

March 8, 2012

**Via Federal Express**

Mr. David A. Stawick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

Re: National Futures Association: Retail Forex Transactions – Proposed Amendments to NFA Financial Requirements Section 14, the Interpretive Notice Entitled *Forex Transactions* and the Interpretive Notice Entitled *NFA Compliance Rule 2-40: Procedures for the Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business\**

Dear Mr. Stawick:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended, National Futures Association (“NFA”) hereby submits to the Commodity Futures Trading Commission (“CFTC” or “Commission”) the proposed amendments to NFA Financial Requirements Section 14, the Interpretive Notice Entitled *Forex Transactions* and the Interpretive Notice Entitled *NFA Compliance Rule 2-40: Procedures for the Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business*. NFA’s Board of Directors (“Board”) approved the proposal on February 16, 2012.

NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”) and will make these proposals effective 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.

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**PROPOSED AMENDMENTS**  
**(additions are underscored and deletions are ~~stricken through~~)**

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**FINANCIAL REQUIREMENTS**

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**SECTION 14. ASSETS COVERING LIABILITIES TO RETAIL FOREX CUSTOMERS.**

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(a) Each Forex Dealer Member shall calculate the amount owed to ~~U.S.~~ customers for forex transactions and shall hold assets equal to or in excess of that amount at one or more qualifying institutions in the United States or money center countries (as defined in CFTC Regulation 1.49).

(b) The amount owed to ~~U.S.~~ customers shall be calculated by adding up the net liquidating values of each forex account that liquidates to a positive number, using the fair market value for each asset other than open positions and the current market value for open positions.

\* \* \*

(f) ~~For purposes of this rule, a U.S. customer is a retail customer that is:~~

~~(i) a natural person who is a resident of the United States;~~

~~(ii) a partnership, corporation, or other entity (including a collective investment vehicle) organized under the laws of the United States or which has its principal place of business in the United States;~~

~~(iii) an estate or trust, the income of which is subject to United States income tax regardless of source; or~~

~~(iv) an entity organized principally for passive investment (e.g., a commodity pool or investment company) in which U.S. persons beneficially own, in the aggregate, a 10% or greater interest.~~

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## INTERPRETIVE NOTICES

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### 9053 - FOREX TRANSACTIONS

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#### 3. Financial Requirements Section 11(b)

Section 11(b) prohibits a Forex Dealer Member from including assets held by an affiliate (unless approved) or an unregulated person in the firm's current assets for purposes of determining its adjusted net capital under CFTC Regulation 5.7(b)(2)(v)(A). This means an FDM may not count any part of those assets for capital purposes.<sup>9</sup>

An unregulated person is any person that is **not**:

- (i) a bank or trust company regulated by a U.S. banking regulator;
- (ii) a broker-dealer registered with the U.S. Securities and Exchange Commission and a member of FINRA;
- (iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;
- (iv) a retail foreign exchange dealer registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;
- (v) a bank or trust company regulated in a money center country which has in excess of \$1 billion in regulatory capital; or
- (vi) any other entity approved by NFA.

Any Forex Dealer Member may ask NFA to approve an otherwise unregulated person for purposes of Financial Requirements Sections 11(b) and (c). In determining whether to approve an unregulated person that is not an affiliate, NFA will consider a number of factors, including:

- Whether the person is regulated in another jurisdiction and, if so, the type and extent of regulation;
- The person's capital; ~~and~~
- ~~The person's credit rating.~~

NFA's approval of a particular person means that all unaffiliated Forex Dealer Members may treat that person as regulated under Sections 11(b) and (c). NFA

may also approve categories of counterparties (e.g., banks regulated in a particular jurisdiction ~~or with a particular credit rating~~).

A Forex Dealer Member may not engage in Section 11(b) or (c) transactions with a regulated affiliate without NFA's approval. The Member may, however, ask NFA to authorize it to cover its positions with specified affiliates (including unregulated affiliates). An affiliate is any entity that controls, is controlled by, or is under common control with the Forex Dealer Member. The standards for approving affiliated persons are significantly higher than those for unaffiliated persons. For example, NFA will also consider:

- The parent company's and affiliated person's capital;
- Whether the parent company and the affiliated person are regulated entities;
- Whether the parent company will guarantee the obligations of the affiliated person (unless the parent company and the affiliated person are the same entity);
- ~~The parent company's credit rating;~~
- Whether the affiliated person has strong risk-management policies to limit its value-at-risk; and
- For purposes of Section 11(c), whether the affiliated person limits the amount of offsetting transactions it enters into with unregulated counterparties.

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#### **9058 - NFA COMPLIANCE RULE 2-40: PROCEDURES FOR THE BULK ASSIGNMENT OR LIQUIDATION OF FOREX POSITIONS; CESSATION OF CUSTOMER BUSINESS**

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#### **RECORDS**

For a bulk assignment, liquidation, or transfer, the assignor/transferor FDM and the assignee/transferee FDM must ~~should~~ provide NFA's Compliance Department with all pertinent records pertaining to the transaction, including. ~~A at a minimum, the assignor/transferor FDMs must provide the following records:~~

(A) At the time that the assignor/transferor FDM first contacts NFA's Compliance Department, the assignor/transferor FDM must provide:

1. representative copies of the customer agreements;
2. a list of the affected accounts, including:
  - a. customer names;
  - b. account numbers; and
  - c. account values as of the end of the previous day;
3. if an assignment or transfer, documentation regarding the assignor/transferor FDM's investigation of the assignee/transferee's status as an authorized counterparty and its financial ability to honor its commitments to the customers.

(B) Immediately after the bulk assignment, liquidation, or transfer, the assignee/transferee FDM must provide a list of the affected accounts and the value of each account as of the date of the transaction

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## EXPLANATION OF PROPOSED AMENDMENTS

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NFA's Financial Requirements Section 14 and CFTC Regulation 5.8(a) require FDMs/R FEDs to calculate the amount owed to retail forex customers and hold assets equal to or in excess of that amount at one or more qualifying institutions. Financial Requirements Section 14 imposes this requirement with respect to U.S. customers, while Regulation 5.8 applies to all retail customers. Therefore, in order to keep NFA's requirements consistent with those of the CFTC, NFA is amending NFA Financial Requirements Section 14 to remove the references to U.S. customers.

As required by the Dodd-Frank Act, the Commission amended its regulations to remove any references to or requirement for reliance on credit ratings in its regulations, effective September 23, 2011. In order to keep NFA's Rules consistent with Commission regulations, NFA is amending the Interpretive Notice entitled *Forex Transactions* to remove references to credit ratings. Specifically, the section of the Interpretive Notice related to Financial Requirements Section 11(b) indicates that an FDM may not include assets held by an affiliate or an unregulated person in the firm's current assets and may not use these entities to cover forex transactions for purposes of determining its adjusted net capital, unless the affiliate or unregulated person has been approved by NFA. The Notice lists "a person's credit rating" as a factor NFA may consider in determining whether to approve an FDM's affiliate or an otherwise unregulated person for these purposes. As a result, amendments to the Interpretive Notice entitled *Forex Transactions* remove these references to keep the Interpretive

Mr. David A. Stawick

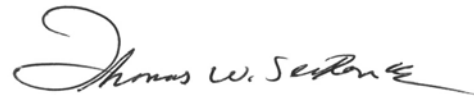
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Notice consistent with the rationale underlying the CFTC's deletion of credit ratings from its regulations.

NFA is also amending the language in the Interpretive Notice entitled NFA Compliance Rule 2-40: Procedures for the Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business regarding the reporting responsibilities for the Assignor/Transferor FDM and the Assignee/Transferee FDM to clarify that the Assignee/Transferee must provide NFA with certain information immediately after a bulk assignment, liquidation or transfer.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make the amendments to NFA Financial Requirements Section 14, the Interpretive Notice Entitled *Forex Transactions* and the Interpretive Notice Entitled *NFA Compliance Rule 2-40: Procedures for the Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business* effective ten days after receipt of this submission by the Commission, unless the Commission notifies NFA that the Commission has determined to review the proposal for approval.

Respectfully submitted,



Thomas W. Sexton  
Senior Vice President and  
General Counsel

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\*The proposed amendments to Financial Requirements Section 14 and the Interpretive Notices are effective July 26, 2012.