

Joint Audit Committee

REGULATORY UPDATE

TO: Chief Financial Officers
Chief Compliance Officers

#13-01

DATE: August 12, 2013

SUBJECT: CFTC Part 162 – Subpart C - Identity Theft Red Flags, Regulation 162.30

CFTC Regulation 162.30: Identity Theft Red Flags, issued jointly with SEC Regulation 248.201: Identity Theft Red Flags, has become effective as of May 20, 2013. CFTC Regulation 162.30 provides rules and guidelines that must be developed, implemented and that are designed to detect, prevent and mitigate identity theft. The FCM's Board of Directors (or appropriate subcommittee thereof or designated senior management) is required to approve the firm's identify theft program and must be involved in its oversight, development, implementation and administration. Oversight should be provided at a senior enough level to help ensure that the program has the proper independence, objectivity, resources and empowerment to effectively execute the program. Further, Appendix B to Part 162 – Interagency Guidelines on Identity Theft Detection, Prevention and Mitigation provides more specific guidance to assist FCMs in the development, maintenance and implementation of their Identity Theft Program to satisfy the requirements of the rules. The new rules require, among other things, that an FCM shall:

- Establish a written identity theft program
- Identify relevant identity theft red flags
- Detect identity theft red flags
- Prevent and mitigate identity theft
- Update, as warranted, the identity theft prevention program
- Administer the identity theft program

The above items are not meant to be all inclusive, do not constitute legal advice and affected entities should consult with the relevant rules to gain a comprehensive understanding of the requirements. It is important to keep in mind that not every FCM is identical. Accordingly, FCMs should look to a variety of characteristics of their business, such as their customer profile, customer trading activities, the method of communication with customers (e.g., internet, email, face to face) etc., to help ensure the appropriate red flags are being monitored and the program is tailored to the FCM.

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For a complete copy of the final rule and its requirements, please see the applicable Federal Register (April 19, 2013, Vol. 78, No. 76, at page 23638) which can be found on the CFTC's web site at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-08830a.pdf>

All FCMs must be in compliance with this rule not later than November 20, 2013.

If you have any questions, please contact your DSRO.