



**NFA Self-Exam Checklist - General (All Firms Complete)**

**2010**

## **Introduction**

Each NFA Member Firm must complete a yearly self-examination checklist and maintain the completed checklist as part of the firm's books and records. Mallon P.C. has prepared this guide to help managers complete the self-examination process as quickly and efficiently as possible.

## **Overview**

This checklist covers the following categories:

- Registration
- Supervision
- Ethics Training
- Business Continuity and Disaster Recovery
- Account Opening
- Privacy Rules
- Cash Flow
- Promotional Material
- E-Mails
- Web Sites
- Security Futures Products

Instructions for completing this checklist can be found at <http://www.hedgefundlawblog.com/nfa-self-examination-checklist-2010-fcms-ibs-cpos-and-ctas>. If you have questions regarding your firm's compliance program or this self-exam checklist, please feel free to contact a compliance associate at Mallon P.C.

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Registration		
Review	Notes	Initials
<p>List all individuals as principals on the Member's Form 7-R:</p> <ul style="list-style-type: none"> <li>▪ Who hold the following positions with the Member: <ul style="list-style-type: none"> <li>○ Sole proprietor of a sole proprietorship</li> <li>○ General partner of a partnership</li> <li>○ Director, president, chief executive officer, chief operating officer, chief financial officer or a person in charge of a business unit, division or function subject to regulation by the Commission of a corporation, limited liability company or limited partnership</li> <li>○ Manager, managing member or a member vested with the management authority for a limited liability company or limited liability partnership.</li> </ul> </li> <li>▪ Who directly or indirectly, through agreement, holding companies, nominees, trusts or otherwise, have the following financial relationships to the Member: <ul style="list-style-type: none"> <li>○ Own 10 percent or more of the outstanding shares of any class of the Member's stock</li> <li>○ Are entitled to vote 10 percent or more of any class of the Member's voting securities</li> </ul> </li> </ul>		

<ul style="list-style-type: none"> <li>○ Have the power to sell or direct the sale of 10 percent or more of any class of the Member's voting securities</li> <li>○ Have contributed 10 percent or more of a Member's capital</li> <li>○ Are entitled to receive 10 percent or more of a Member's net profits.</li> <li>▪ Who have the power to exercise a controlling influence over an applicant's or registrant's activities that are subject to regulation by the Commission.</li> </ul>		
<p>List all entities as principals on the Member's Form 7-R that are:</p> <ul style="list-style-type: none"> <li>▪ A general partner of a partnership</li> <li>▪ The direct owner of 10 percent or more of any class of an entity's securities</li> <li>▪ Entities that have directly contributed 10 percent or more of a Member's capital unless such capital contribution consists of subordinated debt contributed by: <ul style="list-style-type: none"> <li>○ An unaffiliated bank insured by the Federal Deposit Insurance Corporation</li> <li>○ A United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions</li> <li>○ An insurance company subject to regulation by any</li> </ul> </li> </ul>		

State.		
Ensure that all individuals who are responsible for supervising APs are registered as APs.		
List all branch office locations and branch office managers on the Member's Form 7-R.		
Require all branch office managers to meet the branch office manager proficiency requirements of NFA Compliance Rule 2-7.		
Ensure that branches hold themselves out in the name of the Member.		
Ensure all doing business as names are listed.		
Review all parties which you are doing business with to ensure those that are required to be registered are registered, and, if required to be an NFA Member, are such.		
Review commission payouts and other disbursements to ensure that only NFA Members are being paid for customer business.		
Require APs to attend ethics training in accordance with the CFTC's Statement of Acceptable Practices and NFA's Interpretive Notice on Ethics Training Requirements.		
File with the CFTC a Statement of Reporting Trader for reportable positions (CFTC Form 40).		
Allow only registered APs to handle customer accounts.		
Permit unregistered individuals to accept customer orders only if they are acting in a purely clerical manner.		
File all guarantee agreements and terminations with NFA.		

<p>Maintain a copy of the signed guarantee agreement.</p>		
<p>File with NFA an Individual Withdrawal Notice (CFTC Form 8-T) within 30 days after principals, branch office managers or APs terminate their affiliation with the Member. Broker-dealers may no longer file a Form U5 in lieu of the Form 8-T; however, they may elect to complete and file the U5 disciplinary questions as part of the Form 8-T. The sponsor that files the Form 8-T must promptly provide a hard copy version to the person whose association has been terminated.</p>		
<p>Ensure that at least one principal is registered as an “associated person” otherwise NFA shall deem that Member’s failure to be a request to withdraw from NFA membership and shall notify that Member accordingly.</p>		
<p>Promptly correct any deficiency or inaccuracy on the Member’s Form 7-R which no longer renders accurate and current information contained therein on NFA’s Online Registration System.</p>		

<b>Supervision</b>		
Review	Notes	Initials
Designate a “compliance officer” who is responsible for handling customer complaints or inquiries of a compliance nature.		
Establish policies and procedures to handle customer complaints and inquiries.		
Maintain a compliance procedures manual or other written documentation which outlines the Member’s policy with respect to handling compliance matters, such as customer complaints or inquiries.		
Establish a systematic method of recording, investigating and responding to customer complaints or inquiries.		
Require branches to forward complaints to the home office.		
Establish an Internal Audit Department or other designated individual (“Auditor”) who monitors branches and guaranteed IBs.		
Have the Auditor report to a partner or officer.		
Give the Auditor responsibility for conducting on-site inspections of branch offices and guaranteed IBs.		
Perform on-site inspections annually.		
Use a written audit program when conducting on-site inspections.		
Prepare written summaries of findings noted during on-site inspections of branch offices and guaranteed IBs.		
Take appropriate corrective action in the event the Auditor finds problems at a branch or guaranteed IB.		
Familiarize the Auditor with NFA Notices regarding Branch Office On-site Visits.		

Establish policies and procedures regarding the hiring and supervision of APs who have been or whose past employers have been disciplined by NFA or the CFTC for fraud.		
If you are a one-person office, inform customers when you will be unavailable to service your customer accounts (i.e., vacations) and whom they should contact in your absence.		
Distribute changes in rules or regulations to appropriate personnel.		
Supervise sales solicitations by any, or all, of the following methods: direct listening, reviewing taped solicitations, silent phone monitoring and customer contact.		
Provide APs with training on the futures and options markets.		
Provide sales solicitation training to APs.		
Monitor incoming and outgoing mail so customer complaints, etc. would be intercepted.		
If a predispute agreement is included in the customer account documentation, provide customers with a list of three forums, one of which is NFA arbitration, in the event the customer gives notice of its intent to file a claim.		
Require an officer or other supervisory personnel to regularly review trading in non-customer and proprietary trading accounts.		



Ethics Training		
Review	Notes	Initials
Establish policies and procedures regarding the ethics training requirements for APs, detailing areas such as content, frequency and format of training. For further assistance in drafting these ethics training procedures, see <a href="#">Appendix C</a> .		
Ensure APs receive ethics training in accordance with the firm's procedures and maintain records documenting compliance with these procedures, including dates and providers of training and materials used or distributed.		
Ensure ethics training provider (either internal or external) is qualified to conduct training.		

<b>Business Continuity and Disaster Recovery Plan</b>		
<b>Review</b>	<b>Notes</b>	<b>Initials</b>
Establish a written business continuity and disaster recovery plan. For further assistance in drafting a business continuity and disaster recovery plan, see <a href="#">Appendix B</a> .		
Periodically test the plan.		
Periodically review and revise the plan when necessary.		
Distribute the plan to key employees to maintain copies off-site.		
Communicate the recovery plan to all employees.		
Duplicate essential computer and telecommunication systems at a backup facility.		
Establish primary and backup facilities reasonably geographically apart. For example, the primary and backup facilities should be located in different power grids, and different telecommunication vendors should be utilized.		
Periodically back up essential electronic data (e.g., general ledger) and store off-site.		
Maintain a complete, up-to-date inventory of all information technology systems, including both hardware and software.		
Consider the impact of business interruptions encountered by third parties determined to be essential to the continuation of your business.		
Maintain a complete inventory of essential documents.		
Copy and store essential paper files off-site or include a plan for recreating required papers.		

Secure alternative remote office space or have provisions for key staff to work from home or an alternate site.		
Communicate transportation options and alternative routes to the backup facilities to employees.		
Contemplate the unavailability of key public utilities.		
Maintain current employee telephone lists and contact information.		
Duplicate critical staff competencies.		
Develop a communication plan to contact essential parties such as employees, board members, customers, carrying brokers, vendors, disaster recovery specialists and NFA.		

Account Opening		
Review	Notes	Initials
Review the customer account documentation to ensure it complies with all applicable rules and regulations.		
Ensure safeguards are employed for the purpose of verifying that an electronic signature is that of the person purporting to use it.		
Ensure procedures are in place to safeguard the alteration of an electronic record after it has been signed.		
Require that all necessary information be on file before new accounts are allowed to commence trading.		
Require a partner, officer, director, branch office manager or supervisory employee to approve customer accounts and document this review.		
Provide adequate risk disclosure to customers prior to opening an account.		
Obtain the following information from customers: Name, address, occupation or business description, estimated annual income, estimated net worth, age and prior investment and futures trading experience.		
If the required information is not obtained, document that the customer declined to provide such information.		
Train individuals who are responsible for assessing and providing risk disclosure to customers as required by NFA Compliance Rule 2-30.		
Designate a supervisory individual to review the actions of the individuals providing risk disclosure to customers as required by NFA Compliance Rule 2-30.		

Privacy Rules		
Review	Notes	Initials
Establish a written privacy policy pertaining to consumer financial information as required by CFTC Regulation 160. For further assistance in drafting these privacy procedures, see <u>Appendix D</u> .		
Provide the privacy notice to customers at the time the account is opened and annually thereafter.		
Provide and obtain customer “opt out” notices as required.		

<b>Cash Flow</b>		
Review	Notes	Initials
Make all disbursements, except petty cash, by check.		
Require that a responsible individual approve all invoices in writing prior to payment.		
Review disbursements made by branch offices.		
Maintain documents authorizing use of qualifying bank accounts.		
Prepare a listing of all cash receipts.		
Make and keep copies of customer checks prior to depositing them.		
Restrictively endorse checks upon receipt.		
Review third-party checks received from customers to ensure the initial payee is not required to be an NFA Member.		
Prepare bank reconciliations on a timely basis.		
Ensure that blank checks are accessible only to authorized personnel.		
Ensure that all voided checks are mutilated to prevent reuse and kept on file.		
Limit access to signature plates used to sign checks.		
Review checks and wires received to ensure they are from owners of the account to which they are to be credited.		
Permit disbursements to a third party, only with specific written authorization from the account owner on file.		

<b>Promotional Material</b>		
<b>Review</b>	<b>Notes</b>	<b>Initials</b>
Establish written procedures to supervise the preparation and use of promotional material.		
Require an officer, general partner, sole proprietor, branch office manager or other supervisory employee other than the individual who prepared the material to approve promotional material before its use.		
Review and approve promotional material in writing.		
Maintain all promotional materials for a period of five years from the date last used.		
Maintain supporting documentation for all statements, claims and performance results.		
Include any material information so that the promotional material is not misleading.		
Include an equally prominent statement of the risk of loss if the material mentions the possibility of profit, including the presentation of past performance results.		
Calculate rates of return in a manner consistent with CFTC Part 4 Regulations.		
Ensure that the past performance of any actual accounts presented is representative of the actual performance of all reasonably comparable accounts for the same time period.		
Include a statement that past results are not necessarily indicative of future results when past performance is mentioned.		
Ensure that statements of opinion are identifiable as such and have a reasonable basis in fact. Maintain support for such statements.		
Ensure that there is no guarantee against loss.		

Identify the “limited-risk” and “no margin call” features of options as applying only to the purchase of options.		
Explain that the “limited-risk” feature of options includes the full amount of the premium and transaction costs including commissions.		
Explain fully ratings and results from outside sources, including the limitations of such ratings and results.		
Ensure that reprints of articles have been supplemented with the proper disclosures and disclaimers.		
Present hypothetical results only if there are less than three months of actual trading results for the offered program.		
Include the statement prescribed by NFA Compliance Rule 2-29(c) with hypothetical results.		
Include the actual results of all customer accounts directed by the Member for the past five years with any hypothetical results. If the Member has less than one year of experience directing accounts, include the results of any proprietary accounts for the past five years.		
Calculate hypothetical results in the same way as actual results.		
Ensure that hypothetical results and actual results are presented separately, clearly identified and given equal prominence.		
Explain all material assumptions made in preparing hypothetical results that includes at least the minimum investment amount, distribution or reinvestment of profits, commission charges, management and incentive fees, and the method used to determine the purchase and sale price for each trade.		



<p>Ensure that paid promotional appearances are prominently identified as such prior to, during and subsequent to those appearances.</p>		
<p>Submit all radio or television advertisements that make any specific recommendations or refer to or describe the extent of any profit obtained in the past or that can be achieved in the future to NFA’s promotional material review team for its review and approval at least 10 days prior to first use.</p>		
<p>Prohibit the use of promotional material that contains the following:</p> <ul style="list-style-type: none"> <li>▪ Claims regarding seasonal trades</li> <li>▪ Claims regarding historical price moves</li> <li>▪ Claims regarding price movements that are characterized as conservative estimates when in fact such price movements would be dramatic</li> <li>▪ Claims using certain pricing data for a product different from the one being marketed in the promotional material</li> <li>▪ Claims containing profit projections</li> <li>▪ Claims containing “cherry picked” trades</li> <li>▪ Claims regarding mathematical examples of leverage as a means of suggesting that prospective customers are likely to earn large profits from trading</li> </ul>		
<p>Ensure employees and agents are not purchasing leads from non-Members required to be registered and/or using fraudulent advertising practices. Maintain a record of any advertisement used.</p>		

<b>E-Mails</b>		
<b>Review</b>	<b>Notes</b>	<b>Initials</b>
Establish written procedures to review the use of futures-related e-mail by employees and agents that identifies by title or position the person responsible for conducting the review.		
<p>Also, consider the following when establishing procedures:</p> <ul style="list-style-type: none"> <li>▪ How and with what frequency e-mails will be reviewed and how that review will be documented.</li> <li>▪ Categorize what type of e-mails will be pre-reviewed and post reviewed.</li> </ul>		
Ensure e-mails are in compliance with NFA's promotional material content and review procedures.		

<b>Web Sites</b>		
<b>Review</b>	<b>Notes</b>	<b>Initials</b>
Establish written procedures to supervise the preparation and use of Web sites.		
Require prior review and approval of the Web site by an appropriate supervisor.		
Require documentation of review.		
Ensure Web site meets the standards of content established in Compliance Rule 2-29.		
Properly review personal Web sites of employees or agents used to attract business for the firm.		
Ensure paid hyperlinks to the firm's Web site do not contain deceptive information regarding futures or options trading.		
Monitor the general content of the Web site to which the Member links.		

**Security Futures Products**

Review	Notes	Initials
Designate a security futures principal at each main or branch office.		
Check the Central Registration Depository (CRD) for information on prospective employees who will be involved in security futures activities. Obtain and review a copy of the individual's most recent Form 8-T or U5.		
Require APs to complete appropriate security futures products training modules.		
<p>Ensure that the firm's written procedures address the following:</p> <ul style="list-style-type: none"> <li>▪ Compliance with applicable securities laws, including Sections 9(a), 9(b), and 10(b) of the Securities Exchange Act of 1934.</li> <li>▪ The review and approval of customer accounts including: <ul style="list-style-type: none"> <li>○ Specific criteria and standards to be used in evaluating the suitability of a customer to engage in security futures transactions.</li> <li>○ Specific procedures for approving accounts to engage in security futures transactions, including requiring written approval by a designated security futures principal.</li> <li>○ A requirement that the designated security futures principal explain, in writing, why he or she has approved an account that does not meet the specific criteria and standards set forth in the procedures.</li> </ul> </li> </ul>		

<ul style="list-style-type: none"> <li>○ Specific financial requirements for initial approval and maintenance of customer accounts that engage in security futures transactions.</li> </ul>		
<p>Check the Central Registration Depository (CRD) for any derogatory information on the IB, its principals and its employees who will be involved in security futures activities before entering into a guarantee agreement with an IB.</p>		
<p>Provide the required risk disclosure statement prior to opening an account.</p>		
<p>Obtain the following additional information for customers:</p> <ul style="list-style-type: none"> <li>▪ Identification that the customer account is speculative or hedge</li> <li>▪ Employment status</li> <li>▪ Estimated liquid net worth</li> <li>▪ Marital status</li> <li>▪ Number of dependents</li> </ul>		
<p>Require that the customer account record include the name of the Associate, how the customer account information was obtained and the date the required risk disclosure statement was provided.</p>		
<p>On an annual basis, ensure that customers are provided with written notice regarding NFA's Background Affiliation Status Information Center (BASIC) at <a href="http://www.nfa.futures.org/basicnet">www.nfa.futures.org/basicnet</a>.</p>		
<p>Notify NFA within 10 business days of any required reportable events.</p>		
<p>Submit a quarterly report to NFA regarding written customer complaints.</p>		

<p>Ensure that promotional material meets the following requirements:</p> <ul style="list-style-type: none"> <li>▪ Prominently identifies the Member</li> <li>▪ Includes the date that the material was first used</li> <li>▪ Provides contact information for obtaining a copy of the disclosure statement for security futures products</li> <li>▪ States that security futures products are not suitable for all customers</li> <li>▪ Does not include any statement suggesting that security futures positions can be liquidated at any time</li> <li>▪ 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</li> <li>▪ 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</li> <li>▪ States that supporting documentation will be furnished upon request if it includes any claims, comparisons, recommendations, statistics or other technical data</li> <li>▪ 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 or states that the trading program is unproven</li> </ul>		
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<ul style="list-style-type: none"> <li>▪ Refers to past recommendations regarding security futures products, the underlying securities, or a derivative thereof only if it lists all similar recommendations made by the Member or Associate within the last year</li>   <li>▪ 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 a list of prior recommendations</li>   <li>▪ 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; (unless the promotional material is accompanied or preceded by the disclosure statement for security futures products)</li>   <li>▪ 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.</li> </ul>		
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**Additional Notes**

Please use this area to describe any issues or potential issues which were identified through the self-examination.