



Commodity Futures Trading Commission

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CFTC Market Participants Division Responds to Frequently Asked Questions Regarding Futures Commission Merchant Registration and Ongoing Regulatory Obligations

Staff of the Market Participants Division (“MPD”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) has experienced a recent increase in interest from entities inquiring about registering as futures commission merchants (“FCMs”). In addition, there have been several recent instances of entities acquiring existing FCMs via corporate transactions, including business acquisitions and asset sales. Many of these entities have no previous registration status with the Commission and have limited to no previous experience being a financial institution subject to oversight by a federal financial regulator.

MPD staff is issuing these responses to frequently asked questions (“FAQs”) to assist entities considering registering as, or acquiring, FCMs. The FAQs provide information regarding the FCM registration process, as well as ongoing regulatory requirements. The responses to the FAQs represent the views of MPD staff and are not Commission rules or regulations. The Commission has not approved or disapproved the responses to the FAQs. In addition, the responses are not a comprehensive list of requirements or factors that should be considered under the Commission’s regulations in registering an FCM or in meeting the ongoing regulatory obligations of operating an FCM. The responses are intended to provide general information that potential FCM registrants should consider and adapt to their own situations. Entities that are considering registering and operating an FCM should review the Commission’s regulations and the website of the National Futures Association (“NFA”) for further information.¹

Background

FCMs are financial institutions that perform critical functions necessary for the efficient operation of the futures and cleared swaps markets regulated by the Commission, including event markets operated by designated contract markets. FCMs provide customers with access to futures and cleared swaps by acting as intermediaries, facilitating transactions between FCM customers on one side and contract markets and clearing organizations on the other. FCMs also provide customers with important disclosures regarding the risks associated with transacting in futures and cleared swaps.

As market intermediaries, FCMs hold funds deposited by customers to margin futures and cleared swap positions as well as funds accruing to customers as a result of such positions.² FCMs further provide routine services to support

¹ NFA is a registered futures association under Section 17 of the Commodity Exchange Act (“Act”), 7 U.S.C. 21. The Commission’s regulations may be found at 17 CFR Ch. I. and are available at the Commission’s website, www.cftc.gov. NFA’s website may be accessed at www.nfa.futures.org, and contains detailed information regarding the registration process and ongoing regulatory requirements for FCMs.

² As of April 30, 2025, FCMs held approximately \$573 billion of customer funds for trading futures, foreign futures, and cleared swaps. See financial data for FCMs available at the Commission’s website: <https://www.cftc.gov/MarketReports/financialfcmdata/index.htm>.

customers' participation in the futures and cleared swaps markets, including providing customers with the ability to directly enter orders into exchange trading systems; preparing and distributing to customers confirmation of transactions; and providing customers with monthly statements detailing account activities, including, as applicable, realized and unrealized gains and losses on futures and cleared swap positions, interest income earned, and any fees or expenses incurred by the customers.

FCMs also perform services on behalf of customers with derivatives clearing organizations ("DCOs"). FCMs that are clearing members of a DCO maintain accounts with settlement banks to process daily and intraday margin obligations on behalf of customers with the DCO. Clearing FCMs perform a critical function in the clearing process by guaranteeing their customers' financial obligations to DCOs. If a customer defaults to a clearing FCM by, for example, failing to deposit margin as required, the FCM is obligated to step in and cover the full extent of any financial obligation of the defaulting customer to a DCO. FCM clearing members are also required to contribute to the guaranty fund of a DCO and may be called upon for additional assessments in the event of another clearing member's default to the DCO.

Potential registrants must carefully consider the significant financial and operational responsibilities assumed, and the substantial resources needed, to operate an FCM to meet the critical customer protection and market requirements. Such responsibilities call upon potential registrants to assess whether they have the resources, including systems and knowledgeable personnel, to operate in compliance with the Act and Commission regulations, as well as applicable requirements of the NFA, contract markets, and DCOs.

Responses to Frequently Asked Questions

1. What activities require an entity to register with the Commission as a futures commission merchant?

An entity that solicits or accepts orders to buy or sell futures contracts, option on futures contracts, retail off-exchange forex contracts or swaps, and accepts money or other assets from customers to support such orders is required to register with the Commission as an FCM.³ Each FCM is also required to be a member of NFA and is subject to NFA rules.⁴

2. What is the registration process for a futures commission merchant?

An FCM applicant initiates the registration process by submitting a CFTC Form 7-R⁵ to NFA.⁶ Form 7-R includes general information regarding the FCM applicant, including the applicant's legal name, form of organization, business address, contact information, and location of business records. An FCM applicant also must disclose on Form 7-R the identities of the firm's non-natural person principals.⁷

³ The full definition of the term "futures commission merchant" is set forth in Section 1a(28) of the Act and Commission Regulation 1.3.

⁴ Commission Regulation 170.15. In addition, Commission Regulation 170.1 provides that since a basic purpose of NFA (as a registered futures association) is to regulate the practices of its members, NFA should require its members, including FCMs, to adhere to regulatory requirements governing business practices that are at least as stringent as those imposed by the Commission.

⁵ Firm Application (Form 7-R) is required for the application for registration by the following categories of registration applicants: FCM, swap dealer (SD), major swap participant (MSP), retail foreign exchange dealer (RFED), introducing broker (IB), commodity pool operator (CPO), commodity trading advisor (CTA), non-natural person floor trader (FTF). Registration applicants are also required to submit an Application for NFA Membership. Application templates are available at NFA's website: <https://www.nfa.futures.org/registration-membership/templates-and-forms/index.html>.

⁶ The Commission has issued an order delegating to NFA the authority to process FCM registration applications. *Performance of Registration Functions by National Futures Association*, 49 Fed. Reg. 39593 (Oct. 9, 1984).

⁷ Commission Regulation 3.1(a) contains the definition of the term "principal."

In addition, an FCM applicant must submit a Form 8-R and a fingerprint card for each natural person principal of the firm.⁸ A natural person's status as a principal of an FCM is determined by the person's: (1) financial ownership interest in the applicant; (2) ability to control the applicant's business activities; or (3) formal title or position with the FCM applicant, including the chief compliance officer, chief executive officer, or chief financial officer.⁹

Each person meeting the definition of an associated person of an FCM is also required to submit to NFA a Form 8-R application for registration as an associated person.¹⁰ An associated person of an FCM is defined as a natural person that is a partner, officer, or employee (or any natural person occupying a similar status or performing similar functions) in any capacity that involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons involved in the solicitation or acceptance of customers' orders.¹¹ NFA requires that each FCM have at least one natural person principal registered as an associated person.¹²

A primary purpose of the Commission's registration requirement is to screen a potential registrant's fitness to operate as an FCM, and to identify individuals and organizations whose activities are subject to federal regulation. NFA screens FCM applicants and their principals and associated persons to ensure that they are not subject to one of the enumerated registration disqualification events listed in the Act (*i.e.*, a "statutory disqualification").¹³ Statutory disqualification events include, but are not limited to, pleas and/or convictions of certain criminal offenses and regulatory proceedings that resulted in certain sanctions imposed against the applicant.¹⁴ NFA performs an extensive background check and review of the disciplinary history of each FCM applicant, its principals, and its associated persons, including submitting fingerprint cards to the Federal Bureau of Investigation, to determine whether there are any statutory disqualifications.

3. What proficiency examinations are associated persons of futures commission merchants required to pass to be registered?

Each natural person registering as an associated person of an FCM is required to pass the National Commodity Futures Examination ("Series 3 exam").¹⁵ The Series 3 exam is designed to ensure that an applicant for registration as an associated person has the necessary level of proficiency to appropriately engage with customers in the purchase and sale of futures.¹⁶

The Series 3 exam covers a broad range of topics related to the trading of futures contracts. Major subject areas of the exam include: (i) futures trading theory; (ii) margin on futures and option premiums; (iii) price limits, futures settlements, and futures delivery, exercise, and assignment; (iv) order types, customer accounts, and price analysis;

⁸ Commission Regulation 3.10(a)(2).

⁹ Commission Regulation 3.1(a) (containing a definition of the term "principal").

¹⁰ Commission Regulation 3.12(c) requires each applicant for registration as an associated person of an FCM to submit a Form 8-R to NFA.

¹¹ Commission Regulation 1.3.

¹² NFA Bylaw 301(a)(iv). NFA's bylaws may be accessed here: <https://www.nfa.futures.org/rulebooksql/index.aspx>.

¹³ Sections 8a(2) and 8a(3) of the Act define certain events that constitute "statutory disqualifications" that prohibit the applicant from registering with the Commission or permit the registration subject to conditions.

¹⁴ The enumerated statutory disqualifications further include an entity being subject to a registration suspension or having its registration revoked by the Commission or an entity being denied registration within the past 5 years.

¹⁵ NFA Registration Rule 401, *Qualification Testing Requirement*. An individual that has passed the Series 3 exam and subsequently withdraws the associated person registration has up to two years from withdrawing to re-register without having to retake the Series 3 exam. *Id.* NFA Registration Rule 401 should be consulted as it also includes exceptions to the associated person registration requirement for individuals under certain situations.

¹⁶ NFA Registration Rule 401.

(v) basic hedging and basis calculations; (vi) spreading futures contracts; (vi) speculating with futures contracts; and (vii) CFTC regulations and NFA rules. The NFA website contains a full description of the subject areas that are covered by the Series 3 exam.¹⁷

Individuals registered as associated persons that engage in swaps activities at an FCM are also required to satisfy NFA's Swaps Proficiency Requirements.¹⁸ The Swaps Proficiency Requirements are designed to test an individual's market knowledge and knowledge of regulatory requirements involving swaps activities. The subject areas covered in the Swaps Proficiency Requirements include: (i) swap products and applications; (ii) regulation of the swaps market; (iii) supervision; and (iv) compliance, anti-fraud, and other requirements.¹⁹

4. What books and records are futures commission merchants required to prepare and maintain?

An FCM is subject to transaction and financial reporting recordkeeping requirements. With respect to transaction records, each FCM is required to keep full, complete, and systematic records related to its business of dealing in futures and swaps, and related cash or forward transactions (referred to as "transaction records").²⁰ Transaction records include all orders (whether filled, unfilled, or canceled), trading cards, signature cards, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, which have been prepared in the course of the FCM's business.²¹

An FCM that is a member of a designated contract market or swap execution facility also must retain and produce for inspection all documents on which trade information is originally recorded, irrespective of whether the documents are required under the rules or regulations of the Commission, the designated contract market, or the swap execution facility ("original source records").²²

An FCM must also keep records of written communications that lead to an execution of futures or swaps and related cash or forward transactions, as well as records of certain oral communications that lead to a transaction involving futures and swaps ("communications"). The scope of records required to be maintained include communications by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media.²³

An FCM generally must keep transaction records, original source records, and communications in a form and manner that allows for the identification of a particular transaction.²⁴

With respect to financial records, each FCM is required to prepare and keep current financial ledgers or other similar records which show or summarize, with appropriate reference to supporting documents, each transaction affecting the firm's asset, liability, income, expense, and capital accounts.²⁵ An FCM is also required to compute as of the close of each business day, on a currency-by-currency basis, and report to the Commission and the firm's

¹⁷ The following is a link to the detailed subject matter areas covered by the Series 3 exam: <https://www.nfa.futures.org/registration-membership/study-outlines/index.html>.

¹⁸ NFA Bylaw 301(l) and NFA Interpretive Notice 9075 – *NFA Bylaw 301 and Compliance Rule 2-24: Proficiency Requirements for Swap APs*, available here: <https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9075>.

¹⁹ NFA Swaps Proficiency Requirements FAQs, available here: <https://www.nfa.futures.org/faqs/registrants-membership-app/swap-proficiency.html>.

²⁰ Commission Regulation 1.35.

²¹ *Id.*

²² Commission Regulation 1.35(a)(1)(ii).

²³ Commission Regulation 1.35(a)(1)(iii).

²⁴ Commission Regulation 1.35(a)(5).

²⁵ Commission Regulation 1.18.

designated self-regulatory organization (“DSRO”), the total amount of customer funds on deposit in customer accounts, the total amount of customer funds that are required to be on deposit in customer accounts, and the total amount of the FCM’s proprietary funds (or “residual interest”) maintained in customer accounts.²⁶

An FCM is also required to maintain a record of certain information provided to customers. Each FCM is required to provide in writing to each customer, and to maintain as a record, monthly statements of open contracts, net unrealized profits or losses, customer funds, and financial charges and credits.²⁷ An FCM must also provide confirmation statements to a customer of any transactions impacting the customer’s account, and keep a record of the confirmation statements.²⁸ The FCM is required to provide the customer with the confirmation statement no later than the next business day after the transaction impacted the customer’s account.

An FCM is generally required to retain all required written records for a period of at least five years, and keep records that are exclusively created and maintained on paper readily accessible for at least two years.²⁹ Records of oral communications must be retained for at least one year.³⁰ An FCM also must make its records available for inspection by any representative of the Commission or the United States Department of Justice,³¹ and must produce paper records promptly upon request by a Commission representative.³² With respect to electronic records, an FCM must produce such records in the form and medium requested by the Commission representative, promptly upon request, unless otherwise directed by the Commission representative.³³

NFA rules also impose requirements on an FCM regarding the maintenance of books and records.³⁴ NFA requires each FCM to maintain adequate books and records necessary to conduct its business.³⁵ NFA further requires each FCM to maintain an office in the United States (“U.S.”) that is responsible for preparing and maintaining financial and other records required by the Commission and/or NFA.³⁶ The U.S. office must be under the supervision of a listed principal and registered associated person located in that office.³⁷ Alternatively, an FCM may maintain an office in a non-U.S. jurisdiction that the Commission has found to have comparable rules and regulations as the Commission provided that the non-U.S. office is under the supervision of a listed principal and a registered associated person of the FCM that is a resident of the non-U.S. jurisdiction.³⁸

An FCM is also responsible for reimbursing NFA for any costs incurred in connection with inquiries, examinations, and investigations of a non-U.S. office that exceed the normal expenses incurred in the examination of offices located in the U.S.³⁹ The FCM must also make available during an NFA examination or inquiry an individual authorized to act on the FCM’s behalf, knowledgeable about the FCM’s business, and fluent in English.⁴⁰

²⁶ Commission Regulations 1.32 for futures accounts, 22.2 for cleared swaps accounts, and 30.7 for foreign futures accounts.

²⁷ Commission Regulation 1.33.

²⁸ *Id.*

²⁹ Commission Regulation 1.31(b).

³⁰ Commission Regulation 1.31(b)(2).

³¹ Commission Regulation 1.31(d)(1).

³² Commission Regulation 1.31(d)(2).

³³ Commission Regulation 1.31(d)(3).

³⁴ NFA Compliance Rule 2-10, *Recordkeeping*.

³⁵ NFA Compliance Rule 2-10(a).

³⁶ NFA Compliance Rule 2-10(b)(1).

³⁷ *Id.*

³⁸ NFA Compliance Rule 2-10(b)(2).

³⁹ *Id.*

⁴⁰ NFA Compliance Rule 2-10(d).

5. What additional compliance procedures may futures commission merchants be required to satisfy to register and to maintain ongoing compliance with the rules of the Commission and National Futures Association?

An FCM may be required to develop, and provide NFA for its review, written policies and procedures for certain applicable regulatory and operational functions.⁴¹ The policies and procedures are generally required to address, among other topics: (i) anti-money laundering (“AML”);⁴² (ii) business continuity and disaster recovery;⁴³ (iii) cybersecurity;⁴⁴ (iv) electronic order routing systems;⁴⁵ (v) promotional material;⁴⁶ (vi) supervision of associated persons;⁴⁷ (vii) customer complaints;⁴⁸ (viii) margin procedures;⁴⁹ and (ix) ethics training.⁵⁰ FCMs are also generally required to provide customers with an annual notice of the firm’s privacy policies with respect to nonpublic personal information.⁵¹ Additional information regarding NFA requirements is available at the NFA website: www.nfa.futures.org/members/fcm/regulatory-obligations/index.html.

Each FCM must also designate a natural person to serve as its chief compliance officer.⁵² The FCM must provide the chief compliance officer with the responsibility and authority to develop, in consultation with the board of directors or senior officer (*i.e.*, chief executive officer or other equivalent officer), appropriate policies and procedures to fulfill the duties set forth in the Act and Commission regulations relating to its business as an FCM and to ensure compliance with the Act and Commission regulations.⁵³ The natural person designated to serve as chief compliance officer must have the background and skills appropriate for fulfilling the responsibilities of the position.⁵⁴ Additionally, no individuals subject to statutory disqualification may serve as chief compliance officer.⁵⁵

⁴¹ Information about NFA’s compliance requirements for FCM applicants is available here: <https://www.nfa.futures.org/registration-membership/who-has-to-register/fcm-applicants-compliance-requirements.html>.

⁴² All FCMs are required to have an AML compliance program. See NFA Compliance Rule 2-9, *Supervision*, and NFA Interpretive Notice 9045 – *NFA Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program* for additional information regarding the requirements for an AML compliance program.

⁴³ NFA Compliance Rule 2-38, *Business Continuity and Disaster Recovery Plan* and NFA Interpretive Notice 9052 require FCM members to establish business continuity and disaster recovery plans reasonably designed to enable the firms to continue operating, to reestablish operations, or to transfer their business to other FCMs with minimal disruption to the customers, other FCM members, and the commodity futures markets.

⁴⁴ NFA Interpretive Notice 9070 – *NFA Compliance Rules 2-9, 2-36, and 2-49: Information Systems Security Programs*, requires each FCM member to adopt and enforce an information security programs appropriate to its circumstances.

⁴⁵ NFA Compliance Rule 2-9, *Supervision*, and NFA Interpretive Notice 9046 – *Compliance Rule 2-9: Supervision of the Use of Automated Order-routing Systems*.

⁴⁶ NFA Compliance Rule 2-29, *Communications with the Public and Promotional Material*, addresses requirements imposed on an FCM member with respect to its promotional communications with its customers.

⁴⁷ NFA Compliance Rules 2-9, 2-23, and 2-36.

⁴⁸ NFA Interpretive Notice 9019 – *Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs*.

⁴⁹ NFA Section 16: *FCM Financial Practices and Excess Segregated Funds/Secured Amount/Cleared Swaps Customer Collateral Disbursements*.

⁵⁰ NFA Interpretive Notice 9051 – *NFA Compliance Rules 2-9 and 2-36: Ethics Training Requirements*. NFA’s ethics interpretive notice provides that each FCM should have written procedures outlining its ethics training program.

⁵¹ The Commission’s regulations addressing the privacy of customer information are set forth in Part 160 of the Commission’s regulations.

⁵² Commission Regulation 3.3(a).

⁵³ *Id.*

⁵⁴ Commission Regulation 3.3(b).

⁵⁵ *Id.*

6. What are the minimum capital requirements for futures commission merchants?

An FCM applicant will not be registered by NFA if the firm does not meet the minimum capital requirements. Once registered, an FCM is required to comply with the capital requirements at all times.⁵⁶ An FCM not in compliance with the minimum capital requirements must cease doing business as an FCM and transfer customer accounts to another FCM.⁵⁷

Each applicant for registration as an FCM, and each registered FCM, is required to comply with both Commission and NFA minimum capital requirements.⁵⁸ An FCM's minimum adjusted net capital requirement is the greater of: (i) \$1 million; (ii) the FCM's risk-based capital requirement that is calculated as eight percent of the total aggregate "risk margin" required for customer and noncustomer (*e.g.*, affiliated entities) accounts carried by the FCM; (iii) the minimum adjusted net capital required by NFA; or (iv) for FCMs that are also registered brokers or dealers, the net capital required by the U.S. Securities and Exchange Commission ("SEC").⁵⁹ The minimum adjusted net capital requirement increases to \$20 million if the FCM engages in off-exchange foreign currency transactions with retail participants or if the FCM is also a registered swap dealer.⁶⁰ In addition, an FCM that is approved to use models to compute market risk capital charges or credit risk capital charges is subject to a minimum net capital requirement of \$100 million and a minimum adjusted net capital requirement of \$20 million.⁶¹

NFA also may require an FCM applicant to provide a letter, signed by a principal of the firm, describing the sources of the applicant's current assets, including the names of any individuals and/or entities that have contributed capital to the firm and the amount of capital contributed by each individual and/or entity.⁶² The FCM applicant also may be required to include in the letter a representation that the capital has been contributed for the purpose of operating the FCM business and will continue to be used for such purpose.⁶³

In addition to the above information, NFA may request additional information and documentation regarding the FCM applicant's financial condition and operational capability during its review of the application. The additional documents and other information may include bank statements, general ledgers, wire instructions, and cancelled checks. An FCM will not be approved until NFA reviews and approves all requested items from the FCM applicant.⁶⁴

⁵⁶ Commission Regulation 1.17 and NFA Financial Requirements, *Section 1. Futures Commission Merchant Financial Requirements*.

⁵⁷ Commission Regulation 1.17(a)(4). Regulation 1.17(a)(4) provides that if an FCM that is not in compliance with minimum capital requirements immediately demonstrates to the satisfaction of the Commission or the firm's DSRO the ability to achieve compliance with the FCM's minimum capital requirements, the Commission or the DSRO may in its discretion allow such FCM up to a maximum of 10 business days in which to achieve compliance without having to transfer accounts and cease doing business as otherwise required.

⁵⁸ Commission Regulation 1.17(a)(3); NFA Financial Requirements, *Section 1, Futures Commission Merchant Financial Requirements*.

⁵⁹ Commission Regulation 1.17(a)(1) and NFA Financial Requirements, *Section 1, Futures Commission Merchant Financial Requirements*. The term "risk margin" is defined in Commission Regulation 1.17(b)(8) as the level of margin required by the exchange or clearing organization for the positions carried by an FCM in each customer and noncustomer account. The term "noncustomer" is generally defined under Commission Regulation 1.17(b)(4) as accounts of entities affiliated with the FCM.

⁶⁰ Commission Regulations 1.17(a)(1) and 23.101(a)(4).

⁶¹ Commission Regulation 1.17(a)(1)(ii). An FCM's net capital is computed as the firm's current liquid assets less all liabilities (except certain debt that is subordinated to the claims of other creditors of the firm). An FCM's adjusted net capital is computed as the firm's net capital less defined market risk and credit risk haircuts based on the firm's assets and positions.

⁶² NFA may require the letter in accordance with Commission Regulation 1.10.

⁶³ Commission Regulation 1.10(a)(2)(B).

⁶⁴ NFA Compliance Requirements for Future Commission Merchant (FCM) Applications: <https://www.nfa.futures.org/registration-membership/who-has-to-register/fcm-applicants-compliance-requirements.html>.

7. What financial forms are futures commission merchants required to file?

An FCM applicant is required to demonstrate compliance with the Commission's minimum capital requirements as a condition of being registered as an FCM. Commission Regulation 1.10 requires an FCM applicant to file a CFTC financial Form 1-FR-FCM, or a FOCUS Report for a firm that is registered with the SEC as a securities broker or dealer, with NFA concurrently with the FCM applicant's Form 7-R.⁶⁵ The Financial Report must have been audited by an independent public accountant and reflect balances as of a date that is not more than 45 days prior to the date of the submission of the financial report to NFA.⁶⁶ Alternatively, an FCM applicant may file an unaudited Financial Report reporting balances with an as of date not more than 17 business days prior to the date the Financial Report was filed with NFA and an audited Financial Report with an as of date not more than one year prior to the date on which the financial report is filed with NFA.⁶⁷ Entities that acquire an existing FCM are required to continue filing the monthly unaudited Financial Reports and the annual audited Financial Report that the acquired firm was required to file with the Commission and NFA, and the acquired FCM must continue to meet CFTC and NFA minimum capital requirement upon finalization of the acquisition.⁶⁸

Once registered, an FCM is required to file unaudited monthly Financial Reports and an annual audited Financial Report with the Commission and with the firm's DSRO.⁶⁹ The monthly and annual financial reports filed with the Commission are required to include the oath or affirmation of a senior executive stating that to the best knowledge and belief of the senior executive the information contained in the financial statements is true and correct.⁷⁰

The independent public accountant must also file concurrently with the annual audited Financial Report a supplemental report describing any material inadequacies identified in the FCM's accounting systems, internal accounting controls, or procedures for safeguarding customer and firm assets since the previous audit.⁷¹ A "material inadequacy" includes any conditions that contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to: (i) result in material financial loss; (ii) result in material misstatement of the Financial Reports; (iii) result in violations of the FCM's obligation to segregate customer funds; or (iv) prevent the FCM from promptly completing transactions or meeting its obligations to customers or other creditors.⁷²

An FCM is also required to file daily statements with the Commission and with the firm's DSRO demonstrating compliance with the segregation requirements and detailing the firm's holding of funds for customers trading futures, foreign futures, and cleared swaps.⁷³

Each FCM is also required to file notices of certain defined events with the Commission and with the firm's DSRO. Events that require a notice filing include the FCM: (i) being undercapitalized; (ii) failing to comply with the

⁶⁵ Commission Regulation 1.10(h). The Form 1-FR-FCM and FOCUS Report are referred to herein as a "Financial Report."

⁶⁶ Commission Regulation 1.10(a)(2).

⁶⁷ *Id.*

⁶⁸ Commission Regulation 1.10.

⁶⁹ *Id.*

⁷⁰ Commission Regulation 1.10(d)(4). The senior executive providing the oath or affirmation must be the chief executive officer or chief financial officer for FCMs that are corporations, and the chief executive officer, the chief financial officer, the manager, the managing member, or the members vested with the management authority for FCMs that are limited liability companies or limited liability partnerships.

⁷¹ Commission Regulation 1.16(c)(5).

⁷² Commission Regulation 1.16(d)(2).

⁷³ Commission Regulations 1.32(d), 22.2(g), and 30.7(l).

Commission's customer funds segregation requirements; (iii) failing to maintain current books and records; or (iv) experiencing a reduction in net capital of 20 percent or more.⁷⁴

8. What risk management requirements are futures commission merchants required to meet?

Each FCM that carries customer accounts must establish written risk management policies and procedures designed to monitor and manage risks associated with the FCM's futures and cleared swap activities (the "risk management program").⁷⁵ An FCM's risk management program must be designed in a manner commensurate with the size and business activity of the FCM. At a minimum, the risk management program must include written policies and procedures designed to ensure the appropriate: (i) segregation of customer funds, including a process for evaluating and addressing a depository's holding of customer funds and the criteria the depository must meet with respect to capital, creditworthiness, operational reliability, and access to liquidity; (ii) automated financial risk management controls designed to prevent the placing of erroneous orders, including orders that exceed pre-set capital, credit, or volume thresholds; and (iii) level of firm capital and liquidity to meet reasonably foreseeable needs.⁷⁶ Each FCM carrying customer accounts is also required to have a "risk management unit" staffed by qualified personnel with sufficient authority and resources necessary to carry out the firm's risk management program.⁷⁷ The risk management unit must report directly to the FCM's senior management and must be independent from the business unit.⁷⁸

The risk management program must take into consideration market, credit, liquidity, foreign currency, legal, operational, settlement, segregation, technological, capital, and any other applicable risks together with a description of the risk tolerance limits set by the FCM, and the underlying methodology, in the written policies and procedures.⁷⁹ The risk management program also must include policies and procedures for detecting breaches of risk tolerance limits set by the FCM, and for alerting supervisors within the risk management unit and senior management of the firm of any breaches of the risk tolerance limits.⁸⁰ The risk management program must be reviewed and tested at least annually, or upon any material change in the business of the FCM that is reasonably likely to alter the risk profile of the firm.⁸¹

The risk management unit is required to provide a quarterly written report ("risk exposure report") to the FCM's senior management and the firm's governing body describing: (i) all applicable risk exposures of the FCM; (ii) any recommended or completed changes to the risk management program; (iii) the recommended time frame for implementing recommended changes; and (iv) the status of any incomplete implementation of previously recommended changes to the risk management program.⁸² An FCM is required to provide copies of its risk exposure report to the Commission within five business days of providing the report to the firm's senior management.⁸³

⁷⁴ Commission Regulation 1.12.

⁷⁵ Commission Regulation 1.11.

⁷⁶ Commission Regulation 1.11(e)(3).

⁷⁷ Commission Regulation 1.11(d).

⁷⁸ *Id.*

⁷⁹ Commission Regulation 1.11(e)(1)(i).

⁸⁰ Commission Regulation 1.11(e)(1)(iii).

⁸¹ Commission Regulation 1.11(f).

⁸² Commission Regulation 1.11(e)(2)(i).

⁸³ Commission Regulation 1.11(e)(2)(ii).

9. What are the key responsibilities of the governing body of a futures commission merchant?

An FCM's governing body must approve in writing the risk management program and the written risk management policies and procedures, and any material changes to such program and policies and procedures, that each FCM is required to establish under Commission regulations.⁸⁴ Each FCM must provide the Commission and the firm's DSRO with a copy of its risk management policies and procedures upon application for registration and thereafter upon request.⁸⁵

As part of the risk management program, the FCM's governing body must approve the targeted residual interest amount (*i.e.*, cushion of FCM proprietary funds) that the firm plans to maintain on deposit in customer accounts.⁸⁶ The primary purpose of residual interest is to ensure that an FCM holds a sufficient amount of funds in customer accounts to meet the firm's total financial obligation to customers at all times, thereby ensuring compliance with the Commission's segregation requirements. In establishing the target amount of residual interest that an FCM determines to maintain in customer segregated accounts, the board of directors or similar governing body, chief executive officer, chief financial officer, or other officer or officers specifically granted the authority and responsibility to fulfill the responsibilities of senior management by the governing body, must perform a due diligence inquiry and consider various applicable factors relating to the nature of the firm's business, including: (i) the firm's type of customers, focusing on their general creditworthiness and trading activity; (ii) the type of markets and products traded by the firm's customers and the firm itself; (iii) the general volatility and liquidity of those markets and products; (iv) the firm's own liquidity and capital needs; and (v) historical trends in customer account balances.⁸⁷ FCMs must maintain a written record of the analysis of the factors used to determine the targeted residual amount.⁸⁸

An FCM also is generally prohibited from withdrawing funds from customer segregated accounts that are not for the benefit of the customers if, in a single transaction or series of transactions, the aggregate of the withdrawals would exceed 25 percent of the firm's residual interest in the customer accounts.⁸⁹ An FCM is permitted, however, to make withdrawals in excess of 25 percent of the firm's residual interest if the FCM's chief executive officer, chief financial officer or other senior official that is a listed principal pre-approves the withdrawal, or series of withdrawals, in writing.⁹⁰ The written pre-approval must be signed by the appropriate official and filed with the Commission and with the FCM's DSRO.⁹¹ The written notice must include the amount of the withdrawal, a description of the reasons for the withdrawal, the name of and amount provided to each recipient of the residual interest withdrawal, and an estimate of the FCM's residual interest in the balances held in customer accounts after the withdrawal.⁹² The appropriate official is also required to include a representation that, after performing appropriate due diligence, the official believes that the FCM remains in compliance with the customer funds segregation requirements.⁹³

⁸⁴ "Governing body" is defined in Commission Regulation 1.11(b)(3) as the proprietor, if the FCM is a sole proprietorship; a general partner, if the FCM is a partnership; the board of directors if the FCM is a corporation; the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority if the FCM is a limited liability company or limited liability partnership.

⁸⁵ Commission Regulation 1.11(c)(4).

⁸⁶ Commission Regulation 1.11(e)(3)(i)(D).

⁸⁷ *Id.* and NFA Interpretive Notice 9066 – NFA Financial Requirements Section 16: *FCM Financial Practices and Excess Segregated Funds/Secured Amount/Cleared Swaps Customer Collateral Disbursements*.

⁸⁸ *Id.*

⁸⁹ Commission Regulations 1.23(d), 22.17(c), and 30.7(g).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

An FCM's senior management and governing body also must receive risk exposure reports from the firm's risk management unit. The risk exposure reports are required to be provided to management and the governing body on a quarterly basis or upon detection of any material change in the risk exposure of the FCM.⁹⁴

An FCM's directors, officers, or principals also may be held personally liable for violations of the Act committed by other FCM employees if they controlled the person who committed the violation and lacked good faith or knowingly induced the violation.⁹⁵

In addition, the directors, officers, principals, and other FCM employees may be subject to criminal liability under the Act if they: (i) embezzle customer money, securities, or property having a value in excess of \$100; (ii) manipulate or attempt to manipulate the price of a commodity or swap; (iii) knowingly make false or misleading statements in an application, report, or document required under the Act or Commission regulations, or in an undertaking in a registration statement; (iv) willfully falsify, conceal, or cover up a material fact to a registered entity, board of trade, or registered futures association; or (v) willfully violate any other provisions of the Act, or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the Act.⁹⁶ The directors, officers, principals, and other FCM employees may also be found liable of a felony if they engage in insider trading.⁹⁷ Any person convicted of a felony under the Act will generally be suspended from registration and denied registration or reregistration for at least five years.⁹⁸

The directors, officers, and principals of an FCM may also be subject to additional obligations under the laws of the state of the FCM's incorporation that are designed to ensure responsible stewardship. Such duties and obligations generally include fiduciary duties owed to the FCM and its owners. The fiduciary duties of directors may include the duty to act on corporate matters on an informed basis after reasonable inquiry and deliberation, and the duty to act in good faith and in a manner reasonably believed to be in the best interest of the FCM and its owners. Directors are also required to avoid conflicts of interest and to disclose personal conflicts of interest.

10. What are the duties and responsibilities of the chief compliance officer of a futures commission merchant?

The duties of the chief compliance officer of an FCM include administering the policies and procedures relating to the FCM's business that are required to be established by the Act and Commission regulations. The chief compliance officer is also required to take reasonable steps to: (i) resolve material conflicts of interest relating to the FCM's business as an FCM; (ii) ensure the FCM's compliance with the Act and Commission regulations; (iii) ensure that the FCM establishes, maintains, and reviews written policies and procedures reasonably designed to remediate noncompliance issues; and (v) ensure that the FCM establishes written procedures reasonably designed for the handling, management response, remediation, retesting, and resolution of noncompliance issues.⁹⁹

The chief compliance officer also must prepare and sign a written annual report that covers the most recently completed fiscal year of the FCM.¹⁰⁰ The annual report must, at a minimum, include a description of: (i) the written policies and procedures of the FCM relating to its business as an FCM, including the FCM's code of ethics and conflict of interest policies; (ii) the FCM's assessment of the effectiveness of such policies and procedures; (iii) areas

⁹⁴ Commission Regulation 1.11(c)(2)(i).

⁹⁵ Section 13(b) of the Act. 7 U.S.C. 13c(b).

⁹⁶ Section 9(a) of the Act. 7 U.S.C. 13.

⁹⁷ Section 9(e) of the Act. 7 U.S.C. 13(e).

⁹⁸ Section 9(b) of the Act. 7 U.S.C. 13(b).

⁹⁹ Commission Regulation 3.3(d).

¹⁰⁰ Commission Regulation 3.3(d)(6).

for improvement, and recommended potential or prospective changes or improvements to the FCM's compliance programs and resources devoted to compliance; (iv) the financial, operational, managerial and staffing resources dedicated to compliance with the Act and Commission regulations; (v) any material noncompliance issues and the corresponding action taken; and (vi) any material changes to compliance policies and procedures during the coverage period of the report.¹⁰¹ The annual report also must include a certification by the chief compliance officer or chief executive officer of the FCM 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 in all material respects."¹⁰² The chief compliance officer is required to provide the annual report to the FCM's board of directors or senior officer, as well as its audit committee (if the FCM has established an audit committee).¹⁰³ Additionally, a copy of the annual report must be filed with the Commission within 90 days of end of the FCM's fiscal year.¹⁰⁴

11. What anti money laundering responsibilities are imposed on a futures commission merchant?

An FCM is a financial institution under the Bank Secrecy Act ("BSA") and is required to comply with applicable provisions of the BSA and its implementing regulations promulgated by the Financial Crimes Enforcement Network ("FinCEN") under the BSA and at 31 CFR Chapter X.¹⁰⁵ This requires, in part, each FCM to implement a written Customer Identification Program appropriate for its size and business,¹⁰⁶ and to maintain a written AML compliance program that are approved in writing by the firm's senior management. The AML compliance program must, at a minimum, include: (i) internal policies, procedures, and controls reasonably designed to prevent the FCM from being used for money laundering or the financing of terrorist activities and to achieve compliance with the BSA and implementing regulations; (ii) a designated compliance officer to oversee day-to-day operations of the program; (iii) an ongoing training program for employees; and (iv) an independent audit function to test the program.¹⁰⁷ In addition, the AML program must have appropriate risk-based procedures for conducting ongoing customer due diligence.¹⁰⁸ The procedures must be reasonably designed to: (i) identify and verify the identity of customers; (ii) identify and verify the identity of beneficial owners of legal entity customers;¹⁰⁹ (iii) understand the nature and purpose of the customer relationship to develop customer risk profiles; and (iv) conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.¹¹⁰

In connection with the monitoring and reporting of suspicious transactions, each FCM must report certain suspicious transactions to FinCEN via submission of a Suspicious Activity Report.¹¹¹ Each FCM must also train

¹⁰¹ Commission Regulation 3.3(e).

¹⁰² Commission Regulation 3.3(f)(3).

¹⁰³ Commission Regulation 3.3(f)(1).

¹⁰⁴ Commission Regulations 3.3(f)(2)(i).

¹⁰⁵ Commission Regulation 42.2.

¹⁰⁶ 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the U.S. Department of the Treasury and the CFTC at 31 CFR 1026.220.

¹⁰⁷ Bank Secrecy Act, 31 U.S.C. 5311 *et seq.*, as amended by Title III of the USA Patriot Act, Pub. L. 107-56, 115 Stat. 296, 324 (2001), 31 CFR 1026.210, and NFA Compliance Rule 2-9(c). NFA Interpretive Notice to Compliance Rule 2-9(c): *FCM and IB Anti-money Laundering Program* highlights the minimum standards of an adequate AML program and provides FCMs with additional guidance on satisfying NFA's requirements.

¹⁰⁸ Regulations adopted by the U.S. Department of the Treasury's Financial Crimes Enforcement Network, 31 CFR 1026.210 and Customer Due Diligence Requirements for Financial Institutions (May 11, 2016), 81 FR 29398; NFA Compliance Rule 2-9(c).

¹⁰⁹ With respect to beneficial ownership information, the requirement applies to the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls the legal entity.

¹¹⁰ 31 CFR, 1026.210; NFA Compliance Rule 2-9(c).

¹¹¹ 31 CFR 1026.320. Each FCM must report to FinCEN suspicious transactions conducted, or attempted by, at, or through the FCM that involve an aggregate of at least \$5,000 in funds or other assets, and that the FCM knows, suspects or has reason to suspect: (i) involve funds that come from illegal activity or are conducted to disguise illegal activity; (ii) are designed to evade any requirements of 31 CFR

appropriate staff to identify suspicious behavior during the account opening process and monitor cash and trading activity to detect unusual transactions.¹¹² An FCM's AML compliance program must require employees to promptly notify identified firm personnel of any potential suspicious activity.¹¹³ Appropriate supervisory personnel must evaluate the activity and decide whether the activity warrants reporting to FinCEN.¹¹⁴

FCMs are also subject to the special information sharing requirements set forth by section 314(a) of the USA Patriot Act.¹¹⁵ FCMs must designate a specific 314(a) point of contact and provide this information to FinCEN via online submission. FCMs must develop procedures to access and respond to FinCEN's bi-weekly 314(a) lists, which name persons suspected of money laundering or terrorist financing, and check for matches against their accounts from the past 12 months and transactions from the past six months. FCMs must report to FinCEN any matches within the timeframe and manner specified in the request.¹¹⁶

The AML compliance responsibilities outlined above should be considered non-exhaustive and FCMs are advised to further consult BSA implementing regulations at 31 CFR Chapter X and applicable guidance promulgated by FinCEN, NFA, and the CFTC as necessary.

12. How are customers protected in the event of the bankruptcy of a futures commission merchant?

An FCM bankruptcy is subject to the commodity broker liquidation provisions of the U.S. Bankruptcy Code and Part 190 of the Commission's regulations.¹¹⁷ As a general matter, the laws and regulations governing FCMs and the insolvency of FCMs are designed to minimize losses to customers by providing certain protections to customer accounts. These protections include requiring the segregation of customer funds from those belonging to the FCM to keep the customer funds out of the estate of the insolvent FCM, giving priority to the claims of customers over claims of general creditors to the assets in the estate of the FCM, and expansively defining the category of property that may be considered "customer property" subject to customers' claims. The protections provided by the U.S. Bankruptcy Code and Commission regulations, however, do not include account insurance of the type provided by the Securities Investor Protection Corporation for securities accounts. In addition, customers share on a pro-rata basis if there are insufficient funds available in the bankruptcy proceeding to cover the full value of each customer's claim against the FCM.

FCM bankruptcies are complex legal proceedings under the Bankruptcy Code and the Commission's regulations and beyond the scope of the FAQs. The Bankruptcy Code and Part 190 of the Commission's regulations should be consulted for more information.

Chapter X or any other regulation under the BSA; (iii) have no business or apparent lawful purpose or are not the sort in which the particular customer would normally be expected to engage; or (iv) involve the use of the FCM to facilitate a criminal activity.

¹¹² NFA Interpretive Notice to Compliance Rule 2-9(c): *FCM and IB Anti-money Laundering Program*.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Pub. L. 107-56, 115 Stat. 296, 324 (2001).

¹¹⁶ 31 CFR 1010.520(3)(ii).

¹¹⁷ 11 U.S.C. 761 – 767.