



Forex Transactions: Regulatory Guide

September 2018 revisions: Updated the footnote in the Security Deposits section to include reference to recent Notice [I-18-16](#). Also, updated to incorporate the amendments to NFA Compliance Rule 2-9 and its related Interpretive Notice to incorporate the Financial Crimes Enforcement Network's (FinCEN) Customer Due Diligence Requirements, which became effective on May 11, 2018.

The [Commodity Exchange Act](#) (CEA) 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 CEA, only certain regulated entities may be counterparties to these off-exchange trades with retail customers. These regulated entities are certain registered futures commission merchants (FCM) and registered Retail Foreign Exchange Dealers (RFED). 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.

Introduction



Before going on, you should understand:

- **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.
- **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 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 regulations, interpretive notices and letters regarding forex transactions.

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 CEA. These entities (authorized counterparties) are:

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

FCMs and RFEDs must be 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 Associated Person (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.

Account Managers

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.

Introducing Entities

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. ([See Exemptions available to CPOs.](#))

Members Subject to the Forex Requirements



All 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 and file it with NFA prior to use. This disclosure document 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 Regulation 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 and 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 executes (without human intervention and without exception) an offsetting position to a customer order with another counterparty prior to providing an execution to the customer order.

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 and 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 entitled, [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.

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.

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.

Disclosure of Transaction Data to Customers

Upon the request of an FDM's customer with respect to a particular executed forex transaction of that customer, an FDM must provide the customer, within 30 minutes of the customer's request, with certain transaction data for the 15 forex transactions that occur immediately before and after in the same currency pair of the customer's transaction. See NFA Compliance Rule 2-36(o) for information required to be provided.

Transaction Disclosures

Each FDM shall:

- Disclose the following, if applicable, to each customer on a per-trade basis in the same currency as the base currency of the account on the customer transaction confirmation statement:
 - i. Commission and any other fees;
 - ii. For transactions where an FDM is using straight-through processing, any mark-up or mark-down the FDM imposes on the price the FDM received for the offsetting position to the customer's order; and
 - iii. For transactions where an FDM is not using straight-through processing, the mid-point spread cost.
- FDMs not using straight through processing must provide customers with a description of the mid-point spread cost in a form and manner required by NFA.

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). 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 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 Regulation 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.

Security

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:

1. **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.
2. **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.
3. **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\(a\)\(2\)](#).);
- 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 transactions.

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™.

See NFA Bylaw 1301(e) for a summary of the due schedule for FDMs.

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, and (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:

- 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);
- Five percent of the notional value of other currency transactions;
- For short options, the above amount plus the premium received; and
- 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 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 Regulation 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 Regulation 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.

^[1] Due to market conditions in January 2015, November 2016 and September 2018, NFA's Executive Committee increased and/or decreased the minimum security deposits required to be collected and maintained by FDMs. See Notice to Members [I-15-04](#), [I-15-07](#), [I-16-25](#), [I-16-27](#) and [I-18-16](#).

^[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 course 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.

Financial Requirements



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) (See [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 [NFA Compliance Rule 2-36\(s\)\(2\)](#)) 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 CEA; 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 (SRO) 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 SRO.

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 ANC is:

Current Assets – Liabilities – Charges Against Net Capital = ANC

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 website 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 Regulation 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. an FCM registered with the CFTC 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; and
- ii. an FCM registered with the CFTC 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

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 adjusted net capital under CFTC Regulation 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 GAAP. 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 \(SOX\)](#). 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 SOX. 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 CEA, 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;
- A notice that customers may request the transaction information listed in NFA Compliance Rule 2-36(o); 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 (AML) requirements on financial institutions, including Members. NFA Compliance Rule 2-9(c) requires each Member registered as an FCM or IB to have an AML 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 AML provisions of the Bank Secrecy Act (BSA) and related regulations. A firm's procedures must cover these key areas:

- internal policies, procedures and controls reasonably designed to achieve compliance with the Bank Secrecy Act and implementing regulations;
- appointment of a designated compliance officer to oversee the program's day-to-day operations;
- an ongoing training program;
- an independent audit; and
- appropriate risk-based procedures for conducting ongoing customer due diligence including, but not limited to:
 - understanding the nature and purpose of developing a customer risk profile; and
 - conducting ongoing monitoring to detect and report suspicious transactions and on a risk basis to maintain and update customer information including identifying and verifying beneficial owners.

Customer Identification Program

The AML 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., driver's 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 AML program, that financial institution enters into a contract with the Member agreeing to annually certify that it has implemented an AML 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 AML 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 AML 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 AML 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 AML 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 AML 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.

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.

Bulk Assignments and Transfers

Assignor's Obligations

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

- check the assignee's status to ensure that it is an authorized counterparty under the CEA and that it is not prohibited from acting as a counterparty under the CEA; and
- 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 regulations (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 60 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
 - 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.

General Requirements



All 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.