

Compliance Rules

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

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 and August 21, 2001.]

(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.

(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 Director 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 submissions and the views of the Compliance Director. The panel shall communicate its decision to the Compliance Director or a person designated by the Compliance Director, who shall then inform the Member seeking the waiver. 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.

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).
