



NATIONAL
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NFA Regulatory Requirements

For FCMs, IBs, CPOs, and CTAs

~~December 2014~~**January 2016** Revisions: Updated to reflect the amendments to ~~NFA Compliance Rule 2-38, CFTC Regulation 1.10, 1.11, 1.12, 1.15, 1.16, 1.55 and 3.3's~~ Financial Requirements Section 1 and 16, and its related Interpretive Notice to conform NFA's requirements with the CFTC's rulemaking, *Enhancing Protections Afforded Customers and Customer Funds held by FCMs and DCOs.*

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General Regulatory Requirements

Policies and Procedures

An FCM must maintain written policies and procedures that identify a target amount (either a percentage or dollar amount) that it will seek to maintain as its residual interest in customer segregated and customer secured amount funds, as well as in its cleared swaps customer collateral accounts. This target residual amount, as well as any changes to the amount or material changes to the written policies and procedures, must be approved in writing by the FCM's governing body, ~~CEO or CFO~~ as part of the FCM's Risk Management Program. In establishing the target residual amount, the FCM's governing body, ~~CEO or CFO~~, CFO, or other officer(s) specifically granted the authority and responsibility to fulfill the responsibilities of senior management by the governing body, must perform a due diligence inquiry related to the nature of the firm's business and create a written record that describes the factors used to determine its target residual amount.

Should an FCM fall below the target residual interest amount due to a disbursement that is not for the benefit of customers, it must either deposit funds into the segregated, secured amount or cleared swaps customer collateral accounts necessary to restore the account balance to the target amount or, if appropriate, revise the target amount by the close of business on the next business day. If any of the customer segregated, secured amount funds or cleared swaps customer collateral account(s) falls below the target residual interest amount, the FCM must file immediate notification through WinJammer™. Whenever an FCM makes a disbursement from customer segregated, secured amount funds or cleared swaps customer collateral account(s) that is not for the benefit of customers, the FCM must ensure that after making the disbursement the FCM maintains sufficient funds to remain in continued compliance with its segregated funds, secured amount or cleared swaps customer collateral requirements. Therefore, the FCM's internal procedures must require it to consider the most-current required segregated funds, secured amount or cleared swaps customer collateral calculation, as well as the impact of any known unsecured debits, deficits and previous disbursements that could cause material adjustments to its most-current segregated, secured amounts or cleared swaps customer collateral calculations.

Disbursements from Customer Funds

An FCM may not, by single or multiple transfers, withdraw, transfer or otherwise disburse funds from any customer segregated, secured amount funds or cleared swaps customer collateral accounts that exceed 25% of its residual interest in either customer segregated, secured amount funds or cleared swaps customer collateral accounts based on the ~~most recent~~ daily segregated, secured amounts funds or cleared swaps customer collateral calculation ~~unless, unless the FCM prepared the daily segregation calculation as of the close of business on the previous business day~~ and its CEO, CFO or a financial principal with knowledge of the firm's financial position pre- approves the disbursement in writing. For purposes of calculating the 25% threshold, an FCM may exclude any segregated, secured amount funds or cleared swaps customer collateral disbursements made to or for the benefit of customers.

Immediately after an FCM's CEO, CFO or financial principal pre-approves the disbursement that results in the FCM exceeding the 25% threshold (either through the single disbursements or in combination with disbursements made since the last daily segregated, secured amount funds or cleared swaps customer collateral calculation), the FCM must file a written notice signed by the CEO, CFO or financial principal through WinJammer™. The notice must disclose that the FCM has made, or intends to make, such a disbursement, and describe the reasons, the amount and recipients of the disbursement (or series of disbursements). The notice must also confirm that the disbursement was properly pre-approved and provide a current estimate of the FCM's remaining total residual interest in the segregated, secured amount funds or cleared swaps customer collateral accounts, along with a representation ~~by the person signing the notice~~from the CEO, CFO or financial principal that to the best of that person's knowledge and reasonable belief, after due diligence, the FCM remains in compliance with its segregated, secured amount funds or cleared swaps customer collateral requirement after the disbursement.

After an FCM makes a disbursement that requires the pre-approval and written notice, the FCM must obtain the pre-approval and file the required notice for any subsequent disbursements from the applicable customer segregated, secured amount funds or cleared swaps customer collateral accounts that are not made for the benefit of customers until the FCM completes its next daily segregated, secured amount funds or cleared swaps customer collateral calculation.

FCMs may hold customer segregated or secured amount funds in cash at an acceptable depository or may invest those funds in one of several investments permitted under CFTC Regulation 1.25. ~~Briefly, these investments include: U.S. Government Securities; Bank Certificates of Deposit; Money Market Funds; Municipal Securities; Government Sponsored Enterprise Securities; certain Commercial Paper and certain Corporate Bonds and Notes~~1.25(a).

Reporting Obligations

FCMs must make daily formal segregation, secured amount and cleared swaps customer collateral computations as of the close of each business day. These computations must detail the amount of customer funds required to be on deposit in segregated, secured amount and cleared swaps customer collateral accounts, the amount of funds on deposit in segregated, secured amount and cleared swaps customer collateral accounts and the FCM's residual interest in the funds on deposit. Calculations must be completed and submitted to NFA by noon of the following business day.

In addition, each Member FCM must instruct each depository, as required by NFA, holding customer segregated funds under CFTC Regulation 1.20, customer secured amount funds under CFTC Regulation 30.7 or cleared swaps customer collateral under CFTC Regulation 22.2 to report the balances in the FCM's customer segregated funds, customer secured amount funds and cleared swaps customer collateral accounts to a third party designated by NFA in the form and manner prescribed by NFA.

the 15th fall on a weekend) and the last business day of each month. The report is due by 11:59 p.m. on the business day following the 15th and last business day of each month. The SIDR requires an FCM to provide a detailed breakdown of: an FCM's investment of customer segregated funds, customer secured amount funds and cleared swaps customer collateral accounts, ~~and identify the carrying brokers and other;~~ each type of permitted investment identified in CFTC Regulation 1.25(a); customer owned securities held as margin and as securities under agreements to resell the securities (reverse repurchase transactions); and the identity and location of all depositories holding these funds.

If an FCM fails to complete the required segregated funds, secured amount funds or cleared swaps customer collateral calculations, it is prohibited from making any disbursements not for the benefit of customers from the accounts for which the calculation was not completed until the required calculation is completed and submitted to NFA.

FCMs are required on a monthly basis, within 17 business days after the end of each month, to submit certain financial information through WinJammer™ as of the close of business on the last business day of the month. The required information includes total adjusted net capital, minimum net capital and excess net capital, ~~whether any depository that held customer segregated funds, customer secured amount funds or cleared swaps customer collateral during that month is an affiliate of the FCM,~~ and the firm's measure of leverage using a calculation required by NFA.

Margins

All FCMs must collect margin for customer accounts in accordance with the rules established by the exchange on which the contract is traded. NFA Financial Requirements Section 7 requires that exchange margin procedures be followed by an FCM even if it is not a member of the exchange. Thus, any FCM must establish its margin levels and collection procedures in accordance with exchange rules.

Also, if an FCM carries an account for another FCM on an omnibus basis, CFTC Regulation 1.58 requires the carrying FCM to collect margin and the originating FCM to deposit margin on the gross positions in the account. This means that margin must be collected on each long and short position and those positions may not be netted against each other. In addition, if positions in an omnibus account are to be margined as spreads or hedges, the carrying FCM must receive a written representation from the originating FCM that the positions are entitled to the special rates.

If an FCM accepts other than immediately available funds from an omnibus account, it must notify its DSRO within 24 hours of such acceptance. NFA Compliance Rule 2-33 recognizes wire transfers and certified checks as immediately available funds. Acceptance of any other type of funds must be reported to the DSRO.

Finally, an FCM is required by CFTC Regulation 1.12 to provide immediate notification to the CFTC and the FCM's DSRO when its amount of residual interest is less than the sum of the undermargined amounts in its customer accounts as determined at the point in time that the firm is required to maintain the

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