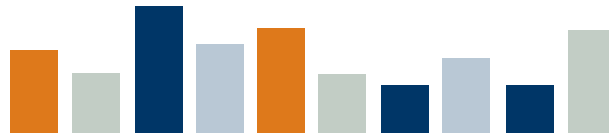


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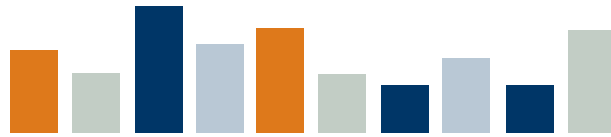
Annual Compliance Reviews of Registered Advisers in the New Era

October 10, 2013

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1. About the Speakers



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Brad focuses his practice on counseling hedge and private equity funds on operational, regulatory and compliance matters. He provides guidance to clients on a broad range of issues, including those related to the U.S. Investment Advisers Act, other federal, state and self-regulatory organization requirements and securities trading rules in the United States. Brad also provides guidance to clients with operations in Hong Kong, Japan and other markets throughout Asia and the U.K. with respect to regulatory, compliance, trading and operations.

Prior to joining SRZ, Brad served for 12 years in various in-house roles, including as general counsel and chief compliance officer of investment advisers ranging from multi-billion dollar funds to start-ups, and as a member in the asset management group of a leading investment bank. This in-house experience, coupled with his results-oriented approach to legal problem solving, enables Brad to offer clients a valuable perspective on investment management operations and compliance issues.

Brad is also a frequent speaker and writer on the topics of fund operations and regulatory compliance. He presented “Trends in Secondary Market Transactions” at the CounselWorks SummerTime Summit and also addressed the “New Private Placement Rules Under the JOBS Act” for a Financial Executives Alliance forum. Brad recently co-authored “How Should Hedge Fund Managers Approach the Identification, Prevention, Detection, Handling and Correction of Trade Errors? (Parts One, Two and Three)” for *The Hedge Fund Law Report*, and also co-authors a periodic column on regulatory and compliance issues of interest to hedge funds for *HFMWeek*. His latest column was “The Long View: Why Working Through Every Item on an Extensive Checklist May Obscure the Bigger Risks — Particularly Conflicts of Interest.”

Brad received his J.D., *cum laude*, from Boston College Law School and his B.A., *magna cum laude*, from Georgetown University.



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Brian advises hedge and private equity fund managers and commodity pool operators on regulatory, compliance and operational matters, including registration and disclosure obligations, trading issues, advertising and marketing, and the establishment of compliance programs. Having spent nearly a decade serving in-house as general counsel and chief compliance officer at several prominent hedge fund management firms, Brian is well versed in a wide range of legal and business challenges facing investment advisers, commodity pool operators and commodity trading advisers and has extensive experience designing and improving compliance processes and organizational systems. Brian has represented clients in proceedings and interactions with regulators in the U.S., the U.K. and Asia.

Brian is well-known for his thought leadership in the regulatory and compliance area as it affects alternative investment funds. In addition to participating in SRZ-sponsored seminars and workshops and authoring SRZ client alerts, he co-authored “FSA Conflicts of Interest Safeguards: Action To Be Taken by All UK-Authorised Hedge Fund Managers” which was published in *The Hedge Fund Journal*; presented “Marketing and Working with Investors in the Current Environment” at Ambrose Connects 2013; discussed “Trading Compliance and Regulations” at ACA Compliance Group’s Spring 2013 Compliance Conference; and spoke on the “US Regulatory Update” and “40 Act Developments” panels at the Bank of America Merrill Lynch *COO and CFO 2013 Hedge Fund Symposium*.

Brian also teaches legal ethics at Yale Law School, focusing on the challenges faced by in-house counsel, and formerly served as co-chair of the Managed Funds Association’s General Counsel Forum and as a steering committee member of its Investment Advisory Committee.

Brian received his B.A., *magna cum laude*, from Catholic University of America, his M.A. from the University of Hawaii and his J.D., with distinction, from Stanford Law School.



Marc E. Elovitz
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Marc chairs Schulte Roth & Zabel's Investment Management Regulatory & Compliance Group and advises private fund managers on compliance with the Investment Advisers Act of 1940 and other federal, state and self-regulatory organization requirements, including establishing compliance programs, registering with the SEC and CFTC, and on handling SEC and NFA examinations. Marc provides guidance to clients on securities trading matters and represents them in regulatory investigations and enforcement actions, arbitrations and civil litigation. He also regularly leads training sessions for portfolio managers, analysts and traders on complying with insider trading and market manipulation laws, and has developed and led compliance training sessions for marketing and investor relations professionals.

Recently, Marc has been working closely with clients undergoing SEC examinations and responding to deficiency letters and enforcement referrals. He has been developing new compliance testing programs in areas such as trade allocations and conflicts of interest. He also has been leading macro-level compliance infrastructure reviews with fund managers, identifying the material risks specific to each particular firm and evaluating the compliance programs in place to address those risks.

A frequent writer and speaker in his areas of expertise, Marc recently authored "The Long View: Is US Regulation a New Bubble or a 'New Normal?'" and "The Long View: On Hedge Fund Marketing" for *HFMWeek*. His recent presentations include "Fund Sales: Must the Broker Be Registered?" at an American Law Institute webinar and "Alternative Investment Management: Surviving an SEC Examination" at the American Bar Association Business Law Section Annual Meeting. He authors chapters in several leading securities laws treatises.

Marc is a member of the Steering Committee of the Managed Funds Association's Outside Counsel Forum, the American Bar Association's Hedge Funds Subcommittee, and the SEC Working Group of the Alternative Investment Management Association. He received his J.D. from New York University School of Law and received his B.A., with honors, from Wesleyan University.



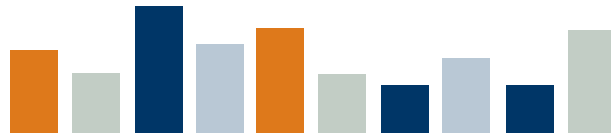
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Jake focuses his practice on counseling commodity pool operators, commodity trading advisors, other commodity professionals and private investment fund managers on operational, regulatory and compliance matters. He regularly advises hedge funds, private equity funds and registered funds with respect to the U.S. Commodity Futures Trading Commission's exemptions, registration and reporting requirements and compliance with the requirements of the National Futures Association. Jake conducts training sessions with respect to regulatory compliance matters, and helps guide firms through regulatory examinations. He also has expertise in the formation and ongoing operational needs of hedge funds and other private investment funds.

Jake joined the firm from the CFTC, where he served most recently as Special Counsel in the Division of Swap Dealer and Intermediary Oversight. At the CFTC, he drafted new regulations and worked on a broad range of matters relating to CFTC registration and compliance. Jake has been a presenter at a series of workshops and seminars on CFTC registration, compliance, and swap rules.

Jake earned both J.D. and M.B.A. degrees from Fordham University. He was the Notes & Articles Editor of the *Fordham Journal of Corporate & Financial Law* and received *cum laude* honors from the Fordham University Graduate School of Business. He received his B.A., *cum laude*, from Brooklyn College.

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Investment Management Hot Topics

2. PowerPoint Presentation

Step 1: Risk-Based Approach

		Outside Business Activities	Allocation of Investment Opportunities	Expense Allocation	Marketing	
	NFA Rules	Valuation	Custody	Portfolio Management		
		Personal Trading	Gifts & Entertainment	Political Contributions	Books & Records	
	Aggregation	Email	Trading	Best Execution	Conflicts of Interest	
	Investment Guidelines	Trade Errors	Position Limits	Regulatory Filings	JOBS Act	
	Bad Actors	Identity Theft	Information Security	Insider Trading		

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Investment Management Hot Topics

Notes:

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Investment Management Hot Topics

3. Outline

Annual Compliance Reviews of Registered Advisers in the New Era

I. Annual Review Requirement

A. SEC

1. Rule 206(4)-7 under the Advisers Act: All SEC-registered investment advisers must comply with Rule 206(4)-7. Under this rule, all registered investment advisers must review their compliance policies and procedures to ensure their adequacy and effectiveness. This review must take place no less frequently than annually and be tailored to the adviser's business and strategies and specific compliance risks applicable to the adviser.

Rule 206(4)-7. Compliance Procedures and Practices:

"If you are an investment adviser registered or required to be registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3), it shall be unlawful within the meaning of section 206 of the Act (15 U.S.C. 80b-6) for you to provide investment advice to clients unless you:

- (a) Policies and procedures: Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Act and the rules that the Commission has adopted under the Act;
 - (b) Annual review: Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and
 - (c) Chief compliance officer: Designate an individual (who is a supervised person) responsible for administering the policies and procedures that you adopt under paragraph (a) of this section."
2. As a best practice and risk control measure, unregistered investment advisers should conduct compliance reviews on a periodic basis.

B. NFA

1. In order to satisfy their continuing supervisory responsibilities under Compliance Rules 2-9, NFA members must review their operations on a yearly basis using NFA's Self-Examination Questionnaire.
2. Every manager registered as a CPO or a CTA is an NFA member and therefore subject to this requirement.

C. Timing

1. Annual review must be conducted no less frequently than annually.
2. Newly registered RIAs in 2012 that have not yet conducted an annual review for 2013 need to do so now.
3. Practical approach: Many RIAs align their annual review with their annual compliance manual update, compliance training and Form ADV updates.
4. The NFA review also should be done no less frequently than annually.

- D. Need an adviser-specific review. Managers should first identify the relevant risk areas for their firm and any specific compliance weaknesses discovered over the past year and use those risk areas and weaknesses as a starting point for the review.
- E. As different firms have different strategies, risks and focuses, the SEC did not include specific steps that must be undertaken as part of an annual review under Rule 206(4)-7.
- F. The annual review also should identify and address any relevant changes in laws or regulations that impact the manager.
- G. The SEC has never specified what the output or documentation of the annual review should be.
- H. Most SEC examiners expect to see a written report that identifies the review process and outcomes in sufficient detail to demonstrate a thorough and effective review. Areas of greater risk for the particular manager should typically be documented in greater detail.
- I. While the NFA rule is similar, there are specific topic areas which are covered.
- J. The NFA also requires signing a self-certification that the review has been done and retaining the certification for your records.

II. SEC Exams and Enforcement

- A. SEC expectations:
 - 1. SEC expects a written annual review report.
 - 2. Annual review should be tailored to the firm.
 - 3. Review should cover ALL relevant risk areas for the firm.
 - 4. CCO to lead the annual review process.
- B. SEC is focusing on annual reviews in examinations.
 - 1. SEC is requesting information about the annual review in exam request lists.
 - 2. Selected current SEC exam questions:
 - (a) Information regarding the adviser's compliance program, risk management and internal controls.
 - (b) Information relating to the firm's compliance testing, including any compliance reviews, quality control analyses, surveillance, and/or forensic or transactional tests performed by the firm. This information should include any significant findings, both positive and negative, of such testing and any information about corrective or remedial actions taken regarding these findings.
 - (c) Ongoing risk identification and assessment:
 - (i) A current inventory of the adviser's compliance risks that forms the basis for its policies and procedures, including any changes made to the inventory and the dates of the changes.
 - (ii) Any documents maintained that map the adviser's inventory of risks to its written policies and procedures.

- (iii) Any written guidance that the adviser has provided to its employees regarding its compliance risk assessment process and the process for creating policies and procedures to mitigate and manage its compliance risks.
 - (d) Any internal audit review schedules and completed audits, including the subject and the date of the report.
 - (e) Information about the oversight process the adviser uses for any remote offices and/or independent advisory contractors, and any policies and procedures with respect to such oversight.
 - (f) Documentation maintained regarding any forensic or other reviews conducted of the adviser's policies and procedures, including any related annual and/or interim reports.
 - (g) A record of any non-compliance with the adviser's code of ethics and of any action taken as a result of such non-compliance.
3. SEC focuses on the annual review in all types of exams, ranging from standard exams to sweep exams (such as in the UK recently; focused on event-driven managers) to the continuing presence exams.
 4. SEC exams currently can last from a few days to months, or even upwards of a full year, depending upon many factors, including the regional office, but most importantly the strength of the compliance program.
 5. In all types of exams, the strength of the annual review is an important consideration.
 6. Tone at the top. Annual review demonstrates the firm's commitment and culture of compliance or lack thereof if it is just a form/check the box process.
 7. SEC focus areas currently:
 - (a) Insider trading;
 - (b) Broker-dealer issues: Unregistered broker-dealer activities;
 - (c) JOBS Act: General solicitation and advertising;
 - (d) Marketing, which could include a review of marketing materials to evaluate whether they contain false or misleading statements of material facts, omit material facts or are otherwise manipulative, fraudulent or deceptive;
 - (e) Portfolio management, which could include a review of portfolio decision-making and trading practices, with a particular focus on the allocation of investment opportunities;
 - (f) Conflicts of interest, which could include an inquiry into the controls and procedures in place to "identify, mitigate, and manage" conflicts of interest, including in areas such as the allocation of investment opportunities, fees and expenses, payments by private funds to an adviser or to its related persons, outside business activities and personal securities trading of adviser personnel, and transactions with affiliates of the adviser;
 - (g) Safety of client assets, which could include an evaluation of compliance with the "custody rule" and related measures designed to prevent the loss or theft of client assets; and
 - (h) Valuation, which could include a review of valuation policies and procedures, especially for illiquid or difficult to value instruments, and the calculation of fees and expenses.

8. With all examinations, if serious deficiencies are found, the examination staff may refer the matter to the SEC's Division of Enforcement, to a self-regulatory organization, to a state regulatory agency or to another regulator.
- C. RIAs are getting deficiencies as a result of weak annual review processes or compliance programs.
1. SEC is closely scrutinizing the substance of the review and the written report.
 - (a) SEC will focus on any deficiencies or compliance violations noted in the report.
 - (b) Pros: Shows the adviser is catching problems — that its compliance monitoring and testing works — and that the adviser is addressing them head on.
 - (c) Overall the key is to address the problem — and make sure it doesn't happen again.
 - (d) SEC deficiencies on annual reviews include failure to cover certain risk areas, such as marketing.

D. Enforcement

1. *In the matter of Comprehensive Capital Management, Inc.* (Investment Advisers Act of 1940 Release No. 3636 / July 29, 2013).
 - (a) SEC instituted public administrative and cease-and-desist proceedings against CCM. CCM submitted an Offer of Settlement which was accepted by the SEC. CCM was censured and fined, and agreed to take other actions.
 - (b) Willful violation of Section 206(4) and Rule 206(4)-2 of the Advisers Act; failure to supervise within the meaning of Section 203(e)(6); willful violation of Rule 206(4)-7, which requires advisers to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act; willful violations of Section 204 and Rules 204-2(a)(7)-(10) and Rule 204-2(e)(1) thereunder.
 - (c) The case involved misappropriation of mutual fund shares and cash from client accounts. Individual pled guilty to mail fraud and money laundering and was sentenced to prison and fined.
 - (d) Individual opened a separate account through the Custodian and told the CCO the account was solely for the sale of mutual fund shares.
 - (e) CCO knew about the account and raised certain custody issues, but never monitored the account or the activity within it despite knowing the account held CCM client assets. CCO drafted a memo stating he would continue to monitor this activity and would focus on this matter during the on-site visit of the office.
 - (f) SEC brought the action claiming that CCM failed to reasonably supervise the individual at issue with a view to preventing his violations.
 - (g) SEC also alleged that CCM failed to “reasonably implement” its policies governing custody, reviews of transactions, books and records, email and annual office audits.
 - (i) Under its policies, CCO was responsible for implementing CCM's policy prohibiting the firm from having custody of client assets.

CCM and the CCO failed to reasonably implement this prohibition.
 - (ii) CCM and the CCO failed to implement CCM's policy requiring the daily review of transactions in client accounts.

- (1) CCO only reviewed purchases and sales but did not review transfer of assets into or out of client accounts.
- (2) Had he done so, the CCO would have discovered numerous suspicious transactions.
- (iii) CCM and the CCO failed to implement email policy requiring employees only to use CCM issued email address for business matters.
 - (1) CCO knew the individual often used his personal email and the CCO himself sent emails to his personal address.
 - (2) CCM had a policy allowing personal email use if forwarded to work email, but emails were never forwarded.
 - (3) No oversight or monitoring of emails. Had CCO retained and monitored individual's emails, could have discovered the fraud.
- (iv) CCM and the CCO failed to implement office audit policies as required by policies.
 - (1) Compliance audits were “perfunctory” and not designed to prevent or detect fraud.
 - (2) No “meaningful” discussion or review of the individual's business or his outside business activities.
 - (3) Only one audit from 2008 to 2011.
- (v) CCM and the CCO failed to implement books and records policies.
- (h) Summary
 - (i) Policy manual stated CCO was responsible for developing, adopting, implementing and enforcing ALL of the firms' supervisor and compliance policies and procedures.
 - (ii) CCO “took no action.”
 - (iii) Had CCM and the CCO reasonably implemented CCM's custody policy, they could have prevented or detected the individual's fraud.
 - (iv) Demonstrates the importance of implementation.
 - (v) This could have been picked up in a substantive annual review.
- (i) Undertakings — CCM agreed to retain an outside party to do an independent compliance review and submit the report to CCM and SEC and describe how CCM is implementing recommendations.

III. What Works — and What Doesn't: 7 Steps to a Successful Annual Review

A. Step 1: Risk-based approach

1. Assess what are the top compliance risks for the firm.
2. Meet with the principals and senior management (CEO, COO, CFO, CAO, HR, CTO, GC) and ask what they view as the top risks.
3. Based upon:

- (a) Investment strategy/strategies
 - (b) Structure of the firm
 - (c) Types of clients – funds vs. managed accounts
 - (d) Size of the firm
 - (e) History of the firm – any prior SEC exams
 - (f) Maturity of the compliance program – new vs. established firm
 - (g) Overall risk tolerance
4. Focus the annual review on the top risks to the firm.
5. Compliance risk matrix
- (a) A risk matrix can be an effective tool to efficiently identify the principle risks applicable to an adviser based on its business and investment strategies and potential weaknesses in the compliance program that merit additional attention and controls.
 - (b) The CCO should discuss specific compliance risks with the various business units, including portfolio management, trading, operations, finance, accounting, marketing and investor relations, information technology and administration. Specifically, the CCO, together with these other business units, should evaluate how the firm's strategies, activities, arrangements, affiliations, client base, service providers, conflicts of interest and other business factors may raise potential breaches of fiduciary duty or violations of the Advisers Act or other laws or any appearance of impropriety.
 - (c) Areas that are identified as contributing to a high risk of compliance violations should receive more attention during the annual review.
6. Need to cover ALL relevant areas in an annual review.
- If certain areas are not applicable to the firm because of its strategy, the adviser should note that in its annual review report.
7. At a minimum, advisers should cover the following areas in an annual review as these are areas of focus for the SEC:
- (a) Potential conflicts of interest
 - (i) Outside business activities
 - (ii) Allocation of investment opportunities
 - (iii) Expense allocation across the funds, co-investors, management company
 - (b) Marketing
 - (c) Valuation
 - (d) Custody
 - (e) Portfolio management

(f) Insider trading (not only trading but “tipping” as well)

(g) Personal trading policies

(h) Gifts & entertainment

(i) Political contributions

(j) Books & records

New CFTC exemption requirement

(k) Email

(l) Trading

(i) Best execution and review of trading counterparties

(ii) Compliance with investment guidelines

(iii) Trade errors

(iv) Position limits

(m) Regulatory filings

(n) JOBS Act

(o) Bad actors

(p) Identity theft

(q) Information security

8. PE firms

(a) Some of these topics may not be relevant (e.g., trading).

(b) Other risk areas may be more pronounced.

(i) Serving on boards of portfolio companies (if applicable).

(ii) Broker-dealer issues

B. Step 2: Comprehensive review of compliance manual

1. Make sure you are doing everything you say you are doing.

2. Every action item needs to be done and accounted for.

3. Make sure you are doing testing and monitoring – cover all major risk areas with some testing/monitoring.

4. For each risk area – policy + procedures + testing + action + training.

5. Make sure you are addressing new regulatory developments:

- (a) JOBS Act — general solicitation/advertising — reasonable steps to verify
 - (b) Bad actors
 - (c) Identity theft
 - (d) Information security
- C. Step 3: Streamline compliance manual & procedures
- 1. Assess whether each action item is required by the Advisers Act.
 - 2. Legal analysis here is key to determine whether the policy/procedure is specifically required by the Advisers Act, SEC pronouncements — or is it included because it is what the SEC expects advisers to be performing.
 - 3. If it's not required — or helpful to your compliance program — consider streamlining your manual.
- D. Step 4: Engage principles/PMs and senior management — not just a CCO responsibility
- Meet with and ask input on what they are seeing, risks, any issues throughout the year, concerns and suggestions on improvements.
- E. Step 5: Take action
- 1. Annual review should not just sit on a shelf.
 - 2. Take action where improvements should be made.
 - 3. The annual review is not just about updating the compliance manual, although that is one part of the process.
 - 4. It is about action items to improve the compliance program.
 - 5. Emphasize what actions you are taking in the written annual review report.
- F. Step 6: The written annual review report
- 1. This is an important legal document.
 - 2. Will be one of the first things SEC reviews in an examination.
 - 3. Very important that it be drafted carefully and reviewed closely
 - 4. Make sure for every issue, weakness is accounted for — and that you have an action item to address it.
- G. Step 7: Compliance training
- 1. Use the annual review process as an opportunity to engage your employees in the process.
 - 2. After the annual review is complete, refresh your compliance training for all employees.
 - 3. Let employees know what you are finding — without mentioning any names.

- (a) For example, if employees are not getting required pre-approval for personal trades, give some statistics on how many issues you have had this year and explain why it is so critical that they follow the policy – and why it is important to them.
 - (b) Similarly with respect to promotional material – if employees are not getting all materials pre-screened and are including information or making statements which should not be made.
- 4. Explain new action items the firm is taking to improve.
 - 5. Explain new regulatory developments and new policies.
 - 6. Refresh training on key areas that need to be emphasized in every training session.
 - 7. Explain that you are monitoring email and other testing/monitoring that you are doing, and why you are doing this – to protect the firm and because the SEC expects advisers to be doing this.

IV. NFA Self-Assessment

- A. Unlike the Advisers Act annual review, the NFA self-assessment covers particular areas, some of which overlap with your Advisers Act annual review, but some of which are unique to the NFA review. The NFA self-assessment focuses on the following areas:
 - 1. Registration Information
 - (a) Appropriate listing of all principals
 - (b) Branch offices and branch office managers
 - (c) Associated persons
 - (i) What restrictions are in place to ensure that non-APs do not solicit?
 - (ii) Have you documented why certain individuals are not APs?
 - (d) Updating firm information on Form 7-R and individuals on Form 8-R:
 - (i) Registering the CPO as a “swaps firm” and APs as “swaps associated persons” are relatively new requirements.
 - (ii) Listing the CCO as a principal was not required until late 2012.
 - 2. Bylaw 1101
 - (a) Written procedures: How Bylaw 1101 is satisfied.
 - (b) Annual review of investor status.
 - 3. Ethics training of APs: Written policies in place?
 - 4. Business continuity and disaster recovery
 - 5. Privacy policy
 - 6. Promotional material

While the NFA has a similar approach to the SEC as to what is acceptable, there are some distinctions. The annual review is a great opportunity to integrate these two policies to allow for a more streamlined approach.

B. Other CFTC and NFA requirements to include as part of the year-end self-assessment:

1. An annual questionnaire also must be completed by year-end. Unlike the self-assessment, this must be filed with the NFA.
2. Quarterly statements to investors: Are you including all the required information? Does the statement include the required oath and the requisite NAV information?
3. Audited annual financial statements

The CFTC requires audited financial statements to be provided within 90 days of the fiscal year-end. It may be worth considering whether a firm will still need the 120 days that you may be accustomed to and whether requesting an extension from the NFA will be necessary.

C. Other CFTC areas to review:

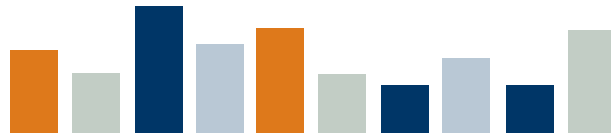
1. Futures trading
 - (a) Aggregation: Firms may want to reevaluate whether this will pose any issues. The CFTC is expected to reintroduce more restrictive position limits and aggregation rules. Firms should determine whether an independent account controller exemption may be necessary.
 - (b) Review of policies prohibiting wash trades (i.e., particularly when using automated trading systems) and other manipulative trading.
2. Dodd-Frank policies and procedures
 - (a) Have policies been added to your manual and implemented to ensure that you are complying with the representations made in the EMIR and DF Protocols?
 - (b) Preparing for SEFs
 - (c) Cross-border applicability: A new U.S. person definition went into effect on October 9. For the managers who are still considered non-U.S. persons, what steps are being taken to verify that the fund investors are majority non-U.S. going forward?
3. Delegation
 - (a) Have the general partners and the board of directors appropriately delegated CPO authority to the registered CPO?
 - (b) There may soon be a requirement to make an additional notice filing.
4. Recordkeeping
 - (a) If records are not being kept at the main business office of the registered CPO, there is a new requirement to file for an exemption with the CFTC (via the NFA).
 - (b) Swap Recordkeeping: Funds entering into CFTC swaps are required to keep all “pertinent records” relating to the swap transaction.
5. CFTC exemptions

- (a) By March 2014, firms must reaffirm their 4.13 and 4.14 exemption filings.
- (b) Firms should also be assessing which CTA exemptions are being relied upon and documenting the approach. (This is particularly applicable to managers who are sub-advising RICs, as RICs are no longer all exempt funds.)

V. Using the Annual Review to Strengthen the Firm — Action Items Post Review

- A. Implement and execute
 - 1. Methodically take action to address each potential weakness in the program.
 - 2. Prioritize high risk areas (insider trading, conflicts of interest, marketing, valuation, custody).
 - 3. Largest, most successful advisers don't just follow the lowest common denominator of what is required — they focus on industry best practices and what is important to their investors.
- B. Include the principals and senior management in the process
 - 1. It is very important to get buy-in from the principals and senior management in the annual review.
 - 2. Present the annual review report to the leaders of the firm.
 - 3. Explain the key issues — and discuss and debate options and decisions that need to be made.
 - 4. Discuss the key risks and areas for improvement.
 - 5. Explain how these improvements will add value to firm.
 - (a) Not only strengthening the compliance program which is a long-term asset to the firm.
 - (b) But other ways these improvements will add value to the firm.
- C. Compliance staffing. It is critical to make an assessment based upon the annual review whether the firm has adequate compliance staffing and resources.
 - 1. The SEC will expect the firm to be doing everything it says it will do in its compliance manual and code of ethics, and the SEC expects that firms dedicate sufficient resources to compliance.
 - 2. CCO has significant responsibilities.
 - 3. Given all of the additional regulatory burdens and expectations of the SEC, the compliance function at this point requires support.
 - 4. Also, if another officer is performing the CCO function, like the CFO, make sure the CFO has sufficient training and can dedicate the necessary time to focus on compliance

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4. Additional Materials

Introduction

NFA Compliance Rule 2-9 places a continuing responsibility on every Member to diligently supervise its employees and agents in all aspects of their futures-related activities, while NFA Compliance Rule 2-36 (and Compliance Rule 2-39 by reference to Compliance Rule 2-36), imposes the same requirements on Members with respect to their forex-related activities. 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. It is NFA’s policy to leave the exact form of supervision to the Member, thereby providing the Member with flexibility to design procedures that are tailored to the Member’s own situation. However, NFA believes that all Members should regularly review the adequacy of their supervisory procedures.

In order to satisfy their continuing supervisory responsibilities under Compliance Rules 2-9, 2-36 and 2-39 NFA Members must review their operations on a yearly basis using NFA’s Self-Examination Questionnaire, which includes a general questionnaire that must be completed by all Members and five supplemental questionnaires (e.g. FCM, FDM, IB, CPO and CTA) that must be completed as applicable. The questionnaires are designed to aid Members in recognizing potential problem areas and to alert them to procedures that need to be revised or strengthened. The questionnaires focus on the Member’s regulatory responsibilities and solicit information regarding whether the Member’s internal procedures are adequate for meeting these responsibilities.

After reviewing the annual questionnaires, an appropriate supervisory person must sign and date a written attestation stating that they have reviewed the Member’s operations in light of the matters covered by the questionnaire. Although a Member may review more than one supplemental questionnaire, only one attestation is necessary per office. A separate attestation must be made for each branch office and if the branch office reviews its own operations then the main office must receive a copy of the questionnaire’s signed attestation. Guarantor FCMs and FDMs must obtain copies of the questionnaire’s signed attestation from guaranteed IBs, including branch offices of these guaranteed IBs. These attestations **should not** be forwarded to NFA but should be retained by the Member. Signed attestations should be readily available for the most recent two years and retained for the most recent five years. As necessary, NFA updates these questionnaires to reflect new and amended rules. Members should obtain the most recent version of the questionnaires from NFA’s Web site (www.nfa.futures.org). If you have questions, please contact the NFA Compliance Department at (800) 621-3570.

Sample Attestation

(On Member's Letterhead)

Appropriate supervisory personnel for Member's Name have reviewed and evaluated the current procedures of Member's Name (and branch location, if applicable) using the NFA Self-Examination Questionnaire. Based on that review, it appears that Member's Name current procedures are adequate to meet its supervisory responsibilities.

Signed

Date

General Self-Examination Questionnaire for All Members

Registration

- Has the Member listed all of the following individuals as principals on the Member's Form 7-R? (Registration Rules 208 and 101(s)):
 - Individuals who hold the following positions with the Member:
 - Sole proprietor of a sole proprietorship;
 - General partner of a partnership;
 - Director, president, chief executive officer, chief operating officer, chief financial officer or a person in charge of a business unit, division or function subject to regulation by the Commission of a corporation, limited liability company or limited partnership;
 - Manager, managing member or a member vested with the management authority for a limited liability company or limited liability partnership; or
 - A chief compliance officer.
 - Individuals who directly or indirectly, through agreement, holding companies, nominees, trusts or otherwise, have the following financial relationships to the Member:
 - Own 10 percent or more of the outstanding shares of any class of the Member's stock, other than non-voting stock;
 - Are entitled to vote 10 percent or more of any class of the Member's voting securities;
 - Have the power to sell or direct the sale of 10 percent or more of any class of the Member's voting securities;
 - Have contributed 10 percent or more of a Member's capital;
 - Are entitled to receive 10 percent or more of a Member's net profits.
 - Individuals who have the power to exercise a controlling influence over an applicant's or registrant's activities that are subject to regulation by the Commission.
- Has the Member listed all of the following entities as principals on the Member's Form 7-R? (Registration Rules 208 and 101(s)):
 - A general partner of a partnership;
 - The direct owner of 10 percent or more of any class of an entity's securities, other than non-voting stock; or
 - Entities that have directly contributed 10 percent or more of a Member's capital unless such capital contribution consists of subordinated debt contributed by:
 - An unaffiliated bank insured by the Federal Deposit Insurance Corporation;

- A United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions; or
 - An insurance company subject to regulation by any State.
- Has the Member listed all branch office locations and branch office managers on the Member's Form 7-R? (Interpretive Notice ¶9002)
- Have all branch office managers passed the branch office manager proficiency exam? (NFA Compliance Rule 2-7)
- Do all branch offices hold themselves out in the name of the Member? (CFTC Regulation 166.4)
- Has the Member listed on the Form 7-R or updated on the Form 3-R all "doing business as" names? (Registration Rules 204 and 210)
- Does the Member prohibit individuals who are not registered as APs from soliciting or accepting customer orders (except in a clerical capacity) or from supervising those individuals? (CEA Sec 4k)
- If the Member terminated any principal's, branch office manager's or AP's affiliation with the Member, did the Member file with NFA an Individual Withdrawal Notice (CFTC Form 8-T) within 30 days after the termination? (Registration Rule 214)
- Is the information provided on the Member's Form 7-R still accurate and complete. If there were any changes that rendered the information inaccurate or incomplete, did the Member update and correct the information on NFA's Online Registration System? (Registration Rule 210)
- Has the Member reviewed commission payouts and other disbursements to ensure that only NFA Members are being paid for customer business? (NFA Bylaws 301 and 1101)
- Does the Member review all parties it does business with to ensure those that are required to be registered are registered, and, if required to be an NFA Member, are NFA Members? (NFA Bylaw 1101 and Compliance Rule 2-36(d))
- If the Member or Associate intends to engage in retail forex transactions, has the Member and Associate designated themselves as a forex firm or forex AP on NFA's Online Registration System? (NFA Bylaw 301)

Supervision (Compliance Rule 2-9, 2-36 and Interpretive Notices ¶9019 and 9028)

- Has the Member designated a "compliance officer" who is responsible for handling customer complaints or inquiries of a compliance nature including matters received in branch offices?

- Does the Member have a compliance procedures manual or other written documentation that outlines the Member's policy with respect to handling compliance matters, such as customer complaints or inquiries?
- Does the Member have a systematic method of recording, investigating and responding to customer complaints or inquiries?
- If the Member has any branch offices or GIBs, does it have an Internal Audit Department or other designated individual ("Auditor") who monitors the branch offices and/or GIBs, including annual on-site inspections, using a written audit program?
 - Has the Auditor prepared a written summary of findings noted during an on-site inspection of a branch office or GIB and submitted the report to a partner or officer?
 - If the Auditor noted any problems during an on-site visit or other during other monitoring, has the Member taken appropriate corrective action?
- Does the Member have policies and procedures regarding the hiring and supervision of APs who have been or whose past employers have been disciplined by NFA or the CFTC for fraud?
- If the Member or Associate intends to offer retail forex, does the Member have procedures to screen prospective Associates to ensure that they are qualified and to determine the extent of supervision they will need if hired?
- If the Member or Associate intends to offer retail forex, does the Member have procedures to screen 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?
- Does the Member supervise sales solicitations by one or more of the following methods: direct listening, reviewing taped solicitations, silent phone monitoring and customer contact?
- Does the Member provide its APs with training on proper sales solicitations for transactions in the forex, futures and options markets?
- Does the Member distribute changes in rules or regulations to appropriate personnel?
- Does the Member monitor incoming and outgoing mail in order to intercept/identify any customer complaints?
- Does an officer or other supervisory personnel regularly review trading in non-customer and proprietary trading accounts?
- If the firm has had any traders with reportable positions, has it filed a Form 40 with the CFTC? (CFTC Regulation 15.03). If not, the firm must file this form immediately.

Ethics Training (Interpretive Notice ¶9051 and Compliance Rule 2-9)

- Does the Member have policies and procedures regarding the ethics training requirements for APs, detailing areas such as content, frequency and format of training? For further assistance in drafting these ethics training procedures, see [Appendix C on NFA's website](#).
- Have all of the Member's APs received ethics training in accordance with the firm's procedures? Has the Member maintained records documenting compliance with these procedures, including dates and providers of training and materials used or distributed?
- Does the firm use an ethics training provider (either internal or external) who is qualified to conduct training (e.g. has completed relevant proficiency testing and has three years of relevant industry experience, or similar experience)?

Business Continuity and Disaster Recovery Plan (Compliance Rule 2-38 and Interpretive Notice ¶9052)

- Does the firm test its business continuity and disaster recovery plan on a periodic basis or at least once a year?
- Has a supervisory individual reviewed the plan and signed off that review? For further assistance in drafting a business continuity and disaster recovery plan, see [Appendix B on NFA's website](#).

Account Opening (Compliance Rules 2-9, 2-10, 2-30 and 2-36)

- Does the firm obtain the following information from customers who are individuals: name, address, occupation or business description, estimated annual income, estimated net worth, age and prior investment and futures trading experience? For all other non-ECP customers: name, address, principal business, net worth or net assets and current estimated annual income (if not available the previous year's annual income)?
- Does the Member require that the necessary information be obtained and recorded prior to permitting a new account to commence trading?
- If an account is opened in the name of an entity, does the Member obtain some type of authorization signed by appropriate personnel (such as a corporate resolution) indicating who has the authority to open and trade the account and identifying any account limitations?
- Does the Member require a partner, officer, director, branch office manager or other supervisory employee to approve a new customer account and document this review?
- Does the firm provide adequate risk disclosure to customers prior to opening an account?
- If the Member intends to offer retail forex, has the Member provided the customer with the risk disclosure statement required by CFTC Regulation 5.5(b)?

Privacy Rules (CFTC Regulation 160 and NFA Compliance Rule 2-4)

- Does the firm have a written privacy policy pertaining to consumer financial information as required by CFTC Regulation 160? Does the firm provide the privacy notice to customers at the time the account is opened and annually thereafter?
- Does the firm provide and obtain customer “opt out” notices as required?
- For further assistance in drafting these privacy procedures, see [Appendix D on NFA's website](#).

Promotional Material (Compliance Rule 2-29 and 2-36)

- Does the Member have written procedures to supervise the preparation and use of promotional material?
- Does the Member require an officer, general partner, sole proprietor, branch office manager or other supervisory employee other than the individual who prepared the material to approve promotional material in writing before its use?
- Does the Member maintain all promotional materials and written approvals for a period of five years from the date last used?
- Does the Member maintain supporting documentation for all statements, claims and performance results?
- Does the firm ensure that the promotional material includes all material information necessary to ensure that it is not misleading?
- If the material mentions the possibility of profit including the presentation of profitable past performance results, does the Member include an equally prominent statement of the risk of loss?
- Does the Member calculate rates of return in a manner consistent with CFTC Part 4 Regulations?
- Does the Member ensure that any presentation of past performance of any actual accounts is representative of the actual performance of all reasonably comparable accounts for the same time period?
- Does the Member include a statement that past results are not necessarily indicative of future results when past performance is mentioned?
- Does the Member ensure that statements of opinion are identifiable as such and have a reasonable basis in fact? Does the Member maintain support for such statements?
- Does the Member ensure that the promotional material does not include any guarantee against loss?
- Does the Member ensure that reprints of articles have been supplemented with the proper disclosures and disclaimers?

- Does the Member include the hypothetical performance disclaimer prescribed by NFA Compliance Rule 2-29(c) with any hypothetical performance results? The Member must cease using hypothetical results when there are three months or more of actual trading results for the offered program.
- When the Member uses hypothetical results for a trading system, does the Member also include either the actual results of all customer accounts directed by the Member for the past five years (or entire performance history if less than five years), or if the Member has less than one year of experience directing accounts, the results of any proprietary trading over the past five years (or the entire performance history if less than five years)?
- Does the Member calculate hypothetical results in the same way as actual results?
- When the Member uses both hypothetical results and actual results, does the Member ensure that the actual results and hypothetical results are appropriately identified, separately formatted, discussed in an equally balanced manner and calculated pursuant to the same rate of return method?
- Does the Member explain all material assumptions made in preparing hypothetical results, including at least the minimum investment amount, distribution or reinvestment of profits, commission charges, management and incentive fees, and the method used to determine the purchase and sale price for each trade? (Interpretive Notice 9025)
- Does the Member submit all radio, television advertisements, audio podcasts and videos on the internet that make any specific recommendations or refer to or describe the extent of any profit obtained in the past or that can be achieved in the future to NFA's promotional material review team for its review and approval at least 10 days prior to first use?
- Does the Member prohibit the use of promotional material that contains any of the following? :
 - Claims regarding seasonal trades;
 - Claims regarding historical price moves;
 - Claims regarding price movements that are characterized as conservative estimates when in fact such price movements would be dramatic;
 - Claims using certain pricing data for a product different from the one being marketed in the promotional material;
 - Claims containing profit projections;
 - Claims containing "cherry picked" trades; and
 - Claims regarding mathematical examples of leverage as a means of suggesting that prospective customers are likely to earn large profits from trading.

- Does the Member ensure employees and agents are not purchasing leads from non-Members required to be registered and/or using fraudulent advertising practices? Does the Member maintain a record of any non-member or member advertisement used?
- If the Member intends to offer retail forex, has the Member ensured that its promotional material does not represent that? :
 - forex funds deposited with an FDM are given special protection under the bankruptcy laws or that 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 U.S. or a money center country. (Interpretive Notice 9028)
 - Its services are commission free without prominently disclosing how it is compensated in near proximity to that representation. (Interpretive Notice 9028)
 - It offers trading with "no-slippage" or that it guarantees the price at which a transaction is filled (unless it can also 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 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). (Interpretive Notice 9028)
 - Solicits customers based on the leverage available unless the material balances any discussion regarding the advantages or leverage with an equally prominent contemporaneous disclosure that increasing leverage increases risk. (Interpretive Notice 9028)

E-Mails (Interpretive Notice ¶9037 and NFA Compliance Rules 2-9 and 2-29)

- Does the Member have written procedures to review the use of futures-related e-mail by employees and agents, which identify by title or position the person responsible for conducting the review and address how and with what frequency e-mails will be reviewed, how that review will be documented and what type of e-mails will be pre-reviewed and post reviewed?
- Does the Member ensure e-mails are in compliance with NFA's promotional material content and review procedures?

Websites and Social Networking Groups (Interpretive Notices ¶9037 and ¶9063 and NFA Compliance Rules 2-9 and 2-29)

- Does the Member have written procedures to supervise the preparation and use of websites?
- Does the Member require prior review and written approval of the website by an appropriate supervisor?

- Does the Member ensure the website meets the standards of content established in Compliance Rule 2-29.?
- Does the Member ensure paid hyperlinks to the firm's website do not contain deceptive information regarding futures or options trading?
- Does the Member monitor the general content of any websites to which the Member links?
- Does the Member properly review personal websites or on-line social networking groups used by employees or agents to attract business for the firm?
- Does the Member monitor blogs, chat rooms or futures or forex-related forums hosted by the firm or its Associates and take down any misleading or fraudulent posts and ban users for egregious or repeat violations?

Supplemental Questionnaire for CPOs

- Does the Member operate all of its pools as separate legal entities from the CPO? (CFTC Regulation 4.20(a)(1) and NFA Compliance Rule 2-13)
- Does the Member ensure that all funds, securities, or other property received by the CPO from an existing or prospective pool participant for an investment in a pool is received in the name of that pool? (CFTC Regulation 4.20(b) and NFA Compliance Rule 2-13)

Account Statements (CFTC Regulations 4.22 and NFA Compliance Rule 2-13)

- Does the Member distribute account statements to pool participants at least monthly within 30 days of month end for pools with net asset value of more than \$500,000 (or at least on a quarterly basis within 30 days of the quarter end for pools with net asset value less than \$500,000 or exempt pools under CFTC Regulation 4.7)? Does the account statement for the pool include:
 - Statement of Income and Loss itemizing: realized commodity trading gain or loss, change in unrealized gain or loss, other gains and losses, management fees, advisory fees, brokerage commissions, other fees and other expenses?
 - Statement of Changes in NAV itemizing: beginning NAV, additions, withdrawals, net income/loss, ending NAV, NAV per unit or individual's interest in the pool, and oath or affirmation manually signed by the proper individual?
 - An oath or affirmation that to the best of the knowledge and belief of the individual making the oath or affirmation, that the information contained in the oath or affirmation is accurate and complete and the name of the individual signing the oath or affirmation, the capacity in which he/she is signing, the name of the commodity pool operator for which he/she is signing and the name of the commodity pool for which the account statement is being distributed?
- Does the Member ensure that for pools comprised of more than one ownership class or series, the series or class on which the account statement is reporting is presented in addition to the information presented for the pool as a whole? (Except that, for a pool that is a series fund structured with a limitation on liability among the different series, the account statement is not required to include consolidated information for all series).
- Does the Member ensure that any material business dealings between the pool, the pool's operator, commodity trading advisor, futures commission merchant or their principals that has not previously disclosed in the disclosure document are disclosed in the account statement?

Financial (CFTC Regulation 4.22, 4.23, 4.27 and NFA Compliance Rule 2-13)

- Does the Member retain an independent certified public accountant to do a certified audit of each pool operated during the past fiscal year, including those pools which have permanently ceased trading?

- Does the Member distribute copies of the certified reports to NFA and to each of the participants within 90 days of the fiscal year-end or within 90 days of when the pool funds were returned to participants?
- Does the certified audit for each pool include the following information for the preceding two year-ends: NAV of the pool, NAV per outstanding participation unit in the pool or total value of the participant's interest or share in the pool, statement of financial condition, statement of operations, changes in net assets, appropriate footnote disclosure, and such further material information as may be necessary to ensure that the required statements are not misleading?
- Does the Member maintain the following documents for each pool: cash receipts and disbursements journal; security purchases and sales journal; adjusting journal entries; subsidiary ledger for each participant, including name, address, dates of deposits, withdrawals, etc., amount of deposits and withdrawals, etc., gains/losses accruing to participant, participant equity calculated on a quarterly/monthly basis, and the number of units owned; general ledger; copies of statements from any entity holding pool assets; copies of statements received from carrying brokers; bank statements and cancelled checks; dated copies of all reports and letters; balance sheets; income statements; account statements; and signed and dated acknowledgments of receipt of the disclosure document?
- Does the Member use NFA's EasyFile to report on a quarterly basis with NFA or the CFTC specific information about the firm and the pools that it operates? These quarterly reports are due within 60 days after the end of the quarters ending March 31, June 30 and September 30. Reports for the quarter ending December 31 are due within 90 days of the calendar year-end for Small CPOs (less than \$150 million in assets under management (AUM)) or Mid-size CPOs (greater than \$150 million but less than \$1.5 billion in AUM) and within 60 days for Large CPOs (greater than \$1.5 billion in AUM). All Pool Quarterly Reports (PQR) must be filed electronically using NFA's EasyFile system regardless of whether the PQR is being filed to fulfill NFA or CFTC requirements. The content of the quarterly PQR filing will depend upon the CPO's highest AUM during the reporting period. All CPOs are required to file a quarterly report even if the CPO has not operated during the reporting period. CPOs that file a Form PF with the SEC will continue to be required to file a PQR with NFA for quarters ending March 31, June 30 and September 30 and with the CFTC for the quarter ending December 31.

Disclosure Document (CFTC Regulations 4.21, 4.24, 4.25 and 4.26, NFA Compliance Rules 2-13, 2-34, 2-35 and 2-45 and NFA Interpretive Notices ¶ 9006, ¶ 9023, ¶ 9034, and ¶ 9035)

- Does the Member's disclosure document comply with NFA Rules and CFTC Regulations?
- Does the Member file the disclosure document and any amendments with NFA electronically at least 21 calendar days prior to the date it first intends to solicit clients with the document?
- Does the Member file amendments or a new disclosure document when the existing document becomes materially incomplete or inaccurate?
- Does the Member provide prospective pool participants with a disclosure document, including any existing amendments, which is dated no more than nine months prior to the date of delivery before accepting funds from the participant?
- Does the Member provide existing pool participants with all amendments to the disclosure document?
- Does the Member maintain signed and dated acknowledgments of receipt of disclosure documents from each pool participant?
- Does the Member calculate fees in accordance with the method described in the disclosure document?
- Does the Member ensure that the pool does not make a direct or indirect loan or advance of pool assets to the Member or any other affiliated person or entity?

Security Futures Products (Rules and Resources and NFA Compliance Rule 2-37 and Interpretive Notices 9043, 9044, 9049 and 9050)

- Does the Member check the Central Registration Depository (CRD) for information on prospective employees who will be involved in security futures activities and obtain and review a copy of the individual's most recent Form 8-T or U5?
- Does the Member require APs to complete appropriate security futures products training modules?

Supplemental Questionnaire for CTAs

Disclosure Document (CFTC Regulations 4.31, 4.34, 4.35 and 4.36, NFA Compliance Rules 2-13, 2-34 and 2-35, and NFA Interpretive Notices ¶ 9006, ¶ 9023, ¶ 9034, and ¶ 9035)

- Does the Member's disclosure document comply with NFA Rules and CFTC Regulations?
- Does the Member file the disclosure document and any amendments with NFA electronically at least 21 calendar days prior to the date it first intends to solicit clients with the document?
- Does the Member file amendments or a new disclosure document when the existing document becomes materially incomplete or inaccurate?
- Does the Member provide prospective clients with a disclosure document, including any existing amendments, which is dated no more than nine months prior to the date of delivery?
- Does the Member provide existing clients with all amendments to the disclosure document?
- Does the Member maintain signed and dated acknowledgments of receipt of disclosure documents from each client?
- Does the Member calculate fees in accordance with the disclosure document?
- If the Member collects fees directly from clients instead of from the carrying broker, is that amount reflected in the performance record supporting worksheets as an addition and as a debit to net performance?

Bunched Orders (CFTC Regulation 1.35(a-1)(5)(iii)(B)-(C), NFA Compliance Rule 2-10 and NFA Interpretive Notice ¶ 9029)

- Does the Member maintain specific allocation procedures that are fair and equitable so that no account or group of accounts receives consistently favorable or unfavorable treatment?
- Does the Member ensure that all customer accounts have the correct allocation of contracts on each trade?
- Does the Member analyze each trading program at least once a quarter to ensure the allocation method has been fair and equitable? Does the Member maintain records of the review and any deficiencies that are discovered through the review?

Post-Execution Allocation of Bunched Orders (CFTC Regulation 1.35(a-1)(5)(ii), NFA Compliance Rule 2-10 and NFA Interpretive Notice ¶ 9029)

- Does the Member make the following information available to customers upon request? :
(1) the general nature of the allocation methodology; (2) a summary of composite data sufficient for a customer to compare his results with those of other relevant customers

and any account in which the account manager has an interest; and (3) an indication whether any account in which the account manager has an interest can be included with customer accounts in bunched orders. Prior to the end of the trading day, does the Member provide the clearing FCM with information concerning the number of contracts to be allocated to each account included in the bunched order along with instructions for the allocation of split and partial fills among accounts?

- If fill prices are allocated by an FCM, does the Member maintain a written agreement with the FCM that clearly describes that the FCM is responsible for the allocation?

Security Futures Products (Rules and Resources and NFA Compliance Rule 2-37 and Interpretive Notices 9043, 9044, 9049 and 9050)

- Does the Member check the Central Registration Depository (CRD) for information on prospective employees who will be involved in security futures activities and obtain and review a copy of the individual's most recent Form 8-T or U5?
- Does the Member require APs to complete appropriate security futures products training modules?

Appendix A - Anti-Money Laundering Questionnaire

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

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

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

<http://www.nfa.futures.org/nfamanual/NFAManual.aspx#2-9>

<http://www.nfa.futures.org/nfamanual/NFAManual.aspx#45>

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

General Questions

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

Customer Identification Program (CIP)

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

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

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

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

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

Identifying High-Risk Accounts

- How does the firm identify potentially high-risk accounts?
- What types of accounts does the firm characterize as high risk?
- How does the firm determine whether a customer/prospective customer appears on OFAC's list of Specially Designated Nationals and Blocked Persons (SDN list) identifying known or suspected terrorists and terrorist organizations?

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

Suspicious Activity

- What systems and procedures does the firm use to detect and report suspicious activity:
 - During the account opening process?
 - While an account is open?
 - When an account closes?
- What type of transactions will require the firm to file a form SAR?
- How does the firm ensure that a form SAR is filed for a transaction or series of transactions that are conducted, attempted by, at or through the firm, involve an aggregate of at least \$5,000 in funds or other assets and the firm knows, suspects or has reason to suspect that transactions or pattern of transactions (1) Involves funds that come from illegal activity or are part of a transaction designed to conceal that the funds are from illegal activity; (2) Are designed, such as through structuring, to evade the reporting requirements of BSA; (3) Do not appear to serve any business or apparent lawful purpose; (4) Use the firm to facilitate a criminal transaction? Generally, a SAR is due within 30 days after the firm becomes aware of the suspicious transaction.

- How does the firm monitor wire transfer activity for unusual transfers (e.g., unexpected or unusually frequent or large transfers by a particular account during a particular period, transfers involving certain countries identified as high risk or having AML/CFT deficiencies)?
- What examples of “red flags” does the firm provide its employees to alert them to suspicious activity?
- What kind of investigation does the firm do when a red flag occurs? Who does it?
- How promptly must employees report potential suspicious activity and who do they report it to?
- What are the firm's procedures for filing a form SAR with FinCEN after the firm becomes aware of a suspicious transaction or if identity is unknown? Specifically, how promptly does the firm file a form SAR with FinCEN?
- Which supervisory personnel evaluate the activity and determine whether the firm is required to file a SAR with FinCEN?
- How does your firm ensure the confidentiality of SAR filings or any information that would reveal the existence of a SAR?
- Where, and in what form, does the firm keep the form SAR and any supporting documentation which must be maintained for five years from the date the SAR was filed?
- How does the firm maintain the confidentiality of the form SAR?
- If your firm shares a SAR with a parent entity (or entities) does it have a written confidentiality agreement or other arrangement in place specifying that the parent (or parent entities) must protect the confidentiality of the SAR through appropriate internal controls?
- If your firm shares a SAR, or any information that might reveal the existence of a SAR, with an affiliate, does it have policies and procedures, as part of its internal controls, which ensure that its affiliate protects the confidentiality of the SAR? Note that any affiliate receiving a SAR from your firm must be subject to a SAR regulation and cannot share the SAR with another affiliate.
- What kind of due diligence does the firm do to ensure that any requests for SARs or SAR supporting documentation come from a representative of FinCEN or an appropriate law enforcement or supervisory agency? What procedures will the firm use to complete this verification?
- Does the firm have additional risk-based measures to help ensure the confidentiality of SARs, including limiting access to "need-to-know" basis, establishing restricted areas for reviewing SARs, maintaining a log of access to the SARs, using cover sheets for notices that highlight confidentiality concerns before a person may access or disseminate the information? Does the firm include information on SAR confidentiality and the penalties associated with unauthorized disclosure in its ongoing training of employees?
- Does the firm obtain a written request from a law enforcement agency when the agency is requesting that the firm keep a particular account open? If so, what type of documentation is maintained and for what time period does the firm keep the documentation?

Other

- If your firm is an FCM, what steps does the firm take to respond to FinCEN information requests (e.g., 314(a) biweekly request)?
- If responsibilities for conducting AML compliance, other than CIP responsibilities, are divided between your firm and an FCM or IB, what documentation does your firm maintain to indicate how those responsibilities are divided? How does the firm ensure the other firm is adhering to the AML procedures?
- If your firm is an FCM that guarantees introducing brokers ("GIB"), how does it ensure that the firm's GIBs are adhering to their AML procedures?
- If your firm is an FCM, how does your firm comply with the currency transaction reporting and funds transfer recordkeeping requirements set forth in the Bank Secrecy Act?
- Does your firm accept private banking accounts maintained for non-U.S. persons? If so, what kind of special due diligence does the firm perform for those accounts? If not, how does the firm screen new accounts to ensure that it does not accept this type of account?
- Does your firm accept private banking accounts maintained by or on behalf of senior political figures? If so, what enhanced scrutiny does the firm conduct for private banking accounts maintained by or on behalf of senior political figures? If not, how does the firm screen new accounts to ensure that it does not accept this type of account?
- Does your firm have a procedure to file the required FBAR report if it has a financial interest or signature authority over any financial accounts which exceed \$10,000 in a foreign country at any time during the calendar year?
- Does your firm (only FCMs) have a procedure to file a Report of International Transportation of Currency or Monetary Instruments (CMIR) if your firm transports amounts exceeding \$10,000 internationally under certain circumstances?
- Does the firm accept correspondent accounts established, maintained or administered by the firm in the US for a foreign financial institution. If so, what procedures or controls have the firm established over the account that will allow the firm to reasonably detect and report any known suspected money laundering activity conducted through or involving the correspondent account? If not, it is sufficient to indicate that the firm will not open any correspondent accounts.
- What are the firm's procedures regarding Section 311 Special Measures? Do the procedures require the firm to monitor FinCEN's website for information on foreign jurisdictions, institutions, classes of transactions, or types of account that have been designated as a primary money laundering concern and any special measures that have been imposed? Does the firm's procedure require the firm to follow any special measures that have been imposed?
- Which individuals or departments are trained, at least every 12 months, on the firm's overall AML program?

- Which individuals or departments are trained to monitor unusual trading activity to detect suspicious activity? How often do these employees take the training?
- Who conducts the training and what areas does it cover? Be specific for each group of employees who receive training.
- Other than documents obtained or made during the CIP process, what AML documents and records does the firm maintain? How long are they maintained? Be specific.
- Which independent firm personnel or experienced outside party will conduct annual testing on the adequacy of the firm's anti-money laundering program at least every 12 months?
- What areas are reviewed in the annual audit?
- Who in senior management or on the audit committee receives the results of the independent audit?
- Who in senior management or on the audit committee reviews and signs off in writing on the independent audit report?
- How will the firm address deficiencies noted in the annual AML audit report?

Appendix B - Business Continuity & Disaster Recovery Plan Questionnaire

Each National Futures Association (“NFA”) Member firm must adopt a written business continuity and disaster recovery plan tailored to its operations. NFA has developed the following questionnaire to assist firms in meeting that requirement.

The firm should maintain its business continuity and disaster recovery plan with other firm procedures. Having a written policy is not enough to meet your regulatory requirements, however. You must also implement and follow that policy and communicate it to your employees.

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

<http://www.nfa.futures.org/nfamanual/NFAManual.aspx#2-38>

<http://www.nfa.futures.org/nfamanual/NFAManual.aspx#52>

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

- Where are the firm's backup facilities (including systems and personnel) located? Are the backup facilities located in separate geographical areas from the primary facility? Are the backup facilities on a different power grid than the primary facility? Do they utilize a different telecommunication vendor?
- What are the firm's procedures for backing up or copying essential documents and data? How often is this done?
- Does the firm store the information in hard copy? In electronic format? Where is the backup information stored?
- What staff competencies or duties are critical to continuing your operations? How has your firm duplicated these competencies in order to minimize the effect on the firm's operations if it loses primary staff?
- What specific steps will the firm take to minimize the impact of business interruptions encountered by the following third parties:
 - Banks?
 - Carrying brokers?
 - Order routers?
 - Data providers?
 - Other third parties that are critical to continuing your operation? Be specific.
- Describe the firm's disaster-related communication plan. Specifically, how will the firm contact each of the following essential parties:

- Employees?
- Customers?
- Carrying brokers?
- Vendors?
- Other third parties that are essential to continuing your operation? Be specific.
- How often does management review the plan for needed updates? What evidence does the firm maintain as proof that a review was completed?
- How often is the plan tested for effectiveness? Describe the testing process, including whether the firm plans to participate in any industry-wide disaster recovery testing. What evidence does the firm maintain as proof that a test was completed?
- Where does the firm maintain copies of the plan? Is the plan kept at one or more off-site locations that are readily accessible to key employees? Be specific.
- List the key employees that have received the plan. Has the plan been explained to these employees? What essential components have been discussed with all other employees? How often will the plan be communicated or distributed to employees?
- What procedures are in place to ensure that any updated plan is distributed to key employees and that all other employees are notified of changes to essential components?
- Has the firm provided NFA with emergency contact information for one or more individuals whom NFA can contact in the event of an emergency?

If not, this information can be updated in the firm's annual questionnaire. Go to NFA's Web site home page under the "Electronic Filings" heading. Then click on "Annual Questionnaire."

Members will need an ORS sign-on ID and password to gain access.

The components listed in the above steps are the minimum areas that the plan should address. Please include additional information on any other areas that are essential to your operations.

Appendix C - Ethics Training Policy Questionnaire

Each National Futures Association (“NFA”) Member firm must adopt a written ethics training policy tailored to its operations. NFA has developed the following questionnaire to assist firms in meeting that requirement.

The firm should maintain its ethics training policy with other firm procedures. Having a written policy is not enough to meet your regulatory requirements, however. You must also implement and follow that policy.

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

<http://www.nfa.futures.org/nfamanual/NFAManual.aspx#2-9>

<http://www.nfa.futures.org/nfamanual/NFAManual.aspx#51>

A Member firm's written policy should answer all of the following questions as completely as possible.

- Who conducts the ethics training? If the firm conducts training in-house, who are the training personnel (by name or title)? If the firm utilizes an outside provider, what is the provider's name?
- What are the training personnel's or provider's qualifications? What proof does the firm maintain that the training personnel or provider are qualified to conduct ethics training?
- What type of medium (e.g., Internet, audiotapes, computer software, videotapes, in-person courses) does the firm utilize for the ethics training course?
- How frequently are employees required to complete the training? Specifically, how soon and how often are new registrants required to complete ethics training? How often are other registrants required to complete ethics training?
- How long is the ethics training program for new registrants? For existing registrants?
- List the topics the ethics training program addresses.
- What type of written materials are distributed during training? How does the firm ensure that it maintains copies of those materials?
- What type of documentation or records does the firm maintain as proof that its employees have completed the ethics training?
- How often does management review the firm's ethics training policy?

Appendix D - Privacy Policy Questionnaire

National Futures Association (“NFA”) has developed the following questionnaire to assist firms in meeting their obligations under the CFTC’s privacy rules.

Many elements of the firm’s privacy policy must be described in the privacy notice given to customers. The firm’s policy and procedures for protecting customer records and information (see third bullet below) must be in writing separate from the privacy notice and should be maintained with the rest of the firm’s written procedures. Although the firm is not technically required to have a separate document describing every aspect of its privacy policy and procedures, a comprehensive written policy is the best way to ensure that firm personnel know what the firm’s policy is. This is important because just having a policy is not enough to meet your regulatory requirements. You must also implement and follow that policy.

The questions listed below are very general and do not cover every aspect of the privacy rules. You should consult the following CFTC Regulations when designing your privacy policy:

<http://www.cftc.gov/foia/fedreg01/foi010511a.htm>

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

- Does the firm solicit, accept, or have any clients or customers who are individuals and who use the firm’s products or services primarily for personal, family or household purposes?
[NOTE: If the answer to this question is “NO,” the firm is not required to have a privacy policy and does not need to answer the remaining questions.]
- What types of nonpublic personal information does the firm collect from clients or customers? Be specific. (NOTE: Nonpublic personal information includes account numbers, trading history, account balances, social security numbers and all financial information obtained from the customer. It also includes names and addresses when that information is included in a list derived in whole or in part from nonpublic personal information, such as a list of the firm’s customers.)
- What does the firm do – administratively, technically and physically – to maintain the confidentiality and security of customer information?
 - How does the firm safeguard paper documents?
 - How does the firm safeguard electronic information?
 - Who has access to nonpublic personal information?
 - How does the firm protect against unauthorized access, disclosure or use of the information?

- Does the firm disclose information to nonaffiliated third parties? If so, what categories of nonaffiliated third parties does the firm disclose customer information to? For each category, what information does the firm disclose and under what circumstances does the firm disclose it? Be specific.
- What types of information are included in the firm's written privacy notice? (If the firm has written privacy procedures, you should attach a copy of the privacy notice to those procedures.)
- When does the firm provide new customers with the firm's privacy policy? How often does the firm provide its privacy policy to existing customers?
- Under what circumstances does the firm provide its privacy policy to consumers who do not become customers?
- How does the firm distribute its privacy policy to customers (e.g., electronically or mailed, included with account statements)?
- Does the firm give customers an opt-out notice? (If the firm has written privacy procedures, you should attach a copy of the opt-out notice to those procedures.) [NOTE: Your firm does not have to give customers an opt-out notice if it does not share nonpublic personal information with nonaffiliated third parties.]
- When does the firm provide customers with amended privacy and opt-out notices?

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