premium received; and
(iv) For long options, the entire premium.

NFA's Executive Committee may temporarily increase these requirements under extraordinary market conditions.[1] FDMs may, of course, charge their customers higher security deposits.

An FDM is required to notify NFA's Compliance department immediately if the FDM changes the security deposit amount it requires customers or ECP counterparties to deposit. An FDM may not, however, decrease the required security deposit amount below the highest minimum security deposit amount as applicable to a particular currency under NFA Financial Requirements Section 12.

Additionally, an FDM is prohibited from acting as a counterparty to an ECP acting as a dealer unless that dealer[2] collects and maintains from its customers and ECP counterparties security deposit amounts for forex equal

[1] Due to market conditions in January 2015, NFA's Executive Committee increased the minimum security deposits required to be collected and maintained by FDMs. See Notice to Members I-15-04 and I-15-07.

[2] A dealer is any person that holds itself out as a dealer in forex or in retail commodity transactions; makes a market in forex or in retail commodity transactions; regularly enters into forex or retail commodity transactions with counterparties as an ordinary cause of business for its own account; or engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in forex or in retail commodity transactions. See 2(c)(2)(D) of the Act for a description of retail commodity transactions. Dealers include other FDMs, as well as any entity acting in this manner that is not required to be an FDM. Dealer does not include a bank or trust company regulated in a money center country which has in excess of $1 billion in regulatory capital.

or greater to the amounts required by NFA Financial Requirements Section 12.

If the currency pair includes currencies with different security deposit requirements, the Member must collect the higher percentage amount. Therefore, if the transaction pairs the U.S. dollar with a non-major currency, the security deposit is based on the foreign currency and the Member must therefore collect 5% for the entire transaction.

Example:

Currency Pair	***Security Deposit***
EUR/USD	2%
CND/JPY	2%
CND/BRL	5%
USD/MXN	5%
BRL/MXN	5%

For short options, the FDM must collect the security deposit plus the premium the customer received. For long options, the FDM must simply collect the entire premium from the customer.

The FDM must calculate the security deposit when the positions are initiated and at least daily thereafter. The firm must make this daily calculation while customer positions are open. In other words, your firm may not calculate the security deposit while the positions are being rolled over if your firm treats its customers as flat during that period. NFA requirements, however, do not prohibit FDMs from computing security deposits more than once a day.

In addition to cash, an FDM may accept instruments described in CFTC Rule 1.25 as collateral for customers' security deposits. The collateral must be in the FDM's possession and control and is subject to the haircuts in CFTC Rule 1.17.

An FDM must collect additional security deposits from a retail forex customer, or liquidate the customer's positions, if the amount of the customer's security deposits maintained with the FCM is not sufficient to meet the requirements set forth above.

Minimum financial requirements help protect customers and market participants by requiring Members to maintain enough capital to remain solvent and meet their financial obligations.

FDM Capital Requirements

Each FDM must maintain adjusted net capital ("ANC") (as defined by CFTC Regulation 5.7) equal to or in excess of the greatest of:

(i) $20,000,000; or
(ii) The amount required by (i) plus:
  (a) 5% of all liabilities the FDM owes to customers (as customer is defined in Compliance Rule 2-36(q(2)) and to eligible contract participant counterparties that are not an affiliate of the FDM and are not acting as a dealer exceeding $10,000,000; and
  (b) 10% of all liabilities the FDM owes to eligible contract participant counterparties that are an affiliate of the FDM not acting as a dealer; and
  (c) 10% of all liabilities eligible contract participant counterparties that are an affiliate of the FDM and acting as a dealer owe to their customers (including eligible contract participant), including liabilities related to retail commodity transactions as described in Section 2(c)(2)(D) of the Act; and
  (d) 10% of all liabilities the FDM owes to eligible contract participant counterparties acting as a dealer that are not an affiliate of the FDM, including liabilities related to retail commodity transactions as described in Section 2(c)(2)(D) of the Act; or
(iii) For FCMs, any other amount required under NFA Financial Requirements Section 1.

An FDM may not include assets held by an affiliate (unless approved by NFA) or an unregulated person in its current assets for purposes of determining its ANC under CFTC Regulation 5.7. An affiliate is any person that controls, is controlled by, or is under common control with the FDM. An unregulated person is defined as any person that is not one of the following:

(i) A bank or trust company regulated by a U.S. banking regulator;
(ii) A broker-dealer registered with the SEC and a member of FINRA;
(iii) An FCM registered with the CFTC and a Member of NFA;
(iv) An RFED registered with the CFTC and a Member of NFA;

(v) A bank or trust company regulated in a money center country and which has in excess of $1 billion in regulatory capital; or

(vi) Any other entity approved by NFA.

An FDM for which NFA is the DSRO that is required to file any document with or give any notice to its DSRO under CFTC Regulation 5.6, 5.7 and 5.12, or is required to file any financial report or statement with any other securities or futures self-regulatory organization of which it is a Member shall also file one copy of these documents or give notice to NFA at its Chicago office no later than the date such document or notice is due to be filed with the CFTC or the self-regulatory organization.

An FDM may not use an affiliate (unless approved by NFA) or an unregulated person, as defined above, to cover currency positions for purposes of CFTC Regulation 1.17(c)(5).

Net Capital Calculation

The formula for determining Adjusted Net Capital is:

Current Assets – Liabilities – Charges Against Net Capital = Adjusted Net Capital

CFTC Regulation 1.17 defines these terms (except that NFA's Financial Requirements Section 11 limits current assets as described above). Your firm's financial statements must be prepared according to generally accepted accounting principles (GAAP). In some cases, however, CFTC Regulation 1.17 is more restrictive than GAAP. You must always follow CFTC Regulation 1.17 when calculating your firm's net capital.

FDMs must prepare CFTC Form 1-FR in accordance with CFTC Regulation 1.16 and file it with NFA and its DSRO on a monthly basis. An independent public accountant must certify the financial statement prepared as of the firm's fiscal year end. Although the Form 1-FR contains a number of different financial statements, only the applicable statements need to be prepared for each filing.

Unaudited Form 1-FR must contain the following:

- Statement of financial condition;
- Statement of the computation of minimum capital requirements;
- Statement of changes in ownership equity; and
- Statement of changes in liabilities subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement (if applicable).

The certified year-end Form 1-FR must also include:

- The statement of income and
- The statement of cash flows.

The certified statement must also contain any necessary footnote disclosures, an auditor's opinion covering all statements, and an auditor's supplemental report on material inadequacies.

NFA must receive unaudited Form 1-FRs within 17 business days after the statement date. NFA must receive audited Form 1-FRs within 90 days after the statement date. Please note that if the FDM/RFED is registered as an FCM, NFA must receive audited Form 1-FRs within 60 days after the statement date.

The instructions for the Form 1-FR generally say where to classify items on the form. When the CFTC adopted Form 1-FR, however, registered firms generally did not conduct forex business. As a result, the form does not clearly indicate how to account for some items related to the forex activities of FDMs.

FDMs should account for their forex activities on the Form 1-FR form as follows: On the asset side of the balance sheet, funds received from customers for forex transactions should be classified as "Retail Forex Aggregate Assets". On the liability side, the firm should classify amounts owed to customers under accounts payable on the line designated as "Obligation to Retail FX Customers". Any forex activities with ECP clients should still be classified as 'other" and forex income (retail and ECP) should still be classified under "other income".

Capital Charges for Forex Positions

FDMs must take a capital charge on all uncovered proprietary positions, although the firm may net on-exchange and off-exchange positions when determining the firm's uncovered position. Uncovered off-exchange proprietary positions are subject to a haircut charge that depends on the underlying currency. Net balances in British pounds, Japanese yen, Canadian dollars, Swiss francs and the Euro are subject to a 6% charge. Net balances in all other currencies are subject to a 20% charge.

When calculating its net position, your firm may include foreign currency held in deposit, investment, or trading accounts at banks, FCMs, broker-dealers, and similar entities if the following conditions are met:

- The foreign currency is unencumbered and immediately accessible, making it available to satisfy your firm's obligations to its customers; and

- Your firm treats the foreign currency in the account consistently for capital purposes (i.e., the foreign currency is always included when determining the firm's net position).

An FDM, however, may not include positions at an affiliate or an unregulated person when calculating its net position for purposes of the capital charge.

Subordinated Loan Agreements

Proceeds from subordinated loan agreements may be included in the firm's capital if the agreement meets the requirements in CFTC Regulation 1.17(h) and has been filed with and approved by the firm's DSRO. The firm must submit a signed copy of the agreement to its DSRO at least 10 days prior to the proposed effective date. A subordination agreement must include the name and address of the lender, state the business relationship of the lender to the firm, and indicate whether the firm carried funds or securities for the lender at or about the time firm files the proposed agreement. If a lender contributes 10 percent or more of the firm's capital, then the firm must list the lender as a principal.

In addition, the Member's DSRO must approve prepayments or special prepayments, and the Member must give its DSRO notice of accelerated maturity. The Member must also submit amendments to existing subordination agreements to its DSRO for approval. Finally, NFA has developed standardized Cash Subordination Loan Agreements and Secured Demand Notes. You can obtain copies of these agreements from NFA's web site at www.nfa.futures.org.

Assets Covering Liabilities to Retail Forex Customers

An FDM must calculate the amount owed to forex customers and hold assets, solely of the type permitted under CFTC Rule 1.25, equal to or in excess of the amount at certain qualified institutions.

For assets held in the United States, a qualifying institution is:

(i) a bank or trust company regulated by a U.S. banking regulator;

(ii) a broker-dealer registered with the U.S. Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority; or

(iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA.

For assets held in a money center country as defined in CFTC Regulation 1.49, a qualifying institution is:

(i) a bank or trust company regulated in the money center country which has in excess of $1 billion in regulatory;

(ii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA.

To calculate the amount owed, you add up the net liquidating values of each forex account that liquidates to a positive number, using the fair market value for each asset other than open positions and the current market value for open positions.

Assets held in a money center country are not eligible to cover the amount owed to customers unless the FDM and the qualifying institution have entered into an agreement, acceptable to NFA, authorizing the institution to provide NFA and the CFTC with information regarding the FDM's accounts and to provide that information directly to NFA or the CFTC upon their request. This signed agreement must be filed with NFA.

Each FDM must instruct each qualifying institution to report the balances in the FDM's account(s) to NFA or a third party designated by NFA in the form and manner prescribed by NFA on a daily basis. The qualifying institution must comply with this request in order to be deemed an acceptable qualifying institution to hold assets covering an FDM's liabilities to retail forex customers.

Any FDM funds that are not held in a qualifying institution as noted may not be considered as part of assets covering liabilities to forex customers.

Assets at Affiliates and Unregulated Entities
A FDM may not include assets held by an affiliate (unless approved by NFA) or an unregulated person in its current assets for purposes of determining its adjusted net capital under CFTC Rule 5.7. An affiliate is any person that controls, is controlled by, or is under common control with the FDM.

Financial Books and Records

FDMs are required to prepare and maintain ledgers or other similar records that summarize each transaction affecting the Member's assets, liability, income, expense and capital accounts and include appropriate references to supporting documents. These ledgers must be classified into the account classification subdivisions on the CFTC Form 1-FR. Generally, the firm's records would include basic accounting documents such as a General Ledger and a Cash Receipts and Disbursements Journal.

In order to demonstrate compliance with the capital requirements, an FDM should make and maintain daily records showing the transactions executed that day and their effect on the firm's obligations to its customers. The record

of daily trades should show, at a minimum, the date, time, currency pair, price, and size of each transaction; commissions and fees; and the person for whom the transaction was made. For options, the record should include whether the option is a put or a call, the strike price, the delta, and the premium. The record of obligations to customers should include the gross profits and the gross losses to customers, the firm's open currency exposures to customers, the sum of the customers' cash balances, and the net liquidating value of all customer accounts combined.

The individuals responsible for preparing an FDM's books and records must be under the ultimate supervision of a listed principal and registered associated person of the Member. Such principal is also responsible for researching and selecting the independent public accountant that certifies the firm's annual financial statements.

Financial Internal Controls

Prior to conducting business as an FDM, a firm must demonstrate to NFA that the Member has adequate internal financial controls. The FDM must demonstrate that its system of internal controls provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The FDM must also demonstrate that its system of internal financial controls has no material weaknesses and that it is adequate for establishing and maintaining internal controls over financial reporting by the Member.

An FDM may satisfy this obligation by obtaining an internal control report that is prepared and certified by an independent public accountant who is registered under Section 102 of the Sarbanes-Oxley Act. The internal control report shall contain, at a minimum, a detailed explanation of the examination performed by the accountant and a representation by the accountant that it has examined and tested the FDM's system of internal controls and that the controls comply with the above standards.

If NFA believes that a Member's internal controls are inadequate at any time, NFA's Compliance Director may require it to provide to NFA an internal control report that is prepared and certified by an independent public accountant who is registered under Section 102 of the Sarbanes-Oxley Act. The internal control report shall meet the above standards.

Forex Reporting Requirements

Each FDM must be able to properly account for all funds received from and owed to customers. FDMs should prepare a daily computation showing the total amount of customer funds on deposit, the total amount of customer open positions, and the total amount due to customers.

The firm must file with NFA three report types: Daily electronic reports showing liabilities to customers and other financial and operational information; monthly operational and risk management reports; and quarterly reports that contain the most-recent performance disclosures required under CFTC Regulation 5.5(e)(1)(i) – (iii).

The daily reports must be prepared each business day, and must be filed by noon on the following business day. The monthly reports must be filed within 17 business days after the end of each month for which the report is prepared. Similarly, the quarterly reports must be filed within 17 business days after the end of each quarter for which the report is prepared.

Submitting these reports certifies that the person filing it is a supervisory employee that is, or is under the ultimate supervision of, a listed principal who is also an NFA Associate, is duly authorized to bind the FDM, and that all information in the report is true, correct, and complete. Any report that is filed after it is due will incur a late fee of $1,000 for each business day that it is late.

Risk Management Program

Each FDM is required to establish, maintain and enforce a Risk Management Program designed to monitor and manage the risks associated with their forex activities. Each FDM must have a supervisory system in place to ensure that the Risk Management Program is being diligently followed by all appropriate personnel. See the Interpretive Notice entitled, "NFA Compliance Rule 2-36: Risk Management Program for Forex Dealer Members."

Written Risk Management Program

Each FDM must adopt written policies and procedures that describe the risk management program and those policies and procedures must be approved in writing by the firm's governing body. The firm must also ensure that any materials changes to the policies and procedures are approved in writing by the firm's governing body. The Risk Management Program must include procedures for the timely distribution of the written Risk Management Program to relevant supervisory personnel. The FDM is required to maintain records of the persons whom the Risk Management Program is distributed to along with the date of distribution. A copy of the Risk Management Program must be submitted to NFA and/or the CFTC upon request.

Risk Management Unit and Periodic Risk Exposure Reports

Each FDM must establish and maintain a risk management unit (RMU). The (RMU) must have sufficient authority; qualified personnel; and financial, operational and other resources to carry out the firm's Risk Management Program. The (RMU) should report directly to the firm's senior management, and must be independent from those employees involved (including in a supervisory capacity) in pricing, trading, sales, marketing, advertising, and solicitation activities of the FDM (collectively business trading unit).

The RMU also must provide to FDM senior management and its governing body quarterly written risk exposure reports, which set forth all applicable risk exposures of the FDM, breaches of any established risk limits, any recommended or completed changes to the Risk Management Program, the recommended time frame for implementing recommended changes; and the status of any incomplete implementation of previously recommended changes to the Risk Management Program.

An FDM must also immediately provide senior management and its governing body with an interim risk exposure report any time the FDM detects a material change in its risk exposure. An FDM must provide a copy of all quarterly and interim risk exposure reports to NFA through WinJammer™ within five business days of providing the reports to the FDM's senior management and governing body.

Elements of the Risk Management Program and Tolerance Limits

The Risk Management Program must include policies and procedures to monitor and manage the following risks: market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, counterparty risk, liabilities to retail forex customers risk, technological risk, capital risk, and any other applicable risk. See the Interpretive Notice entitled, "NFA Compliance Rule 2-36: Risk Management Program for Forex Dealer Members" for a detailed explanation of these risks.

The Risk Management Program must set risk tolerance limits for each of these risks. The Risk Management Program must discuss the underlying methodology used in setting these limits; as well as any policies and procedures governing exceptions to these limits and detecting and reporting breaches to appropriate management. Each FDM's senior management (on a quarterly basis) and governing body (on an annual basis) should review and approve the risk tolerance limits.

Stress Testing

The FDM's RMU must require the FDM to conduct stress tests under extreme but plausible conditions of all positions in the proprietary account and in each counterparty account (both retail customers and ECPs) at least on a semi-monthly basis.

Affiliate Risk

The Risk Management Program also must consider all risks posed by the FDM's affiliates, including the risks affiliates pose when the FDM functions as the primary risk manager and/or liquidity provider for affiliates, the FDM's other business lines and any other trading activity engaged in by the FDM.

Review and Testing

The FDM must ensure that the Risk Management Program is reviewed and tested at least annually or upon any material change in the FDM's business that is reasonably likely to alter the FDM's risk profile. The review and testing should be conducted by qualified internal audit staff that are independent of the business trading unit, or by a qualified third party audit service, which reports to FDM staff that are independent of the business trading unit. The review must include an analysis of adherence to, and the effectiveness of, the risk management policies and procedures, and any recommendations for modifications to the Risk Management Program. The results of the review must be reported to and reviewed by the FDM's senior management and governing body.

The FDM must document all internal and external reviews, and testing of the Risk Management Program including the date of the review or test; the

results; any identified deficiencies; the corrective action taken; and the date the corrective action was taken.

Recordkeeping

The FDM must maintain copies of all written policies and procedures, changes to the policies and procedures and all required approvals for the period required by CFTC Regulation 1.31.

Public Disclosures

Each FDM must make the following information available on its website and must update the information as necessary to keep it accurate but at least on an annual basis:

- The name, title, business background, areas of responsibility, and the nature of the duties of each person that is a listed principal of the FDM;
- A discussion of the FDM's significant types of business activities and product lines, the approximate percentage of the FDM's assets and capital used in each type of activity;
- A discussion of the FDM's business on behalf of its customers, including types of customers, markets and currencies traded, international businesses, prime brokers and/or liquidity providers used, and the FDM's policies and procedures concerning the choice of bank depositories, custodians and counterparties to permitted transactions under CFTC Regulation 1.25;
- A discussion of the materials risks associated with the FDM acting as a counterparty to ECPs as defined in Section 1a(18) of the Commodity Exchange Act, including any risks created by the FDM's affiliates and other ECPs acting as dealers;
- A discussion of any pending or completed material administrative, civil, enforcement or criminal complaints or actions filed against the FDM during the last three years;
- The disclosure required under CFTC Regulation 5.5(e) for each of the most recent four calendar quarters during which the FDM maintained retail forex customer accounts; and
- The following financial information:
    - A summary schedule of the FDM's adjusted net capital; net capital and excess net capital; all computed in accordance with the CFTC Regulation 5.7 and reflecting balances as of the month-end for the most recent 12 months;
    - The Statement of Financial Condition and all related footnotes that are part of the FDM"s most current certified annual reports pursuant to CFTC Regulation 1.16; and
    - The total customer liability as reported each day to NFA on the Forex Financial Report for the last 12 months.

  (The FDM must clearly notate any financial information that has been amended.)

Anti-Money Laundering Programs

Federal law imposes significant anti-money laundering requirements on financial institutions, including NFA Members. NFA Compliance Rule 2-9(c) requires each Member registered as an FCM or IB to have an anti-money laundering program, and an interpretive notice to that rule explains the standards the program must meet.

Developing Policies, Procedures, and Internal Controls

Members must establish and implement policies, procedures, and internal controls reasonably designed to assure compliance with anti-money laundering provisions of the Bank Secrecy Act (BSA) and related regulations. A firm's procedures must cover four key areas:

- identifying customers;
- detecting and reporting suspicious activity;
- hiring qualified staff; and
- recordkeeping.

Customer Identification Program

The anti-money laundering program must include procedures to obtain information about the customer and to verify its identity. Unlike NFA's "know your customer" requirements, these requirements apply to all customers, not just individuals.

A Member must obtain the following minimum information before it transacts business (e.g., introduces or opens an account or acts as counterparty) with a customer:

- for individuals, the customer's name, date of birth, and personal or business address;
- for customers that are not individuals, the customer's name, principal place of business, local office or other physical location;
- for U.S. persons, the customer's social security number or taxpayer identification number; and
- for non-U.S. persons, a U.S. taxpayer identification number, a passport number and the issuing country, an alien identification card number, or the number and issuing country for any other government-issued document that shows nationality or residence and contains a photograph or similar safeguard.

In addition to obtaining this minimum information, the Member must take steps to verify the customer's identity. You do not have to verify the customer's identity before transacting business with the customer but must

do so within a reasonable time before or after the first business transaction. The procedures for verifying the customer's identity should:

- describe those situations where documents will be used to verify identity and list the documents that will be used (e.g., drivers license, passport, certified articles of incorporation, government-issued business license);
- explain when non-documentary methods will be used either instead of or in addition to looking at documents and describe those non-documentary methods (e.g., contacting the customer at the telephone number or address provided by the customer, comparing the information provided by the customer with information from a consumer reporting agency, checking references with other financial institutions);
- include a mechanism for identifying customers that may be high money laundering or terrorist financing risks (such as customers from particular geographic locations);
- provide a means for notifying customers that the Member will ask them for information to verify identity; and
- describe what the Member will do if it cannot form a reasonable belief that it knows the customer's true identity.

If a Member cannot identify a customer that is not an individual using its normal procedures, the Member may need to obtain information about the individual with authority or control over the account. Your firm's customer identification procedures should describe those situations where the firm will obtain this information.

Members are not required to determine whether a document used to verify identity is valid. If a document appears to be a forgery or there is other evidence of fraud, however, your firm must decide whether it has enough information to form a reasonable belief that it knows the customer's true identity. The same is true if the information provided by the customer is inconsistent (e.g., a home address in New York and a telephone number in California or a birth date that isn't consistent with the customer's apparent age).

A Member may rely on another U.S. financial institution to conduct the customer identification procedures. The law provides a safe harbor if the BSA requires the other financial institution to have an anti-money laundering program, that financial institution enters into a contract with the Member agreeing to annually certify that it has implemented an anti-money laundering program and will perform the required steps, and reliance is reasonable under the circumstances. Your firm's procedures must describe any circumstances where it will rely on another financial institution.

Although the safe harbor does not apply unless all of the above conditions are satisfied, firms may also choose to rely on U.S. financial institutions in other reasonable circumstances. Your firm should conduct a risk-based analysis before relying on those institutions.

Detecting and Reporting Suspicious Activity

A Member's anti-money laundering program must also include systems and procedures designed to detect and report suspicious activity, such as transactions that do not appear to have a business or other lawful purpose, that are unusual for the customer, or that cannot be reasonably explained. Your firm and appropriate personnel should know the nature of the customer's business and the customer's purpose in entering into the transactions. Your firm should also provide employees with examples of activities that raise red flags.

Each firm's program must require employees to promptly notify specified firm personnel of potentially suspicious activity. The appropriate supervisory personnel must then evaluate the activity and decide whether to report it to the firm's DSRO or the Financial Crimes Enforcement Network (FinCEN).

Hiring Qualified Staff

A Member's procedures should describe its policies for ensuring that employees in areas susceptible to money laundering or terrorist financing are properly qualified and trained. Your firm should perform background checks on key employees to screen those employees for criminal and disciplinary histories.

Recordkeeping

The procedures must also describe the firm's recordkeeping policies regarding information and documents obtained during the identification process. Members must keep records of all identifying information obtained from customers, including a copy or detailed description of each document viewed and a description and the results of each non-documentary method used. Your firm must keep records of the information obtained from customers for five years after the account is closed and of the information used to verify identify for five years after those records are made.

Other Requirements

Compliance Officer

Each Member must designate a qualified individual or individuals to monitor the firm's day-to-day compliance with its anti-money laundering program. For example, a firm with a full-time compliance officer could designate that compliance officer. The designated individual may not be involved in any functional areas where money laundering or terrorist financing could occur and must ultimately report to senior management. This individual does not, however, have to be a principal of the firm or an Associate Member of NFA.

Employee Training Program

Members must provide ongoing training to employees who are involved in areas where money laundering or terrorist financing could occur. These employees should receive annual or more frequent training on their firm's policies and procedures, federal laws, and NFA requirements. Your firm should maintain records to show it has met this training requirement.

Independent Audit Function

A Member's anti-money laundering program must be audited at least annually. The audit may be conducted by internal audit staff or other internal employees if the employees conducting the audit do not have other anti-money laundering responsibilities, are not involved in areas where money laundering or terrorist financing could occur, and are independent of staff with these responsibilities or involved in these areas (e.g., the internal audit staff may not report to a compliance officer responsible for monitoring the firm's day-to-day compliance with the program). In the alternative, the Member may hire an independent outside party with experience in this type of auditing.

The audit staff or outside auditor should document the audit and report the results of the audit to the firm's senior management or to an internal audit committee or department. If the audit reveals any deficiencies, the audit staff, outside auditor, senior management, or internal committee or department should follow up to ensure that the firm has addressed and corrected those deficiencies.

Bulk Assignment or Liquidation

Under NFA Compliance Rule 2-40, an FDM that executes a bulk assignment or liquidation of customer positions or a bulk transfer of customer accounts must follow certain procedures to ensure that its customers and NFA have sufficient information and notice of the assignment, liquidation, or transfer. These procedures are described in the Interpretive Notice entitled "Procedures for the Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business." The following discussion summarizes these procedures, but is not a substitute for reading the Interpretive Notice.

Bulk Assignments and Transfers

Assignor's Obligations

A Member must exercise due diligence in selecting an assignee. In particular, the firm must:

1. check the assignee's status to ensure that it is an authorized counterparty under the Act and that it is not prohibited from acting as a counterparty under the Act, and

2. conduct a reasonable investigation to determine that the assignee intends and is financially able to honor its commitments to the firm's customers as a result of the assignment or transfer.

Your firm may not assign open positions to an entity that is not an authorized counterparty. Other reasons for rejecting a proposed assignee are that the proposed assignee will not cooperate with your investigation, you cannot obtain adequate and reliable information, or you have any other reason to question the assignee's motives or financial standing.

Members must also obtain each customer's written consent or provide customer with a notice of the assignment or transfer. The notice must give the reason for the assignment or transfer (e.g., the firm is going out of business). The notice must also (at a minimum):

1. inform customers that they are not required to accept the proposed assignment or transfer but can direct the FDM to instead liquidate their positions;

2. include the name and contact information of an individual at your firm to contact with questions or to liquidate positions;

3. provide the name and contact information for the assignee firm, as well as the name of an individual at that firm; and

4. instruct customers that their failure to respond to the notice by a specified date, not less than seven days from the date of the notice,

will result in a default action (generally either assignment to the assignee or, if assignment is not permitted under the customer agreement, liquidation of the open positions and return of the remaining funds).

The notice must also include any other material information. For example, if customer positions are being assigned to a firm that is not an NFA Member, the notice must include the disclosure language prescribed in the Interpretive Notice.

A Member should notify NFA's Compliance Department of the proposed assignment or transfer as early as possible. Your firm must send NFA a copy of the customer notice before sending it to customers.

Assignee's Obligations

If an FDM or an IB obtains customer positions or credit balances as assignee, it may not accept orders initiating new positions until it has obtained personal and financial information from the customer and provided the disclosures required under NFA and CFTC Rules (discussed above). If the assignor is also an FDM or an IB, however, your firm may obtain the necessary customer information from the assignor. The assignee/transferee FDM must also receive the required signed acknowledgement within sixty days of such assignment or transfer. The only exception to this requirement is when the assignee/transferee IB introduces the retail forex customer to the same FDM as the assignor/transferor IB and the assignee/transferee IB has clear written evidence that the assignor/transferor IB provided the retail forex customer with these disclosures with respect to the FDM.

Finally, the assignee/transferee FDM or IB must provide the required disclosures with respect to the transferee FDM even in those situations when the assignment or transfer is at the retail forex customer's request.

Bulk Liquidations

Prior to any bulk liquidation of customer positions the FDM must notify NFA and either obtain the express written consent of its customers or provide them with prior notice. The customer notice must be provided to NFA before it is sent to the customers and must, at a minimum:

1. provide the reason for the liquidation;

2. inform the customer that as of a particular date (not less than seven day after the date of the notice) the FDM will liquidate all open positions and close the customer's account; and

3. include the name and contact information of an individual at the FDM to contact with questions regarding the liquidation.

These requirements are only applicable for bulk liquidations and not when a customer's position is being liquidated due to a lack of margin funds.

Records

Depending upon the circumstances, FDM assignor/transferor must provide NFA with all pertinent records pertaining to the transaction. Prior to the transaction, the FDM must provide:

Representative copies of the customer agreements;

- A list of the affected accounts; including:
    - Customer names;
    - Account numbers; and
    - Account values as of the end of the previous day:
- If an assignment or transfer, documentation regarding the FDM's investigation of the assignee/transferee's status as an authorized counterparty and its financial ability to honor its commitments to the customers.

Immediately after the bulk assignment, liquidation or transfer, the assignee/transferee must provide a list of the affected accounts and the value of each account as of the date of the transaction.

Ceasing Business

In order to permit NFA to oversee an orderly winding down, an FDM must notify NFA seven days before it ceases its forex business.

All NFA Members must comply with the federal privacy laws and NFA's business continuity and disaster recovery requirements.

Privacy Rules

The CFTC's regulations restrict a Member's right to disclose nonpublic, personally identifiable financial information about customers and other consumers. These restrictions only apply to information about individuals who obtain financial products or services from the Member primarily for personal, family, or household purposes.

Members must have policies and procedures that describe their administrative, technical, and physical safeguards for protecting customer records and information. The procedures should also address the Member's policies for disclosing nonpublic, personally identifiable financial information and for notifying customers of those policies.

A Member must provide a customer with a privacy notice when the customer first establishes a relationship with the Member and annually after that. Your firm must also notify other consumers of its privacy policies before disclosing nonpublic personal information about those consumers.

Every Member must provide a privacy notice that identifies the categories of nonpublic personal information the Member collects and describes the Member's policies and procedures for protecting that information.

If your firm does not disclose nonpublic personal information to nonaffiliated third parties, or does so in very limited circumstances, the only additional information you must include in the privacy notice is a statement that the firm shares nonpublic personal information with third parties as permitted by law. CFTC Regulations describe the limited circumstances where Members may disclose the information without having to provide a more detailed privacy notice (e.g., when necessary to process a transaction or provide a service to the customer or with the customer's specific consent).

If your firm discloses nonpublic personal information to nonaffiliated third parties for other reasons, the notice must inform the customer that the firm discloses or reserves the right to disclose nonpublic personal information to nonaffiliated third parties and that the customer has the right to opt out of that disclosure. The notice must identify the categories of nonpublic personal information that your firm discloses and the categories of affiliates and non-affiliates that your firm will disclose the information to. The notice must inform the customer that it may opt out of the disclosure and must provide a reasonable means for the customer to exercise its opt out right.

Members must provide amended privacy and opt out notices before disclosing information to unaffiliated third parties if either the information or the third party does not fall within a previously identified category.

All privacy and opt out notices should be in writing. Members may deliver these notices electronically if the customer agrees.

Business Continuity and Disaster Recovery Plan

Each Member must establish and maintain a written business continuity and disaster recovery plan. The plan must be reasonably designed to enable the Member to continue operating, to reestablish operations, or to transfer its business with minimal disruption.

Your firm's business continuity plan should address the following areas:

- establishing back-up facilities, systems, and personnel in locations that are geographically separated from the firm's primary facilities, systems, and personnel;
- backing up or copying essential documents and storing the information off-site;
- considering the impact of third-party business interruptions and identifying ways to minimize that impact; and
- developing a communication plan to contact essential parties such as employees, customers, counterparties, vendors, and disaster recovery specialists.

Each Member must update its plan when necessary and must periodically review the plan and keep a record of the review. Your firm should distribute and explain the plan to key employees, communicate the essential parts of the plan to all employees, and maintain copies of the plan at one or more off-site locations that are readily accessible to key employees.

Additionally, if your firm is an FDM, your firm must provide NFA, and keep current, the name and contact information for all key management employees, as identified by NFA, in the form and manner prescribed by NFA. FDMs must also provide NFA with the location/address and telephone number of its primary and alternative disaster recovery sites.

BYLAWS

Bylaw 301. Requirements and Restrictions

[Effective dates of amendments: April 11, 1983; July 28, 1983; September 16, 1983; June 4, 1985; August 1, 1985; January 28, 1986; December 30, 1986; July 29, 1988; January 1, 1990; October 29, 1991; August 16, 1993; September 21, 1993; April 1, 1997; March 10, 1998; March 18, 2003; July 21, 2003; September 15, 2003; December 15, 2004; November 18, 2009; September 30, 2010; October 1, 2011; July 18, 2012; January 1, 2013; and February 20, 2014.]

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(j) Eligibility to Conduct Forex Activities.

(i) Any Member that is registered with the Commission as an FCM, RFED, IB, CPO, or CTA and engages in forex activities must be approved as a forex firm by NFA.

(1) In addition to being approved by NFA as a forex firm, an RFED or an FCM that is a Forex Dealer Member must also be designated by NFA as an approved Forex Dealer Member.

(A) No FCM may be designated as an approved Forex Dealer Member unless such FCM provides NFA with satisfactory evidence that it meets the requirements in NFA Financial Requirements Section 11.

(ii) Any person associated with a Member that is registered with the Commission as an FCM, RFED, IB, CPO, or CTA and engages in forex activities must be approved as a forex associated person by NFA in order to engage in forex activities on behalf of such Member.

(iii) No Member may be approved as a forex firm unless at least one of its principals is registered as an "associated person" and approved as a forex associated person.

(1) If any Member that has been approved as a forex firm fails to have at least one principal that is registered as an "associated person" and approved as a forex associated person, then NFA shall deem such failure as a request to have the approval of the Member as a forex firm withdrawn and shall notify that Member accordingly.

(iv) Any request for designation as an approved Forex Dealer Member or approval as a forex firm or forex associated person must be filed electronically through NFA's Online Registration System.

(v) Any individual applying for designation as an approved Forex Dealer Member or approval as a forex firm or forex associated person shall not be granted designation as an approved Forex Dealer Member or approval as a forex firm or forex associated person unless:

(1) The applicant has satisfied the proficiency requirements under NFA Registration Rule 401(a) or 401(e) and:

(A) NFA has received satisfactory evidence that the applicant has taken and passed the Retail Off-Exchange Forex Examination (Series 34) on a date which is no more than two years prior to the date the application is received by NFA;

(B) NFA has received satisfactory evidence that the applicant has taken and passed the Retail Off-Exchange Forex Examination (Series 34) and since the date the applicant last passed such examination, there has been no period of two consecutive years during which the applicant has not been either registered as a FB, AP or principal of an FCM, RFED, IB, CTA, CPO, or LTM; or

(C) the applicant was duly registered under the Act as a FB, AP or sole proprietor FCM, IB, CTA, CPO or LTM on May 22, 2008, and there has been no period of two consecutive years since May 22, 2008, during which the applicant has not been registered as a FB, AP or principal of an FCM, RFED, IB, CTA, CPO or LTM.

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Bylaw 306. Forex Dealer Members.

[Adopted effective June 28, 2002. Effective dates of amendments: December 1, 2003; June 13, 2005; February 13, 2007; October 18, 2010; and October 1, 2011.]

Members of NFA are Forex Dealer Members if they are the counterparty or offer to be the counterparty to forex transactions (as defined in Bylaw 1507(b).

Bylaw 1301. Schedule of Dues and Assessments.

[Effective dates of amendments: January 10, 1983; July 27, 1983; November 29, 1983; February 27, 1984; April 1, 1984; June 4, 1985; January 28, 1986; July 1, 1988; May 22, 1989; July 1, 1989; January 1, 1990; July 1, 1991; July 1, 1993; January 1, 1994; July 1, 1994; January 1, 1995; January 1, 1998; July 1, 1999; July 1, 2001; October 15, 2001; January 1, 2002; April 1, 2002; July 1, 2002; September 9, 2002; January 1, 2003; September 15, 2003; December 1, 2003; July 1, 2004; January 1, 2005; April 30, 2006; December 4, 2006; October 1, 2007; January 1, 2008; September 11, 2009; and October 18, 2010; November 1, 2010; January 1, 2011, February 1, 2012; June 12, 2012; February 21, 2013; April 1, 2013; and October 1, 2014.]

Subject to the provisions of Article XII, dues and assessments of Members shall be as follows:

* * *

(e) Forex Dealer Members.

(i) Each Forex Dealer Member shall pay to NFA annual dues in the following amounts based on the FDM's gross annual revenue from its latest certified financial statement:

(a) FDMs with gross annual revenue of $5,000,000 or less shall pay annual dues of $125,000;

(b) FDMs with gross annual revenue of more than $5,000,000 but not more than $10,000,000 shall pay annual dues of $250,000;

(c) FDMs with gross annual revenue of more than $10,000,000 but not more than $25,000,000 shall pay annual dues of $500,000;

(d) FDMs with gross annual revenue of more than $25,000,000 but not more than $50,000,000 shall pay annual dues of $750,000; and

(e) FDMs with gross annual revenue exceeding $50,000,000 shall pay annual dues of $1,000,000, provided, however, that a Forex Dealer Member for which NFA does not serve as the DSRO, as defined in NFA Financial Requirements Section 1, shall pay annual dues in the amount under section (b)(ii) of this bylaw plus a surcharge of $23,500 if the Forex Dealer Member’s DSRO, or the entity to which the DSRO has delegated such responsibilities, agrees in writing to examine the Forex Dealer Member’s forex activities to ensure compliance with all applicable NFA requirements as part of the annual examination of the Forex Dealer Member. These dues replace the dues that would otherwise be payable based on the Forex Dealer Member's registration category.

(ii) Each Forex Dealer Member shall pay an assessment of $.002 on each order segment submitted by the Forex Dealer Member to NFA's Forex Transaction Reporting Execution Surveillance System. For purposes of this requirement, an order segment is a record of any line of data associated with an order, and includes when an order is added, modified, cancelled or filled.

* * *

Bylaw 1507. Definitions.

[Effective dates of amendments: February 1, 1988; January 1, 1990; and February 13, 2007.]

Except as provided in this Bylaw, the terms used in these Bylaws shall have the same meaning as in the Articles.

(a) The term "futures" as used in these Bylaws shall include:

(1) option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts;

(2) foreign futures and foreign options transactions made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's rules;

(3) leverage transactions as that term is defined in the Commission's rules; and

(4) security futures products, as that term is defined in Section 1a(32) of the Act.

(b) The term "forex" means:

(1) foreign currency futures and options and any other agreement, contract, or transaction in foreign currency that is offered or entered into on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis;

(2) offered to or entered into with persons that are not eligible contract participants as defined in Section 1a(12) of the Act; and

(3) not executed on or subject to the rules of a contract market, a derivatives transaction execution facility, a national securities exchange registered pursuant to Section 6(a) of the Securities Exchange Act of 1934, or a foreign board of trade.

Provided, however, that the term does not include any security that is not a security futures product, any contract of sale that results in actual delivery within two days, or any contract of sale that creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in

connection with their line of business, unless the transaction involves a futures contract or an option.

Such contracts are hereby declared to be proper subjects of NFA regulation and oversight (see Article XVIII, paragraph (k)).

COMPLIANCE RULES

Rule 2-23. FCM and RFED Responsibility for Guaranteed Member IBs.

[Adopted effective February 27, 1984. Effective date of Amendments: October 18, 2010]

Any Member FCM or RFED which enters into a guarantee agreement, pursuant to CFTC Regulation 1.10(j), with a Member IB, shall be jointly and severally subject to discipline under NFA Compliance Rules for acts and omissions of the Member IB which violate NFA requirements occurring during the term of the guarantee agreement.

Rule 2-24. Qualification Testing of Associated Persons.

[Adopted effective May 4, 1984. Effective date of Amendments: January 1, 1990; September 9, 2002; and October 18, 2010.]

(a) Testing Requirement.

Subject to the provisions of paragraphs (d) and (e) of Bylaw 301, no FCM, RFED, IB, CPO, CTA or LTM Member of NFA shall have associated with it (See Bylaw 301(b)) any person who has not satisfied the applicable proficiency requirements set forth in Registration Rule 401.

(b) Limitations on Activities.

(i) No person registered with NFA as an Associate of an NFA Member (See Bylaw 301(b)) who has satisfied the requirements of Registration Rule 401 by the use of an alternative to the National Commodity Futures Examination (Series 3) that requires the person to limit their futures-related activities may exceed such limits.

(ii) No Member of NFA shall have associated with it (See Bylaw 301(b)) any person who has satisfied the requirements of Registration Rule 401 by the use of an alternative to the National Commodity Futures Examination (Series 3) that requires the person to limit their futures-related activities and who exceeds such limits.

Rule 2-36. Requirements for Forex Transactions.
[Adopted effective June 28, 2002. Effective dates of amendments: December 1, 2003; November 30, 2005; February 13, 2007; October 25, 2007; April 1, 2009; October 18, 2010; October 1, 2011; and January 4, 2016.]

(a) General Prohibition

No Forex Dealer Member shall engage in any forex transaction that is prohibited under the Commodity Exchange Act.

(b) Fraud and Related Matters

No Forex Dealer Member or Associate of a Forex Dealer Member engaging in any forex transaction shall:

(1) Cheat, defraud or deceive, or attempt to cheat, defraud or deceive any other person;

(2) Willfully make or cause to be made a false report, or willfully to enter or cause to be entered a false record in or in connection with any forex transaction;

(3) Disseminate, or cause to be disseminated, false or misleading information, or a knowingly inaccurate report, that affects or tends to affect the price of any foreign currency;

(4) Engage in manipulative acts or practices regarding the price of any foreign currency or a forex transaction;

(5) Willfully submit materially false or misleading information to NFA or its agents with respect to forex transactions;

(6) Embezzle, steal or purloin or knowingly convert any money, securities or other property received or accruing to any person in or in connection with a forex transaction.

(c) Just and Equitable Principles of Trade

Forex Dealer Members and their Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their forex business.

(d) Doing Business with Non-Members

No Member may carry a forex account for, accept a forex order or account from, handle a forex transaction for or on behalf of, receive compensation (directly or indirectly) for forex transactions from, or pay compensation (directly or indirectly) for forex transactions to any non-Member of NFA, or

suspended Member, that is required to be registered with the Commission as an FCM, RFED, IB, CPO, or CTA in connection with its forex activities and that is acting in respect to the account, order, or transaction for a forex customer, a forex pool or participant therein, a forex client of a commodity trading advisor, or any other person unless:

(1) the non-Member is a member of another futures association registered under Section 17 of the Act or is exempted from this prohibition by Board resolution; or

(2) the suspended Member is exempted from this prohibition by the Appeals Committee.

(e) Supervision

Each Forex Dealer Member shall diligently supervise its employees and agents in the conduct of their forex activities for or on behalf of the Forex Dealer Member. Each Associate of a Forex Dealer Member who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's forex activities for or on behalf of the Forex Dealer Member.

(f) BASIC Disclosure

When a customer first opens an account and at least once a year thereafter, each Forex Dealer Member shall provide each customer with written information regarding NFA's Background Affiliation Status Information Center (BASIC), including the web site address.

(g) Filing Promotional Materials with NFA.

The Compliance Director may require any Forex Dealer Member for any specified period to file copies of all promotional material with NFA for its review and approval at least 10 days prior to its first use or such shorter period as NFA may allow. The Compliance Director may also require a Forex Dealer Member to file for review and approval copies of promotional material prepared or used by some or all of the non-Members it is responsible for under Section (d).

(h) Hypothetical Results

Any Member who uses promotional material that includes a measurement or description or makes any reference to hypothetical forex transaction performance results that could have been achieved had a particular trading system of the Member or Associate been employed in the past must comply with Compliance Rule 2-29(c) and the related Interpretive Notice as if the performance results were for transactions in on-exchange futures contracts.

(i) Customer Accounts

A Forex Dealer Member must notify NFA prior to commencing customer business.

(j) FDM Chief Compliance Officer

Each Forex Dealer Member shall designate one principal to serve as Chief Compliance Officer (CCO). Each CCO must prepare an annual report that meets the requirements of CFTC Regulation 3.3(e) and must provide the annual report to the Forex Dealer Members Board of Directors or Senior Officer. Each Forex Dealer Member must submit the annual report to NFA within 60 days after the Forex Dealer Member's fiscal year end. The annual report must include a certification by the Forex Dealer Member's CCO or chief executive officer that to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete.

(k) CFTC Forex Regulations

Any Member or Associate that violates any of CFTC Regulations 5.2, 5.5, 5.10 through 5.19 or 5.23, as applicable, shall be deemed to have violated an NFA Requirement.

(l) Customer Information and Risk Disclosure

(1) Each Member or Associate shall, in accordance with the provisions of this subsection, obtain information from all customers and provide such customers with disclosure of the risks of forex trading.

(2) The Member or Associate shall exercise due diligence to obtain the information and shall provide the risk disclosure at or before the time a customer first opens a forex trading account with or introduced by the Member or first authorizes the Member to exercise discretionary trading authority in a forex trading account. For an active customer who is an individual, the Member acting as the counterparty to the customer shall contact the customer, at least annually, to verify that the information obtained from the customer under paragraph (3) remains materially accurate, and provide the customer with an opportunity to correct and complete the information. Whenever the customer notifies the Member acting as the counterparty to the customer of any material changes to the information, a determination must be made as to whether additional risk disclosure is required to be provided to the customer based on the changed information. If an FCM or IB Member introduces the customer's account or a CTA Member exercises discretionary trading

authority over the account, then the Member acting as the counterparty to the customer must notify that FCM, IB or CTA Member of the changes to the customer's information. The Member or Associate who currently solicits and communicates with the customer is responsible for determining if additional risk disclosure is required to be provided based on the changed information. In some cases, this may be the Member introducing or controlling the account; in other cases, it may be the Member acting as the counterparty to the customer account.

(3) The information to be obtained from the customer shall include at least the following:

(i) The customer's true name and address, and principal occupation or business;

(ii) For customers who are individuals, the customer's current estimated annual income and net worth. For all other customers, the customer's net worth or net assets and current estimated annual income, or where not available, the previous year's annual income;

(iii) For individuals, the customer's approximate age or date of birth;

(iv) An indication of the customer's previous investment, futures trading and forex trading experience; and

(v) Such other information deemed appropriate by such Member of Associate to disclose the risks of futures trading to the customer.

(4) The risk disclosure to be provided to the customer shall include at least the following:

(i) The Risk Disclosure Statement required by CFTC Regulation 5.5, if the Member is required by that Regulation to provide it; and

(ii) The Risk Disclosure Statement required by CFTC Regulation 4.34, if the Member is required by that Regulation to provide it.

(5) In the case of an account introduced by a Member or an account for which a Member CTA exercises discretionary trading authority, and except as otherwise provided in paragraph (2), it shall be the responsibility of the Member soliciting the account to comply with this

Rule. However, if the account is introduced or managed by a non-NFA Member, it shall be the sole responsibility of the Member acting as a counterparty to the transaction to comply with this rule.

(6) A Member or Associate shall be entitled to rely on the customer (as the sole source) for the information obtained under paragraph (3) and shall not be required to verify such information.

(7) Each Member or Associate shall make or obtain a record containing the information obtained under paragraph (3) at the time the information is obtained. If a customer declines to provide the information set forth in paragraph (3), the Member or Associate shall make a record that the customer declined, except that such a record need not be made in the case of a non-U.S. customer. Each Member shall keep copies of all records made pursuant to this Rule in the form and for the period of time set forth in CFTC Regulation 1.31.

(8) Each Member shall establish and enforce adequate procedures to review all records made pursuant to this Rule and to supervise the activities of its Associates in obtaining customer information and providing risk disclosure.

(9) Nothing herein shall relieve any Member from the obligation to comply with all applicable CFTC Regulations and NFA Requirements.

(m) Risk Management Program

Each Forex Dealer Member must establish, maintain and enforce a Risk Management Program as prescribed by NFA's Board of Directors.

(n) Public Disclosure by Forex Dealer Members

Each Forex Dealer Member must make the following information readily available on its website and update such information as is necessary, but no less frequently than on an annual basis:

(i) The name, title, business background, areas of responsibility, and the nature of the duties of each person that is a listed principal of the Forex Dealer Member;

(ii) A discussion of the significant types of business activities and product lines engaged in by the Forex Dealer Member, and the approximate percentage of the Forex Dealer Member's assets and capital used in each type of activity;

(iii) A discussion of the Forex Dealer Member's business on behalf of its customers, including types of customers, markets and currencies traded, international businesses, prime brokers and/or liquidity providers used, and the Forex Dealer Member's policies and procedures concerning the choice of bank depositories, custodians and counterparties to permitted transactions under CFTC Regulation 1.25;

(iv) A discussion of the material risks associated with the Forex Dealer Member acting as a counterparty to eligible contract participants (ECP) as defined in Section 1a(18) of the Act, including any risks created by the Forex Dealer Member's affiliates and other ECPs acting as dealers;

(v) A discussion of any pending or completed material administrative, civil, enforcement or criminal complaints or actions filed against the Forex Dealer Member during the last three years;

(vi) A summary schedule of the Forex Dealer Member's adjusted net capital; net capital and excess net capital; all computed in accordance with CFTC Regulation 5.7 and reflecting balances as of the month-end for the most recent 12 months;

(vii) The Statement of Financial Condition and all related footnotes that are part of the Forex Dealer Member's most current certified annual report pursuant to CFTC Regulation 1.16;

(viii) The total customer liability as reported each day to NFA on the Forex Financial Report for the last 12 months; and

(ix) The disclosure, displayed in a prominent manner, required by CFTC Regulation 5.5(e) for each of the most recent four calendar quarters during which the Forex Dealer Member maintained retail forex customer accounts.

If any of the financial information required under (iv)-(vii) is amended, the Forex Dealer Member must clearly notate that it has been amended.

(o) Scope

This rule governs forex transactions as defined in Bylaw 1507(b).

(p) Exemptions for Certain Transactions

Transactions entered into through a Member to hedge currency exposure from positions on regulated exchanges are exempt from all forex requirements except sections (b) and (c) of this rule if the on-exchange transactions are handled by the same Member.

(q) Definitions

For purposes of this rule:

(1) "Affiliate" means any person that controls, is controlled by, or is under common control with the Forex Dealer Member;

(2) "Customer" means a counterparty that is not an eligible contract participant as defined in Section 1a(18) of the Act; and

(3) "Dealer" means any person that (i) holds itself out as a dealer in forex or in retail commodity transactions as defined in 2(c)(2)(D) of the Act; (ii) makes a market in forex or in retail commodity transactions as described in 2(c)(2)(D) of the Act; (iii) regularly enters into forex or in retail commodity transactions as described in 2(c)(2)(D) of the Act with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in forex or in retail commodity transactions as described in 2(c)(2)(D) of the Act. Dealer includes other FDMs, as well as any entity acting in this manner that is not required to be an FDM.

Rule 2-38. Business Continuity and Disaster Recovery Plan.
[Adopted effective April 7, 2003. Effective date of Amendments: October 18, 2010 and September 30, 2013.]

(a) Each Member must establish and maintain a written business continuity and disaster recovery plan that outlines procedures to be followed in the event of an emergency or significant business disruption. The plan shall be reasonably designed to enable the Member to continue operating, to reestablish operations, or to transfer its business to another Member with minimal disruption to its customers, other Members, and the commodity futures markets.

(b) Each FCM Member and FDM must provide NFA with, and keep current, the name of and contact information for key management employees, as identified by NFA, in the form and manner prescribed by NFA. In addition, each FCM Member and FDM must provide NFA with the location/address and telephone number of its primary and alternative disaster recovery sites.

(c) Each IB, CPO and CTA Member must provide NFA with the name of and contact information for an individual who NFA can contact in the event of an emergency, and the Member must update that information upon request. Each IB, CPO, and CTA Member that has more than one principal must also provide NFA with the name of and contact information for a second individual who can be contacted if NFA cannot reach the primary contact, and the Member must update that information upon request. These individuals must be authorized to make key decisions in the event of an emergency.

Rule 2-39. Soliciting, Introducing, or Managing Forex Transactions or Accounts.

[Adopted effective September 15, 2005. Effective dates of amendments: February 13, 2007; June 5, 2007; September 21, 2007; October 25, 2007; April 1, 2009; October 18, 2010; and October 1, 2011.]

(a) Members and Associates who solicit customers, introduce customers to a counterparty, or manage accounts on behalf of customers in connection with forex transactions shall comply with Sections (a), (b), (c), (d), (e), (h), and (l) of Compliance Rule 2-36.

(b) For purposes of this rule, the term "customer" means a person that is not an eligible contract participant as defined in Section 1a(12) of the Act and includes persons who participate in pooled accounts.

Rule 2-40. Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business.

[Adopted effective February 16, 2007. Effective dates of amendments: June 5, 2007 and November 15, 2011.]

(a) Bulk Assignment, Transfer, or Liquidation. A Forex Dealer Member or an IB may not enter into a bulk assignment, transfer, or liquidation of forex positions or accounts unless the assignment, liquidation, or transfer complies with CFTC Regulation 5.23 and the procedures established by NFA in the Interpretive Notice entitled *NFA Compliance Rule 2-40: Procedures for Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business*.

(b) Ceasing Business. A Forex Dealer Member must notify NFA by e-mail or facsimile seven calendar days prior to ceasing its forex business.

(c) Definitions. For purposes of this rule, the term "forex" has the same meaning as in Bylaw 1507(b) and the term "customer" means a counterparty that is not an eligible contract participant as defined in 1(a)(12) of the Act.

Rule 2-43. Forex Orders

[Adopted effective May 15, 2009. Effective dates of amendments: June 12, 2009 and September 11, 2009.]

(a) Price Adjustments

(1) A Forex Dealer Member may not cancel an executed customer order or adjust a customer account in a manner that would have the direct or indirect effect of changing the price of an executed order except when:

(i) the cancellation or adjustment is favorable to the customer and is done as part of a settlement of a customer complaint, provided, however, that individual customer complaints are not required in order for a Forex Dealer Member to favorably adjust all customer orders that were adversely affected by technical problems with the trading platform or by similar factors beyond the customer's control and that are unrelated to market price movements (except that the Forex Dealer Member must adjust all customer orders adversely affected and may not, except as provided in section (a)(1)(ii), adjust any order that received a favorable price due to the problem); or

(ii) if a Forex Dealer Member exclusively uses straight-through processing such that the Forex Dealer Member automatically (without human intervention and without exception) enters into the identical but opposite transaction with another counterparty (creating an offsetting position in its own name) and that counterparty cancels or adjusts the price at which the position was executed.

(2) With regard to cancellations or adjustments made pursuant to section (a)(1)(ii), a Forex Dealer Member must:

(i) provide written notification to the customer within fifteen (15) minutes of the customer order having been executed that it is seeking to cancel the executed order or adjust the customer's account to reflect the adjusted price provided by the Forex Dealer Member's counterparty, as applicable, and the written notification must include documentation of the cancellation or adjustment from the Forex Dealer Member's counterparty; and

(ii) either cancel or adjust all executed customer orders executed during the same time period and in the same

currency pair or option regardless of whether they were buy or sell orders.

(3) Notwithstanding section (a)(2)(ii), a Forex Dealer Member may choose to honor transactions in which customer orders resulted in profits for the customers but must do so with regard to all similarly situated customers.

(4) Cancellations and adjustments to executed customer orders must be reviewed and approved by a listed principal that is also an NFA Associate. Such review and approval must be documented by a written record, must include any supporting documentation, and must be provided to NFA in the manner requested by NFA.

(5) A customer order is considered executed upon the earlier of the customer receiving notification of the execution price from the Forex Dealer Member or when the position established by such order is identified in the customer's account, whether electronically or otherwise.

(6) If a Forex Dealer Member may cancel or adjust an executed order under the circumstances provided for in section (a)(1)(ii), the FDM must provide customers with written notice that the Forex Dealer Member may cancel or adjust executed customer orders based upon liquidity provider price changes prior to the time they first engage in forex transactions with the Forex Dealer Member. The notice may be included in a customer agreement.

(7) Any provision in a customer agreement or any contract between a Forex Dealer Member and a customer that reserves to the Forex Dealer Member the right to make price or equity adjustments to a customer account except as allowed by this Rule is prohibited.

(b) Offsetting Transactions

Forex Dealer Members may not carry offsetting positions in a customer account but must offset them on a first-in, first-out basis. At the customer's request, an FDM may offset same-size transactions even if there are older transactions of a different size but must offset the transaction against the oldest transaction of that size.

Rule 2-48. Forex Dealer Member Daily Trade Data Reports
[Adopted effective February 4, 2011. Effective date of amendment: December 2, 2013.]

(a) Each Forex Dealer Member must file a daily electronic report of trade data with NFA using the electronic filing method required by NFA. The report must contain the data and be in the format prescribed by NFA. Each Forex Dealer Member must prepare the report as of 5:00 P.M. Eastern time and file it with NFA by 11:59 P.M. Eastern time the same day.

(b) By submitting the report, the FDM certifies that the report is true and complete.

(c) Each daily report that is filed after it is due shall be accompanied by a late fee of $1,000 for each business day that it is late. Payment and acceptance of the fee does not preclude NFA from filing a disciplinary action for failure to comply with the deadlines imposed in this rule.

FINANCIAL REQUIREMENTS

Section 1. Futures Commission Merchant Financial Requirements.

[Effective dates of amendments: December 17, 1999; October 31, 2000; January 10, 2001; December 31, 2001; September 30, 2004; July 31, 2006; February 13, 2007; October 31, 2008; March 31, 2010; October 18, 2010; and June 30, 2013.]

(a) Each NFA Member that is registered or required to be registered with the Commodity Futures Trading Commission (hereinafter "CFTC") as a Futures Commission Merchant (hereinafter "Member FCM") must maintain "Adjusted Net Capital" (as defined in CFTC Regulation 1.17) equal to or in excess of the greatest of:

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(vi) For a Member FCM that acts as counterparty to a forex transaction (as forex is defined in Bylaw 1507(b) but excluding the counterparty limitation contained in Bylaw 1507(b)(2)), $20,000,000, except that Forex Dealer Members must meet the requirements in Financial Requirements Section 11.

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(d) No Member FCM may use forex customer equity as capital or may record forex customer equity as an asset without recording a corresponding liability. For purposes of this requirement:

(i) Forex customer means any person who is not an eligible contract participant, as defined in Section 1a(12) of the Act, who enters into forex transactions (as defined in Bylaw 1507(b)) with the FCM or any of its affiliates described in section 2(c)(2)(B)(ii)(III); and

(ii) Forex customer equity means money, securities, and property received by the FCM or any of its affiliates described in section 2(c)(2)(B)(ii)(III) to margin, guarantee, or secure forex transactions between a forex customer and the FCM or any of its affiliates described in section 2(c)(2)(B)(ii)(III) or accruing to a forex customer as a result of such transactions.

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Section 11. Forex Dealer Member Financial Requirements.
[Adopted Effective December 1, 2003. Effective dates of amendments: November 30, 2005; July 31, 2006; August 9, 2006; February 13, 2007; March 31, 2007; May 7, 2007; December 17, 2007; December 21, 2007; October 31, 2008; November 30, 2009; October 1, 2010; October 18, 2010; February 1, 2011; and January 4, 2016.]

(a) Each Forex Dealer Member must maintain "Adjusted Net Capital" (as defined in CFTC Regulation 5.7) equal to or in excess of the greatest of:

(i) $20,000,000;

(ii) the amount required by subsection (a)(i) above plus:

(aa) 5% of all liabilities the Forex Dealer Member owes to customers (as customer is defined in Compliance Rule 2-36(g)(2)) and to eligible contract participant counterparties that are not an affiliate of the Forex Dealer Member and are not acting as a dealer exceeding $10,000,000; and

(bb) 10% of all liabilities the Forex Dealer Member owes to eligible contract participant counterparties that are an affiliate of the Forex Dealer Member not acting as a dealer; and

(cc) 10% of all liabilities eligible contract participant counterparties that are an affiliate of the Forex Dealer Member and acting as a dealer owe to their customers (including eligible contract participants), including liabilities related to retail commodity transactions as described in Section 2(c)(2)(D) of the Act; and

(dd) 10% of all liabilities the Forex Dealer Member owes to eligible contract participant counterparties acting as a dealer that are not an affiliate of the Forex Dealer Member, including liabilities related to retail commodity transactions as described in Section 2(c)(2)(D) of the Act;

or

(iii) For FCMs, any other amount required by Section 1 of these Financial Requirements.

(b) A Forex Dealer Member may not include assets held by an affiliate (unless approved by NFA) or an unregulated person in its current assets for purposes of determining its adjusted net capital under CFTC Regulation 5.7.

For purposes of this section and section (c), a person is unregulated unless it is:

(i) bank or trust company regulated by a U.S. banking regulator;

(ii) a broker-dealer registered with the U.S. Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority;

(iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;

(iv) a retail foreign exchange dealer registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;

(v) a bank or trust company regulated in a money center country which has in excess of $1 billion in regulatory capital; or

(vi) any other entity approved by NFA.

(c) A Forex Dealer Member may not use an affiliate (unless approved by NFA) or an unregulated person, as defined in section (b), to cover its currency positions for purposes of CFTC Regulation 5.7(b)(2)(v)(A).

(d) An FDM for which NFA is the DSRO that is required to file any document with or give any notice to its DSRO under CFTC Regulations 5.6 [Maintenance of minimum financial requirements by retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions], 5.7 [Minimum financial requirements for retail foreign exchange dealers and future commission merchants offering or engaging in retail forex transactions] and 5.12 [Financial reports of retail foreign exchange dealers], or is required to file any financial report or statement with any other securities or futures self-regulatory organization of which it is a member shall also file one copy of such document with or give such notice to NFA at its Chicago office no later than the date such document or notice is due to be filed with or given to the CFTC or the self-regulatory organization.

(e) For purposes of this rule:

(1) "Forex" has the same meaning as in Bylaw 1507(b);

(2) "Forex Dealer Member" has the same meaning as in Bylaw 306;

(3) As used in section (c), "currency" refers to open foreign currency positions with counterparties regardless of whether those counterparties are eligible contract participants as defined in Section 1a(18) of the Act;

(4) "Affiliate" means any person that controls, is controlled by, or is under common control with the Forex Dealer Member; and

(5) "Dealer" means any person that (i) holds itself out as a dealer in forex or in retail commodity transactions as described in 2(c)(2)(D) of the Act; (ii) makes a market in forex or in retail commodity transactions as defined in 2(c)(2)(D) of the Act; (iii) regularly enters into forex or in retail commodity transactions as described in 2(c)(2)(D) of the Act with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in forex or in retail commodity transactions as described in 2(c)(2)(D) of the Act. Dealer includes other FDMs, as well as any entity acting in this manner that is not required to be an FDM. For purposes of (a)(ii)(dd) above, dealer does not include a bank or trust company regulated in a money center country which has in excess of $1 billion in regulatory capital.

Section 12. Security Deposits for Forex Transactions with Forex Dealer Members.

[Adopted Effective December 1, 2003. Effective dates of amendments: June 6, 2004; September 15, 2005; February 13, 2007; May 14, 2008; October 31, 2008; November 30, 2009; October 18, 2010; and January 4, 2016.]

(a) Each Forex Dealer Member shall collect and maintain the following minimum security deposit for each forex transaction between the Forex Dealer Member and its customers and/or eligible contract participant counterparties:

(i) 2% of the notional value of transactions in the British pound, the Swiss franc, the Canadian dollar, the Japanese yen, the Euro, the Australian dollar, the New Zealand dollar, the Swedish krona, the Norwegian krone, and the Danish krone;

(ii) 5% of the notional value of other transactions;

(iii) for short options, the above amount plus the premium received; and

(iv) for long options, the entire premium.

(b) The Executive Committee may temporarily increase these requirements under extraordinary market conditions.

(c) For purposes of this rule:

(1) "Forex" has the same meaning as in Bylaw 1507(b); and

(2) "Forex Dealer Member" has the same meaning as in Bylaw 306.

(d) In addition to cash, a Forex Dealer Member may accept those instruments described in CFTC Rule 1.25 as collateral for customers' security deposit obligations. The collateral must be in the FDM's possession and control and is subject to the haircuts in CFTC Rule 1.17.

(e) An FDM is required to collect additional security deposits from a retail forex customer, or liquidate the retail forex customer’s positions, if the amount of the retail forex customer’s security deposits maintained with the FDM is not sufficient to meet the requirements of this section.

(f) An FDM is required to immediately notify NFA's Compliance Department if the FDM changes the security deposit amount established by either subsection (a) or (b) above provided, however, that any decrease cannot fall below the highest minimum security deposit amount required by either subsection (a) or (b) as applicable to a particular currency.

(g) An FDM is prohibited from acting as a counterparty to an eligible contract participant acting as a dealer (as that term is defined in Financial Requirements Section 11(e)) unless that dealer collects and maintains from its customers and eligible contract participant counterparties security deposit amounts for forex equal or greater to the amounts required in subsection(s) (a) and (b).

Section 13. Forex Dealer Member Reports.

[Adopted Effective July 25, 2006. Effective dates of amendments: April 1, 2009; January 2, 2012; September 25, 2012; and December 2, 2013.]

(a) Each Forex Dealer Member must file electronically the following reports with NFA within the specified time periods in a form and manner prescribed by NFA:

(1) Daily electronic reports showing liabilities to customers and any other financial or operational information required by NFA. The report must be prepared each business day and must be filed by noon on the following business day.

(2) Monthly operational and risk management reports. These reports must be filed within seventeen business days after the end of each month for which the report is prepared.

(3) Quarterly reports containing the most updated performance disclosures required by CFTC Regulation 5.5(e)(1)(i) – (iii). These reports must be filed within seventeen business days after the end of each quarter for which the report is prepared.

(b) No Forex Dealer Member may access NFA's electronic financial reports database until NFA has assigned it a unique identifying code and password. Each Forex Dealer Member is responsible for maintaining the security and confidentiality of its identifying code and password and that of each person it authorizes to file electronic reports on its behalf.

(c) Submitting any of these reports certifies that the person filing it is a supervisory employee that is, or is under the ultimate supervision of, a listed principal who is also an NFA Associate; that the person filing it is duly authorized to bind the Forex Dealer Member; and that, to the best of that person's knowledge, all information in the report is true, correct, and complete.

(d) Any report that is filed after it is due shall be accompanied by a fee of $1,000 for each business day it is late. Payment and acceptance of the fee does not preclude NFA from filing a disciplinary action for failure to comply with the deadlines imposed by this rule.

Section 14. Assets Covering Liabilities to Retail Forex Customers.

[Adopted Effective July 1, 2007. Effective dates of amendments: December 17, 2007, February 1, 2011, July 26, 2012 and October 15, 2014.]

(a) Each Forex Dealer Member shall calculate the amount owed to customers for forex transactions and shall hold assets equal to or in excess of that amount at one or more qualifying institutions in the United States or money center countries (as defined in CFTC Regulation 1.49).

(b) The amount owed to customers shall be calculated by adding up the net liquidating values of each forex account that liquidates to a positive number, using the fair market value for each asset other than open positions and the current market value for open positions.

(c) For assets held in the United States, a qualifying institution is:

(i) a bank or trust company regulated by a U.S. banking regulator;

(ii) a broker-dealer registered with the U.S. Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority; or

(iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA.

(d) For assets held in a money center country as defined in CFTC Regulation 1.49, a qualifying institution is:

(i) a bank or trust company regulated in the money center country which has in excess of $1 billion in regulatory capital; or

(ii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA.

(e) Assets held in a money center country are not eligible to meet the requirements of this rule unless the Forex Dealer Member and the qualifying institution have entered into an agreement, acceptable to NFA, authorizing the institution to provide NFA and the CFTC with information regarding the Forex Dealer Member's accounts and to provide that information directly to NFA or the CFTC upon their request. The Forex Dealer Member must file the signed agreement with NFA.

(f) Each Forex Dealer Member must instruct each qualifying institution, as required by NFA, holding assets used to cover the Forex Dealer Member's liabilities to its retail forex customers under subsection (a), to report the

balances in the Forex Dealer Member's account(s) to NFA or a third party designated by NFA in the form and manner prescribed by NFA.

(g) In addition to the requirements of subsections (c), (d) and (e), in order to be an acceptable qualifying institution to hold assets used to cover a Forex Dealer Member's liabilities to its retail forex customers identified in subsection (a), the qualifying institution must report the balances in the Forex Dealer Member's account(s) held at the qualifying institution to NFA or a third party designated by NFA in the form and manner prescribed by NFA.

Section 15. Forex Dealer Member Internal Financial Controls.
[Adopted Effective September 21, 2007. Effective dates of amendments: December 17, 2009.]

(a) No Member may act as a Forex Dealer Member (as defined in Bylaw 306) unless it has demonstrated to NFA that the Member has adequate internal financial controls. The Forex Dealer Member must demonstrate that its system of internal controls provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. The Forex Dealer Member must demonstrate that its system of internal financial controls has no material weaknesses and that it is adequate for establishing and maintaining internal controls over financial reporting by the Member. A Forex Dealer Member may satisfy this obligation by obtaining an internal control report that is prepared and certified by an independent public accountant who is registered under Section 102 of the Sarbanes-Oxley Act. The internal control report shall contain, at a minimum, a detailed explanation of the examination performed by the accountant and a representation by the accountant that it has examined and tested the Forex Dealer Member's system of internal controls and that the controls comply with the above standards.

If NFA believes that a Member's internal controls are inadequate at any time, NFA's Compliance Director may require it to provide to NFA an internal control report that is prepared and certified by an independent public accountant who is registered under Section 102 of the Sarbanes-Oxley Act. The internal control report shall meet the above standards.

(b) Provided NFA's Compliance Director believes that a Forex Dealer Member's financial records are inadequate, the Compliance Director may require a Forex Dealer Member's annual certified financial statements to be prepared by an independent public accountant who is registered under Section 102 of the Sarbanes-Oxley Act.

(c) The individuals who prepare the Forex Dealer Member's financial books and records must be under the ultimate supervision of a listed principal and registered associated person of the Member. This principal must also be responsible for researching and selecting the independent public accountant that certifies the firm's annual financial statements.

NFA COMPLIANCE RULE 2-10: THE ALLOCATION OF BUNCHED RETAIL FOREX ORDERS FOR MULTIPLE ACCOUNTS

(Board of Directors, August 11, 2011; effective June 18, 2012; amended March 21, 2014)

INTERPRETIVE NOTICE

NFA Compliance Rule 2-10 adopts by reference CFTC Regulation 1.35, which, among other things, imposes on futures commission merchants ("FCMs") and retail foreign exchange dealers ("RFEDs") certain recordkeeping requirements relating to customer forex[1] orders. The purpose of the regulation is to prevent various forms of customer abuse, such as the fraudulent allocation of trades, by providing an adequate audit trail that allows customer orders to be tracked at every step of the order processing system. In general, Regulation 1.35 requires FCMs and RFEDs receiving a customer order to prepare a written record of the order immediately upon receipt, including an appropriate account identifier.

With respect to bunched orders placed by a commodity trading advisor ("CTA") on behalf of multiple clients, the CFTC has interpreted Regulation 1.35 to require that, at or before the time the order is placed, the CTA must provide the FCM with information that identifies the accounts included in the bunched order and specifies the number of contracts to be allotted to each account[2,3] (unless the order is done in accordance with the post-execution of bunched order requirements)[4]. Recent NFA examinations have found that many CTAs who manage retail forex customer accounts are using a percentage allocation management module ("PAMM") to allocate bunched orders placed by them on behalf of multiple clients.

CTAs utilizing PAMM trade an unlimited number of customer accounts under one "Master Account" at an FCM or RFED. Each individual customer then has a sub-account under the Master Account. CTAs utilize the total equity of the Master Account—the aggregate of all individual customers' funds—to place a bunched order for forex lots or contacts and then subsequently allocate a percentage of the lot(s) or contract(s) to each individual customer's sub-account based on each customer's account equity as a percentage of the overall total equity in the Master Account.[5]

If PAMM resulted in the fair and non-preferential allocation of regularly offered and tradable sized lot(s) or contract(s)[6] to each customer's sub-account—and was not based on the customer's account equity as a percentage of the overall total equity in the Master Account—then this method would be consistent with prior interpretations of Regulation 1.35. However, CTAs trading customer accounts and FCMs and RFEDs acting as

counterparty to these accounts do not apply PAMM in this manner. Specifically, NFA found that CTAs determine the quantity of regularly offered and tradable sized lots or contracts for a bunched order based on the Master Account's equity, rather than on the quantity of regularly offered and tradable sized lots or contracts that would be permitted based on the margin equity in each individual account, which is often too low to place a trade for a regularly offered and tradable sized lot or contract. Therefore, after the FCM or RFED executes the order, PAMM's application does not result in regularly offered and tradable sized lot(s) or contract(s) being allocated to the individual sub-accounts. Rather, pursuant to PAMM, a percentage of the lot(s) or contract(s) are allocated to each customer based upon their percentage of equity in the Master Account. For example, if two customers had equity that equaled 40% and 12.5% of the Master Account's equity, respectively, then the customers would be allocated .4 and .125 of the regularly offered and tradable sized lot or contract, respectively, if the account manager traded one contract.

The placement of trades based upon the Master Account's total equity and subsequent allocation of a percentage of the lot(s) or contract(s) to individual client accounts pursuant to PAMM, rather than based upon the equity in each individual account causes these individual accounts to be treated similar to a commodity pool's participant units—without the Master Account being legally structured as a commodity pool. Moreover, PAMM leads to certain client accounts not being treated fairly and in a non-preferential manner. Specifically, because FCMs and RFEDs are likely to only act as a counterparty with respect to the regularly offered and tradable sized lot(s) or contract(s) margined and traded at the Master Account level. PAMM often restricts the ability of account managers to offset an open position in a smaller percentage lot or contract without affecting the positions of all the sub-accounts underlying the Master Account.

NFA also noted that each FCM and RFED that utilizes PAMM imposes varying restrictions applicable to the process by which customers withdraw and add funds to their accounts. In the extreme situation, individual client withdrawal requests are held up indefinitely because the customer's percentage lot open forex position may not be offset until the regularly offered and tradable sized position is offset for all customers at the Master Account level. In another situation, NFA found that if an individual customer is removed from the PAMM module without their open percentage position being offset, then this customer account may not incur a profit or loss for this position and the original regularly offered and tradable lot sized position is simply subsequently reallocated to the remaining sub-accounts thereby immediately increasing the percentage of equity each individual account has in the regularly offered and tradable sized position established based on the Master Account's equity. Due to these restrictions, NFA is concerned that customers may not be able to close their accounts and have timely access to

their funds, and customers are not being treated fairly as a result of this trade allocation method.

In summary, CTAs managing retail forex customer accounts may use bunched orders. However, in determining the quantity of lots or contracts for a bunched order, the CTA may not exceed the sum of the quantity of regularly offered and tradable sized contracts that would be permitted based on the equity in each individual account, not the overall equity in the Master Account. In addition, prior to or at the time the CTA places a bunched order with an FCM or RFED, the CTA must inform the FCM or RFED of the number of regularly offered and tradable sized contracts each individual customer account will receive if the order is filled. The CTA must allocate regularly offered and tradable sized lots or contracts to each individual account using a non-preferential predetermined allocation methodology. Further, all customers should be allowed to make additions and withdrawals in a fair and timely manner, and in a manner that does not affect other customers who are managed by the CTA in the same trading program. Given the significant allocation issues with the use of PAMM, NFA at this time is detailing for forex CTAs the longstanding core principles and responsibilities applicable to the allocation of customer bunched orders.

Core Principles and Responsibilities

Allocation instructions for trades made through bunched orders for multiple accounts must address how the total number of contracts should be allocated to the various accounts included in the bunched order. For some CTAs, this allocation may remain relatively constant. For others, although their basic allocation methodology does not change, the specific allocation instructions produced by the methodology may change on a daily basis.

The second issue may be somewhat less applicable to retail forex transactions given the counterparty nature of these transactions but involves the allocation of split or partial fills. For example, a CTA may place a bunched order of 100 contracts for multiple accounts. This order may be either filled at a number of different prices or if an order is to be filled at a particular price the FCM or RFED may be willing to act as counterparty for some but not all of the 100 lot order. In either example, the question arises of how the different prices of the contracts in the split or partial fill should be allocated among the accounts included in the block order.

The same set of core principles govern the procedures to be used in handling both of these issues. Any procedure for the general allocation of trades or the allocation of split and partial fills must be:

- designed to meet the overriding regulatory objective that allocations are non-preferential and are fair and equitable over time, such that

no account or group of accounts receive consistently favorable or unfavorable treatment;[7]

- sufficiently objective and specific to permit independent verification of the fairness of the allocations over time and that the allocation methodology was followed for any particular bunched order; and
- timely, in that the CTA must provide the allocation information to FCMs and RFEDs as soon as practicable at the time the order is placed or after the order is filled.[8]

The responsibility for allocating contracts executed through a bunched order rests solely with the CTA.[9] The CTA must confirm, on a daily basis, that all its accounts have the correct allocation of contracts. A CTA must also analyze each trading program at least once a quarter to ensure that the allocation method has been fair and equitable (i.e., customers in the same trading program achieve similar allocation results over time).[10] Allocation fairness over time, rather than trade-by-trade, is the critical element in this evaluation. If materially divergent performance results exist over time among accounts in the same trading program, such results must be shown to be attributable to factors other than the CTA's trade allocation procedures. Applicable CFTC and NFA interpretations have addressed permitted reasons for divergent performance results among accounts in the same trading program. If those results indicate that the allocation method has not been fair and equitable over time, however, then the CTA must revise its allocation methodology or adopt a different allocation method for application on a prospective basis only. A CTA must document its internal audit procedures and results and maintain these audit procedures and results as firm records subject to review during an NFA examination.

Although the CTA is responsible for the allocation of each bunched order, FCMs and RFEDs have certain obligations as well. In particular, each FCM and RFED must receive from an account manager sufficient information to allow it to perform its functions, including information concerning the number of contracts to be allocated to each account included in the bunched order along with instructions, if applicable, for the allocation of split and partial fills among accounts. One means by which an FCM or RFED can meet this recordkeeping requirement is to maintain a copy of the allocation instructions provided by the account manager by facsimile, e-mail, or other form of electronic transmission. If the allocation is provided orally, however, the FCM or RFED must create a written record and maintain that record.

Also, if an FCM or RFED has actual or constructive notice that allocations may be fraudulent, the FCM or RFED must take appropriate action. For example, if an FCM or RFED has notice of unusual allocation activity, the FCM or RFED must make a reasonable inquiry into the matter and, if appropriate, refer the matter to the proper regulatory authorities (e.g., the

CFTC or NFA or its DSRO). Whether an FCM or RFED has such notice depends upon the particular facts involved.

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[1] For purposes of the Notice, the term "forex" has the same meaning as in Bylaw 1507(b).

[2] Bunched orders can provide customers with the advantages of better pricing and more efficient execution of orders.

[3] Consistent with the provisions of CFTC Regulation 1.35(b)(1), account managers that place orders for a single account must still provide account identification information at the time of order entry.

[4] CFTC Regulation 1.35(b)(5)'s language governing the post-execution allocation of bunched orders appears inapplicable to retail Forex bunched orders.

[5] FCMs and RFEDs acting as counterparties to retail Forex customer accounts traded as part of a block order have an obligation to ensure that they have collected and maintained for each individual customer the applicable security deposit requirement pursuant to NFA Financial Requirements Section 12 for each lot or contract placed in a customer's account by a CTA.

[6] Forex positions are often regularly traded in the following lot sizes: Standard (100,000 units), Mini (10,000 units) and Micro (1,000 units). CTAs must disclose to their customers the lot size they intend to use.

[7] Because customers must have access to information that allows them to assess the fairness of the allocation process, CTAs are required to make the following information available to customers upon request: (1) the general nature of the CTA's allocation methodology; (2) whether accounts in which the CTA may have an interest may be included with customer accounts in bunched orders; and (3) summary or composite data sufficient for that customer to compare its allocation results with the allocation results of other comparable customers and, if applicable, any account in which the account manager has an interest.

[8] In 19997, NFA adopted *Interpretive Notice 9029-NFA Compliance Rule 2-10: The Allocation of Bunched Orders for Multiple Accounts* and in the Notice set out examples of methodologies for the allocation of bunched orders that generally satisfy the core principles described above. Although these methodologies were set forth with regard to on-exchange traded futures and options transactions, their application may be equally applicable to retail forex transactions.

[9] However, NFA rules do not preclude an FCM or RFED from agreeing to undertake this responsibility, pursuant to either its own procedures or to those supplied by the CTA. For example, the CTA and FCM or RFED may agree that an FCM or RFED will allocate a bunched order in accordance with instructions that the CTA files with the FCM or RFED either prior to or concurrently with placing the bunched order. Any division of responsibilities agreed to by the FCM and CTA should be clearly documented.

[10] CTAs must review customer performance at the individual client account level and not the master account level. Moreover, CTAs must maintain the necessary records and calculate customer performance for each trading program in conformity with the CFTC's Part 4 Regulations.

NFA FINANCIAL REQUIREMENTS: THE ELECTRONIC FILING OF FINANCIAL REPORTS

(Board of Directors, March 24, 1997; revised July 1, 2000; July 24, 2000; December 31, 2001; and October 18, 2010)

INTERPRETIVE NOTICE

NFA Financial Requirements require each FCM for which NFA is DSRO, each RFED and each IB which is not operating pursuant to a guarantee agreement to file financial reports with NFA. FCMs and RFEDs must file reports monthly while IBs file on a semi-annual basis. FCMs and RFEDs file reports on CFTC Form 1-FR-FCM while IBs use Form 1-FR-IB. FCMs or IBs which are also registered as securities brokers or dealers may use the SEC FOCUS Report in lieu of the Form 1-FR for their financial reports.

NFA, in partnership with the Chicago Mercantile Exchange and the Chicago Board of Trade, has developed computer software which allows FCMs, RFEDs and IBs to electronically file financial reports with NFA, the CME, CBOT and the CFTC. This software is being used industry-wide. The software accommodates filing of the Form 1-FR-FCM, Form 1-FR-IB, FOCUS II and FOCUS IIA Reports. All FCMs and IBs for which NFA is the DSRO and RFEDs must file their financial reports electronically using this software.

NFA's filing software also includes procedures for the appropriate representative of the NFA Member FCM, RFED or IB to attest to the completeness and accuracy of the financial report in order to comply with NFA and CFTC certification and attestation requirements. Each authorized signer must apply to NFA for a Personal Identification Number using an application form approved by NFA.

Full details about the software and electronic filing procedures and the application form for obtaining a PIN number are are available by accessing the Compliance Section, Issues for FCMs, RFEDs and IBs, of NFA's web site at http://www.nfa.futures.org/ or by contacting the Information Center at (312) 781-1410. Information is also available on the Joint Audit Committee's web site at www.wjammer.com/jac/.

FOREX TRANSACTIONS

(Revised November 9, 2004; June 13, 2005; September 15, 2005; November 30, 2005; April 30, 2006; July 31, 2006; October 1, 2006; February 13, 2007; March 7, 2007; March 9, 2007; March 31, 2007; May 7, 2007; June 5, 2007; July 1, 2007; September 21, 2007; October 1, 2007; October 25, 2007; December 17, 2007; December 21, 2007; June 1, 2008; July 1, 2008; October 31, 2008; April 1, 2009; June 1, 2009; November 30, 2009; December 17, 2009; October 1, 2010; October 18, 2010; February 1, 2011; October 1, 2011; January 2, 2012; February 1, 2012 and July 26, 2012.)

INTERPRETIVE NOTICE

The Commodity Exchange Act (CEA or Act) gives the Commodity Futures Trading Commission (CFTC or Commission) jurisdiction over certain off-exchange foreign currency transactions offered to or entered into with retail customers.

As described below, NFA Bylaw 306 creates a Forex Dealer Member category for NFA Members who act as counterparties to forex transactions with retail customers. This category allows NFA to exercise appropriate regulatory jurisdiction over the retail forex activities of these Members.

NFA Bylaw 1507(b) defines forex as foreign currency futures and options and any other agreement, contract, or transaction in foreign currency that is offered or entered into on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis that are:

- offered to or entered into with persons that are not eligible contract participants as defined in Section 1a(12) of the Act (retail customers); and

- not executed on or subject to the rules of a contract market, a derivatives transaction execution facility, a national securities exchange registered pursuant to Section 6(a) of the Securities Exchange Act of 1934, or a foreign board of trade.[1]

Bylaw 1507(b) also excludes the following from the forex definition if the transaction is not a futures or options contract:

- securities (other than security futures products);

- any contract of sale that results in actual delivery within two days; and

- any contract of sale that creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

Given the differences between off-exchange transactions and traditional exchange-traded futures and options, the Board of Directors does not believe that it is appropriate to apply the full array of NFA's futures rules to forex transactions. Therefore, rather than simply incorporating forex transactions into the definition of "futures," NFA adopted NFA Compliance Rule 2-36 to govern these transactions.

In developing its forex requirements, NFA's primary concern was to ensure that they provide adequate protection for retail customers without imposing undue burdens on NFA Members. NFA also believes that its requirements should, where consistent with customer protection, promote innovation and competition. In order to provide Members with as much flexibility as possible, NFA has chosen to deal with a number of issues by providing guidance under NFA Compliance Rule 2-36 instead of by adopting additional rules.

NFA Compliance Rule 2-36 sets out the general standards that apply to Forex Dealer Members and their Associates in connection with forex transactions. Subsection (b) prohibits Forex Dealer Members and their Associates from engaging in fraudulent activities, subsection (c) requires Forex Dealer Members and their Associates to observe high standards of commercial honor and just and equitable principles of trade in connection with their forex business, subsection (d) prohibits Members from accepting forex orders or accounts from, handling a forex transaction for or on behalf of, receiving compensation for forex transactions from, or paying compensation for forex transactions to any non-Member of NFA that is required to be registered with the Commission as a FCM, RFED, IB, CPO, or CTA in connection with its forex activities, subsection (e) requires Forex Dealer Members and their Associates with supervisory duties to supervise their employees and agents, subsection (f) requires Forex Dealer Members to provide customers (at account opening and annually thereafter) with written information regarding NFA's BASIC, subsection (g) provides that the Compliance Director may require a Forex Dealer Member to file copies of all promotional material with NFA for NFA's review and approval before it is used, subsection (h) requires Members to comply with Compliance Rule 2-29 with respect to any promotional material that includes a measurement or description or makes reference to hypothetical forex performance results, subsection (i) requires Forex Dealer Members to notify NFA prior to commencing customer business, subsection (j) requires Forex Dealer Members to designate a Chief Compliance Officer and subsection (l) requires Members and Associates to obtain specific customer information and provide required risk disclosure at the time of account opening. Compliance Rule 2-

39 extends these provisions to other Members and their Associates who solicit, introduce or manage forex accounts.

This notice has three sections. The first section explains who qualifies as a Forex Dealer Member under NFA Bylaw 306, the second section provides additional guidance about the requirements in Compliance Rule 2-36, and the third section covers other miscellaneous requirements.

A. BYLAW 306

Forex Dealer Members are NFA Members who act as counterparties to forex transactions. This is a self-executing requirement, which means that any Member who qualifies is automatically a Forex Dealer Member. There is no application form and no approval requirement.

Members who do not act as counterparties are not Forex Dealer Members, even if they introduce or manage forex accounts. Under NFA Compliance Rule 2-39, however, Members who introduce or manage forex accounts are required to comply with subsections (a), (b), (c), (d), (e), (g), (h) and (l) of NFA Compliance Rule 2-36.

B. COMPLIANCE RULE 2-36

As noted above, this section provides additional guidance on what Compliance Rule 2-36 requires. Certain sections specifically refer to Forex Dealer Members. All other provisions of this notice also apply to Members and their Associates who solicit, introduce or manage forex accounts.

1. *Disclosure* - Members must provide forex customers with understandable and timely disclosure on essential features of forex trading.

At or before the time a customer first engages in a forex transaction, a Forex Dealer Member and its Associates should provide the customer sufficient information concerning the characteristics and particular risks of entering into forex transactions. Members and Associates introducing or managing accounts should know what information has been provided and should supplement it when necessary. At or before the time a customer first engages in a forex transaction, a Member and its Associates should also disclose how the Member will be compensated for the services it will provide to the customer. Forex Dealer Members should provide both the bid and the offer when the customer enters an order. Members should update any material information that has changed prior to entering into new transactions with current customers if failing to update the information would make it misleading.

2. *Supervision* - Members and their Associates having supervisory responsibilities must diligently supervise the Member's forex business, including the activities of the Member's Associates and agents. Members must establish, maintain, and enforce written supervisory procedures.

NFA has provided Members with guidance on minimum standards of supervision through interpretive notices issued under NFA Compliance Rule 2-9.[5] In these interpretive notices NFA recognized that, given the differences in the size of and complexity of the operations of NFA Members, there must be some degree of flexibility in determining what constitutes "diligent supervision" for each firm. This principle also applies to the supervision of a Member's forex business.

Although Members have the flexibility to design procedures that are tailored to their own situation, an adequate program for supervision would include procedures for performing day-to-day monitoring. These procedures would include:

- screening prospective Associates to ensure that they are qualified and to determine the extent of supervision the person would require if hired;
- screening persons with whom the Member intends to do forex business to determine if they are required to be registered with the Commission and, if so, to ensure that they are Members of NFA;
- monitoring communications with the public, including sales solicitations and web sites, and approving promotional material;
- reviewing the information obtained from and the information provided to customers solicited by the firm and its employees to ensure that the necessary account information has been obtained and the appropriate information provided; and
- handling and resolving customer complaints;
- reviewing disclosures given to customers to ensure they are understandable, timely, and provide sufficient information;
- reviewing and analyzing the forex activity in customer accounts, including discretionary customer accounts; and
- handling customer funds, including accepting security deposits, if applicable.

A Forex Dealer Member and a listed principal that is also a registered associated person (see Financial Requirements 15(c)) must supervise the preparation of a Forex Dealer Member's financial books and records. Diligent supervision includes hiring and retaining qualified staff. In determining whether an individual responsible for preparing the Member's financial books and records is qualified, the firm and its financial principal should consider the following:

- Is the individual qualified for the position by experience or training?
- Does the individual exercise independent judgment?
- Has the individual ever been sanctioned or refused membership or licensing by NFA, the CFTC, the SEC, NASD or FINRA, the Public Company Accounting Oversight Board, or any other financial regulator?
- Has the individual ever been sanctioned or refused membership by the American Institute of Certified Public Accountants or any other accounting organization?
- Has any firm for which the individual performed auditing, accounting, or bookkeeping been subject to an emergency action or sanctioned by NFA, the CFTC, the SEC, NASD or FINRA, the Public Company Accounting Oversight Board, or any other financial regulator for failure to comply with financial requirements or for having inadequate books and records while the individual was engaged in those activities?
- Are there any pending actions against the individual or a firm for which the individual performed auditing, accounting, or bookkeeping?

This is not an exclusive list. If the individual or a firm for which the individual worked (either as an independent contractor or an employee) was subject to an emergency action, sanctioned by a financial regulator, or is subject to a pending action, the FDM and the listed principal/registered AP responsible for the FDM's financial books and records should consider the nature and seriousness of the conduct (or alleged conduct) and the individual's role in it. An NFA Member Responsibility Action or an emergency action by another financial regulator is always an extremely serious matter.

The Forex Dealer Member and its financial principal must also conduct due diligence and consider analogous information when selecting an independent public accountant to certify the firm's annual financial statements.

An adequate supervisory program should also include annual on-site visits to branch offices and guaranteed introducing brokers that conduct forex business on behalf of the Member. The Member needs to determine the frequency and nature of these visits. The number of visits will depend on the amount of business generated, the number of customer complaints received, the training and experience of the office personnel, and the frequency and nature of problems that arise from the office. Members should refer to NFA Interpretive Notice 9019 - *Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs* for the minimum standards for a supervisory program for branch offices and guaranteed IBs.

Finally, a Member's supervisory responsibilities include the obligation to ensure that its employees are properly trained to perform their duties. The formality of a training program will depend on the size of the firm and the nature of its business. Procedures should be in place to ensure that supervisory personnel know and understand the firm's supervisory procedures and that employees receive adequate training to abide by NFA requirements and to properly handle customer accounts.

3. *Communications with the Public and Promotional Material* - No Member or Associate shall make any communication with potential or current customers that operates as a fraud or deceit; uses a high-pressure approach; or implies that forex transactions are appropriate for all persons.

Promotional material used by the Member or Associate shall not:

- Deceive the public or contain any material misstatement of fact or omit a fact that makes the promotional material misleading;[6]

- Include any statements of opinion unless they are clearly identified as such and have a reasonable basis in fact;

- Mention the possibility of profit unless accompanied by an equally prominent statement of the risk of loss;

- Include any reference to actual past trading profits without mentioning that past results are not necessarily indicative of future results;

- Include any statistical or numerical information about past performance of actual accounts unless the Member can demonstrate that the performance is representative of actual performance of all reasonably comparable accounts for the same period (calculated in accordance with the formula in CFTC Regulation 4.35(a)(6) and NFA Compliance Rule 2-34); or

- Include testimonials unless they are representative of all reasonably comparable accounts, the material prominently states that the testimonial is not indicative of future performance or success, and the material prominently states that they are paid testimonials (if applicable).

No Member or Associate may represent that forex funds deposited with a Forex Dealer Member are given special protection under the bankruptcy laws. No Member or Associate may represent or imply that any assets necessary to satisfy its obligations to customers are more secure because the Member keeps some or all of those assets at a regulated entity in the United States or a money center country.

No Member or Associate may represent that its services are commission free without prominently disclosing how it is compensated in near proximity to that representation.

No Member or Associate may represent that it offers trading with "no-slippage" or that it guarantees the price at which a transaction will be executed or filled, unless:

- It can demonstrate that all orders for all customers have been executed and fulfilled at the price initially quoted on the trading platform when the order was placed;[7] and

- No authority exists, pursuant to a contract, agreement, or otherwise, to adjust customer accounts in a manner that would have the direct or indirect effect of changing the price at which an order was executed.[8]

Members and Associates may not solicit customers based on the leverage available unless they balance any discussion regarding the advantages of leverage with an equally prominent contemporaneous disclosure that increasing leverage increases risk.

No Member shall use or directly benefit from any radio or television advertisement that recommends specific forex transactions or describes the extent of any profit obtained in the past or that can be obtained in the future unless the member submits the advertisement to NFA's Promotional Material Review Team for its review and approval at least 10 days prior to its first use or such shorter period as NFA may allow.[9]

Every Member should adopt and enforce written procedures to supervise communications with potential and current customers and promotional material. A supervisory employee that is, or is under the ultimate supervision of, a listed principal who is also an NFA Associate should review and

approve all promotional material and make a written record of such review and approval.[10]

All promotional material should be maintained by each Member and be available for examination for the periods specified in the recordkeeping section of this notice, measured from the date of last use.

4. *Customer Information and Risk Disclosure* - Members and Associates are required to acquaint themselves sufficiently with the personal and financial circumstances of each forex customer and provide the customer with certain required risk disclosures as well as other facts, explanations and disclosures are needed in order for the customer to make an informed decision on whether to enter into forex transactions.

Every Member should determine what information it will obtain from a prospective forex customer. At a minimum, the Member soliciting the customer to engage in forex transactions must obtain the information and provide the disclosures required by Compliance Rule 2-36(l). Members and their Associates need to ensure that each customer they solicit has received adequate information concerning the risks of forex transactions so that the customer can make an informed decision as to whether forex transactions are appropriate for the customer. There may be some customers for whom the additional disclosure will portray forex trading as too risky for that customer. In these instances, the only adequate risk disclosure by the Member and Associate is that forex trading is too risky for that customer. However, NFA believes that a determination of who those customers are cannot be made except on a case-by-case basis, because no objective criteria can be established that will apply to all customers. The essential feature of the Rule is the link between "knowing the customer" and providing risk disclosure. Once that has been done and the customer has been given adequate disclosure, the customer is free to make the decision whether to trade forex and the Member is permitted to accept the account. Members and Associates, however, are prohibited from making individualized recommendations to any customer for which the Member or Associate has or should have advised that forex trading is too risky for that customer. Finally, although it is the responsibility of the Member soliciting the account to comply with these requirements, Members may agree in writing that the Member acting as the counterparty to the transaction will be responsible for fulfilling the requirements of Compliance Rule 2-36(l). Members should refer to NFA Interpretive Notice 9004 – *NFA Compliance Rule 2-30: Customer Information and Risk Disclosure* for additional guidance on the requirements of this section.

5. *BASIC Disclosure* - Members must provide forex customers with information on NFA's BASIC system.

NFA Compliance Rule 2-36(g) requires Forex Dealer Members to provide customers with written information regarding NFA's Background Affiliation Status Information Center (BASIC), including the web site address [11]. This information must be provided when the customer first opens an account and at least once a year thereafter.

Forex Dealer Members may provide the information electronically but must do it in a way that ensures each customer is aware of it. For example, merely having the information on the Member's web site is not adequate, but sending customers an e-mail including a link to that information and explaining what the link is would be sufficient in most circumstances.

C. OTHER REQUIREMENTS

This section of the notice provides guidance on dues, capital requirements, and security deposits. These requirements apply only to Forex Dealer Members.

1. Bylaw 1301

NFA Bylaw 1301(e) requires Forex Dealer Members to pay annual dues that are graduated according to the firm's gross annual revenue from customers (e.g., commissions, mark-ups, mark-downs) for its forex activities. Profits and losses from proprietary trades are *not* to be included. To calculate dues:

The following table shows the dues to be assessed for Forex Dealer Members:

Amount of Annual Gross Revenue From Forex Transactions	Dues if NFA is the DSRO	Dues if NFA is not the DSRO
$ million or less	$125,000	$25,000
More than $5 million, but not more than $10 million	$250,000	$25,000
More than $10 million, but not more than $25 million	$500,000	$25,000
More than $25 million, but not more than $50 million	$750,000	$25,000
More than $50 million	$1,000,000	$25,000

These dues apply when a firm first becomes approved as a Forex Dealer Member or accepts a forex trade (whichever is earlier). New Members' initial dues will be the minimum due ($125,000), payable quarterly. If an existing Member becomes approved as a Forex Dealer Member, NFA will send the Member an invoice for the minimum dues ($125,000) minus any amount

already paid for that membership year. Thereafter, the dues will be assessed on the firm's membership renewal date, will be invoiced and paid quarterly, and will be based on the Forex Dealer Member's latest certified financial statement.

The only exception to the dues set forth above is a situation in which NFA does not serve as the DSRO for a Forex Dealer Member and the DSRO has agreed to examine the Forex Dealer Member's forex activities. In this case, the membership dues paid by the Forex Dealer Member, regardless of gross annual revenue, is $25,000. Accordingly, for such a Forex Dealer Member the dues to be assessed at the time it offers to be a counterparty to a forex transaction or accepts a forex trade (whichever is earlier), and on its membership renewal date thereafter, will be $25,000.

Each Forex Dealer Member is also required to pay an assessment of $.002 on each order segment submitted by the Forex Dealer Member to NFA's Forex Transaction Reporting Execution Surveillance system. For purposes of this requirement, an order segment is a record of any line of data associated with an order, and includes when an order is added, modified, cancelled or filled. In addition, any unfilled open orders that are carried over by the system are considered a new order segment the next day.

NFA will invoice the Member monthly for the Forex Transaction Reporting Execution surveillance system assessment amount and the Member must remit the assessment to NFA within 30 days after the date of the invoice.

2. Financial Requirements Section 11(a)

Forex Dealer Members must maintain adjusted net capital equal to or in excess of the greatest amount specified in subsections (a)(i), (a)(ii), and (a)(iii) (if applicable). Subsection (a)(ii) applies to Forex Dealer Members that execute any customer transactions and that also have liabilities to customers of more than $10 million. Where it applies, the Member’s capital requirement is the minimum capital required by subsection (a)(i) plus 5% of the liabilities over $10 million. The formula is:

Amount required by (a)(i) + .05(customer liabilities - $10,000,000)

For example, if the minimum capital requirement is $20 million, a Forex Dealer Member that operates a dealing desk and has $208 million in liabilities to customers would be required to maintain adjusted net capital equal to or in excess of $29.9 million.

3. Financial Requirements Section 11(b)

Section 11(b) prohibits a Forex Dealer Member from including assets held by an affiliate (unless approved) or an unregulated person in the firm's current

assets for purposes of determining its adjusted net capital under CFTC Regulation 5.7(b)(2)(v)(A). This means an FDM may not count any part of those assets for capital purposes.[12]

An unregulated person is any person that is **not**:

(i) a bank or trust company regulated by a U.S. banking regulator;

(ii) a broker-dealer registered with the U.S. Securities and Exchange Commission and a member of FINRA;

(iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;

(iv) a retail foreign exchange dealer registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;

(v) a bank or trust company regulated in a money center country which has in excess of $1 billion in regulatory capital; or

(vi) any other entity approved by NFA.

Any Forex Dealer Member may ask NFA to approve an otherwise unregulated person for purposes of Financial Requirements Sections 11(b) and (c). In determining whether to approve an unregulated person that is not an affiliate, NFA will consider a number of factors, including:

- Whether the person is regulated in another jurisdiction and, if so, the type and extent of regulation; and

- The person's capital.

NFA's approval of a particular person means that all unaffiliated Forex Dealer Members may treat that person as regulated under Sections 11(b) and (c). NFA may also approve categories of counterparties (e.g., banks regulated in a particular jurisdiction).

A Forex Dealer Member may not engage in Section 11(b) or (c) transactions with a regulated affiliate without NFA's approval. The Member may, however, ask NFA to authorize it to cover its positions with specified affiliates (including unregulated affiliates). An affiliate is any entity that controls, is controlled by, or is under common control with the Forex Dealer Member. The standards for approving affiliated persons are significantly higher than those for unaffiliated persons. For example, NFA will also consider:

- The parent company's and affiliated person's capital;

- Whether the parent company and the affiliated person are regulated entities;
- Whether the parent company will guarantee the obligations of the affiliated person (unless the parent company and the affiliated person are the same entity);
- Whether the affiliated person has strong risk-management policies to limit its value-at-risk; and
- For purposes of Section 11(c), whether the affiliated person limits the amount of offsetting transactions it enters into with unregulated counterparties.

4. Financial Requirements Section 11(c)

Section 11(c) prohibits Forex Dealer Members from using affiliates (unless approved) and unregulated persons to cover their foreign currency positions for purposes of CFTC Regulation 5.7(b)(2)(v)(A).

The rule does not prohibit Forex Dealer Members from entering into positions with unregulated or unapproved counterparties. They may not, however, count positions with those counterparties when calculating their covered positions for purposes of CFTC Regulation 5.7(b)(2)(v)(A).

5. Financial Requirements Section 13

Section 13 obligates FDMs to file daily reports regarding an FDM's capital position and its ability to meet its obligation to retail Forex customers. Among other daily reporting obligations, FDMs must indicate the net aggregate notional value for all open futures and options Forex positions.

In addition, NFA requires FDMs to provide operational information on a monthly basis. These monthly reports must specify the number of retail and ECP Forex customers as well as how many customers are active, US domiciled or foreign domiciled. Also, FDMs must file monthly reports with respect to the FDM's risk management of its market exposure. NFA may require an FDM to file additional information on a monthly basis as needed. These monthly operational reports must be filed within seventeen business days of the month for which the report is prepared.

FDMs must also file quarterly reports containing the most updated performance disclosures required by CFTC Regulation 5.5(e)(1)(i) – (iii). This report must include the total number of non-discretionary retail forex customer accounts maintained by the FDM for the prior quarter, the percentage of such accounts that were profitable during the quarter and the percentage of accounts that were not profitable during the quarter. These

quarterly reports must be filed within seventeen business days of the quarter for which the report is prepared.

NFA may also require FDMs to file other reports regarding the FDM's capital position, its operations or any other information which NFA deems relevant in assessing the FDM's overall compliance with NFA requirements.

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[1] The Board of Directors has declared that these transactions are a proper subject of NFA regulation and oversight under Article XVIII, paragraph (k).

[2] Compliance Rule 2-39 excludes these same entities when they introduce or manage forex accounts.

[3] Bylaw 306(b)(ii) and (iii) excludes broker-dealers and certain affiliates of broker-dealers that are members of any fully-registered national securities association. At this time, however, FINRA is the only fully-registered national securities association.

[4] These are affiliates of broker-dealers for which the broker-dealer makes and keeps records under the Securities and Exchange Commission's risk assessment requirements. See Section 17(h) of the Securities Exchange Act of 1934 and SEC Rule 17h-1T.

[5] See, for example, Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs, NFA Manual paragraph 9019; Compliance Rule 2-9: Supervisory Procedures for E-Mail and the Use of Web Sites, NFA Manual paragraph 9037; Compliance Rule 2-9: Supervision of the Use of Automated Order-Routing Systems, NFA Manual paragraph 9046. These interpretive notices do not directly apply to forex activities, but the principles included in these notices are equally applicable to those activities.

[6] Through interpretive notices issued under NFA Compliance Rule 2-29, NFA has provided Members with guidance on what activities are deceptive and misleading. See, for example, NFA Compliance Rule 2-29: Deceptive Advertising, NFA Manual paragraph 9033; NFA Compliance Rule 2-29: Deceptive Advertising, NFA Manual paragraph 9034; Compliance Rule 2-29: High Pressure Sales Tactics, NFA Manual paragraph 9038; and NFA Compliance Rules 2-29 and 2-9: NFA's Review and Approval of Certain Radio and television Advertisements, NFA Manual paragraph 9039. Although these interpretive notices do not directly apply to forex activities, the principles included in them with regard to what is deceptive or misleading are equally applicable to those activities.

[7] The Forex Dealer Member is not required to give the customer a price that is no longer reflected on the platform at the time the order reaches it. The Forex Dealer

Member is not responsible for transmission delays outside its control. If an Forex Dealer Member, however, advertises "no-slippage" or that it guarantees fill prices, it must prominently disclose that transmission delays might result in customer orders being executed at a price other than that seen by the customer.

[8] This includes *force majeure* provisions.

[9] Submission of promotional materials for NFA review is not a substitute for a Member's own responsibility to review promotional material. NFA staff will not independently verify the accuracy of statements made in an advertisement; that responsibility remains with the Member. Submitting promotional material to NFA will not provide a "safe harbor" from NFA actions for Members if misstatements or omissions of material fact are discovered subsequently or NFA otherwise later determines that the material is in violation of any applicable standards.

[10] Under traditional legal principles, Members can also be liable for promotional material promoting forex trading systems developed by third-parties. For example, a Member has direct responsibility for misleading promotional material if the Member prepares or distributes it; has agency responsibility if the system developer is an agent of the Member under established principles of agency law; and has supervisory responsibility if the Member fails to supervise its own employees when linking to a third-party trading system developer's web site, recommending a third-party's trading system, or entering into a referral agreement with a third-party system developer. See Interpretive Notice titled "NFA Bylaw 1101, Compliance Rules 2-9 and 2-29: Guidelines Relating to the Registration of Third-Party Trading System Developers and the Responsibility of NFA Members for Promotional Material That Promotes Third-Party Trading System Developers and their Trading Systems," NFA Manual, paragraph 9055.

[11] Forex Dealer Members can comply with this requirement by providing customers with a copy of NFA's brochure entitled "Background Affiliation Status Information Center (BASIC): An Information Resource for the Investing Public," which is available in print and on NFA's website at http://www.nfa.futures.org/.

[12] Where the CFTC's requirements for holding current assets are more stringent, those requirements apply.

NFA COMPLIANCE RULE 2-36: REQUIREMENTS FOR FOREX TRANSACTIONS

(Board of Directors, August 18, 2011; effective March 26, 2012)

INTERPRETIVE NOTICE

NFA Compliance Rule 2-36 imposes a number of obligations on a Forex Dealer Member (FDM) regarding the manner in which it handles customer forex transactions. Compliance Rule 2-36(b)(1) prohibits an FDM engaging in a forex transaction from cheating, defrauding, or deceiving or attempting to cheat, defraud or deceive any other person. NFA Compliance Rule 2-36(b)(4) prohibits an FDM from engaging in any manipulative acts or practices regarding the price of any foreign currency or forex transaction. Also, NFA Compliance Rule 2-36(c) requires an FDM to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its forex business. NFA's Board of Directors (Board) adopted these provisions to ensure than an FDM acts honestly, fairly and in the best interests of its customers.

NFA's Business Conduct Committee (BCC) recently issued several disciplinary Complaints for violations of these rule provisions based on strikingly similar conduct. As described more fully below, in each of these disciplinary matters, the FDM dealt with price changes that occurred from the time the customer entered an order until the time it reached the FDM's system in an asymmetrical manner that benefited the FDM to the detriment of the customer. Given the severity of the conduct at issue in these disciplinary matters, NFA's Board of Directors is issuing this Notice to provide further guidance.

When a customer's order reaches an FDM's trading system, the price being offered on the system may be different than the price offered at the time the customer first submitted the order.[1] The difference between these two prices is commonly referred to as slippage. If the customer's order is executed at the price quoted at the time the customer entered the order, the slippage will result in an immediate unrealized gain or loss to the customer based on the direction of the market's movement. Since the FDM takes the other side of the customer's order, if the market movement is unfavorable to the customer, it will be favorable to the FDM and vice versa.

When slippage occurs, some FDMs immediately requite the customer the current price and require the customer to confirm that it still wants to place the order at the requited price. In order to prevent excessive requiting in a fast moving market and to ensure timelier fills, some FDMs have built in and clearly disclosed slippage parameters to customers that permit the execution of the order if the slippage is within the established slippage parameters.[2] In each of the recent disciplinary matters, the FDM used asymmetrical slippage

settings that benefited the FDM to the detriment of the customer because the slippage settings made it much more likely that a customer order that moved against the customer (and therefore in the FDM's favor) would be filled than one that moved in the customer's favor (and therefore against the FDM). In particular, the FDMs named in the BCC Complaints employed on or more of the following practices:

- The FDM set the maximum losing slippage (i.e., slippage that was unfavorable to the customer and favorable to the FDM) at a much wider range of pips than the maximum profit slippage (i.e., slippage that was favorable to the customer and unfavorable to the FDM). As a result, a customer was much more likely to have an order filled when the market move was unfavorable to it than when the movement was favorable to the customer.
- The FDM set the limit on the number of contracts in an order that could be executed that experienced losing slippage for the customer at a much higher number than the limit on the number of contracts in an order that could be executed that experienced profitable slippage for the customer. As a result, a larger sized order that moved against the customer was much more likely to be executed than a smaller sized order that moved in the customer's favor.
- The FDM only passed negative slippage on to the customer. If the FDM was able to offset the customer's order at a better price than the price at the time the customer submitted its order, the FDM did not give the customer the better price. However, if the FDM offset the customer's order at a price that had negative slippage and was unfavorable to the customer, the FDM would thereby benefit from the slippage and fill the customer's order at the offset price.

In each of the above instances, the FDM's asymmetrical slippage settings allowed it to manipulate the prices that the forex customer received and allowed the FDM to benefit from the order slippage to the detriment of the customers, which clearly violates Compliance Rule 2-36(b)(1) and (b)(4) and Compliance Rule 2-36(c). The above practices are examples of the type of conduct that would violate these rule provisions, but is not an all encompassing list. Any asymmetrical slippage settings or requiting practices, or any other manipulative practices, that provide an advantage to the FDM to the detriment of the forex customer would violate these rule provisions.[3]

The Board is not prohibiting an FDM from setting symmetrical slippage parameters or requiting prices in appropriate circumstances. An FDM should not be held responsible for order transmission delays that are beyond its control that result in the FDM's trading system reflecting a price at the time a customer order reaches the platform that is different from the price at the time the customer placed the order.[4] However, in order for an FDM to avoid violating these rule provisions, the FDM must apply the slippage settings

uniformly regardless of the direction in which the market has moved. Similarly, if the FDM requotes prices based on slippage parameters when the market has moved against it, then it must also requote prices when the market has moved in its favor. An FDM must also ensure that the customer is aware of how the FDM handles such circumstances prior to trading with the FDM. Accordingly, prior to entering into the first forex transaction with a customer, an FDM must disclose its policy with regard to orders that are received for a price that is no longer reflected on the platform. For example, the FDM must disclose whether the order will automatically be executed or filled at the price reflected on the platform or if the customer will be notified of the price reflected on the platform and provided with an opportunity to accept or reject this new price. Similarly, if the FDM utilizes slippage parameters, it must disclose these parameters. In particular, the FDM must fully disclose how slippage parameters will be used with respect to limit orders. If the FDM applies different slippage settings and requoting practices depending on the customer, the FDM must also disclose this fact and indicate the guidelines it uses to determine the appropriate settings and practices for a particular customer.

An FDM must also have written procedures in place regarding its handling of instances where the price at the time a customer's order reaches the FDM's trading system is different from the price that was reflected at the time the customer placed the order. For those FDMs that utilize different slippage parameters and requoting practices depending on the customer, the FDM's procedures should indicate the guidelines it uses to determine the appropriate settings and practices for a particular customer. A listed principal that is also an NFA associate must have reviewed and approved these procedures.

Finally, an FDM must ensure that any of its promotional material that discusses the mechanics of its trading system does not provide information that misrepresents or is misleading with respect to how it deals with price slippage and requoting. This includes ensuring that if the FDM uses promotional material that discusses the performance in a demo account, that demo account is subject to the same slippage parameters as actual customer accounts and those parameters are disclosed. Moreover, if the FDM advertises that its electronic trading platform ensures "no slippage," the electronic trading platform must be designed to execute a market order at the price displayed to the customer when the order is entered by the customer.

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[1] Although this difference could be the result of an FDM manipulating the prices, the difference may also occur for a number of legitimate reasons including a fast moving market and/or delays in transmitting the order.

[2] These slippage parameters dictate the number of pips the market may move without affecting the execution of the customer's order at the price at the time the customer entered the order. If the order is outside the slippage parameters, the FDM will requote the customer and obtain confirmation of the new price.

[3] These practices apply to FDM proprietary systems where these parameters are internally and inherently programmed into the system as well as for FDM systems that are enhanced by add-ons that are purchased or leased from third parties. An FDM is responsible for ensuring that its trading system, whether proprietary, purchased or leased, is in compliance with this Interpretive Notice.

[4] An FDM is, however, responsible for taking steps to ensure that its trading system has sufficient capacity and integrity to handle the timely and efficient transmission and execution of customer orders.

NFA COMPLIANCE RULES 2-4 AND 2-36: PROHIBITION ON THE USE OF CERTAIN ELECTRONIC FUNDING MECHANISMS

(Board of Directors, May 15, 2014; effective January 31, 2015.)

INTERPRETIVE NOTICE

NFA Compliance Rule 2-4 requires Members and Associates to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business. Similarly, NFA Compliance Rule 2-36(c) requires Forex Dealer Members (FDM) and their Associates to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their forex business.

NFA's Board of Directors (Board) recently reviewed information regarding the use of credit cards[1] by FDM retail customers to fund their forex trading accounts, which indicates that retail forex customers overwhelmingly fund their trading accounts using a credit card. For the reasons described below, the Board believes that permitting customers to invest in the forex or futures markets using a credit card is inconsistent with a Member's obligation to observe high standards of commercial honor and just and equitable principles of trade.

Credit cards, by their very nature, permit easy access to borrowed funds. Given the highly volatile nature of the forex and futures markets, the substantial risk of loss, and the possibility that a total loss may occur in a very short period of time, the Board has concluded that Members should be prohibited from permitting customers to use credit cards to fund forex or futures accounts.

The Board also recognizes that the retail forex and futures businesses are largely Internet based, electronic payments are the acceptable payment method for most Internet based businesses, and that certain electronic funding methods may provide some convenience to customers. Therefore, the Board is not prohibiting all forms of electronic payment mechanisms.

Specifically, the Board believes that certain electronic funding mechanisms are acceptable and appear consistent with a Member's obligation to observe high standards of commercial honor and just and equitable principles of trade. Those electronic funding mechanisms, however, must be tied to a customer's bank account at a financial institution. In particular, the Board is aware that with an electronic payment made through a debit card, the funds are drawn directly from the customer's bank account and therefore this payment method functions in a manner very similar to a check drawn on a customer's account. The Board also understands that certain other electronic payment facilitators may draw funds directly from a customer's bank account.

The key factor differentiating a credit card payment from an electronic funding method that is directly tied to the customer's account at a financial institution is that with the latter method, the customer has funds on hand and those funds are immediately transferred from the customer's bank account to the FDM or FCM, which significantly reduces the likelihood that the customer is borrowing funds to invest. The Board also believes, however, that in order to accept an electronic funding method such as a debit card, the Member must be able to distinguish, prior to accepting funds, between a debit card or other electronic funding method that draws money from the customer's checking or savings account at a financial institution and a traditional credit card, and be able to reject the credit card before accepting funds. For example, in processing electronic payments, Members may utilize a third-party provider that uses technology to differentiate between a credit or debit card transaction.

As always, any FCM or FDM offering this type of funding mechanism should make sure that adequate risk disclosure is provided to a customer in light of the customer's financial circumstances.

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[1] For purposes of this Interpretive Notice, the term credit card also includes other electronic payment facilitators (e.g., Paypal) that commonly draw funds from a customer's credit card.

NFA COMPLIANCE RULE 2-40: PROCEDURES FOR THE BULK ASSIGNMENT OR LIQUIDATION OF FOREX POSITIONS; CESSATION OF CUSTOMER BUSINESS

(Board of Directors, November 16, 2006; effective February 16, 2007. Revised October 18, 2010; October 1, 2011; November 15, 2011; and July 26, 2012.)

INTERPRETIVE NOTICE

In addition to the requirements of CFTC Regulation 5.23, a Forex Dealer Member ("FDM") must follow these procedures when seeking to employ a bulk assignment or liquidation of its customer's positions or a bulk transfer of customer accounts. NFA may waive or modify any of these procedures or impose additional requirements if doing so is in the FDM's customers' best interest or if the circumstances otherwise require.

BULK ASSIGNMENTS AND TRANSFERS

Permitted Assignees

An FDM must notify NFA's Compliance Department ("Compliance") prior to any bulk assignment of customer positions or bulk transfer of customer accounts. An FDM may only assign open positions to an entity that is an authorized counterparty enumerated in Section 2(c)(2)(B)(i)(ll) of the Act, provided that entity is not prohibited from acting as a counterparty under 2(c)(22)(E) of the Act. Prior to the assignment or transfer, the FDM must conduct a reasonable investigation and determine that the assignee intends and is financially able to honor its commitments to the FDM's customers as a result of the assignment or transfer. The FDM must document this investigation and provide this information to NFA.

Written Consent or Prior Notice

An FDM may assign customer positions and transfer customer accounts to an authorized counterparty with the express written consent of its customers. Alternatively, an FDM may assign open positions and transfer accounts by providing its customers with prior notice. The FDM must send NFA's Compliance Department a copy of this notice before the notice is sent to customers.

Notice to Customers

The notice should be sent to the customer's independent e-mail address (not a dedicated address provided by the Forex Dealer Member) and by postal mail (at least first class delivery). Generally, the FDM must provide this notice at least seven calendar days before the assignment or transfer. In rare and unusual circumstances, NFA's Compliance

Department might determine that a shorter notice period is appropriate. Additionally, there might be circumstances in which the Compliance Department determines that a longer notice period is required.

The notice should include any information that is material based upon the specific circumstances of the assignment or transfer. At a minimum, the notice must include:

1. The reason for the assignment/transfer;

2. A clear and concise statement that as of a particular date (the assignment/transfer date, which should not be less than seven calendar days after the date of the notice) the FDM will no longer be the counterparty to the customer's positions and will not service the customer's account;

3. The name, NFA ID (if applicable), postal and e-mail addresses, and telephone number of the proposed assignee/transferee as well as the name of an individual at the assignee/transferee the customer can contact about the proposed assignment/transfer;

4. A statement that the customer is not required to accept the proposed assignment/transfer but may direct the assignor/ transferor FDM to liquidate the customer's positions;

5. The name, postal and e-mail address, and telephone number of an individual at the assignor/transferor FDM the customer can contact with questions or to liquidate positions; and

6. A statement that failure to respond to the notice within a specified period of time, not less than seven days from the date of the notice, will result in a default action, which must be either (A) assigning the customer's positions and transferring account balances to the assignee (if authorized by contract) or (B) liquidating the customer's positions and returning the remaining funds, whichever is the case.

Where the customer positions and accounts are being assigned/transferred to a firm that is an NFA Member but is not an FDM, the notice must include the following disclosure:

> YOUR POSITIONS AND ACCOUNT WILL BE ASSIGNED TO A FIRM WHOSE OFF-EXCHANGE FOREX ACTIVITIES ARE NOT REGULATED BY NATIONAL FUTURES ASSOCIATION.

Obligations of the Assignee/Transferee

If forex positions or accounts are assigned or transferred to an FDM or an IB, the assignee/transferee FDM or IB may not accept orders initiating new positions until it obtains the personal and financial information pertaining to the retail forex customer that is required under Compliance Rule 2-36 from either the retail forex customer or the assignor/transferor FDM or IB.

In addition to the disclosures required by CFTC Regulation 5.23, the assignee/transferee FDM or IB must also provide the retail forex customer with the disclosures required under CFTC Regulation 5.5(e)(1)(i)-(iii) with respect to the assignee/transferee FDM (prior to accepting any orders initiating new positions) and must receive the required signed acknowledgement within sixty days of such assignment or transfer. The only exception to this requirement is when the assignee/transferee IB introduces the retail forex customer to the same FDM as the assignor/transferor IB and the assignee/transferee IB has clear written evidence that the assignor/transferor IB provided the retail forex customer with these disclosures with respect to the FDM.

Finally, the assignee/transferee FDM or IB must provide the disclosure required under 5.5(e)(1)(i)-(iii) with respect to the transferee FDM even in those situations when the assignment or transfer is at the retail forex customer's request.

BULK LIQUIDATIONS

An FDM must notify NFA's Compliance Department prior to any bulk liquidation of customer positions. An FDM may liquidate customer positions with the express written consent of its customers. Alternatively, an FDM may liquidate customer positions by providing its customers with prior notice of the liquidation. The FDM must send NFA's Compliance Department a copy of this notice before the notice is sent to customers.

Notice to Customers

The notice should be sent to the customer's independent e-mail address (not a dedicated address provided by the Forex Dealer Member) and by postal mail (at least first class delivery). Generally, the FDM must provide this notice at least seven calendar days before the liquidation. In rare and unusual circumstances, NFA's Compliance Department might determine that a shorter notice period is appropriate. Additionally, there might be circumstances in which the Compliance Department determines that a longer notice period is required.

The notice should include any information that is material based upon the specific circumstances of the liquidation. At a minimum, the notice must include:

1. The reason for the liquidation;

2. A clear and concise statement that as of a particular date (the liquidation date, which should not be less than seven calendar days after the date of the notice) the FDM will liquidate all open positions in the customer's account and close the account; and

3. The name, postal and e-mail address, and telephone number of an individual at the FDM the customer can contact with questions regarding the liquidation.

RECORDS

For a bulk assignment, liquidation, or transfer, the assignor/transferor FDM and the assignee/transferee FDM must provide NFA's Compliance Department with all pertinent records pertaining to the transaction, including at a minimum:

(A) At the time that the assignor/transferor FDM first contacts NFA's Compliance Department, the assignor/transferor FDM must provide:

1. representative copies of the customer agreements;

2. a list of the affected accounts, including:

   a. customer names;
   b. account numbers; and
   c. account values as of the end of the previous day;

3. if an assignment or transfer, documentation regarding the assignor/transferor FDM's investigation of the assignee/transferee's status as an authorized counterparty and its financial ability to honor its commitments to the customers.

(B) Immediately after the bulk assignment, liquidation, or transfer, the assignee/transferee FDM must provide a list of the affected accounts and the value of each account as of the date of the transaction.

COMPLIANCE RULE 2-36(e): SUPERVISION OF THE USE OF ELECTRONIC TRADING SYSTEMS

(Board of Directors, November 16, 2006; effective July 1, 2007; October 15, 2007; December 17, 2007; June 1, 2009; October 18, 2010; October 1, 2011; and November 15, 2011.)

INTERPRETIVE NOTICE

NFA Compliance Rule 2-36(e) places a continuing responsibility on every Forex Dealer Member (FDM) to diligently supervise its employees and agents in all aspects of its forex activities, and Compliance Rule 2-39 applies this same requirement to Members who solicit, introduce, or manage forex customer accounts. These rules are broadly written to provide Members with flexibility in developing procedures tailored to meet their particular needs, so NFA uses interpretive notices to provide more specific guidance.[1]

Although the Board of Directors firmly believes that supervisory standards do not change with the medium used, technology may affect how those standards are applied. The forex markets are highly automated, with virtually all trading done on electronic platforms. Most orders are also placed electronically, usually entered directly with the platform via the Internet. Therefore, in order to fulfill their supervisory responsibilities, Members must adopt and enforce written procedures to address the security, capacity, credit and risk-management controls, and records provided by the firm's electronic trading systems.[2] This includes electronic trading platforms, order-routing systems incorporated into electronic trading platforms, and separate order-routing systems (AORSs).[3] For an electronic trading platform, the procedures must also address the integrity of the trades placed on it.

NFA recognizes that Members who solicit or manage accounts may not have control over the electronic platform where the customer places its trades. Nonetheless, if these Members are dealing with a counterparty that is not an FDM, they have a supervisory responsibility to conduct a reasonable investigation regarding security, capacity, credit and risk-management, records, and integrity of trades on the platform prior to entering into a relationship with that counterparty and periodically thereafter. Therefore, while they are not subject to the more specific requirements of this Notice, they should adopt written procedures addressing the steps they will take to investigate the platform and how they will respond if they have reason to believe that the platform does not meet the general standards set out after each major heading.[4]

The specific requirements of this Notice do, however, apply to any FDM that uses another entity's trading platform through a "white-labeling" arrangement.[5] If the entity providing the platform (the white labeler) is also an FDM, the FDM using the platform (the sponsor) may rely on the white labeler

to comply with most of these requirements. The sponsor must, however, adopt and enforce written procedures to:

- Provide required notifications and disclosures to customers;
- Maintain records; and
- Respond to situations where it has reason to believe the white labeler is not complying with the Notice.

If the white labeler is not an FDM, the sponsor and the white labeler may agree by contract that the white labeler will comply with the Notice, but the sponsor FDM will still be liable if the requirements are not met.[6]

Each FDM must notify NFA of the trading platform it uses, including the identity of the platform's owner and developer (if different than the owner) and whether the platform is proprietary, used under a white-labeling arrangement, or leased from a third-party under other terms. The FDM must also notify NFA when it changes its trading platform, adds a new trading platform, or drops a trading platform.

Each FDM must also maintain a copy of the procedures required by this Notice and provide a copy to NFA upon its request. The procedures must assign the responsibility for complying with this Notice to individuals who are under the ultimate supervision of an Associated Person who is also a listed principal.

Members must also ensure that any promotional or other material they distribute or endorse regarding the electronic trading system, or the services (e.g., capacity) or the quality of services (e.g., performance level) they provide with respect to that system, accurately and completely discuss the system's functions and operation. Using material that misrepresents the electronic system, or the Member's services or quality of service, constituted a violation of NFA Compliance Rules 2-36(b) and 2-39(a).

Given the differences in NFA Members' size, complexity of operations, and business activities, they must have some flexibility in determining what constitutes "diligent supervision" for their firms. NFA's policy is to leave the exact form of supervision up to each Member, thereby providing the Member with flexibility to design procedures tailored to its own situation. It is also NFA's policy to set general standards rather than to require specific technology. Therefore, other procedures besides the ones described in this Interpretive Notice may comply with the general standards for supervisory responsibilities imposed by Compliance Rules 2-36 and 2-39.[7]

Security

General Standard. Members who handle customer orders must adopt and enforce written procedures reasonably designed to protect the reliability and confidentiality of customer orders and account information. The procedures must also assign responsibility for overseeing the process to one or more individuals who understand how it works and who are capable of evaluating whether the process complies with the firm's procedures.

Authentication. Electronic trading systems, or other systems the customer must go through to access electronic trading systems, should authenticate the user. Authentication can be accomplished through a number of methods, including:

- Passwords;
- Authentication tokens, such as SecurID cards; or
- Digital certificates.

Encryption. The system should use encryption or equivalent protections for all authentication and for any order or account information that is transmitted over a public network (including the Internet), a semi-private network, or a virtual private network. If more appropriate and effective security procedures are developed or identified, the use of those procedures would comply with this standard.

Firewalls. Firewalls or equivalent protections should be used with public networks, semi-private networks, and virtual private networks. The system should log the activities that pass through a firewall, and the log should be reviewed regularly for abnormal activity. If more appropriate and effective security procedures are developed or identified, the use of those procedures would comply with this standard.

Authorization. Although it is the customer's responsibility to ensure that only authorized individuals have access to the electronic trading system using the customer's facilities and authentication devices (e.g., passwords), the Member's procedures should, as appropriate, provide customers with a means to notify the Member that particular individuals are no longer authorized or to request that authentication devices be disabled. Customers should be informed about the notification process.[7]

Administration. The Member should adopt and enforce written procedures assigning the responsibility for overseeing the security of the electronic trading system to appropriate supervisory personnel. The procedures should also provide that appropriate personnel keep up with new developments, monitor the effectiveness of the system's security, and respond to any

breaches. Additionally, the procedures should provide for updating the system as needed to maintain the appropriate level of security.

Capacity

General Standard. Members who handle customer orders must adopt and enforce written procedures reasonably designed to maintain adequate personnel and facilities for the timely and efficient delivery of customer orders and reporting of executions. Members who operate trading platforms must adopt and enforce written procedures reasonably designed to maintain adequate personnel and facilities for the timely and efficient execution of customer orders. The procedures must also be reasonably designed to handle customer complaints about order delivery, execution (if applicable), and reporting and to handle those complaints in a timely manner.

Capacity Reviews. The Member should adopt and enforce written procedures to regularly evaluate the capacity of each electronic trading system and to increase capacity when needed. The procedures should also provide that each system will be subjected to an initial stress test. Such test may be conducted through simulation or other available means. Capacity reviews should be conducted whenever major changes are made to the system or the Member projects a significant increase in volume and should occur at least annually.

The Member should monitor both capacity (how much volume the system can handle before it is adversely impacted or shuts down) and performance (how much volume the system can handle before response time materially increases), and should assess the electronic trading system's capacity and performance levels based on the major strains imposed on the system. The Member should establish acceptable capacity and performance levels for each of its electronic trading systems. The Member's procedures should be reasonably designed to provide adequate capacity to meet estimated peak volume needs based on past experience, present demands, and projected demands.

The procedures should also provide for the Member to follow up on customer complaints about access problems, system slowdowns, system outages, or other problems that may be related to capacity.[8] The Member should identify the cause of any problem and take action to prevent it from re-occurring.

Disaster Recovery and Redundancies. The Member should have contingency plans reasonably designed to service customers if either the system goes down or activity exceeds reasonably expected peak volume needs. The Member should use redundant systems or be able to quickly convert to other systems if the need arises. These backup systems can include facilities for accepting orders by telephone.

When operational difficulties occur, including but not limited to a system outage or disruption or delay in execution time, the Member should provide prompt and effective notification to any customers affected by the operational difficulties. Notification can be made by a number of methods, including:

- a message on the Member's web site;
- e-mails or instant messages;
- a recorded telephone message for customers on hold; and/or
- a recorded telephone message on a line dedicated to providing system bulletins to existing customers.

An FDM must notify NFA as soon as reasonably possible, but no more than 24 hours, after operational difficulties occur. The notice should include the date, time, length, and cause of the outage or disruption; what the FDM did to remedy the situation in the short term; what steps the FDM will take to guard against future occurrences; the number of customers affected; and any actions the FDM took to adjust customer trades or accounts.

Advance Disclosure. The Member should disclose, in advance, the factors that could reasonably be expected to materially affect the system's performance (e.g., periods of stress) and the means available for contacting the Member during a system outage or slow-down. This disclosure should be provided to each customer at the time the customer opens an account using a method reasonably calculated to ensure that the customer becomes aware of it.[9] The disclosure should also be prominently displayed on the Member's web site. The Member should also educate customers on alternative ways to enter orders when the system goes down or reaches an unacceptable performance level. This disclosure must be made in a manner designed to provide this information to current customers before problems occur, such as through the account agreement or a notice on the Member's website.

Credit and Risk-Management Controls

General Standard. Members who handle customer orders must adopt and enforce written procedures reasonably designed to prevent customers from entering into trades that create undue financial risks for the Member or the Member's other customers.[10] Regardless of its business model – dealer or straight through processor – a Member must also have policies and procedures in place to monitor its own proprietary trading, including open positions, and the impact those positions and any potential market movement or adjustments may have on the Member's ability to meet its capital requirement.

Account Controls. An electronic trading system should be designed to allow the Member to set limits for each customer based on the amount of equity in the account or the currency, quantity, and type of order, and the Member should utilize these controls. The system should automatically block any orders that exceed the pre-set limits.[11]

If the trading platform automatically liquidates positions, the FDM should set the liquidation levels high enough so that the positions will be closed out at prices that will prevent the account from going into a deficit position under all but the most extraordinary market conditions.[12] The FDM's platform must automatically liquidate positions, and it must set its liquidation levels to comply with this requirement, if its customer agreement or promotional material states or implies that customers cannot lose more than they invest.

An electronic trading platform that does not automatically liquidate positions should generate an immediate alert when an account is in danger of going into a deficit position. Firm personnel should monitor those alerts throughout the day and take action when necessary.

System Controls. An electronic trading system should also be designed to identify trading anomalies or patterns that indicate a system malfunction, especially a malfunction that could result in undue risk to the FDM.

Recordkeeping

General Standard. Members who handle orders must adopt and enforce written procedures reasonably designed to record and maintain essential information regarding customer orders and account activity, including the information required by CFTC Regulation 5.18(b)(4).

Profit and Loss Reports. Electronic trading platforms should be able to produce, upon request, a report showing monthly and yearly realized and unrealized profits and losses by customer. The report should be sortable by the person soliciting, introducing, or managing the account.

The system should generate year-end reports for each customer showing the realized profits and losses incurred during the calendar year and the unrealized profits and losses on open positions. The FDM must distribute these reports to customers by January 31st.[13]

Reporting to NFA

General Standard. Each FDM must submit to NFA any reports or information required by NFA.

Daily Trade Records. Each FDM must file a daily electronic report of trades with NFA in accordance with NFA Compliance Rule 2-48. The report must contain the following data required by NFA:

- All order transaction records on a daily basis;
- A list of executed trades on a daily basis;
- A list of all money managers on the first day of reporting, with any changes being reported daily;
- A list of all price adjustments made by the FDM on a daily basis; and
- A list of any unusual events, such as a system outage or "fast market" on a daily basis as applicable.

Management should review this report to ensure that it is providing NFA with full and complete information and review all transactions, exceptions and unusual events for suspicious or unjustifiable activity.

Assessment Fee Reports. Electronic trading platforms should generate month-end assessment fee reports for each FDM using the platform. The report should summarize the number of forex transactions executed during the month and the size of those transactions.[14]

Retention. Members must maintain this information for five years from the date created, and it must be readily accessible during the first two years, in accordance with CFTC Regulation 1.31. These records must be open to inspection by NFA, and copies must be provided to NFA upon request.

Trade Integrity

General Standard. FDMs must adopt and enforce written procedures reasonably designed to ensure the integrity of trades placed on their trading platforms.

Pricing. Trading platforms must be designed to provide bids and offers that are reasonably related to current market prices and conditions. For example, bids and offers should increase as prices increase, and spreads should remain relatively constant unless the market is volatile.[15] Furthermore, if an FDM advertises a particular spread (e.g., 1 pip) for certain currency pairs or provides for a particular spread in its customer agreement, the system should be designed to provide that spread.[16]

Slippage. An electronic trading platform should be designed to ensure that any slippage is based on real market conditions. For example, slippage should be less frequent in stable currencies than in volatile ones, and prices should move in customers' favor as often as they move against it.

Settlement. An electronic trading platform should be designed to calculate uniform settlement prices. An FDM must have written procedures describing how settlement prices will be set using objective criteria.

Rollovers. If an electronic trading platform automatically rolls over open positions, the trading platform should be designed to ensure that the rollover complies with the terms disclosed in the customer agreement, including those provisions dictating how the rollover price is determined. Forex Dealer Members should adopt and enforce a written policy detailing the procedures it follows to calculate rollover or interest charges and payments. The policy must include the factors that are considered as well as the names of any sources for these factors. The Member should document the underlying factors reviewed in completing the calculation, including any related transactions entered into by the Forex Dealer Member, so it can be replicated.

Periodic Reviews and Annual Certification

Members should conduct periodic reviews (at least annually, but more frequently if the circumstances warrant a more frequent review) of any electronic trading system it utilizes. This review should be designed to:

- Assess the security of the electronic trading system;
- Assess the reliability of the electronic trading system's credit and risk-management controls;
- Ensure that the electronic trading system maintains required data and is capable of generating the reports required by this Notice;
- Ensure that the electronic system protects the integrity of the trades placed on it and executes customer forex orders in a fair manner.

The Member must prepare a report of the periodic review, noting the scope of the review, any findings and corrective action and maintain a copy of the review in accordance with CFTC Regulation 1.31. The results of this review should be reported to the firm's senior management, including the FDM's Chief Compliance Officer, and any follow up should be recorded and signed by senior management.

An FDM must also have a qualified outside party conduct an independent annual review of any electronic trading platform it uses within twelve months after the FDM begins trading on that platform or within twelve months after the firm becomes an FDM, whichever is later.[17] Thereafter, an independent review must be conducted at least annually, and a qualified outside party must conduct the review every other year. The remaining annual reviews and any additional reviews (which should be performed when needed) may be

conducted by either an independent internal audit department or a qualified outside party. For pure order-routing systems, the required reviews may be conducted by an independent internal audit department or a qualified outside party and must be done at least annually.

The reviews should audit the system for compliance with the requirements in this Notice. The results should be documented and reported to the firm's senior management or to an internal audit committee or department. The Member should follow up to ensure that any deficiencies are addressed and corrected. The FDM should document the corrective action taken, and a member of the firm's senior management should sign off on that report. The FDM should retain this report in accordance with CFTC Regulation 1.31.

Each FDM - including each FDM that provides a trading platform to its customers through a white-labeling arrangement - must certify annually that the requirements in this Notice have been met and that the written procedures required by this Notice are up-to-date. The certification must be signed by a principal who is also a registered AP and must be filed with NFA. In completing this certification the AP/principal should review the results of the periodic reviews and any corrective action taken.

Members who solicit or introduce forex customers or manage forex customer accounts must provide annual certifications if they use an electronic trading platform offered by a counterparty that is not an FDM or if they provide or endorse a separate AORS. The certification must be signed by a principal who is also a registered AP and must be filed with NFA. The certification may, however, be limited to the applicable requirements.

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[1] For purposes of this Notice, the term "Forex Dealer Member" has the same meaning as in Bylaw 306, the term "forex" has the same meaning as in Bylaw 1507(b), and the term "customer" has the same meaning as in Compliance Rule 2-36(i).

[2] The written procedures do not, however, have to contain technical specifications or duplicate procedures that are documented elsewhere.

[3] A trading platform executes a customer's trade by assigning the other side of the trade to a counterparty. An order-routing system transmits orders to a trading platform (or to another system or individual). In most instances, the same trading system will perform both functions. NFA understands that separate systems are extremely rare in the forex markets. Nonetheless, since most of the same principles apply, these separate systems are included in this Notice.

[4] If the Member provides or endorses a separate AORS, however, the Member is responsible for meeting all of the applicable requirements in connection with that system.

[5] White labeling refers to the practice of leasing the right to place the lessee's name on and market another firm's trading platform as its own and then passing the trades through to the lessor. In the typical while labeling arrangement, the lessee's customers do not have a contractual relationship with, and in fact may be unaware of, the firm that owns and operates the platform. For regulatory purposes, the lessee is the counterparty to the customer's trades and the corresponding transactions with the lessor are separate transactions between the lessee and the lessor to hedge the lessee's customer obligations.

[6] As a practical matter, NFA will not take disciplinary action unless the sponsor knew or should have known that the white labeler was not meeting its contractual obligation to comply with this Notice or the sponsor failed to exercise due diligence when establishing and maintaining the relationship with the white labeler.

[7] For purposes of this notice, the term "customer" includes CTAs entering orders for forex customers except when referring to credit-worthiness and ability to accept risk. In those instances, the term "customer" is limited to the owner of the account.

[8] For example, lack of capacity might result in excessive slippage or an order not being filled.

[9] A Member could, for example, provide the disclosure in a separate e-mail to an address provided by the customer. Burying the disclosure in the account opening documents is not sufficient.

[10] A Member should assess each individual customer's ability to accept risk as part of the Member's obligation to know its customers. (*See* NFA Interpretive Notice entitled "Forex Transactions," NFA Manual, paragraph 9053).

[11] An AORS used to access an electronic trading platform need not include pre-execution and post-execution controls if the Member providing or sponsoring the AORS has determined, after a reasonable investigation, that the trading platform complies with those requirements and that the Member who controls the trading platform effectively utilizes its controls.

[12] If the FDM unconditionally guarantees customers against deficits it should, of course, take any loss that occurs beyond the amount of equity in the account even when the deficit occurs because of those extraordinary market conditions. Misrepresenting the potential for customer losses is a violation of NFA Compliance Rule 2-36(b) or 2-39(a).

[13] FDMs can use Form 1099-B to satisfy this requirement.

[14] The report should exclude transactions by eligible contract participants as that term is defined in Section 1a(12) of the CEA.

[15] Management should approve each fill outside the price range displayed by the system when a market order was placed and should document the reason for the fill price.

[16] If the FDM's customer agreement provides for exceptions in volatile or illiquid markets and those exceptions are prominently disclosed, the system may be programmed to be consistent with the agreement's terms.

[17] For purposes of this Notice, "qualified outside party" means an unaffiliated individual or entity that, through experience or training, understands complex IT systems and is able to test the firm's systems for compliance with the requirements in the Notice.

NFA COMPLIANCE RULE 2-36: RISK MANAGEMENT PROGRAM FOR FOREX DEALER MEMBERS

(*Board of Directors, May 21, 2015, effective January 4, 2016.*)

INTERPRETIVE NOTICE

Each NFA Member Futures Commission Merchant (FCM) is required under NFA Compliance Rule 2-26 (incorporating CFTC Regulation 1.11) to establish, maintain and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with its activities as an FCM (known as a Risk Management Program). Each NFA Member Swap Dealer (SD) and Major Swap Participant (MSP) is subject to similar requirements under NFA Compliance Rule 2-49 (incorporating CFTC Regulation 23.600) and must have a Risk Management Program with respect to monitoring and managing the risks associated with its swap dealing activities.

NFA's Board of Directors (Board) believes that each NFA Forex Dealer Member (FDM) should be subject to Risk Management Program requirements with respect to monitoring and managing its forex activities.[1] Therefore, the Board is amending NFA Compliance Rule 2-36 to specifically require FDMs to establish, maintain and enforce a Risk Management Program designed to monitor and manage the risks associated with their forex activities.[2] The purpose of this interpretive notice is to provide guidance relating to the FDM Risk Management Program requirements.

Written Risk Management Program

Each FDM must establish, maintain, and enforce a Risk Management Program designed to monitor and manage the risks associated with its forex activities. Each FDM must adopt written policies and procedures that describe its Risk Management Program, and those policies and procedures along with any material changes thereto must be approved in writing by the firm's governing body.[3] The Risk Management Program must also include procedures for the timely distribution of the written Risk Management Program to relevant supervisory personnel. The FDM must maintain records of the persons to whom the Risk Management Program is distributed, along with the date of distribution. The FDM must also submit a copy of the Risk Management Program to NFA and/or the CFTC upon request.

Risk Management Unit

Each FDM must establish and maintain a risk management unit. This unit must have sufficient authority; qualified personnel; and financial, operational and other resources to carry out the firm's Risk Management Program. The risk management unit must report directly to the firm's senior management[4] and be independent from those employees involved (including in a

supervisory capacity) in pricing, trading, sales, marketing, advertising, and solicitation activities of the FDM (collectively business trading unit).

Elements of the Risk Management Program

At a minimum, the Risk Management Program must include policies and procedures to monitor and manage the following risks:

a. *Market Risk* shall take into account, among other things, for all counterparties (*i.e.,* ECP and Non-ECP) the daily measurement of market exposure, volatility of prices, basis and correlation risks, leverage, sensitivity of option positions (if applicable), and position concentration to comply with market risk tolerance limits; timely and reliable valuation data derived from, or verified by, sources that are independent of the business trading unit; and periodic reconciliation of profits and losses resulting from valuations with the general ledger.

b. *Credit Risk* shall take into account, among other things, for all counterparties the daily measurement of overall credit exposure to comply with forex counterparty credit limits; monitoring and reporting violations of counterparty customer credit limits performed by persons independent of the business trading unit; the firm's process for monitoring and adjusting security deposit requirements imposed upon all counterparty customers; and regular valuation of collateral (including appropriate haircuts) used to cover credit exposures and safeguarding of collateral.

c. *Liquidity Risk* shall take into account, among other things, the daily measurement of liquidity needs, risks presented by prime brokers and/or liquidity providers, and, if applicable, procedures for liquidating all non-cash collateral in a timely manner and without significant effect on price and application of appropriate collateral haircuts that accurately reflect market and credit risk.

d. *Foreign Currency Risk* shall take into account, among other things, the daily measurement of the amount of capital exposed to fluctuations in the value of foreign currency to comply with applicable limits and the establishment of safeguards against adverse currency fluctuations.

e. *Legal Risk* shall take into account, among other things, the determination that any transaction and netting arrangements entered into have a sound legal basis, account opening documents are properly completed and adequate risk disclosure provided, and an evaluation of what impact any potential litigation may have upon firm capital.

f. *Operational Risk* shall take into account, among other things, secure and reliable operating and information systems with adequate, scalable capacity and independence from the business trading unit; safeguards to detect,

identify and promptly correct deficiencies in the operating and information systems; automated financial and risk management controls reasonably designed to prevent the placing of erroneous trades, including those that exceed pre-set capital, credit or volume thresholds; and reconciliation of all data and information in operating and information systems.

g. *Counterparty Risk* shall take into account, among other things, all risks including but not limited to, settlement risks, pricing risks associated with offsetting the FDM's forex positions with counterparties, including different prime brokers, banks and other FDMs.

h. *Liabilities to Retail Forex Customers Risk* shall take into account, among other things, the process to ensure that the FDM has sufficient assets to cover the amount owed to retail forex customers on a daily basis. This process must include:

- a separation of duties among individuals responsible for advising customers on trading activities, approving or overseeing customer cash receipts and disbursements and recordkeeping and reporting financial transactions;

- a method for ensuring the firm is accurately computing its liability to retail forex customers and accurately monitoring and valuing the funds used to cover the liability to retail forex customers;

- a method for evaluating on a continued basis the depositories used to hold funds used to cover the amount owed to retail forex customers including ensuring that the depositories meet specified criteria relating to the depository's capitalization, creditworthiness, operational reliability and access to liquidity, as well as the requirements of CFTC Regulation 5.8 and NFA Financial Requirements Section 14;

- a method for assessing the appropriateness of specific investments of funds used to cover the liability to retail forex customers in permitted investments under CFTC Regulation 1.25; and

- the timely recording of all transactions, including transactions impacting retail forex customers' accounts, in the FDM's books and records.

i. *Technological Risk* shall take into account, among other things, the process to identify and guard against all risks relating to technology including but not limited to the risks associated with both proprietary and third party trading platforms, the security of proprietary and third party platforms, technology changes and the firm's business continuity plan.

j. *Capital Risk* shall take into account, among other things, that the FDM has sufficient capital to be in compliance with the Commodity Exchange Act and its regulations and NFA Financial Requirements, as well as having sufficient capital and liquidity to meet the reasonably foreseeable needs of the FDM.

k. *Any Other Applicable Risks.*

Risk Tolerance Limits

The Risk Management Program must also set risk tolerance limits for each of the elements described above and discuss the underlying methodology used in setting these limits, as well as any policies and procedures governing exceptions to these limits and detecting and reporting to appropriate management. These risk tolerance limits must be reviewed and approved quarterly by the firm's senior management and annually by the firm's governing body. The FDM must maintain a copy of these approvals.

Additionally, the Risk Management Program must include policies and procedures for detecting breaches of risk tolerance limits set by the FDM and alerting supervisors within the risk management unit and senior management, as appropriate.

Stress Testing

As part of the Risk Management Program, the FDM must conduct stress tests under extreme but plausible conditions of all positions in the proprietary account and in each counterparty account (both retail customers and ECPs) at least on a semi-monthly basis.

Affiliate Risk

The Risk Management Program must also consider all risks posed by the FDM's affiliates, including the risks affiliates pose when the FDM functions as the primary risk manager and/or liquidity provider for affiliates, the FDM's other business lines and any other trading activity engaged in by the FDM.

Periodic Risk Exposure Reports

Each FDM's risk management unit must provide to senior management and its governing body quarterly written risk exposure reports, which set forth all applicable risk exposures of the FDM, breaches of any established risk limits, any recommended or completed changes to the Risk Management Program, the recommended time frame for implementing the recommended changes; and the status of any incomplete implementation of previously recommended changes to the Risk Management Program.

Each FDM must also provide senior management and the governing body with interim risk exposure reports immediately at any time the FDM detects a material change in the risk exposure of the FDM. An FDM must provide to NFA a copy of all quarterly and interim risk exposure reports provided to its senior management and governing body within 5 business days of providing the report to the FDM's senior management and governing body.

Supervision of the Risk Management Program

The FDM must have a supervisory system in place to ensure that the Risk Management Program is being diligently followed by all appropriate personnel.

Review and Testing

The FDM must ensure that the Risk Management Program is reviewed and tested at least annually or upon any material change in the FDM's business that is reasonably likely to alter the FDM's risk profile by qualified internal audit staff that are independent of the business trading unit, or by a qualified third party audit service, which reports to FDM staff that are independent of the business trading unit. The review must include an analysis of adherence to, and the effectiveness of, the risk management policies and procedures, and any recommendations for modifications to the Risk Management Program. The results of the review must be reported to and reviewed by senior management and the FDM's governing body.

The FDM must document all internal and external reviews and testing of the Risk Management Program including the date of the review or test; the results; any identified deficiencies; the corrective action taken; and the date the corrective action was taken.

Recordkeeping

An FDM shall maintain copies of all written policies and procedures, changes thereto, and approvals required in this notice pursuant to NFA Compliance Rule 2-10 for the period required under CFTC Regulation 1.31.

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[1] The FDM Risk Management Program requirements are drawn from similar requirements set forth in CFTC Regulations 1.11 and 23.600. In light of the counterparty nature of forex transactions and the fact that FDMs accept customer funds, the Board believes it appropriate to apply certain requirements set forth in CFTC Regulations 1.11 and 23.600.

[2]RFEDs that are also registered as an FCM and/or SD may have one risk management program that addresses all the risks associated with the activities of each registration category.

[3]Governing body means (a) board of directors; (b) a body performing a function similar to a board of directors; or (c) any committee of a board or body.

[4]Senior management means, any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management by the governing body.

Appendix 3: Additional Resources

Selected NFA Rules of General Application

- Compliance Rule 2-9(c) – Supervision (Anti-Money Laundering Programs).
- Compliance Rule 2-10 – Recordkeeping.
- Compliance Rule 2-29 – Communications with the Public and Promotional Material.
- Compliance Rule 2-38 – Business Continuity and Disaster Recovery Plan.

Selected NFA Interpretive Notices of General Application

- NFA Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program. (¶ 9045)
- NFA Compliance Rule 2-38: Business Continuity and Disaster Recovery Plan. (¶ 9052)

NFA Interpretive Notices that Provide Useful Guidance

- Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs. (¶ 9019)
- Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results. (¶ 9025)
- Compliance Rule 2-9: Supervisory Procedures for E-Mail and the Use of Web Sites. (¶9037)
- Compliance Rule 2-9: Supervision of the Use of Automated Order-Routing Systems. (¶ 9046)
- Compliance Rule 2-9: Ethics Training Requirements. (¶ 9051)

CFTC Rules and Advisories

- CFTC Regulation 1.10, Financial Reports of Futures Commission Merchants and Introducing Brokers (17 C.F.R. § 1.10).
- CFTC Regulation 1.12, Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers (17 C.F.R. § 1.12).

- Regulations 1.14 (Risk Assessment Recordkeeping Requirements for Futures Commission Merchants) and 1.15 (Risk Assessment Reporting Requirements for Futures Commission Merchants) (17 C.F.R. §§ 1.14 and 1.15). *See also* Section 4f(c)(2)(B) of the Act.

- CFTC Regulation 1.17, Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers (17 C.F.R. § 1.17).

- CFTC Regulations 160.1-160.30, Privacy of Consumer Information (17 C.F.R. §§ 160-1-160.30).

- CFTC Division of Trading and Markets Advisory Concerning Foreign Currency Trading by Retail Customers (March 1, 2002), *available at* http://www.cftc.gov/files/opa/opaforexupdateadvisory3-19-021.pdf.

- CFTC Division of Clearing and Oversight Advisory Concerning Retail Off-Exchange Foreign Currency Trading (August 30, 2007) *available at* http://www.cftc.gov/stellent/groups/public/@cpfraudawarenessandprotection/documents/file/forex_advretailcustomers2007.pdf

SEC Rules

- SEC Rule 17h-1T, Risk Assessment Recordkeeping Requirements for Associated Persons of Brokers and Dealers (17 C.F.R. § 240.17h-1T). *See also* Securities Exchange Act Section 17(h) (15 U.S.C. § 78q(h)).

Federal Laws

- Commodity Exchange Act Section 2(c), Agreements, Contracts, and Transactions in Foreign Currency, Government Securities, and Certain Other Commodities (7 U.S.C. § 2(c)).

- Commodity Exchange Act Section 8a, Registration of Commodity Dealers and Associated Persons (7 U.S.C. §12a).

- Bank Secrecy Act Section 5318(h), Anti-Money Laundering Programs (31 U.S.C. § 5318(h)).

Appendix 4: Sources of Additional Information

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, IL 60606
(312) 781-1410
www.nfa.futures.org

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
(202) 418-5080
www.cftc.gov

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