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### Part 1 - Definitions

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## RULE 1-1. DEFINITIONS.

*[Effective date of amendments: April 7, 1982; July 27, 1983; January 14, 1988; September 29, 1989; July 24, 2000; August 21, 2001; May 1, 2004; February 13, 2007; October 18, 2010; September 19, 2016 and July 1, 2019.]*

**(a) "Act"** — means the Commodity Exchange Act.

**(b) "Actual Funds"** — means the equity in a commodity trading account over which a CTA has trading authority and funds that can be transferred to that account without the client's consent to each transfer.

**(c) "Appeals Committee"** — means the Appeals Committee established under NFA Bylaw 702.

**(d) "Associate"** — means a person who is associated with a Member within the meaning of the term "associated person" as used in the Act and Commission Rules and who is required to be registered as an "associated person" with the Commission

**(e) "Business Conduct Committee"** — means the Business Conduct Committee established under NFA Bylaw 704.

**(f) "Commission" or "CFTC"** — means the Commodity Futures Trading Commission.

**(g) "Commodity Interest"** — means futures, forex and/or swaps.

**(h) "Commodity Pool Operator" or "CPO"** — means a person who is required to register or is registered as a commodity pool operator under the Act and Commission Rules.

**(i) "Commodity Trading Advisor" or "CTA"** — means an exchange designated by the Commission as a contract market to trade in one or more commodity interests.

**(j) "Contract Market"** — means an exchange designated by the Commission as a contract market to trade one or more commodity interests.

**(k) "Exchange Act"** — means the Securities Exchange Act of 1934.

**(l) "Foreign Board of Trade"** — means a board of trade, exchange, or market located outside the United States, its territories or possessions.

**(m) "Foreign Futures" and "Foreign Options"** — means futures and options transactions made or to be made on or subject to the rules of a foreign board of trade.

**(n) "Foreign Futures or Foreign Options Customer"** — means any person located in the

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United States, its territories or possessions who trades in foreign futures or foreign options.

**(o) "Forex"** — has the same meaning as in Bylaw 1507(b).

**(p) "Forex Dealer Member"** — has the same meaning as in Bylaw 306.

**(q) "Futures"** includes -

(1) futures and option contracts traded on a contract market;

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

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

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

(5) security futures products, as that term is defined in Section 1a(45) of the Act.

**(r) "Futures Commission Merchant" or "FCM"** — means a person who is required to register or is registered as a futures commission merchant under the Act and Commission Rules.

**(s) "Hearing Committee"** — means the Hearing Committee established under NFA Bylaw 707.

**(t) "Introducing Broker" or "IB"** — means a person who is required to register or is registered as an introducing broker under the Act and Commission Rules.

**(u) "Leverage Transaction Merchant" or "LTM"** — means a person who is required to register or is registered as a leverage transaction merchant under the Act and Commission Rules.

**(v) "Major Swap Participant" or "MSP"** — means a person who is required to register or is registered as a major swap participant under the Act and Commission Rules.

**(w) "Member"** — means a Member of NFA other than a contract market.

**(x) "Nominal Account Size"** — means the account size agreed to by the client that establishes the level of trading in the particular trading program.

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**(y) "Partially-Funded Account"** — has the same meaning as in CFTC Regulation 4.10(m).

**(z) "Person"** — includes individuals, corporations, limited liability companies, partnerships, trusts, associations and other entities.

**(aa) "Qualified Eligible Person" or "QEP"** — has the same meaning as in CFTC Regulation 4.7(a).

**(bb) "Requirements"** — includes any duty, restriction, procedure or standard imposed by a charter, bylaw, rule, regulation, resolution or similar provision.

**(cc) "Retail Foreign Exchange Dealer" or "RFED"** — means a retail foreign exchange dealer as that term is used in the Commodity Exchange Act, and that is required to be registered as such under the Act and Commission Rules.

**(dd) "Security Futures Products"** — has the same meaning as in Section 1a(45) of the Act.

**(ee) "Swap Dealer" or "SD"** — means a person who is required to register or is registered as a swap dealer under the Act and Commission Rules.

**(ff) "Swap"** — has the same meaning as in the Act and Commission Rules.

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## Part 2 - Rules Governing the Business Conduct of Members Registered with the Commission

### RULE 2-1. CONTRACT MARKET JURISDICTION.

No Member or Associate shall be charged with an offense under these Rules if the specific conduct alleged to constitute the offense is governed or otherwise regulated by the requirements of a contract market and such Member or Associate is subject to the disciplinary jurisdiction of the contract market for such conduct. The foregoing shall not apply if the contract market has expressly delegated enforcement responsibility to NFA, or if the offense under these Rules is a violation of NFA Financial Standards requirements adopted pursuant to Section 1(b) of Article III or NFA Customer Protection requirements adopted pursuant to Section 1(e) of Article III of the NFA Articles of Incorporation.

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### RULE 2-2. FRAUD AND RELATED MATTERS.

*[Effective date of amendments: March 21, 1983; July 24, 2000 and July 1, 2019.]*

No Member or Associate shall:

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- (a) Cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any commodity futures or swap customer or counterparty;
- (b) Bucket a customer's commodity futures order or engage in a business that is of the nature of a bucket shop;
- (c) Willfully make or cause to be made to a customer or counterparty a false report, or willfully to enter or cause to be entered for a customer or counterparty a false record, in or in connection with any commodity futures contract or swap;
- (d) Disseminate, or cause to be disseminated, false or misleading information, or a knowingly inaccurate report, that affects or tends to affect the price of any commodity that is the subject of a commodity futures contract or swap;
- (e) Engage in manipulative acts or practices regarding the price of a commodity futures contract or swap;
- (f) Willfully submit materially false or misleading information to NFA or its agents;
- (g) Effect a commodity futures or swap transaction on or pursuant to the rules of a contract market or swap execution facility for a customer who is subject to a Commission prohibition from trading on or pursuant to the rules of any contract market or swap execution facility, as applicable, unless the Member or Associate did not know or have reason to know of the prohibition;
- (h) Embezzle, steal, purloin or knowingly convert any money, securities or other property received from or accruing to a customer, client, pool participant or counterparty in or in connection with a commodity futures contract or swap; or
- (i) Act in any capacity requiring registration under the Act unless the Member or Associate is either registered in that capacity or exempt from registration.

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### **RULE 2-3. SHARING IN PROFITS.**

*[Effective date of amendments: March 1, 2019 and July 1, 2019.]*

No Member or Associate shall share, directly or indirectly, in the profits or losses accruing from commodity interest trading in any account of a customer carried by the Member, or another Member, unless the customer's prior written authorization is therefore obtained.

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### **RULE 2-4. JUST AND EQUITABLE PRINCIPLES OF TRADE.**

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*[Effective date of amendments: January 5, 2015.]*

Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business and swaps business.

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## **RULE 2-5. COOPERATION IN NFA INVESTIGATIONS AND PROCEEDINGS.**

*[Effective date of amendments: July 24, 2000.]*

Each Member and Associate shall cooperate promptly and fully with NFA in any NFA investigation, inquiry, audit, examination or proceeding regarding compliance with NFA requirements or any NFA disciplinary or arbitration proceeding. Each Member and Associate shall comply with any order issued by the Executive Committee, the Membership Committee, the Business Conduct Committee, the Appeals Committee or any NFA hearing or arbitration panel.

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## **RULE 2-6. EXPELLED OR SUSPENDED MEMBER OR ASSOCIATE.**

*[Effective date of amendments: July 20, 2005; June 5, 2007 and July 1, 2019.]*

No person who has been expelled or suspended or is subject to a similar sanction by NFA in a proceeding brought pursuant to Part 3 of NFA's Compliance Rules that temporarily or permanently prohibits the person from NFA membership or affiliation in any capacity with an NFA Member shall hold himself out as a Member in good standing of NFA, or as affiliated with a Member, as the case may be, during the period the sanction is in effect. No FCM, IB, CPO or CTA Member, FDM or Associate shall permit such a person to maintain any affiliation with it or perform any activities for, on behalf of or in connection with its commodity interest business regardless of whether such affiliation or activities require registration or NFA Membership during the period the sanction is in effect unless authorized by the Business Conduct Committee, Hearing Committee or the Appeals Committee.

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## **RULE 2-7. BRANCH OFFICE MANAGERS AND DESIGNATED SECURITY FUTURES PRINCIPALS.**

*[Adopted effective September 30, 1992. Effective date of amendments: January 28, 1994; August 21, 2001; December 9, 2005; December 17, 2007; and July 9, 2013.]*

(a) No Member shall allow an Associate to be a branch office manager unless:

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(1) The Associate has taken and passed the NFA Branch Manager Examination, *provided, however*, that any Associate who subsequently ceases acting as a branch manager will not be required to retake and pass the examination in order to resume acting as a branch manager unless after acting as a branch manager the Associate was not registered in any capacity for a period of more than two years; or

(2) The Associate is sponsored by a registered broker-dealer and is qualified to act as a branch office manager under the rules of either the New York Stock Exchange or the Financial Industry Regulatory Authority.

(b) Each Member registered as a broker-dealer under Section 15(b)(11) of the Exchange Act must have at least one designated security futures principal. No such Member shall designate a person as a security futures principal unless:

(1) The person is a partner, officer, director, branch office manager or supervisory employee of the Member;

(2) The person is a Member or an Associate of the Member as defined in Bylaw 301(b); and

(3) The person has taken and passed the "NFA Branch Manager Examination."

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### **RULE 2-8. DISCRETIONARY ACCOUNTS.**

*[Effective date of amendments: July 28, 1983; January 24, 1985; January 14, 1988; March 15, 1994; August 29, 1996; April 23, 1998; July 24, 2000; August 21, 2001 and September 30, 2019.]*

#### **(a) Grant of Discretion Must Be in Writing.**

No Member or Associate shall exercise discretion over a customer's commodity futures account unless the customer or account controller has authorized the Member or Associate, in writing (by power of attorney or other instrument) to exercise such discretion. No Member or Associate shall exercise discretion with regard to foreign futures or foreign options transactions on behalf of a foreign futures or foreign options customer unless the customer or account controller has specifically authorized the Member or Associate, in writing, to exercise discretion with regard to foreign futures or foreign options transactions. The Member or Associate does not need written authorization to exercise discretion with regard to time and price only. Each Member must maintain records which clearly identify which of the Member's accounts are accounts over which the Member or any Associate thereof has discretionary authority.

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### **(b) Review of Discretionary Trades.**

Each futures trade initiated in an account that a Member or Associate has written authorization to trade shall be presumed to have been made pursuant to that trading authorization unless otherwise indicated, in writing, at the time the trade was placed. Each Member initiating such trades (other than a Member who employs only one individual having discretionary authority if that individual is also the only principal who supervises futures activity) must adopt and enforce written procedures:

- (1) Which ensure that a partner, officer, director, branch office manager or supervisory employee of the Member (other than any individual who exercises discretion in trading the account) regularly reviews discretionary trading activity and that a designated security futures principal regularly reviews discretionary security futures trading activity if the Member is registered as a broker-dealer under Section 15(b)(11) of the Exchange Act; and
- (2) Which require such partner, officer, director, branch office manager or supervisory employee or designated security futures principal to make a written record that such review procedures were performed.

Discretionary trading activity must be regularly reviewed, and a written record of the review must be made, as required above.

### **(c) Minimum Experience Requirement.**

No Member FCM or IB shall allow an Associate to exercise discretion over a customer's commodity futures account unless that Associate has been continuously registered under the Act for a minimum of two years and has worked in such registered capacity for that period of time. This requirement shall not apply to any individual registered as a CTA. This requirement may, in NFA's discretion, be waived upon a showing that the Associate has equivalent experience. Any Member seeking such a waiver may submit a written request to the Compliance Department and all such requests shall be ruled upon by a three-member panel consisting of three members of the Business Conduct Committee and/or the Hearing Committee, said members to be appointed by the Board from time to time. The decision of the panel shall be final and shall be based upon the written submission of the Member and the views of the Compliance Department. An Associate who has been determined to have equivalent experience pursuant to the rules of any contract market Member of NFA having a similar minimum experience requirement shall be deemed to have satisfied the requirement of this Rule.

### **(d) Third-Party Account Controllers.**

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No FCM or IB shall accept an order from a third party, not an Associate of the FCM or IB, without first obtaining a copy of the account controller's written trading authorization or a written acknowledgment from the customer that such authorization has been given.

### **(e) Exception.**

The provisions of sections (b), (c) and (d) of this Rule shall not apply when the individual who owns the account and the individual exercising discretion are members of the same family (a spouse, parent, child, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece or in-law).

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### **RULE 2-9. SUPERVISION.**

*[Effective date of amendments: October 29, 1991; January 19, 1993; March 15, 1994; April 23, 2002; November 1, 2007; July 30, 2018 and September 30, 2019.]*

(a) Each FCM, IB, CPO or CTA Member shall diligently supervise its employees and agents in the conduct of their commodity interest activities for or on behalf of the Member. Each Associate of an FCM, IB, CPO or CTA Member who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity interest activities on behalf of the Member.

(b) NFA's Board of Directors may require FCM, IB, CPO and CTA Members that meet specific criteria established by the Board relating to the employment history of its APs or principals or to the total commissions, fees and other charges paid by their customers to adopt enhanced supervisory requirements specified by the Board. This requirement may, in NFA's discretion, be waived upon a showing by the FCM, IB, CPO or CTA Member that the Member's current supervisory procedures provide effective supervision over its employees and agents. Any FCM, IB, CPO or CTA Member seeking such a waiver may submit a written request to a three-member panel consisting of three members of the Business Conduct Committee and/or the Hearing Committee, said members to be appointed by the Board from time to time. Within 30 days after an FCM, IB, CPO or CTA Member submits a waiver request, the Compliance Department will submit a written response to the panel. The decision of the panel shall be final and shall be based upon the written submissions of the Member and of the Compliance Department.

(c) Each FCM and IB Member shall develop and implement a written anti-money laundering program approved in writing by senior management reasonably designed to achieve and monitor the Member's compliance with the applicable requirements of the Bank Secrecy

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Act (31 U.S.C. 5311, et. seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury and, as applicable, the Commodity Futures Trading Commission. That anti-money laundering program shall, at a minimum,

- (1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the financial institution from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;
- (2) Provide for independent testing for compliance to be conducted by Member personnel or by a qualified outside party;
- (3) Designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program;
- (4) Provide ongoing training for appropriate personnel; and
- (5) Include appropriate risk-based procedures for conducting ongoing customer due diligence, including, but not be limited to:
  - i) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
  - ii) conducting ongoing monitoring to identify and report suspicious transactions, and, on a risk basis, to maintain and update customer information, including the information regarding the beneficial owners of legal entity customers.

(d) Each Swap Dealer or Major Swap Participant Member shall diligently supervise its employees and agents in the conduct of their swap activities for or on behalf of the Member.

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### **RULE 2-10. RECORDKEEPING.**

*[Effective date of amendments: April 11, 1983; April 1, 2006; July 1, 2007; October 1, 2011; June 17, 2013 and July 1, 2019.]*

(a) Each Member shall maintain adequate books and records necessary and appropriate to conduct its business including, without limitation, the records required to be kept under CFTC Regulations 1.18, 1.32 through 1.37, and 1.71 for the period required under CFTC Regulation 1.31.

(b) Each FCM Member and Forex Dealer Member must:

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(1) Maintain an office in the continental United States, Alaska, Hawaii, or Puerto Rico responsible for preparing and maintaining financial and other records and reports required by CFTC and/or NFA rules under the supervision of a listed principal and registered associated person of the FCM or Forex Dealer Member who is resident in that office; or

(2) If an FCM, maintains an office in a jurisdiction that the CFTC has found to have a comparable regulatory scheme for purposes of Part 30 of the CFTC's rules and be subject to that regulatory scheme. This foreign office must be responsible for preparing and maintaining financial and other records and reports required by CFTC and/or NFA rules under the supervision of a listed principal and registered associated person of the FCM who is resident in that office, and the Member must agree to reimburse NFA for any travel, translation, telephone, and similar expenses incurred in connection with inquiries, examinations and investigations of the Member that exceed the normal expenses incurred by NFA in examining an FCM Member located at the closest point in the continental United States, Alaska, Hawaii, or Puerto Rico.

(c) Each Member subject to minimum capital requirements must:

(1) prepare financial reports required to be filed with the CFTC and/or NFA in English, using U.S. dollars, and according to U.S. accounting standards; and

(2) maintain a general ledger in English using U.S. dollars.

(d) Each CPO, CTA, FCM, FDM, IB, MSP and SD Member must:

(1) file reports, requests for extensions, and other documents required to be filed with the CFTC and/or NFA in English;

(2) maintain English translations of all foreign-language promotional material, including disclosure documents and Web sites, distributed to or intended for viewing by customers located in the United States, its territories, or possessions;

(3) maintain written procedures required by CFTC or NFA rules in English (as well as in any other language if necessary for them to be understood by the Member's employees and agents);

(4) provide English translations of other foreign-language documents and records and file financial information in U.S. dollars when requested by NFA; and

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(5) make available to NFA (during an examination or to respond to other inquiries) an individual who is authorized to act on the Member's behalf, is fluent in English, and is knowledgeable about the Member's business and about financial matters.

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### **RULE 2-11. CUSTOMER ACCOUNTS.**

*[Adopted effective September 30, 1982. Effective date of amendments: July 24, 2000.]*

No Member FCM, unless a member of a contract market, shall carry customer accounts without prior notice to NFA.

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### **RULE 2-12. [RESERVED].**

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### **RULE 2-13. CPO/CTA REGULATIONS.**

*[Adopted effective September 29, 1982. Effective date of Amendments: April 11, 1983; July 5, 1984; April 4, 1988; August 24, 1995; October 10, 1996; July 24, 2000; December 14, 2003; and October 18, 2010.]*

(a) Any Member who violates any of CFTC Regulations 4.1, 4.7, 4.12 and 4.16 through 4.41 shall be deemed to have violated an NFA requirement. Members are also subject to the requirements of CFTC Regulation 5.4.

(b) Each Member CPO which delivers or causes to be delivered a Disclosure Document under CFTC Regulation 4.21 must include in the Disclosure Document a break-even analysis which includes a tabular presentation of fees and expenses. The break-even analysis must be presented in the manner prescribed by NFA's Board of Directors and must be accurate as of the date of the Disclosure Document.

(c) Each Member required to file any document with or give notice to the CFTC under CFTC Regulations 4.7, 4.12, 4.22, 4.26 or 4.36 shall also file one copy of such document with or give such notice to NFA at its Chicago office no later than the date such document or notice is due to be filed with or given to the CFTC. Any CPO Member may file with NFA a request for an extension of time in which to file the annual report required by CFTC Regulation 4.22 (c) or a request for approval of a change to its fiscal-year election.

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### **RULE 2-14. COMPLIANCE JURISDICTION.**

*[Effective date of amendments: September 29, 1982 and July 24, 2000.]*

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Any Member or Associate who violates or fails to comply with any NFA requirement shall be subject to appropriate Member or Associate Responsibility Action or disciplinary action, or both, in accordance with these rules.

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### **RULE 2-15. [RESERVED]**

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### **RULE 2-16. [RESERVED]**

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### **RULE 2-17. [RESERVED]**

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### **RULE 2-18. [RESERVED]**

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### **RULE 2-19. [RESERVED]**

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### **RULE 2-20. [RESERVED]**

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### **RULE 2-21. [RESERVED]**

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### **RULE 2-22. PROHIBITED REPRESENTATIONS.**

*[Adopted effective April 22, 1983. Effective date of amendments: August 1, 1985 and August 21, 2001]*

No Member or Associate shall represent or imply in any manner whatsoever that such Member or Associate has been sponsored, recommended or approved, or that such Member's or Associate's abilities have in any respect been passed upon, by NFA or any federal or state regulatory body: *Provided, however,* that this Rule shall not prohibit a Member from stating the fact of membership, or an Associate from stating the fact of registration as an Associate if the effect of NFA membership or registration as an Associate is not misrepresented, or from discussing or explaining the functions and purposes of NFA.

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### **RULE 2-23. FCM AND RFED RESPONSIBILITY FOR GUARANTEED MEMBER IBs.**

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

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

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### **RULE 2-24. QUALIFICATION TESTING OF ASSOCIATED PERSONS.**

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

#### **(a) Testing Requirement.**

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

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*Effective January 31, 2020 the above paragraph will read as follows:*

#### **(a) Testing Requirement.**

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

(2) Subject to the provisions of paragraphs (d) and (e) of Bylaw 301, no FCM, IB, CPO or CTA Member of NFA shall have associated with it (See Bylaw 301(b)) any person engaging in activity involving swaps subject to the jurisdiction of the Commission who has not satisfied NFA's Swaps Proficiency Requirements set forth in Bylaw 301 (l) and the related Interpretive Notice entitled *Proficiency Requirements for Swap APs*.

(3) No SD or MSP shall have associated with it any person who is an associated person as defined in subsection 6 of the Associated Person definition under CFTC Regulation 1.3 who has not satisfied NFA's Swaps Proficiency Requirements set forth in the Interpretive Notice entitled *Proficiency Requirements for Swap APs*.

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#### **(b) Limitations on Activities.**

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

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

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### **RULE 2-25. REQUIREMENTS FOR DEALER OPTIONS TRANSACTIONS OF FCMs.**

*[Adopted effective November 5, 1984]*

Any Member who violates any of the CFTC Part 32 Regulations shall be deemed to have violated an NFA requirement. Each Member required to file any documents with or give notice to the CFTC under the CFTC Part 32 Regulations shall also file one copy of such document with or give such notice to NFA at its Chicago office no later than the date such document or notice is due to be filed with or given to the CFTC.

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### **RULE 2-26. FCM AND IB REGULATIONS.**

*[Adopted effective January 24, 1985. Effective date of Amendments: February 1, 1996; August 29, 1996; July 24, 2000; August 21, 2001; and July 12, 2014.]*

Any Member or Associate who violates any of CFTC Regulations 1.11, 1.33, 1.55, 1.56, 1.57, 1.65, 155.3, or 155.4, as applicable, shall be deemed to have violated an NFA Requirement.

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### **RULE 2-27. TRANSFER OF CUSTOMER ACCOUNTS.**

*[Adopted effective January 24, 1985.]*

(a) Upon receipt of a signed instruction from a customer to transfer an account from one Member to another, and provided that such instruction contains the customer's name, address and account number (and, if the transfer is not of the entire account, a description of which portions are to be transferred) and the name and address of the receiving Member, the carrying Member shall confirm to the receiving Member all balances in the account, whether money, securities or other property, and all open positions, within two business days or within such further time as may be necessary in the exercise of due diligence. Within three business days of the day such confirmation is due, or within such

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further time as may be necessary in the exercise of due diligence, and provided that the receiving Member agrees to accept the account, the carrying Member shall effect the transfer of the balances and positions to the receiving Member.

(b) This rule shall apply only to transfers made at the request of a customer.

(c) This rule shall not prohibit transfers based upon oral requests.

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### **RULE 2-28. [RESERVED]**

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### **RULE 2-29. COMMUNICATIONS WITH THE PUBLIC AND PROMOTIONAL MATERIAL.**

*[Adopted effective November 19, 1985. Effective date of Amendments: February 1, 1996; August 29, 1996; March 28, 2000; July 24, 2000; December 4, 2000; August 21, 2001; May 1, 2004; February 1, 2010 and September 30, 2019.]*

#### **(a) General Prohibition.**

No Member or Associate shall make any communication with the public which:

- (1) operates as a fraud or deceit;
- (2) employs or is part of a high-pressure approach; or
- (3) makes any statement that futures trading is appropriate for all persons.

#### **(b) Content of Promotional Material.**

No Member or Associate shall use any promotional material which:

- (1) is likely to deceive the public;
- (2) contains any material misstatement of fact or which the Member or Associate knows omits a fact if the omission makes the promotional material misleading;
- (3) mentions the possibility of profit unless accompanied by an equally prominent statement of the risk of loss;
- (4) includes any reference to actual past trading profits without mentioning that past results are not necessarily indicative of future results;
- (5) includes any specific numerical or statistical information about the past performance of any actual accounts (including rate of return)

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(i) unless such information is and can be demonstrated to NFA to be representative of the actual performance for the same time period of all reasonably comparable accounts and,

(ii) in the case of rate of return figures, unless such figures are calculated in a manner consistent with CFTC Regulation 4.25(a)(7) for commodity pools and with CFTC Regulation 4.35(a)(6), as modified by NFA Compliance Rule 2-34(a), for figures based on separate accounts, or

(6) includes a testimonial that is not representative of all reasonably comparable accounts, does not prominently state that the testimonial is not indicative of future performance or success, and does not prominently state that it is a paid testimonial (if applicable).

### **(c) Hypothetical Results.**

(1) Any Member or Associate who uses promotional material which includes a measurement or description of or makes any reference to hypothetical performance results which could have been achieved had a particular trading system of the Member or Associate been employed in the past must include in the promotional material the following disclaimer prescribed by NFA's Board of Directors:

HYPOTHETICAL PERFORMANCE RESULTS HAVE MANY INHERENT LIMITATIONS, SOME OF WHICH ARE DESCRIBED BELOW. NO REPRESENTATION IS BEING MADE THAT ANY ACCOUNT WILL OR IS LIKELY TO ACHIEVE PROFITS OR LOSSES SIMILAR TO THOSE SHOWN. IN FACT, THERE ARE FREQUENTLY SHARP DIFFERENCES BETWEEN HYPOTHETICAL PERFORMANCE RESULTS AND THE ACTUAL RESULTS SUBSEQUENTLY ACHIEVED BY ANY PARTICULAR TRADING PROGRAM.

ONE OF THE LIMITATIONS OF HYPOTHETICAL PERFORMANCE RESULTS IS THAT THEY ARE GENERALLY PREPARED WITH THE BENEFIT OF HINDSIGHT. IN ADDITION, HYPOTHETICAL TRADING DOES NOT INVOLVE FINANCIAL RISK, AND NO HYPOTHETICAL TRADING RECORD CAN COMPLETELY ACCOUNT FOR THE IMPACT OF FINANCIAL RISK IN ACTUAL TRADING. FOR EXAMPLE, THE ABILITY TO WITHSTAND LOSSES OR TO ADHERE TO A PARTICULAR TRADING PROGRAM IN SPITE OF TRADING LOSSES ARE MATERIAL POINTS WHICH CAN ALSO ADVERSELY AFFECT ACTUAL TRADING RESULTS. THERE ARE NUMEROUS OTHER FACTORS RELATED TO THE MARKETS IN GENERAL OR TO THE IMPLEMENTATION OF ANY SPECIFIC TRADING PROGRAM WHICH CANNOT BE FULLY

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ACCOUNTED FOR IN THE PREPARATION OF HYPOTHETICAL PERFORMANCE RESULTS AND ALL OF WHICH CAN ADVERSELY AFFECT ACTUAL TRADING RESULTS.

If a Member or Associate has either less than one year of experience in directing customer accounts or trading proprietary accounts, then the disclaimer must also contain the following statement:

(THE MEMBER) HAS HAD LITTLE OR NO EXPERIENCE IN TRADING ACTUAL ACCOUNTS FOR ITSELF OR FOR CUSTOMERS. BECAUSE THERE ARE NO ACTUAL TRADING RESULTS TO COMPARE TO THE HYPOTHETICAL PERFORMANCE RESULTS, CUSTOMERS SHOULD BE PARTICULARLY WARY OF PLACING UNDUE RELIANCE ON THESE HYPOTHETICAL PERFORMANCE RESULTS.

(2) Any Member or Associate who uses promotional material which includes a measurement or description of or makes any reference to a hypothetical composite performance record showing what a multi-advisor account portfolio or pool could have achieved in the past if assets had been allocated among particular trading advisors must include in the promotional material the following disclaimer prescribed by NFA's Board of Directors instead of the disclaimer prescribed by Section (c) (1) of this Rule:

THIS COMPOSITE PERFORMANCE RECORD IS HYPOTHETICAL AND THESE TRADING ADVISORS HAVE NOT TRADED TOGETHER IN THE MANNER SHOWN IN THE COMPOSITE. HYPOTHETICAL PERFORMANCE RESULTS HAVE MANY INHERENT LIMITATIONS, SOME OF WHICH ARE DESCRIBED BELOW. NO REPRESENTATION IS BEING MADE THAT ANY MULTI-ADVISOR MANAGED ACCOUNT OR POOL WILL OR IS LIKELY TO ACHIEVE A COMPOSITE PERFORMANCE RECORD SIMILAR TO THAT SHOWN. IN FACT, THERE ARE FREQUENTLY SHARP DIFFERENCES BETWEEN A HYPOTHETICAL COMPOSITE PERFORMANCE RECORD AND THE ACTUAL RECORD SUBSEQUENTLY ACHIEVED.

ONE OF THE LIMITATIONS OF A HYPOTHETICAL COMPOSITE PERFORMANCE RECORD IS THAT DECISIONS RELATING TO THE SELECTION OF TRADING ADVISORS AND THE ALLOCATION OF ASSETS AMONG THOSE TRADING ADVISORS WERE MADE WITH THE BENEFIT OF HINDSIGHT BASED UPON THE HISTORICAL RATES OF RETURN OF THE SELECTED TRADING ADVISORS. THEREFORE, COMPOSITE PERFORMANCE RECORDS INVARIABLY SHOW POSITIVE RATES OF RETURN. ANOTHER

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INHERENT LIMITATION ON THESE RESULTS IS THAT THE ALLOCATION DECISIONS REFLECTED IN THE PERFORMANCE RECORD WERE NOT MADE UNDER ACTUAL MARKET CONDITIONS AND, THEREFORE, CANNOT COMPLETELY ACCOUNT FOR THE IMPACT OF FINANCIAL RISK IN ACTUAL TRADING. FURTHERMORE, THE COMPOSITE PERFORMANCE RECORD MAY BE DISTORTED BECAUSE THE ALLOCATION OF ASSETS CHANGES FROM TIME TO TIME AND THESE ADJUSTMENTS ARE NOT REFLECTED IN THE COMPOSITE.

If a Member or Associate has less than one year of experience allocating assets among particular trading advisors, then the disclaimer must also contain the following statement:

(THE MEMBER) HAS HAD LITTLE OR NO EXPERIENCE ALLOCATING ASSETS AMONG PARTICULAR TRADING ADVISORS. BECAUSE THERE ARE NO ACTUAL ALLOCATIONS TO COMPARE TO THE PERFORMANCE RESULTS FROM THE HYPOTHETICAL ALLOCATION, CUSTOMERS SHOULD BE PARTICULARLY WARY OF PLACING UNDUE RELIANCE ON THESE RESULTS.

(3) Any Member or Associate who uses promotional material which includes a measurement or description of or makes any reference to hypothetical performance results which could have been achieved had a particular trading system of the Member or Associate been employed in the past must include in the promotional material comparable information regarding:

(i) past performance results of all customer accounts directed by the Member pursuant to a power of attorney over at least the last five years or over the entire performance history if less than five years;

(ii) if the Member has less than one year of experience in directing customer accounts, past performance results of his proprietary trading over at least the last five years or over the entire performance history if less than five years.

(4) No Member or Associate may use promotional material which includes a measurement or description of or makes any reference to hypothetical performance results which could have been achieved had a particular trading system of the Member or Associate been employed in the past if the Member or Associate has three months of actual trading results for that system.

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(5) Any Member or Associate utilizing promotional material containing hypothetical performance results must adhere to all the requirements contained in the Board's Interpretive Notice relating to this issue.

(6) These restrictions on the use of hypothetical trading results shall not apply to promotional material directed exclusively to persons who meet the standards of a "Qualified Eligible Person" under CFTC Regulation 4.7.

### **(d) Statements of Opinion.**

Statements of opinion included in promotional material must be clearly identifiable as such and must have a reasonable basis in fact.

### **(e) Supervisory Requirements**

Every Member shall adopt and enforce written procedures to supervise its Associates and employees for compliance with this Rule. Prior to its first use, all promotional material shall be reviewed and approved, in writing, by an officer, general partner, sole proprietor, branch office manager or other supervisory employee other than the individual who prepared such material (unless such material was prepared by the only individual qualified to review and approve such material). If the Member is registered as a broker-dealer under Section 15(b) (11) of the Exchange Act and the promotional material specifically refers to security futures products, the individual reviewing and approving the promotional material must be a designated security futures principal.

### **(f) Recordkeeping.**

Copies of all promotional material along with a record of the review and approval required under paragraph (e) of this Rule and supporting materials for any results described under paragraphs (b)(5)-(6) or (c) of this Rule must be maintained by each Member and be available for examination for the periods specified in CFTC Regulation 1.31, measured from the date of the last use. Each Member who uses promotional material of the types described in paragraph (b)(5)-(6) or (c) of this Rule shall demonstrate the basis for any reported results to NFA upon request.

### **(g) Filing with NFA.**

The Compliance Department may require any Member for any specified period to file copies of all promotional material with NFA promptly after its first use.

### **(h) Radio and Television Advertisements.**

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No Member shall use or directly benefit from any radio or television advertisement or any other audio or video advertisement distributed through media accessible by the public if the advertisement makes any specific trading recommendation or refers to or describes the extent of any profit obtained in the past or that can be achieved in the future unless the Member submits the advertisement to NFA's Promotional Material Review Team for its review and approval at least 10 days prior to first use or such shorter period as NFA may allow in particular circumstances.

### **(i) Definitions.**

(1) For purposes of this Rule "promotional material" includes: (i) Any text of a standardized oral presentation, or any communication for publication in any newspaper, magazine or similar medium, or for broadcast over television, radio, or other electronic medium, which is disseminated or directed to the public concerning a futures account, agreement or transaction; (ii) any standardized form of report, letter, circular, memorandum or publication which is disseminated or directed to the public; and (iii) any other written material disseminated or directed to the public for the purpose of soliciting a futures account, agreement or transaction.

(2) "Futures account, agreement or transaction" includes futures accounts and orders, commodity pool participations, agreements to direct or guide trading in futures accounts, and agreements and transactions involving the sale, through publications or otherwise, of non-personalized trading advice concerning futures.

### **(j) Security Futures Products**

In addition to the other requirements of this Rule, Members registered as broker-dealers under Section 15(b)(11) of the Exchange Act and their Associates shall not use any promotional material that specifically refers to security futures products unless the promotional material:

- (1) prominently identifies the Member;
- (2) includes the date that the material was first used;
- (3) provides contact information for obtaining a copy of the disclosure statement for security futures products;
- (4) states that security futures products are not suitable for all customers;
- (5) does not include any statement suggesting that security futures positions can be liquidated at any time;

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(6) does not include any cautionary statement, caveat, or disclaimer that is not legible, that attempts to disclaim responsibility for the content of the promotional material or the opinions expressed in the material, that is misleading, or that is otherwise inconsistent with the content of the material;

(7) discloses the source of any statistical tables, charts, graphs, or other illustrations from a source other than the Member, unless the source of the information is otherwise obvious;

(8) states that supporting documentation will be furnished upon request if it includes any claims, comparisons, recommendations, statistics or other technical data;

(9) if soliciting for a trading program that will be managed by an FCM or IB or Associate of an FCM or IB, it includes the cumulative performance history of the Member's customers who have used the trading program; provided, however, that if the Member does not have customers who have traded the program through the Member, the promotional material must state that the trading program is unproven and must include all of the information required by section (c) of this Rule and the Interpretive Notice on the Use of Promotional Material Containing Hypothetical Performance Results (9025);

(10) refers to past recommendations regarding security futures products, the underlying securities, or a derivative thereof only if it sets forth all recommendations as to the same type, kind, grade, or classification of securities (including security futures products and other security derivatives) made by the Member or Associate within the last year; which information must include the name of each security recommended with the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and the general market conditions during the period covered if the promotional material refers to past recommendations regarding security futures products, the underlying securities, or a derivative thereof;

(11) includes current recommendations regarding security futures products only if: (i) the Member has a reasonable basis for the recommendation; (ii) the material discloses all material conflicts of interest created by the Member's or Associate's activities in the underlying security; and (iii) the material contains contact information for obtaining the list of prior recommendations described in subsection (10);

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(12) includes only a general description of the security futures products for which accounts, orders, trading authorization, or pool participations are being solicited; the name of the Member; and contact information for obtaining a copy of the current disclosure statement for security futures products; provided, however, that this subsection does not apply if the promotional material is accompanied or preceded by the disclosure statement for security futures products; and

(13) has been submitted to NFA for review and approval at least ten days prior to first use if it reaches or is designed to reach a public audience through mass media (e.g., newspapers, magazines, radio, television, or other electronic media). This requirement does not apply to any promotional material in which the only reference to security futures products is contained in a listing of the Member's services.

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### **RULE 2-30. CUSTOMER INFORMATION AND RISK DISCLOSURE.**

*[Adopted effective June 1, 1986. Effective date of amendments: January 1, 1990; August 21, 2001 December 10, 2002; December 17, 2007; January 3, 2011; and September 19, 2016.]*

(a) Each Member or Associate shall, in accordance with the provisions of this Rule, obtain information from all individual customers and any other customers who are not eligible contract participants (as defined in Section 1(a)(18) of the Act) and provide such customers with disclosure of the risks of futures trading.

(b) The Member or Associate shall exercise due diligence to obtain the information and shall provide the risk disclosure at or before the time a customer first opens a futures trading account to be carried or introduced by the Member, or first authorizes the Member to direct trading in a futures account for the customer. A Member registered as a broker or dealer under Section 15(b)(11) of the Exchange Act shall provide a copy of the disclosure statement for security futures products at or before the time the Member approves the account to trade security futures products. For an active customer who is an individual, the FCM Member carrying the customer account shall contact the customer, at least annually, to verify that the information obtained from that customer under Section (c) of this Rule remains materially accurate, and provide the customer with an opportunity to correct and complete the information. Whenever the customer notifies the FCM Member carrying the customer's account of any material changes to the information, a determination must be made as to whether additional risk disclosure is required to be provided to the customer based on the changed information. If another FCM or IB introduces the customer's account on a fully disclosed basis or a CTA directs trading in the account, then the carrying FCM must notify that Member of the changes to the customer's information. The Member or

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Associate who currently solicits and communicates with the customer is responsible for determining if additional risk disclosure is required to be provided based on the changed information. In some cases, this may be the Member introducing or controlling the account; in other cases, it may be the carrying FCM.

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

- (1) The customer's true name and address, and principal occupation or business;
- (2) For customers who are individuals, the customer's current estimated annual income and net worth. For all other customers, the customer's net worth or net assets and current estimated annual income, or where not available, the previous year's annual income;
- (3) For individuals, the customer's approximate age or date of birth;
- (4) An indication of the customer's previous investment and futures trading experience; and
- (5) Such other information deemed appropriate by such Member or Associate to disclose the risks of futures trading to the customer.

In addition, Members that are not also members of the Financial Industry Regulatory Authority and their Associates must obtain the following information from each customer who is an individual if the customer trades security futures products:

- (6) Whether the customer's account is for speculative or hedging purposes;
- (7) The customer's employment status (e.g., name of employer, self-employed, retired);
- (8) The customer's estimated liquid net worth (cash, securities, other);
- (9) The customer's marital status and number of dependents;
- (10) Such other information used or considered to be reasonable by such Member or Associate in making recommendations to the customer.

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

- (1) the Risk Disclosure Statement required by CFTC Regulation 1.55, if the Member is required by that Regulation to provide it;
- (2) the Disclosure Document required by CFTC Regulation 4.31, if the Member is

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required by that Regulation to provide it;

(3) the Options Disclosure Statement required by CFTC Regulation 33.7, if the Member is required by that Regulation to provide it; and

(4) the Disclosure Document required by CFTC Regulation 31.11, if the Member is required by that Regulation to provide it.

(e) In the case of an account which is introduced by an FCM or IB or for which a CTA directs trading, and except as otherwise provided in subsections (b) and (j), it shall be the responsibility of the Member soliciting the account to comply with this Rule.

(f) A Member or Associate shall be entitled to rely on the customer (as the sole source) for the information obtained under Section (c) of this Rule and shall not be required to verify such information, except as provided in section (j)(2) of this rule.

(g) Each Member or Associate shall make or obtain a record containing the information obtained under Section (c) of this Rule at the time the information is obtained. If a customer declines to provide the information set forth in Section (c) of this Rule, the Member or Associate shall make a record that the customer declined, except that such a record need not be made in the case of a non-U.S. customer unless such customer trades security futures products. Subject to the provisions of Section (i) of this Rule, a Member may open, introduce or agree to direct a futures trading account for a customer only upon the approval of a partner, officer, director, branch office manager or supervisory employee of the Member. Each Member shall keep copies of all records made pursuant to this Rule in the form and for the period of time set forth in CFTC Regulation 1.31.

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

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

(j) Members that are not also members of the Financial Industry Regulatory Authority and their Associates shall adhere to the following additional requirements relating to accounts for customers that trade security futures products:

(1) A Member shall exercise due diligence to learn the essential facts relative to the customer, including the customer's investment objectives and financial situation and, based upon those facts (including any information obtained under subsection (c) of this Rule, if applicable), a partner, officer, director, branch office manager, or

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supervisory employee of the Member shall approve or disapprove the customer's account for security futures transactions. If the Member is an FCM or IB, the account must be approved or disapproved by a designated security futures principal. The approval or disapproval shall be in writing and shall identify the person approving or disapproving the account. Additionally, the customer's account records shall contain information about the account, including the name of the Associate, how the customer's information was obtained, and the date that the disclosure statement for security futures products was provided.

(2) A Member or Associate shall forward the background and financial information upon which the customer's account has been approved for trading security futures products to each customer who is an individual, unless the information has been obtained in writing from the customer, for verification of accuracy within fifteen days after the customer's account has been approved. A copy of the background and financial information on file with the Member shall also be sent to each customer who is an individual for verification within fifteen days after the Member becomes aware of any material change in the customer's financial status. In all cases, absent notice to the contrary from the customer, the information is deemed verified.

(3) No FCM or IB Member or Associate thereof shall recommend to a non-institutional customer a transaction in security futures products or a particular trading strategy relating to such products without making reasonable efforts to obtain current information regarding the customer's financial status and investment objectives; provided, however, that this requirement does not apply to transactions in discretionary accounts. For purposes of this requirement, a non-institutional customer is any customer who is not:

- (i) a bank, savings and loan association, insurance company, registered investment company, a registered commodity pool operator, or a commodity pool operated by a registered commodity pool operator;
- (ii) an investment advisor registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions) or a registered commodity trading advisor;
- (iii) an investment company exempt from registration under the Investment Company Act of 1940, a commodity pool operator exempt from registration under the Commodity Exchange Act, a commodity pool operated by a commodity pool operator exempt from registration under the Commodity

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Exchange Act, an investment advisor exempt from both federal and state registration under the Investment Advisers Act of 1940, or a commodity trading advisor exempt from registration under the Commodity Exchange Act;

(iv) a registered broker-dealer or futures commission merchant; or

(v) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

(4) No FCM or IB Member or Associate thereof shall recommend to any customer a transaction in security futures products or a particular trading strategy relating to such products without reasonable grounds for believing that the recommendation or strategy is not unsuitable for the customer on the basis of the customer's current investment objectives, financial situation and needs, and any other information known by the Member or Associate.

(5) No FCM or IB Member or Associate shall recommend a security futures transaction to a customer unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

(6) No Member or Associate exercising discretion over an account may effect security futures transactions that are excessive in size or frequency in view of the customer's investment objectives and financial situation.

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### **RULE 2-31. FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS.**

*[Adopted effective February 1, 1988.]*

Any Member who violates any of the CFTC Part 30 Regulations shall be deemed to have violated an NFA Requirement.

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### **RULE 2-32. LEVERAGE TRANSACTIONS.**

*[Adopted effective January 1, 1990.]*

Any Member or Associate who violates any of the CFTC Part 31 Regulations shall be deemed to have violated an NFA Requirement.

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## **RULE 2-33. FCM RECEIPT OF FUNDS FROM OMNIBUS ACCOUNTS.**

*[Adopted effective July 24, 1990.]*

Each FCM must give notice to its DSRO or, if so directed by its DSRO, to NFA whenever the FCM accepts other than immediately available funds from an FCM doing business on an omnibus basis. Notice must be received within 24 hours of such acceptance. For purposes of this Rule, wire transfers and certified checks shall be considered immediately available funds for which notice is not required.

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## **RULE 2-34. CTA PERFORMANCE REPORTING AND DISCLOSURES**

*[Adopted effective May 1, 2004.]*

### **(a) Performance Information**

- (1) Member CTAs must calculate rate of return according to CFTC Regulation 4.35(a)(6) using nominal account size as the denominator.
- (2) Draw-down information reported under CFTC Regulation 4.35(a)(1)(v) and (vi) must be based on rate of return figures using nominal account size as the denominator.
- (3) In calculating net performance, Member CTAs may include interest earned on actual funds but may not impute interest on other funds.

### **(b) Written Confirmation for Partially-Funded Accounts**

- (1) For partially-funded accounts, a Member CTA must either receive from a client or deliver to a client a written confirmation that contains the following information:
  - (i) the name or description of the trading program, and
  - (ii) the nominal account size agreed to by the client and the CTA.
- (2) For new clients, the written confirmation must be received from or delivered to the client before the CTA places the first trade for the client.
- (3) For existing clients, the written confirmation must be received from or delivered to the client before the CTA places the first trade after any of the information required under Section (b)(1) of this rule changes. The written confirmation must include the new information and the effective date of the change but need not include any information that will remain the same.

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## **(c) Additional Disclosures for Partially-Funded Accounts**

CTAs must provide the following information to clients with partially-funded accounts if the clients are not QEPs:

- (1) A statement of how management fees will be computed relative to the nominal account size,
- (2) An explanation of how cash additions, cash withdrawals, and net performance will affect the nominal account size,
- (3) A brief explanation regarding the effect of partial funding on margin and leverage,
- (4) A statement that partial funding increases the fees and commissions as a percentage of actual funds but does not increase the dollar amount of those fees, and
- (5) A description, by example or formula, of the effect of partial funding on rate of return and drawdown percentages.

## **(d) CPO Use of CTA Performance Information**

Member CPOs who are required by CFTC Regulation 4.25(c) to disclose CTA performance must report the CTA performance on the same basis as the CTA is required to report it.

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## **RULE 2-35. CPO/CTA DISCLOSURE DOCUMENTS.**

*[Effective dates of amendments: November 1, 2000 and December 14, 2003.]*

### **(a) Required Delivery of Pool Disclosure Document and Statement of Additional Information**

- (1) The Disclosure Document required by CFTC Regulation 4.21(a) must be as clear and concise as possible, using plain English principles, and must contain only the information required or allowed by subsection (b).
- (2) In addition to the Disclosure Document, the CPO of a commodity pool required to register its securities under the Securities Act of 1933 must deliver (or cause to be delivered) a separate Statement of Additional Information to a prospective participant prior to accepting or receiving funds from the prospective participant. The information that may be included in the Statement of Additional Information is described in subsection (c).

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(3) The CPO of a commodity pool that is not required to register its securities under the Securities Act of 1933 may, but is not required to, prepare and distribute a Statement of Additional Information containing any or all of the information described in subsection (c). The Statement of Additional Information may be bound together with the Disclosure Document as long as the Disclosure Document comes first. If the Statement of Additional Information is separately bound, the CPO is not required to provide it to a prospective participant unless the prospective participant requests it.

(4) If a Statement of Additional Information is required under paragraph (2) of this section, the cover page of the Disclosure Document required under paragraph (1) of this section and the Statement of Additional Information required under paragraph (2) of this section shall state that the Disclosure Document is in two parts, both of which must be provided to a prospective participant prior to investing in the offered pool. If a Statement of Additional Information is prepared and separately distributed under paragraph (3) of this section, the cover page of the Disclosure Document required under paragraph (1) of this section shall state that the Statement of Additional Information is available free of charge and shall indicate how to obtain a copy of the Statement of Additional Information.

### **(b) Disclosures Required in the Disclosure Document**

(1) The Disclosure Document required under subsection (a)(1) of this Rule must include the following:

(i) The information required by CFTC Regulation 4.24, and the performance disclosures required by CFTC Regulation 4.25, provided, however, that a CPO may provide the performance information required under CFTC Regulation 4.25 (c)(5) in the Statement of Additional Information; and

(ii) Any other information necessary to understand the fundamental characteristics of the pool or keep the Disclosure Document from being misleading.

(2) The Disclosure Document required under subsection (a)(1) for pools required to register their securities under the Securities Act of 1933 shall include any other information that the Securities and Exchange Commission or state securities administrators require to be included in Part I of a two-part disclosure document. For all other pools, Disclosure Documents required under subsection (a)(1) may include such information.

### **(c) Information Included in the Statement of Additional Information**

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(1) If the CPO of a commodity pool prepares a Statement of Additional Information, the cover page must include the following:

- (i) The name of the commodity pool;
- (ii) A brief statement that the Statement of Additional Information is the second part of a two-part document and that it should be read in conjunction with the pool's Disclosure Document, with instructions on how to obtain a free copy of the Disclosure Document;
- (iii) The date of the most recent Disclosure Document for the pool; and
- (iv) The date of the Statement of Additional Information.

(2) The cover page must be immediately followed by a table of contents.

(3) The Statement of Additional Information may also include:

- (i) Disclosures, not included in the Disclosure Document, that are required by the Securities and Exchange Commission or state securities administrators;
- (ii) Statements that expand on or explain the disclosures in the Disclosure Document, provided that the statements are not misleading or inconsistent with applicable statutes, rules, or regulations; and
- (iii) Any other information about the commodity pool; its investments; its CPO, CTA(s), service providers, and their principals and employees; the commodity futures markets; or any other markets, including cash markets, that affect the value of the pool's investments, provided that the information is not misleading or otherwise inconsistent with applicable statutes, rules, or regulations.

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### **RULE 2-36. REQUIREMENTS FOR FOREX TRANSACTIONS**

*[Adopted effective June 28, 2002. Effective dates of amendments: December 1, 2003; November 30, 2005; February 13, 2007; October 25, 2007; April 1, 2009; October 18, 2010; October 1, 2011; January 4, 2016; March 29, 2017; March 31, 2017; April 5, 2018 and September 30, 2019.]*

(a) General Prohibition

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

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### (b) Fraud and Related Matters

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

- (1) Cheat, defraud or deceive, or attempt to cheat, defraud or deceive any other person;
- (2) Willfully make or cause to be made a false report, or willfully to enter or cause to be entered a false record in or in connection with any forex transaction;
- (3) Disseminate, or cause to be disseminated, false or misleading information, or a knowingly inaccurate report, that affects or tends to affect the price of any foreign currency;
- (4) Engage in manipulative acts or practices regarding the price of any foreign currency or a forex transaction;
- (5) Willfully submit materially false or misleading information to NFA or its agents with respect to forex transactions;
- (6) Embezzle, steal or purloin or knowingly convert any money, securities or other property received or accruing to any person in or in connection with a forex transaction.

### (c) Just and Equitable Principles of Trade

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

### (d) Doing Business with Non-Members

No Member may carry a forex account for, accept a forex order or account from, handle a forex transaction for or on behalf of, receive compensation (directly or indirectly) for forex transactions from, or pay compensation (directly or indirectly) for forex transactions to any non-Member of NFA, or suspended Member, that is required to be registered with the Commission as an FCM, RFED, IB, CPO, or CTA in connection with its forex activities and that is acting in respect to the account, order, or transaction for a forex customer, a forex pool or participant therein, a forex client of a commodity trading advisor, or any other person unless:

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

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

### (e) Supervision

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

(2) NFA's Board of Directors may require Forex Dealer Members that meet specific criteria established by the Board relating to the employment history of its APs or principals or to the total commissions, fees and other charges paid by their customers to adopt enhanced supervisory requirements specified by the Board. This requirement may, in NFA's discretion, be waived upon a showing by the Forex Dealer Member that the Forex Dealer Member's current supervisory procedures provide effective supervision over its employees and agents. Any Forex Dealer Member seeking such a waiver may submit a written request to a three-member panel consisting of three members of the Business Conduct Committee and/or the Hearing Committee, said members to be appointed by the Board from time to time. Within 30 days after a Forex Dealer Member submits a waiver request, the Compliance Department will submit a written response to the panel. The decision of the panel shall be final and shall be based upon the written submissions of the Forex Dealer Member and of the Compliance Department.

### (f) BASIC Disclosure

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

### (g) Filing Promotional Materials with NFA.

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

### (h) Hypothetical Results

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

### (i) Customer Accounts

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

### (j) FDM Chief Compliance Officer

Each Forex Dealer Member shall designate one principal to serve as Chief Compliance Officer (CCO). Each CCO must prepare an annual report that meets the requirements of CFTC Regulation 3.3(e) and must provide the annual report to the Forex Dealer Members Board of Directors or Senior Officer. Each Forex Dealer Member must submit the annual report to NFA within 90 days after the Forex Dealer Member's fiscal year end. The annual report must include a certification by the Forex Dealer Member's CCO or chief executive officer that to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete.

### (k) CFTC Forex Regulations

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

### (l) Customer Information and Risk Disclosure

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

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

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

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

- (i) The customer's true name and address, and principal occupation or business;
- (ii) For customers who are individuals, the customer's current estimated annual income and net worth. For all other customers, the customer's net worth or net assets and current estimated annual income, or where not available, the previous year's annual income;
- (iii) For individuals, the customer's approximate age or date of birth;
- (iv) An indication of the customer's previous investment, futures trading and forex trading experience; and
- (v) Such other information deemed appropriate by such Member or Associate to disclose the risks of forex trading to the customer.

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

- (i) the Risk Disclosure Statement required by CFTC Regulation 5.5, if the Member is required by that Regulation to provide it; and
- (ii) the Risk Disclosure Statement required by CFTC Regulation 4.34, if the Member is required by that Regulation to provide it.

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

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

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

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

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

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

### (m) Risk Management Program

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

### (n) Public Disclosure by Forex Dealer Members

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

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

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

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

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

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

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

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

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

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

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

### (o) Disclosure of Transaction Data to Customers

(1) Upon the request of an FDM's customer with respect to a particular executed forex transaction of that customer, an FDM must provide the customer, within 30 minutes of the customer's request, with the following transaction data for the 15 forex transactions that occur immediately before and after in the same currency pair of the customer's transaction:

(i) Execution date and time (to the nearest millisecond in Eastern time);

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- (ii) Customer side (i.e., buy or sell);
- (iii) Quantity;
- (iv) Currency pair;
- (v) Execution price (including any mark-up);
- (vi) Commission and other charges assessed by the FDM (if applicable); and
- (vii) Currency denomination of commission or other charges.

Provided, however, that an FDM only has to provide transaction data pursuant to this subsection for any transactions that occur within 15 minutes before and after the execution of the customer's transaction.

(2) Each FDM must provide NFA with a copy of any customer request made under subsection (1) above and the FDM's response in the form and manner prescribed by NFA.

(3) Each FDM must inform customers of their ability to request this information by a notice prominently displayed on the FDM's website, each customer's trading platform and each customer transaction confirmation statement.

### (p) Transaction Disclosures

Each Forex Dealer Member shall:

(1) Disclose the following, if applicable, to each customer on a per-trade basis in the same currency as the base currency of the account on the customer transaction confirmation statement:

- (i) Commission and any other fees;
- (ii) For transactions where a Forex Dealer Member is using straight-through processing, any mark-up or mark-down the Forex Dealer Member imposes on the price the Forex Dealer Member received for the offsetting position to the customer's order; and
- (iii) For transactions where a Forex Dealer Member is not using straight-through processing, the mid-point spread cost.

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(2) Forex Dealer Members not using straight through processing must provide customers with a description of the mid-point spread cost in a form and manner required by NFA.

### (q) Scope

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

### (r) Exemptions for Certain Transactions

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

### (s) Definitions

For purposes of this rule:

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

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

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

(4) "Mid-point spread cost" means the difference between the price at which the Forex Dealer Member executes a customer's order and the mid-point of the bid/offer spread at the time the Forex Dealer Member receives the customer's order for market orders, and at the time the order's execution is triggered for conditional orders.

(5) "Straight-through processing" means when a Forex Dealer Member automatically executes (without human intervention and without exception) an offsetting position to a customer order with another counterparty prior to providing an execution to the customer order.

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## **RULE 2-37. SECURITY FUTURES PRODUCTS.**

*[Adopted effective August 21, 2001. Effective dates of amendments: April 16, 2002.]*

This rule applies to Members registered as broker-dealers under Section 15(b)(11) of the Exchange Act and their Associates.

(a) No Member or Associate shall violate Sections 9(a), 9(b), or 10(b) of the Exchange Act or any applicable regulation thereunder in connection with any security futures product.

(b) In addition to the supervisory requirements contained in NFA Compliance Rule 2-9, Members must establish, maintain and enforce written procedures reasonably designed to achieve compliance with applicable securities laws, including Sections 9(a), 9(b), and 10(b) of the Exchange Act and any applicable regulation thereunder.

(c) Members who carry security futures accounts shall, not less than once a year, provide each security futures customer with written information regarding NFA's Background Affiliation Status Information Center (BASIC), including the web site address.

(d) In addition to complying with Registration Rules 204(a) and 210(a), each Member shall notify NFA within 10 business days after the Member knows or should know that the Member or its associated person:

(1) has been found by a self-regulatory organization or professional association in the accounting, banking, finance, insurance, law, real estate, or securities fields to have violated any provision of the securities laws or regulations or any rule or standard of conduct of the organization or association in connection with security futures transactions or to have engaged in conduct inconsistent with just and equitable principles of trade in connection with security futures transactions;

(2) is the subject of a written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery in connection with security futures transactions;

(3) is named as a defendant or respondent in any proceeding brought by a self-regulatory organization in the securities or insurance industry in connection with security futures transactions;

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(4) is a defendant or respondent in any civil litigation or arbitration proceeding or is subject to any other claim for damages involving security futures transactions that has been disposed of by judgment, award, or settlement for an amount exceeding \$15,000 if the claim is against an associated person or \$25,000 if the claim is against the Member;

(5) is associated in any business or financial activity involving security futures products with any person who is subject to a statutory disqualification under either Section 8a of the Commodity Exchange Act or Section 15(b)(4) of the Exchange Act; or

(6) is the subject of a disciplinary action taken by the Member for activities involving security futures products if it results in suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or any significant limitation on the Associate's activities on a temporary or permanent basis.

(e) In addition to complying with Registration Rules 206(a) and 210(b), each Associate shall promptly notify its sponsor of:

(1) any information the Associate is required to report under Registration Rule 206(a) or 210(b); or

(2) the existence of any of the circumstances listed in section (d) of this rule.

(f) Each Member shall file a quarterly report with NFA containing statistical and summary information regarding written customer complaints involving security futures products. The report must be filed with NFA, in the form NFA requires, by the 15th day of the month following the calendar quarter in which the complaints are received. A Member is not required to file a quarterly report for any quarter in which no complaints were received.

(g) Members shall not charge customers more than a fair commission or service charge for transactions in security futures products, taking into consideration all relevant circumstances, including the expense of executing the order and the value of any service the Member may have rendered by reason of its experience in and knowledge of the security futures product and the market in that product.

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### **RULE 2-38. BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN.**

*[Adopted effective April 7, 2003. Effective date of Amendments: October 18, 2010; September 30, 2013 and July 1, 2019.]*

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

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

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

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### **RULE 2-39. SOLICITING, INTRODUCING, OR MANAGING FOREX TRANSACTIONS OR ACCOUNTS.**

*[Adopted effective September 15, 2005. Effective dates of amendments: February 13, 2007; June 5, 2007; September 21, 2007; October 25, 2007; April 1, 2009; October 18, 2010; October 1, 2011; and September 19, 2016.]*

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

(b) For purposes of this rule, the term "customer" means a person that is not an eligible contract participant as defined in Section 1a(18) of the Act and includes persons who participate in pooled accounts.

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### **RULE 2-40. BULK ASSIGNMENT OR LIQUIDATION OF FOREX POSITIONS; CESSATION OF CUSTOMER BUSINESS.**

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

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

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

**(c) Definitions.** For purposes of this rule, the term "forex" has the same meaning as in Bylaw 1507(b) and the term "customer" means a counterparty that is not eligible contract participant as defined in 1a(18) of the Act.

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## **RULE 2-41. [RESERVED].**

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## **RULE 2-42. [RESERVED].**

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## **RULE 2-43. FOREX ORDERS**

*[Adopted effective May 15, 2009. Effective dates of amendments: June 12, 2009; September 11, 2009 and April 5, 2018.]*

### **(a) Price Adjustments**

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

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

(ii) if a Forex Dealer Member exclusively uses straight-through processing, as defined in NFA Compliance Rule 2-36(s)(5) and that counterparty cancels or adjusts the price at which the position was executed.

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

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

(ii) either cancel or adjust all executed customer orders executed during the same time period and in the same currency pair or option regardless of whether they were buy or sell orders.

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

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

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

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

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

### **(b) Offsetting Transactions**

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

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### **RULE 2-44. [RESERVED].**

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### **RULE 2-45. PROHIBITION OF LOANS BY COMMODITY POOLS TO CPOS AND AFFILIATED ENTITIES**

*[Adopted effective September 11, 2009. Effective date of amendments: September 13, 2013.]*

No Member CPO may permit a commodity pool to use any means to make a direct or indirect loan or advance of pool assets to the CPO or any other affiliated person or entity; *provided, however*, that certain specified transactions set forth in the related Interpretive Notice entitled *Prohibition of Loans by Commodity Pools to CPOs and Related Entities* are not prohibited by this rule.

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### **RULE 2-46. CPO AND CTA QUARTERLY REPORTING REQUIREMENTS**

*[Adopted effective March 31, 2010. Effective date of amendments: March 30, 2013; September 30, 2016; and June 30, 2017.]*

(a) Except as provided in paragraph (b) below, each CPO Member must file NFA Form PQR, in a form and manner prescribed by NFA, on a quarterly basis with NFA, for each pool that it operates and for which it has any reporting requirement under CFTC Regulation 4.27 within 60 days after the end of the quarters ending March, June and September, and a year-end report within 90 days of the calendar year end.

(b) Each CPO Member that is required to file CFTC Form CPO-PQR on a quarterly basis pursuant to CFTC Regulation 4.27 will satisfy its NFA Form PQR filing requirements by filing CFTC Form PQR, along with any additional information in a form and manner prescribed by NFA, in accordance with CFTC Regulation 4.27.

(c) Each CTA Member with a reporting requirement under CFTC Regulation 4.27 must file NFA Form PR, in a form and manner prescribed by NFA, on a quarterly basis with NFA within 45 days after the quarters ended March, June and September and a year-end report within 45 days of the calendar year end.

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(d) Each NFA Form PQR or NFA Form PR that is filed after it is due shall be accompanied by a fee of \$200 for each business day it is late. Payment and acceptance of the fee does not preclude NFA from filing a disciplinary action under the Compliance Rules for failure to comply with the deadlines imposed by NFA Compliance Rules or CFTC rules.

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### **RULE 2-47. [RESERVED].**

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### **RULE 2-48. FOREX DEALER MEMBER DAILY TRADE DATA REPORTS**

*[Adopted effective February 4, 2011. Effective date of amendments: December 2, 2013.]*

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

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

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

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### **RULE 2-49. SWAP DEALERS AND MAJOR SWAP PARTICIPANTS REGULATIONS**

*[Adopted effective December 19, 2013. Effective dates of amendments: September 30, 2014.]*

(a) Any Swap Dealer or Major Swap Participant Member that violates CFTC Regulation 3.3 or any requirement under Part 23 of the CFTC's regulations, as applicable, shall be deemed to have violated an NFA Requirement.

(b) A Swap Dealer or Major Swap Participant Member must promptly submit any reports, documents or notices, including those required under CFTC Regulation 3.3 or Part 23 of the CFTC's regulations, and any other supplemental information, to NFA and CFTC, as required by NFA, in the form and manner prescribed by NFA.

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## **Part 3 - Compliance Procedures**

### **RULE 3-1. DEPARTMENT OF COMPLIANCE.**

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*[Effective date of amendments: March 18, 1994 and September 30, 2019.]*

## **(a) Duties.**

There is hereby established a Department of Futures Compliance and a Department of OTC Derivatives Compliance (references to the "Compliance Department" shall mean either or both the Department of Futures Compliance and/or Department of OTC Derivatives Compliance, as the context requires), which shall conduct audits and examinations, and shall investigate violations of NFA requirements, prepare reports and conduct prosecutions, as provided in this Part. The Compliance Department shall commence investigations at the direction of the Commission; upon the discovery or receipt of information by NFA (such as complaints from customers or Members) that, in the Compliance Department's opinion, indicates a possible basis for finding that a violation has occurred; on the Compliance Department's own initiative. The Compliance Department shall have the authority to compel testimony, subpoena documents and require statements under oath from any Member, Associate or person connected therewith.

## **(b) Prohibitions.**

NFA staff may not be a Member or Associate or have any connection, direct or indirect, with a Member or Associate, except as approved by the President. Except with the President's approval, NFA staff shall not trade, directly or indirectly, any commodity interest. For purposes of this Rule 3-1(b), a commodity interest shall be defined as any commodity futures or commodity option contract traded on or subject to the rules of a contract market or linked exchange, or cash commodities traded on or subject to the rules of a board of trade which has been designated as a contract market.

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## **RULE 3-2. INVESTIGATION.**

*[Effective date of amendments: June 13, 1986; March 15, 1994; March 12, 1999 and September 30, 2019.]*

### **(a) Initiation; Report.**

In each case in which the Compliance Department has reason to believe that any NFA requirement is being, has been or is about to be violated, the Compliance Department shall submit a written report of the matter to the Business Conduct Committee. (See NFA Bylaw 704.) The report shall include:

- (i) the reason the investigation was begun;
- (ii) a summary of the complaint, if the investigation was begun as the result of a

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complaint;

(iii) the relevant facts; and

(iv) the Compliance Department's conclusion whether the Business Conduct Committee should proceed with the matter.

### **(b) Termination.**

If upon completing the investigation the Compliance Department concludes that there is no reason to believe that an NFA requirement is being, has been or is about to be violated, the Compliance Department shall submit a report to the Business Conduct Committee, containing the information specified in paragraph (a) above and, if applicable, recommending whether the Business Conduct Committee should issue or authorize the Compliance Department to issue a warning letter. The report, and any warning letter issued, shall become part of the investigation file, which may thereafter be closed as the Compliance Department deems appropriate. Investigations shall be completed within four months of commencement except for good cause.

### **(c) Review of Report.**

Each investigation report shall be reviewed by the Business Conduct Committee. If, upon review of the report, the Business Conduct Committee finds that additional investigation or evidence is necessary, it shall so instruct the Compliance Department. Within 30 days after receiving a completed report the Business Conduct Committee shall either:

(i) close the matter, if it finds (A) no reasonable basis that a violation has occurred, is occurring or is about to occur; or (B) that prosecution is otherwise unwarranted (in which case the Business Conduct Committee may issue or cause to be issued a warning letter). The closure order shall be in writing and briefly state the reasons therefor, and a copy of the order shall be promptly furnished to the President. Such order shall become final 10 days after the President's receipt thereof unless, within such time, the President refers the matter to the Appeals Committee (See NFA Bylaw 702) for its review. In such case, the closure order shall become final 30 days after the date of referral by the President unless, within such time, the Appeals Committee directs the Business Conduct Committee to issue a complaint; or

(ii) serve a written and dated Complaint, if it finds reason to believe that an NFA requirement is being, has been or is about to be violated and that the matter should be adjudicated.

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No member of the Business Conduct Committee or its designated Panel shall participate in the matter if the member, or any person with which the member is connected, has a financial, personal or other direct interest in the matter under consideration or is disqualified under Bylaw 708(c).

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### **RULE 3-3. SERVICE.**

*[Adopted effective March 15, 1994. Effective date of amendments: June 3, 1997; June 8, 2007; and December 10, 2007.]*

For purposes of any proceeding brought under Part 3 of these Rules:

(a) service of a Complaint will be sufficient if mailed to the person charged ("the Respondent") by first class and overnight mail, to the last address provided by the Respondent on record with NFA, or the address of his duly authorized agent for service;

(b) one copy of all pleadings, motions and briefs filed with NFA subsequent to the Complaint shall be served by the party upon all parties not in default (including the attorney of record in NFA's General Counsel's Office), unless otherwise provided. Service on a party's representative shall be service on the party. Service shall be made either by personal service (effective upon delivery), mail (effective upon deposit), facsimile (effective upon receipt of a readable document), or e-mail (effective upon receipt of a readable document): *provided, however*, that service by facsimile or e-mail shall only be permitted on Parties who have consented to service by that means. Proof of service of a document shall be made by attaching thereto an affidavit or certificate of service. To mail means to deposit in the U.S. Mail, first-class postage prepaid, or with an overnight delivery service, delivery fee prepaid; and

(c) documents filed with NFA under this Part must be delivered or mailed to:

National Futures Association  
300 South Riverside Plaza  
Chicago, IL 60606  
Attn: Legal Docketing Department

or sent by facsimile to the attention of the Legal Docketing Department at a facsimile number provided in the original complaint or by e-mail to [Docketing@nfa.futures.org](mailto:Docketing@nfa.futures.org). Filing by delivery or mailing is effective upon receipt. Filing by electronic means is effective upon receipt of a readable document; and

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(d) parties who file documents by electronic means thereby consent to accept service of pleadings in the proceedings by same method and waive any objection based on authenticity and genuineness to the use and admissibility into evidence in the proceeding of any document that they file by electronic means. The first document that a party files by electronic means must identify that party's facsimile number or e-mail address at which other parties may serve pleadings in the proceeding. Parties who provide a facsimile number or an e-mail address must advise Legal-Docketing and all other parties not in default of any change to the facsimile number or e-mail address.

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### **RULE 3-4. NOTICE OF CHARGES.**

*[Adopted effective March 15, 1994, amendments effective September 17, 1999.]*

(a) A Complaint issued by the Business Conduct Committee under these Rules must:

- (i) state each NFA requirement alleged to be, to have been or about to be violated; and
- (ii) state each act or omission that constitutes, constituted or will constitute the alleged violation.

(b) NFA shall advise the Respondent in writing:

- (i) that the Respondent must file a written Answer to the Complaint with NFA, within 30 calendar days of the date of the Complaint;
  - (ii) that failure to file an Answer as provided in Part (i) above shall be deemed an admission of the facts and legal conclusions contained in the Complaint;
  - (iii) that failure to respond to any allegation shall be deemed an admission of that allegation; and
  - (iv) that failure to file an Answer as provided in Part (i) above shall be deemed a waiver of hearing.
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### **RULE 3-5. RIGHT TO COUNSEL.**

*[Effective date of amendments: December 8, 1987; March 15, 1994; and March 12, 1999.]*

The Respondent may be represented by an attorney-at-law or other person at any stage of the investigation or disciplinary proceeding.

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### **RULE 3-6. ANSWER.**

*[Effective date of amendments: March 15, 1994 and March 12, 1999.]*

(a) The Respondent must file a written Answer to the Complaint with NFA within 30 days from the date of the Complaint.

(b) Failure to file a timely Answer shall be deemed an admission of the facts and legal conclusions contained in the Complaint, and a waiver of hearing. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that the Respondent lacks sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may be made only after a diligent effort has been made to ascertain the relevant facts, and shall be deemed to be a denial of the pertinent allegation. The failure to respond to any allegation shall be deemed an admission of that allegation.

(c) For good cause shown, the Business Conduct Committee, or a Hearing Panel may waive the effects of failure to file a timely or complete Answer.

(d) On motion of the Respondent for good cause shown, then Chairman of the Business Conduct Committee, or another member of the Business Conduct Committee designated by the Chairman may grant an extension of time in which to comply with this Rule.

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### **RULE 3-7. APPOINTMENT OF HEARING PANEL.**

*[Effective date of amendments: March 15, 1994; March 12, 1999; and December 10, 2007.]*

The Respondent shall be afforded a hearing on the charges and possible sanctions. The hearing shall be before a designated Hearing Panel of the Hearing Committee ("Hearing Panel"). A Hearing Panel shall consist of no fewer than three members of the Hearing Committee. The Chairman and the remaining members of the Hearing Panel shall be appointed by the Chairman of the Hearing Committee or his designee. If a Hearing Panel member's term on the Hearing Committee expires while the member is serving on a Hearing Panel, the member may continue to serve on that Hearing Panel until the matter is concluded. The hearing shall be held at such location as the Chairman of the Hearing Panel shall determine.

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### **RULE 3-8. PRE-HEARING PROCEDURES.**

*[Effective date of amendments: March 15, 1994 and March 12, 1999.]*

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(a) The Respondent shall be entitled to a reasonable pre-hearing examination of all evidence in the Compliance Department's possession or under its control that is to be relied upon by the Compliance Department or that is relevant to the Complaint. Such pre-hearing examination:

(i) must be requested by the Respondent in writing;

(ii) can be conducted either by the Respondent examining all such evidence at the offices of NFA, or by the Respondent requesting that all such evidence be copied and sent to him with any transportation and copying costs borne by the Respondent making the request;

(iii) is subject to the Compliance Department's right to withhold any privileged material (including, but not limited to, the investigation report), pursuant to all common law and statutory privileges it has available to it.

(b) Within 30 days after the Chairman of the Hearing Panel is appointed, the Chairman shall schedule and hold a pre-hearing conference with the parties. The order scheduling the pre-hearing conference shall specify the issues to be covered in the pre-hearing conference, including setting discovery and motion deadlines and scheduling the hearing. Such conferences may be conducted by telephone.

(c) The Chairman of the Hearing Panel shall schedule pre-hearing conferences and hearing sessions and shall decide all pre-hearing motions concerning discovery, motion deadlines, location of the hearing, continuances, and requests for telephonic or video testimony. All other motions shall be decided by the Hearing Panel.

(d) A motion for continuance shall be supported by an affidavit that provides a detailed description of the circumstances that form the basis for the continuance request.

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### **RULE 3-9. HEARING.**

*[Effective date of amendments: January 28, 1986; April 30, 1986; March 15, 1994; February 2, 1995; March 12, 1999 and September 30, 2019.]*

If a hearing is held:

(a) The formal rules of evidence need not apply;

(b) Telephonic or video testimony shall be permitted if ordered by the Hearing Panel;

(c) The Respondent may appear personally, examine any witnesses, call witnesses and present relevant testimony and other evidence;

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(d) Any party to a hearing may move for an order or the Hearing Panel, on its own motion, may issue an order requiring an NFA Member, Associate, or person connected therewith to testify or produce documents at a hearing at the moving party's expense. Such an order is discretionary with the Hearing Panel and shall be issued only for good cause shown; and

(e) A substantially verbatim record of the hearing shall be made (i.e., one that can be accurately transcribed). The cost of transcription shall be borne by the Respondent only if it requests the transcript, appeals the decision under Rule 3-13 below, or applies for Commission review and review is granted (See paragraph (f)(iii) of Rule 3-13). Otherwise, any transcription costs shall be borne by NFA.

No member of the Hearing Panel shall participate in the matter if the member, or any person with which the member is connected, has a financial, personal or other direct interest in the matter under consideration or is disqualified under Bylaw 708(c).

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### **RULE 3-10. DECISION.**

*[Effective date amendments: December 8, 1987 and March 15, 1994.]*

After the hearing or other consideration of the matter, the Hearing Panel shall render a written decision, based upon the weight of the evidence, containing:

- (a) the charges or a summary of the charges;
- (b) the Answer, if any, or a summary of the Answer;
- (c) a brief summary of the evidence produced at the hearing, or, where appropriate, incorporation by reference of the investigation report;
- (d) a statement of findings and conclusions as to each allegation, including a statement setting forth: each act or practice the Respondent was found to have committed or omitted, is committing or omitting, or is about to commit or omit; each NFA requirement that such act or practice violated, is violating, or is about to violate; and whether the act or practice is deemed to constitute conduct inconsistent with just and equitable principles of trade;
- (e) a declaration of any penalty imposed (See Rule 3-14) and the penalty's effective date; and
- (f) a statement that the Respondent may appeal an adverse decision to the Appeals Committee by filing a written notice of appeal with NFA within 15 days after the date of the decision.

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The decision shall be dated and promptly furnished to the Respondent and the Appeals Committee and shall be final upon expiration of time for appeal or review of the decision. (See Rule 3-13.)

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## **RULE 3-11. SETTLEMENT.**

*[Effective date of amendments: December 8, 1987; March 15, 1994; March 24, 1998; March 12, 1999 and September 30, 2019.]*

### **(a) Offer.**

(i) A subject of an investigation in which the investigation report has been completed, or a Respondent in a disciplinary proceeding, shall submit any proposed settlement of the matter to the Business Conduct Committee or its designated Panel ("BCC Panel") at any time up until a Chairman of the Hearing Panel has been appointed. A BCC Panel shall consist of no fewer than three members of the Business Conduct Committee, each of whom shall be appointed by the Chairman of the Business Conduct Committee. After that date, any proposed settlement offer shall be submitted to the Hearing Panel. Settlement offers may also be submitted to the Appeals Committee if the matter is before it on appeal or review. The Business Conduct Committee, BCC Panel, Hearing Panel or Appeals Committee may accept or reject the settlement offer as it deems appropriate. The Compliance Department shall be afforded an opportunity to express its views with respect to the proposed settlement;

(ii) The Business Conduct Committee, BCC Panel, Hearing Panel or Appeals Committee may in its discretion accept an offer in which the person neither admits nor denies violating NFA requirements; and

(iii) Every settlement offer:

(a) shall contain the following language:

[Respondent] acknowledges that the Compliance Department will present the settlement offer and its views on the proposed settlement orally, in writing or both;

(b) presented to the Business Conduct Committee or BCC Panel shall also contain the following language:

[Respondent] acknowledges that any settlement offer rejected by the Business

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Conduct Committee or BCC Panel will be forwarded to the Hearing Panel for its information in the event that [Respondent] subsequently submits a settlement offer to the Hearing Panel;

(c) presented to the Hearing Panel shall also contain the following language: [Respondent] waives any objection to the Hearing Panel's participation in the hearing in the event that [Respondent's] settlement offer is rejected; and

(d) presented to the Appeals Committee shall also contain the following language:

[Respondent] acknowledges that any settlement offer rejected by the Appeals Committee will be forwarded to the Business Conduct Committee, BCC Panel or Hearing Panel for its information in the event that [Respondent] subsequently submits a settlement offer to the Business Conduct Committee, BCC Panel or Hearing Panel. [Respondent] waives any objection to the Appeals Committee's participation in the review in the event that [Respondent's] settlement offer is rejected; and

(e) shall also contain the following language:

[Respondent] acknowledges that this settlement offer may not be withdrawn by the [Respondent] after it has been submitted to the Business Conduct Committee, BCC Panel, Hearing Panel or Appeals Committee. In the event the settlement offer is rejected by the appropriate Committee or Panel, the settlement offer shall become null and void.

### **(b) Decision.**

If the Business Conduct Committee, BCC Panel, Hearing Panel or Appeals Committee accepts the offer, it shall issue a written decision specifying each NFA requirement it has reason to believe is being, has been or is about to be violated, any penalty imposed and whether the settling party has admitted or denied any violation.

A decision on settlement by the Business Conduct Committee, BCC Panel or Hearing Panel shall be promptly furnished to the President. A decision on settlement by the Business Conduct Committee, BCC Panel or Hearing Panel shall become final and binding 15 days after the date of the decision unless the President, with notice to all parties, refers the matter to the Appeals Committee for review. The Appeals Committee shall approve or disapprove the settlement within 30 days after the date of such referral. Its decision to approve or disapprove the settlement shall become final and binding 15 days after the date of that decision.

A decision on settlement by the Appeals Committee shall become final and binding 15

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days after the date of the decision.

## **(c) Withdrawal of Settlement Offer Is Prohibited.**

A settlement offer may not be withdrawn by a Respondent after it is submitted to the Business Conduct Committee, BCC Panel, Hearing Panel or Appeals Committee. An offer that is rejected by the appropriate Committee or Panel shall be null and void and shall not be deemed to have been an admission of any matter.

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## **RULE 3-12. NOTICE AND PUBLICATION OF DECISION.**

*[Effective date of amendments: March 15, 1994.]*

Written notice of any action taken under Rule 3-10 or Rule 3-11 that is adverse to the Respondent, including reasons, findings, and conclusions, shall be furnished to the Commission within 30 days after it becomes final.

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## **RULE 3-13. APPEAL; REVIEW.**

*[Effective date of amendments: December 8, 1987; October 29, 1991; March 15, 1994; February 2, 1995 and March 12, 1999.]*

### **(a) Appeal.**

The Respondent may appeal any adverse decision of the Hearing Panel issued under Rule 3-10 to the Appeals Committee by filing a written notice of appeal with NFA within 15 days after the date of the decision. The notice must describe those aspects of the disciplinary action to which exception is taken, and must contain any request by the Respondent to present written or oral argument.

### **(b) Review.**

The Appeals Committee may also order review of any decision of the Hearing Panel issued under Rule 3-10. If such a review will be conducted, the Appeals Committee will give written notice to the Respondent within 15 days of the date of the decision. Such review may be conducted by the Appeals Committee:

- (i) on its own motion, or

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(ii) pursuant to a petition filed by the Compliance Department, the granting of which shall be discretionary with the Appeals Committee. The petition will state why the Compliance Department is seeking review and must contain any request by the Compliance Department to present written or oral argument.

### **(c) Stay.**

The Respondent's filing of a notice of appeal under paragraph (a) above or the institution by the Appeals Committee of its own review under paragraph (b) above shall operate as a stay of the effective date of the disciplinary order, until the Appeals Committee renders its decision.

### **(d) Conduct of Proceeding.**

No member of the Appeals Committee shall participate in the proceeding if the member participated in any prior stage of the disciplinary proceeding (other than the review of a settlement offer submitted under Rule 3-11) or if the member, or any person with which the member is connected, has a financial, personal or other direct interest in the matter under consideration or is disqualified under Bylaw 708(c). Except for good cause shown, the appeal or review shall be conducted solely on the record before the Hearing Panel, the written exceptions filed under paragraph (a) above, and such written or oral arguments of the parties as the Appeals Committee may authorize.

### **(e) Briefs.**

If the Appeals Committee authorizes written argument, briefs shall be filed as follows unless otherwise ordered by the Appeals Committee:

(i) the party required to submit the initial brief shall file it with NFA's Legal Docketing Department and serve it on the other parties to the appeal within 30 days after the Appeals Committee issues an order authorizing written argument;

(ii) the responding party shall file its brief with NFA's Legal Docketing Department and serve it on the other parties to the appeal within 30 days after service of the initial brief;

(iii) the party which filed the initial brief may file an answer to the responding brief with NFA's Legal Docketing Department and serve it on the other parties to the appeal within 10 days after service of the responding party's brief;

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(iv) the initial brief or responding brief of any party shall not exceed 35 pages and the answer to the responding brief shall not exceed 10 pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, rules and regulations; and

(v) no other written argument on substantive issues raised on appeal will be accepted from the parties or considered by the Appeals Committee.

### **(f) Decision.**

Promptly after reviewing the matter, the Appeals Committee shall issue a written and dated decision, based on the weight of the evidence. The decision shall include:

(i) the findings and conclusions of the Appeals Committee as to each charge and penalty reviewed, including the specific NFA requirement the Respondent was found by the Hearing Panel to have violated, to be violating, or to be about to violate;

(ii) a declaration of any penalty imposed by the Appeals Committee, the basis for its imposition, and its effective date;

(iii) a statement that any person aggrieved by the disciplinary action may appeal the action pursuant to Commission Regulations, Part 171, within 30 days of service; and

(iv) a statement that any person aggrieved by the disciplinary action may petition the Commission for a stay of the effective date pursuant to Commission Regulations, Part 171, within 10 days of service.

### **(g) Finality.**

The decision of the Appeals Committee shall be final 30 days after the date of service.

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## **RULE 3-14. PENALTIES.**

*[Effective date of amendments: December 8, 1987; July 30, 1990 and March 15, 1994.]*

### **(a) Types of Penalties.**

The Business Conduct Committee, BCC Panel or Hearing Panel, or the Appeals Committee on appeal or review, may at the conclusion of the disciplinary proceeding impose one or more of the following penalties:

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- (i) Expulsion, or suspension for a specified period, from NFA membership; a two-thirds vote of the members of the Hearing Panel or the Appeals Committee present and voting shall be required for expulsion. A suspended Member shall be liable for dues and assessments but shall have no membership rights during the suspension period nor shall a suspended Member hold itself out as an NFA Member during the suspension period;
- (ii) Bar or suspension for a specified period from association with an NFA Member;
- (iii) Censure or reprimand;
- (iv) A monetary fine, not to exceed \$250,000 per violation;
- (v) Order to cease and desist; and
- (vi) Any other fitting penalty or remedial action not inconsistent with this rule.

### **(b) Authority of Appeals Committee to Alter Penalty.**

The Appeals Committee may increase, decrease or set aside the penalties that were imposed by the Hearing Panel, or may impose other and different penalties, as it sees fit, subject to the requirements and limitations in paragraph (a) above.

### **(c) Payment of Fines.**

All fines shall be paid to the NFA Treasurer within 30 days of the date of the decision or within the time prescribed in the decision, and may be used for general NFA purposes. A person who fails to pay a fine on time may, after seven days written notice, be summarily suspended from membership or association with a Member, by order of the President, until the fine is paid.

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## **RULE 3-15. MEMBER OR ASSOCIATE RESPONSIBILITY ACTIONS.**

*[Effective date of amendments: December 8, 1987; October 29, 1991; September 30, 1992; March 15, 1994; February 2, 1995; March 12, 1999; November 30, 2001 and July 1, 2019.]*

A Member or Associate may be summarily suspended from membership, or association with a Member, may be required to restrict its operations (e.g., restrictions on accepting new accounts), or may otherwise be directed to take remedial action, (e.g., may be ordered to immediately infuse additional capital or to maintain its adjusted net capital at a level in excess of its current capital requirement), where the President, with the concurrence of the NFA Board of Directors or Executive Committee, has reason to believe that the summary

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action is necessary to protect commodity interest markets, customers, counterparties, or other Members or Associates. No member of either the Board of Directors or the Executive Committee shall participate in a summary action if the member, or any person with whom the member is connected, has a financial, personal or other direct interest in the matter under consideration or is disqualified under Bylaw 516 or Bylaw 708(c). Notice of such summary action shall be given promptly to the Commission.

### **(b) Procedure.**

The following procedures shall be observed in actions under this Rule:

(i) The subject of the action (the "Respondent") shall, whenever practicable, be served with a notice before the action is taken. If prior notice is not practicable, the Respondent shall be served with a notice at the earliest opportunity. This notice shall (A) state the action taken or to be taken; (B) briefly state the reasons for the action; (C) state the time and date when the action became or becomes effective and its duration; and (D) state that any person aggrieved by the action may petition the Commission for a stay of the effective date of the action pending a hearing pursuant to Commission Regulations, Part 171, within 10 days of service. Service may be made by personal delivery (effective upon receipt), by telefax (effective upon transmission), or by mail (effective upon deposit). When service is effected by mail, the time within which the person served may respond shall be increased by five days.

(ii) The Respondent shall be given an opportunity for a hearing promptly after the summary action is taken. Any such hearing shall be conducted before a Hearing Panel under the procedures of Rule 3-9.

(iii) The Respondent shall have the right to be represented by an attorney-at-law or other person in all proceedings after the summary action is taken, but the Hearing Panel may bar from the proceeding any representative for dilatory, disruptive, or contumacious conduct.

(iv) Promptly after the hearing, the Hearing Panel shall issue a written and dated decision affirming, modifying or reversing the action taken, based upon the evidence contained in the record of the proceeding. A copy of the decision shall be furnished promptly to the Respondent, the Appeals Committee and the Commission. The decision shall contain:

(A) A description of the action taken and the reasons for the action;

(B) A brief summary of the evidence received at the hearing;

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(C) Findings and conclusions;

(D) A determination as to whether the summary action that was taken should be affirmed, modified or reversed; a declaration of any action to be taken against the Respondent as the result of that determination; the effective date and duration of that action; and a determination of the appropriate relief based on the findings and conclusions;

(E) A statement that any person aggrieved by the action may have a right to appeal the action pursuant to Commission Regulations, Part 171, within 30 days of service; and

(F) A statement that any person aggrieved by the action may petition to the Commission for a stay pursuant to Commission Regulations, Part 171, within 10 days of service.

### **(c) Appeal.**

The Respondent shall have no right to appeal a final action taken under this Rule to the Appeals Committee.

### **(d) Review.**

The Appeals Committee may on its own motion review a decision of the Hearing Panel issued under paragraph (b)(iv) above, by giving written notice to the Respondent of its decision to review within 15 days of the date of the decision. The review shall be conducted in accordance with paragraphs (d), (e), (f) and (g) of Rule 3-13.

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## **RULE 3-16. RELATIONSHIP BETWEEN MEMBER OR ASSOCIATE RESPONSIBILITY ACTION AND DISCIPLINARY ACTION.**

*[Effective date of amendments: March 15, 1994.]*

The institution of a Member or Associate Responsibility Action (See Rule 3-15) shall not preclude the institution, at the same or any other time, of a disciplinary action (See Rule 3-2) involving the same matters or persons, nor shall any pending or completed disciplinary action involving the same matters or persons preclude a proceeding under Rule 3-15.

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## **RULE 3-17. COMPOSITION OF COMMITTEES.**

*[Adopted effective December 10, 1993. Effective dates of amendments: January 1, 2005; and February 20, 2014.]*

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The Business Conduct Committee, Hearing Committee, Appeals Committee, Executive Committee, BCC Panel and Hearing Panel conducting a proceeding under these Part 3 rules shall include at least one member who is not an NFA Member or Associate or an employee of an NFA Member. If the proceeding involves swaps or any respondent is a SD or MSP Member, at least one member of the Hearing Panel shall also be affiliated with an SD or MSP. When selecting Hearing Panels, the Chairman of the Hearing Committee or his designee shall endeavor to appoint panelists with diverse interests.

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### **RULE 3-18. SANCTIONS FOR CONTUMACIOUS CONDUCT.**

If a party, attorney for a party, or other representative of a party violates an order of the Business Conduct Committee, Hearing Panel, Chairman of the Business Conduct Committee or Hearing Panel, or Appeals Committee or engages in dilatory, disruptive, or contumacious conduct during a proceeding, the Business Conduct Committee, Hearing Panel, or Appeals Committee may impose those sanctions that are just under the circumstances. In particular, the Business Conduct Committee, Hearing Panel, or Appeals Committee may -

- (a) Find that matters covered by the order or any other designated facts shall be taken as established against the noncomplying party;
  - (b) Refuse to allow the noncomplying party to support or oppose designated claims or defenses or prohibit the noncomplying party from introducing designated witnesses or documents into evidence;
  - (c) Strike portions of the noncomplying party's Complaint or Answer;
  - (d) Stay further proceedings until the noncomplying party complies with the order;
  - (e) Dismiss the Complaint if the Compliance Department is the noncomplying party or find the relevant facts and legal conclusions in the Complaint to be admitted if a Respondent is the noncomplying; or
  - (f) Bar an attorney or other representative from the proceeding if the attorney or representative has engaged in dilatory, disruptive, or contumacious conduct.
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## **Part 4 - Procedures Governing Access to and Certification of CFTC Records, Other than Registration Records, maintained by NFA**

### **RULE 4-1. DISCLOSURE OF INFORMATION FROM CFTC RECORDS, OTHER THAN REGISTRATION RECORDS, MAINTAINED BY NFA.**

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*[Adopted effective June 2, 2006.]*

(a) Definitions.

(1) CFTC Records. For purposes of Rules 4-1 and 4-2, the term "CFTC records" shall be defined to include only those records that are in the custody of or maintained by NFA because such records were transferred from the Commission to NFA or because the Commission has delegated to NFA the authority to receive, generate, compile or maintain such records in performance of functions which NFA is authorized or required by the Commission to perform pursuant to Sections 8a(10) or 17(o) of the Act: Provided, however, that for purposes of Rules 4-1 and 4-2, the term "CFTC records" shall not include registration records subject to Part 700 of NFA's Registration Rules.

(b) Disclosure of Public Information.

(1) If any member of the public requests access to CFTC records, or portions thereof, and the requested record, or portion, is "public" or "publicly available" under CFTC Regulations 1.10(g) or 145.0, then NFA will release that record or portion to the requester.

(2) NFA may charge any member of the public a copying fee, not to exceed the fee charged by the Commission, for any copies of CFTC records provided by NFA directly to the requester.

(c) Disclosure of Non-Public Information. Requests for access to CFTC records, or portions thereof, not subject to disclosure as public or publicly available under paragraph (b)(1) of this Rule shall be referred or transmitted to the Commission for response; except that, NFA will disclose such records or portion thereof:

(1) otherwise with the authorization of the Assistant Secretary of the Commission for FOI, Privacy and Sunshine Act Compliance or his or her designee, or the General Counsel of the Commission or his or her designee, in accordance with CFTC Regulations 145.7(b), (h) and (i); the Freedom of Information Act, 5 U.S.C. § 552; and the Privacy Act, 5 U.S.C. § 552a; and

(2) to any individual or firm, or person acting on behalf of the individual or firm, who seeks access to his, her or its CFTC records: Provided, however, that NFA receives proper verification of the identity and authority of the party requesting the records.

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### **RULE 4-2. CERTIFICATION OF THE AUTHENTICITY OF CFTC RECORDS MAINTAINED BY NFA.**

*[Adopted effective June 2, 2006.]*

(a) Designation of Custodian and Deputies. The President shall designate an NFA employee to serve as the NFA Record Custodian ("Custodian"). The President also may designate one or more NFA employees to serve as Deputy NFA Record Custodians ("Deputies"). The Custodian and the Deputies shall be responsible for maintaining all CFTC records in NFA's possession and shall be the legal custodians of these CFTC records.

(b) Authority of Custodian and Deputies. The Custodian, each of the Deputies, or in their absence, any NFA employee designated by the President, the Custodian or one of the Deputies, is authorized to certify in writing the authenticity of CFTC records in NFA's possession for purposes of any judicial or administrative proceeding. The Custodian, each of the Deputies or any designated employee also is authorized to certify in writing as to the maintenance and completeness of the CFTC records in NFA's possession, as well as the thoroughness of NFA's search for requested documents, for purposes of any judicial or administrative proceeding.

(c) Effectiveness of Certification. This written certification shall be effective when executed by the Custodian, one of the Deputies or any designated employee.

(d) Content of Certification. The written certification shall include that, pursuant to Commission authorization, the Custodian has and maintains legal custody of the official CFTC records that are the subject of the certification.

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