

Joint Audit Committee

REGULATORY ALERT

TO: Chief Executive Officers
Chief Financial Officers
Chief Compliance Officers
Legal Counsel

#24-01

CC: Market Participants Division, CFTC

DATE: October 29, 2024

SUBJECT: Documentation of Discretionary Trading Authority

As FCMs grow and expand their business lines and customer bases, it is important that strong and effective compliance and supervisory programs are in place. The JAC has received several inquiries regarding account documentation to substantiate the grant of discretionary trading authority for corporate accounts¹ in accordance with self-regulatory organization and exchange rules.

A grant of discretionary trading authority must be in writing, signed and dated, by the account owner. Such grant of trading authority (commonly referred to as a power of attorney, trading authorization or similar document) must clearly designate the person to whom discretionary trading authority has been granted.

In working with their clients, FCMs need to ensure the delegation of trading authority of corporate accounts is properly authorized by the beneficial account owner. For clarity, for accounts where the authority for trading has been delegated to a third party,² the underlying agreement (for example a power of attorney, trading authorization, investment management agreement or similar document) delegating such authority must be executed by a properly authorized signatory of the beneficial account owner.

An FCM's due diligence policies and procedures should be designed to validate that the signatory granting trading authority on behalf of the corporate account is properly authorized to do so. In recognizing the diversity of FCMs and their clients and to provide firms with flexibility to develop and implement tailored policies and procedures, the authority of the individual granting trading discretion may be evidenced through various means (collectively "documentary evidence") which provide the FCM with a reasonable basis of the signatory's authority. Such documentary evidence must be maintained by the FCM.

¹ For purposes of this Alert, "corporate accounts" include accounts of corporations, general and limited partnerships, limited liability companies and other legal entities.

² For clarity, a third party includes both affiliated and non-affiliated parties.

Documentary evidence includes, but is not limited to, a corporate resolution, certificate of incumbency, secretary certificate or similar document. Documentary evidence may also be found in a limited liability operating agreement, partnership agreement, trust agreement, offering memorandum, or government agency or regulatory body filing (e.g., a current filing with the SEC). Additionally, an FCM may consider its other established relationships with the beneficial account owner and other executed agreements in determining the signatory's authority. These examples are not meant as an exhaustive list of documentary evidence; therefore, an FCM may utilize other evidence that properly validates the signatory's authority for the corporate account.

For the avoidance of doubt, for existing trading authorizations in place and effectively operating for a corporate account at an FCM, such delegation of trading authority may be considered properly authorized and valid by that FCM. However, as new accounts are opened and new relationships established at an FCM, the FCM must maintain and ensure that the documentary evidence of the signatory's authority, on behalf of the corporate account owner, demonstrates the valid delegation of trading authority.

If you have any questions, please contact your DSRO.