

Recordkeeping and e-Communications

Member Regulatory Workshop



Objectives



- Regulatory requirements
- Communication monitoring
- Common exam findings



Regulatory Requirements



- Keep full, complete and systematic records of all transactions, including all pertinent data and memoranda
 - Including all orders (filled, unfilled, or canceled), journals, ledgers, copies of confirmations, among others
- Keep all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading and prices leading to the execution of a transaction
 - CFTC Regulation 1.35 – FCMs and IBs
 - CFTC Regulations 23.201 and 23.202 – SDs
- For FCM, IB, CPO, and CTA Members – adopt written supervisory procedures over the use of electronic communications

Regulatory Requirements



- Record retention (CFTC Regulation 1.31 & 23.203)
 - Oral records for one year
 - Other records for five years
 - Certain swaps records must be retained for life of transaction plus five years

Regulatory Requirements



- Diligently supervise employees and agents in the conduct of their applicable activities for or on behalf of the Member
 - NFA Compliance Rule 2-9
 - CFTC Regulations 23.602 for SDs
- Swap dealers are required to have policies and procedures reasonably designed to ensure compliance with Part 23, Subpart H requirements
 - Subpart H requirements include prohibition on fraud (23.410) and fair dealing and communications (23.433)

Elements of an Effective Program

- Clear policies and procedures
 - Written procedures should:
 - Identify the approved methods of communication
 - Identify the person(s) responsible for conducting reviews of the activity
 - Specify how and with what frequency the activity will be reviewed
 - Describe how the reviews will be documented
 - Describe how records of the review will be maintained

Elements of an Effective Program (continued)

- Ongoing training
- Code of conduct/attestations
- Program should periodically be reevaluated
- Defined disciplinary framework

Elements of an Effective Program (continued)

- Comprehensive reviews
 - Risk-based
 - Reasonably designed to uncover instances of non-compliance and fraud
 - Not just reviewing to ensure the record(s) exists
 - Inclusive of applicable personnel, devices, business lines, languages, and touch points with customers (i.e., solicitation process vs. trade-related communications)
- Systematic record retention

Elements of an Effective Program (continued)

- Automated methods of detection
 - Tailored lexicons or other detection methods
 - Alerts, reviews, and escalations
- Documented in a manner that demonstrates which specific communications and trades were reviewed and what the results of the reviews were
 - Simple checklists or signoffs are **not** sufficient

Elements of an Effective Program (continued)

- Trade reconstructions – recordkeeping controls
 - Helps to ensure that all required records leading up to trades are being maintained (i.e., “completeness” testing)
 - Allows for additional, focused reviews of trade-related communications
 - Best practices include selecting trades after conducting risk-based review of trading activity to identify certain APs, customers, products, strategies, or other characteristics to select trades to then reconstruct

Common Exam Findings

- Inadequate procedures
- Failure to maintain records
- Failure to properly record communications
- Inadequate communication surveillance
- Inadequate response to outages