

Corporate & Financial Weekly Digest

Posted at 12:44 PM on October 15, 2010 by [Kevin M. Foley](#)

NFA Issues Notice to Members regarding Guidance on CFTC Forex Regulations

Co-authored by [Vanessa Friedman](#)

The National Futures Association (NFA), after consultation with the Commodity Futures Trading Commission, published additional guidance on the CFTC's final forex regulations, which are effective October 18. NFA clarified the following:

1. Futures commission merchants (FCMs), retail foreign exchange dealers (RFEDs) and introducing brokers (IBs) are not required under CFTC Regulation 5.5 to provide existing customers with the most recent quarterly customer account information (unless requested by the customer) or required disclosure documents (or to obtain a disclosure document acknowledgment from such customers). Such requests only apply to customers that open accounts on or after October 18.
2. Only the following types of entities may be used to hold assets equal to the total amount owed to U.S. customers for Forex transactions: (a) in the U.S., a domestic regulated bank or trust company, an SEC registered broker-dealer (that is also a Financial Industry Regulatory Authority member) or a CFTC registered FCM (that is also an NFA member), and (b) in a "money center country" (as defined in CFTC Regulation 1.49), a bank or trust company with regulatory capital greater than \$1 billion, a foreign equivalent of a broker-dealer or FCM with regulatory capital greater than \$100 million or an FCM registered with CFTC and a member of NFA.
3. Any registered FCM, RFED, IB, commodity pool operator or commodity trading advisor must be approved by NFA as a forex firm prior to engaging in retail forex transactions. Any such firm must have at least one principal registered as an associated person (AP) and approved as a forex AP. Two exams are required for any individual who solicits or supervises the solicitation of retail Forex business: the National Commodity Futures Examination (Series 3) and the Retail Off Exchange Forex Examination (Series 34) (though APs, sole proprietors or floor brokers who were registered as such on May 22, 2008 are exempt from taking the Series 34 exam, absent any 2 year or greater gap in their registration since that date).
4. Entities defined in the Commodity Exchange Act §§ 2(c)(2)(B)(ii)(II)(aa), (bb), (ee) and (ff) may solicit retail Forex orders, manage retail Forex accounts or operate a retail Forex pool without registering with the CFTC in the relevant capacity.

The NFA Notice is available [here](#).