



Futures Industry Association

2001 Pennsylvania Ave. NW
Suite 600
Washington, DC 20006-1823

202.466.5460
202.296.3184 fax
www.futuresindustry.org

To: FIA Member Futures Commission Merchants
ATTENTION: Legal and Compliance Departments

From: Walt Lukken
President & Chief Executive Officer

Re: CFTC Internal Conflict Rule – Model Disclosure Statement

Date: July 13, 2012

CFTC Regulation 1.71 provides that no futures commission merchant may permit an affiliated swap dealer or major swap participant to interfere with or attempt to influence the FCM's decision to provide clearing services to a particular customer. Regulation 1.71 additionally requires FCMs to adopt policies and procedures to give effect to that prohibition and to establish an information barrier between the FCM and any affiliated swap dealer or major swap participant.

Regulation 1.71 also requires FCMs to provide their customers with disclosure of any material incentives and any material conflicts of interest regarding a customer's decision regarding trade execution and/or clearing of a derivatives transaction. The term "derivative" is defined for this purpose to include futures contracts and options on futures contracts, as well as swaps, "retail forex," and other instruments regulated by the CFTC. Regulation 1.71, therefore, requires FCMs to disclose this information to their customers whether or not the FCM clears swaps or is affiliated with a swap dealer or major swap participant.

The FIA Law & Compliance Division has drafted the attached model disclosure statement to assist its member FCMs in complying with this requirement. The CFTC has not approved the model statement, and FCMs are free to use their own form of disclosure statement should they choose to do so. Unlike certain other CFTC disclosure requirements, customers are not required to acknowledge their receipt of this disclosure statement.

NOTE: FIA is providing this disclosure statement to its member FCMs for use as they deem appropriate to their own circumstances. Member FCMs should carefully consider the full scope of any legal and regulatory requirements that may apply to their particular circumstances, including whether the FCM needs to make different or additional disclosures. FIA does not provide legal advice, and member FCMs that choose to use the disclosure statement should consult their own legal advisers.

CFTC Regulation 1.71 was originally scheduled to become effective on June 4, 2012. The Law & Compliance Division requested and obtained a 60-day extension of the disclosure statement requirement (and certain other requirements) for all FCMs. The disclosure statement requirement, therefore, becomes effective August 3, 2012. Although the Regulation could be read to require only that an FCM have policies and procedures for the disclosure of this information by the August 3 deadline, the CFTC has made clear that it expects that customers will be provided with appropriate disclosures “prior to the execution of a transaction.”

The Law & Compliance Division is continuing to evaluate steps FCMs can take to comply with the other requirements of Regulation 1.71. FIA member FCMs that would like more information on that subject or that have questions about the attached disclosure statement should contact Barbara Wierzynski, FIA’s Executive Vice President and General Counsel, at bwierzynski@futuresindustry.org or 202-466-5460.