

February 27, 2024

Via Email (secretary@cftc.gov)

Mr. Christopher J. Kirkpatrick
Secretary
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Proposed Amendments to NFA Bylaw 301 and Proposed Adoption of NFA Compliance Rule 2-52: NFA Member Questionnaire Requirements and the related Interpretive Notice 9082 – *NFA Compliance Rule 2-52: Requirements in Connection with NFA's Member Questionnaire*

Dear Mr. Kirkpatrick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("CEA"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") the proposed amendments to NFA Bylaw 301 and the adoption of NFA Compliance Rule 2-52: NFA Member Questionnaire Requirements and a related Interpretive Notice entitled *NFA Compliance Rule 2-52: Requirements in Connection with NFA's Member Questionnaire*. On February 15, 2024, NFA's Board of Directors ("Board") unanimously approved the proposed amendments to NFA Bylaw 301, the adoption of NFA Compliance Rule 2-52 and the adoption of the Interpretive Notice, which provides more specific guidance to NFA Members with respect to submitting and completing the Member Questionnaire, formerly known as the Annual Questionnaire.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make the amendments to NFA Bylaw 301 and the adoption of NFA Compliance Rule 2-52 and related Interpretive Notice effective as early as ten days after receipt of this submission by the Commission unless the Commission notifies NFA that the Commission has determined to review the proposals for approval.

PROPOSED AMENDMENTS, RULE AND INTERPRETIVE NOTICE
(additions are underscoring and deletions are ~~stricken through~~)

NATIONAL FUTURES ASSOCIATION

* * *

NFA BYLAWS

* * *

BYLAW 301. REQUIREMENTS AND RESTRICTIONS

* * *

(h) Suspension and Termination of Membership and Associate Membership.

(viii) Failure to Submit ~~Annual~~ Member Questionnaire under Compliance Rule 2-52.

On at least an annual basis, NFA shall provide each NFA Member ~~FCM~~ for which NFA is the Designated Self-Regulatory Organization, RFED, IB, SD, MSP, CPO, CTA, and LTM with a questionnaire concerning its business activities. The Member shall complete ~~the questionnaire~~ and submit the ~~completed~~ questionnaire in accordance with Compliance Rule 2-52, on the date specified thereon. NFA shall deem the failure to file the completed questionnaire within 30 days ~~following such date~~ of a request made by NFA in accordance with Compliance Rule 2-52 as a request to withdraw from NFA membership, and shall notify the Member accordingly.

* * *

NFA COMPLIANCE RULES

* * *

Rule 2-52. NFA MEMBER QUESTIONNAIRE REQUIREMENTS

- (a) Each Member must file NFA's Member Questionnaire, in a form and manner prescribed by NFA, on at least an annual basis within the time period required by NFA. If requested by NFA, a Member must submit the Member Questionnaire, or specified portions, on a semi-annual basis within the time period required by NFA.
- (b) Each Member must promptly update applicable provisions in the Member Questionnaire to disclose material changes to the Member's business operations.

which make the information previously submitted in the Questionnaire inaccurate or incomplete.

- (c) Except for SD and MSP Members (unless the firm is a Member in another NFA Membership category), each Member must ensure that the Member Questionnaire and any updates required by subsection (b) are reviewed, signed and submitted by an individual who is a registered associated person and a listed principal of the Member.
- (d) SD and MSP Members (unless the firm is a Member in another NFA Membership category) must ensure that the Member Questionnaire and any updates required by subsection (b) are reviewed, signed and submitted by a principal of the Member.

NFA INTERPRETIVE NOTICES

* * *

9082—NFA COMPLIANCE RULE 2-52: REQUIREMENTS IN CONNECTION WITH NFA'S MEMBER QUESTIONNAIRE.

To maintain NFA membership, each NFA Member is required to complete and submit NFA's Member Questionnaire (Questionnaire and f/k/a NFA's Annual Questionnaire) to NFA on at least an annual basis. The Questionnaire provides staff with critical and material information regarding a Member's activities and operations. Further, the Questionnaire's information serves as a continuous source of data for NFA's risk monitoring systems and is the first and the central resource for staff when reviewing or performing our Member oversight responsibilities. Below is further information on a Member's obligations with respect to its ongoing filing requirement.

The Questionnaire contains a General Information section that all Members are required to complete at least annually. This section allows NFA to collect important information, which includes among other items whether a Member: engages in commodity interest activities; currently solicits customers to trade commodity interests; has direct electronic access to a designated contract market or utilizes trading algorithms; has other U.S. or non-U.S. regulators; is a member of a DCM, swap execution facility or designated clearing organization; or engages in activities relating to digital assets or micro-contract products. The General Information section also requires Members to provide key information about their disaster recovery or emergency contacts.

In addition to completing the Questionnaire's General Information section, FCM Members firms for which NFA is the designated self-regulatory organization (DSRO)¹ and all other Members must complete separate Questionnaire sections relating to their

¹ NFA may in appropriate circumstances direct a non-NFA DSRO FCM to complete the Questionnaire's General Information section and FCM business operations component.

respective business operations. These separate Questionnaire sections allow NFA to collect more detailed information about a Member firm's activities relevant to its membership category or categories.

Information About When to File the Questionnaire

As described above, each NFA Member is required to complete and submit NFA's Member Questionnaire (Questionnaire) to NFA on at least an annual basis. Prior to a firm's anniversary date of being approved as an NFA Member, NFA will notify the Member that it must complete and submit to NFA the Questionnaire by a specified date. As provided in NFA Bylaw 301(h), a Member firm's failure to complete and submit the Questionnaire within the required time period will be deemed by NFA as a Member's request to withdraw from NFA membership.

The majority of NFA Members will only need to annually submit the Questionnaire. However, in the situations described below, certain Members will need to complete and submit the Questionnaire more frequently.

Firms With a Semi-Annual Filing Requirement

NFA Compliance Rule 2-52(a) requires a Member to submit the Questionnaire on a more frequent basis if required by NFA. Specifically, the Questionnaire's General Information section asks several "yes/no" questions about a Member's involvement in activities relating to commodity interest products. For those Members that answer "no" to all these questions, NFA has determined that they are not conducting commodity interest business and, therefore, are Inactive.² Further, to clearly indicate to the public that a firm is not conducting any commodity interest business, NFA has posted a banner on the firm's webpage within NFA's BASIC system that prominently indicates the firm is Inactive. Given the potential significance of this banner, a Member should promptly update its Questionnaire if it begins engaging in business activities relating to commodity interest products.

Moreover, to provide NFA with current and timely insight (in case the firm is remiss in updating the Questionnaire upon becoming active) to changes in a firm's business activities and ensure that BASIC information is complete and current, NFA is requiring an Inactive firm to semi-annually complete and submit the Questionnaire. To effectuate this semi-annual filing obligation, if a Member previously answered "no" to the General Information section's questions relating to its involvement in commodity interest activities, approximately six months after a firm's anniversary date, NFA will notify and request that the Member complete appropriate sections³ of the Questionnaire, which

² NFA does not have a formal Inactive membership status.

³ NFA will require the Member to complete the General Information section's questions about the firm's commodity interest business. If the firm changes an answer to "yes" to indicate that it is conducting commodity interest business, the firm will then be required to complete the other applicable questions in the Questionnaire, including those relating to its business operations.

must be submitted by a specified date. Failure to complete and submit the required sections of the Questionnaire within the required time frame will be deemed a request to withdraw.

Material Changes—Obligation to Update

Given the importance of the information provided by Members in submitting the Questionnaire, it is essential that any material information be complete, accurate and up to date. A material change in a Member's business operations may alter a firm's risk profile and is extremely important for NFA to learn about to perform its oversight responsibilities.

Therefore, NFA Compliance Rule 2-52(b) requires a Member to promptly update applicable provisions in the Member Questionnaire to disclose material changes to the Member's business operations, which make the information previously submitted in the Questionnaire inaccurate or incomplete. Consistent with NFA's regulatory approach, NFA does not intend to prescribe all of the events that may qualify as material and, therefore, require a Member to update the Questionnaire. Instead, NFA recognizes that each Member is in the best position to determine what constitutes a material change in its operations based on the type, size and complexity of the Member's business and will rely upon its Members to make these individual determinations and update the Questionnaire accordingly.

However, NFA believes a Member should update its Questionnaire if certain changes occur. Specifically, engaging or disengaging in activities relating to: commodity interest products, micro-contracts, retail forex or digital assets, algorithmic trading activities, or cloud computing; a significant increase or decrease in customer accounts; an IB's revenue increases to exceed the designated threshold that would require it to comply with Commodity Futures Trading Commission Regulation 1.35(a)(1)(iii);⁴ or, if a CPO has a pool that has just commenced operations.

Information About Who Files the Questionnaire

Given the importance of the information contained in the Questionnaire to NFA fulfilling its regulatory oversight responsibilities, the individual responsible for reviewing, signing and submitting the Questionnaire and all updates should be sufficiently knowledgeable about a Member firm's ongoing business operations. Therefore, Compliance Rule 2-52(c) requires that for all Member categories other than SDs and MSPs (provided they are not also a Member in another NFA Membership category) an individual who is a registered associated person (AP) and a listed principal of the Member reviews, signs

⁴ CFTC Regulation 1.35(a)(1)(iii) requires IBs that have generated over the preceding three years more than \$5 million in aggregate gross revenues from their activities as an IB to keep all written and oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest whether transmitted by telephone, voicemail, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media.

and submits the Questionnaire and all updates. Since SDs and MSPs do not have registered APs, Compliance Rule 2-52(d) requires that a principal of the SD or MSP reviews, signs and submits the Questionnaire and all updates. The SD or MSP principal should possess the appropriate level of experience and skills to determine the completeness of the information submitted.

The Questionnaire's submitter is required to complete an attestation certifying that the answers and information provided are materially true, complete and accurate.

EXPLANATION OF PROPOSED AMENDMENTS, RULE AND INTERPRETIVE NOTICE

As part of NFA's membership application process and on at least an annual basis thereafter, all NFA Members are required to complete NFA's Member Questionnaire (Questionnaire).⁵ The Questionnaire provides critical and material information regarding a Member's activities and operations (including whether the firm is currently conducting any commodity interest business). Further, the Questionnaire's information serves as a continuous source of data for NFA's risk monitoring systems and a central resource for staff when reviewing or performing our Member oversight responsibilities.

NFA's current requirements related to the Questionnaire are set forth in NFA Bylaw 301(h)(viii), which specifies that NFA will provide a Member with the Questionnaire on an annual basis; a Member must submit and complete the Questionnaire by the date specified; and a Member's failure to do so shall be deemed a request to withdraw from membership. Given the importance of the information collected in the Questionnaire, and its accuracy, NFA's Board unanimously approved the adoption of Compliance Rule 2-52, which will require Member firms to submit the Member Questionnaire at least annually and more frequently in certain specified circumstances, as well as set forth specific requirements regarding who at the firm must review, sign and submit the Member Questionnaire. Additionally, the Board unanimously approved the adoption of a related Interpretive Notice to provide more specific guidance for Members regarding Compliance Rule 2-52, including with respect to circumstances that will require an update to the Questionnaire. Finally, the Board approved certain clarifying amendments to NFA Bylaw 301(h).

Compliance Rule 2-52(a) will require a Member to submit the Questionnaire at least annually, and provides NFA with the authority to require a Member to submit the Questionnaire or specified portions on a semi-annual basis if requested by NFA. The related Interpretive Notice provides detailed guidance on when a Member would be required to submit the Questionnaire or applicable portions on a semi-annual basis. Specifically, the Questionnaire provides NFA with information that identifies Members that are not currently conducting commodity interest business and are considered "inactive." NFA believes that it is important that the public be aware of

⁵ As described below, the Member Questionnaire was formerly known as the Annual Questionnaire.

firms that have indicated to NFA that they do not conduct any commodity interest business, and we intend to add a banner on the firm's webpage within NFA's BASIC system that prominently indicates that the firm is inactive. Given the potential significance of this banner, the Board also determined that a Member should promptly update its Questionnaire if it begins engaging in business activities relating to commodity interest products. In order to ensure that BASIC information is complete and current, Compliance Rule 2-52(a) also provides NFA with the authority to require a Member to submit the Questionnaire or specified portions on a semi-annual basis, and the Interpretive Notice specifies that any Member that is considered inactive based on its Member Questionnaire will be required to semi-annually complete and submit the Questionnaire. The related Interpretive Notice also provides additional information on the requirement that inactive firms complete the Questionnaire on a semi-annual basis.

Compliance Rule 2-52(b) will require a Member to promptly update applicable provisions in the Questionnaire whenever there are material changes to its business operations that make the Questionnaire's previously provided information inaccurate or incomplete. The Board determined to require these periodic updates because a material change in a Member's business operations may alter a firm's risk profile, and therefore it is extremely important for NFA to have knowledge of in order to perform its oversight responsibilities. Although the related Interpretive Notice identifies certain circumstances where a Member should update the Questionnaire, consistent with NFA's regulatory approach, the Interpretive Notice acknowledges that NFA recognizes that each Member is in the best position to determine what constitutes a material change in its operations based on the type, size and complexity of the Member's business and will rely upon its Members to make these individual determinations and update the Questionnaire accordingly.

The Board also concluded that the individual responsible for reviewing, signing and submitting the Questionnaire should be sufficiently knowledgeable about a Member firm's ongoing business operations. Therefore, the Board adopted Compliance Rule 2-52(c) which requires that for all Member categories other than SDs and MSPs (provided they are not also a Member in another NFA Membership category) an individual who is a registered associated person (AP) and a listed principal of the Member is required to review, sign and submit the Questionnaire. Since SDs and MSPs do not have registered APs, Compliance Rule 2-52(d) requires that a principal of the SD or MSP reviews, signs and submits the Questionnaire.

NFA Bylaw 301 requires FCMs for which NFA is the designated self-regulatory organization (DSRO) to submit the Questionnaire. However, in practice, NFA requires all Member FCMs—regardless of whether NFA is their DSRO—to submit the Questionnaire's *General Information* section. In light of this current practice and to enable NFA to continue to collect some basic business information from its non-NFA DSRO FCM Members, NFA's Board unanimously approved amending NFA Bylaw 301(h) to remove any reference to the requirement that an FCM Member is only required to submit the Questionnaire if NFA is its DSRO. The related Interpretive Notice

clearly states that non-NFA DSRO FCMs should file only the Questionnaire's *General Information* section.

Since the Questionnaire must be filed at least annually and in some circumstances a Member must file and update it more frequently, NFA's Board further amended Bylaw 301 to drop the "annual" terminology when referring to the Questionnaire. Therefore, the Questionnaire will be referred to as the Member Questionnaire.

NFA's Member Advisory Committees supported the above-described proposals. As stated earlier, NFA's Board unanimously approved the proposed changes to Bylaw 301(h) and the adoption of Compliance Rule 2-52 and the related Interpretive Notice.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA. NFA intends to issue a Notice to Members establishing an effective date for the proposed amendments to NFA Bylaw 301, proposed adoption of Compliance Rule 2-52 and the proposed adoption of a related Interpretive Notice as early as ten days after receipt of this submission by the Commission, unless the Commission notifies NFA that the Commission has determined to review the proposals for approval.

Respectfully submitted,

A handwritten signature in black ink that reads "Carol A. Wooding". The signature is written in a cursive, flowing style.

Carol A. Wooding
Senior Vice President
and General Counsel