

March 5, 2019

Via Federal Express

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 NFA Compliance Rule 2-24 and Proposed Interpretive Notice Entitled: *NFA Bylaw 301 and Compliance Rule 2-24: Proficiency Requirements for Swap APs*

Dear Mr. Kirkpatrick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("CEA" or "Act"), 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 NFA Compliance Rule 2-24 and the proposed Interpretive Notice entitled *NFA Bylaw 301 and Compliance Rule 2-24: Proficiency Requirements for Swap APs*. NFA's Board of Directors ("Board") unanimously approved the proposed amendments and Interpretive Notice at its meeting on February 21, 2019.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make this proposal 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.

PROPOSED AMENDMENTS

(additions are underscored and deletions are ~~stricken through~~)

BYLAWS

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CHAPTER 3 – MEMBERSHIP AND ASSOCIATION WITH A MEMBER

BYLAW 301. REQUIREMENTS AND RESTRICTIONS

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(j). Eligibility to Conduct Forex Activities.

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(v) Any individual applying for designation as an approved Forex Dealer Member or approval as a forex firm or forex associated person shall not be granted designation as an approved Forex Dealer Member or approval as a forex firm or forex associated person unless:

(A) The applicant has satisfied the proficiency requirements under NFA Registration Rule 401(a) or 401(ef) and:

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(l). Eligibility to Conduct Swaps Activities.

(i) Any Member that is registered with the Commission as an FCM, IB, CPO, or CTA and engages in activities involving swaps subject to the jurisdiction of the CFTC must be approved as a swaps firm by NFA.

(ii) Any person associated with a Member that is registered with the Commission as an FCM, IB, CPO, or CTA and engages in activities involving swaps subject to the jurisdiction of the CFTC must be approved as a swaps associated person by NFA in order to engage in swaps activities on behalf of such Member.

(iii) No Member may be approved as a swaps firm unless at least one of its principals is registered as an "associated person" and approved as a swaps associated person.

(iv) If any Member that has been approved as a swaps firm fails to have at least one principal that is registered as an "associated person" and approved as a swaps associated person, then NFA shall deem such failure as a request to have the approval of the Member as a swaps firm withdrawn and shall notify that Member accordingly.

(v) Any request for approval as a swaps firm or swaps associated person must be filed electronically through NFA's Online Registration System.

(vi) Any individual applying for approval as an FCM, IB, CPO or CTA Member swap firm or swap associated person of an FCM, IB, CPO or CTA Member shall not be granted approval as a swap firm or swap associated person unless the following requirement is met:

(A) NFA has received satisfactory evidence that the applicant has taken and passed NFA's Swaps Proficiency Requirements:

- (1) On a date which is no more than two years prior to the date the application is received by NFA; or
- (2) Since the date that the applicant took and passed NFA's Swaps Proficiency Requirements, there has been no period of two consecutive years during which the applicant has not been approved as a swap associated person of an FCM, IB, CPO or CTA, approved as a swap firm that is a Member of NFA or employed by an SD that is a Member of NFA or its affiliated entity.

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COMPLIANCE RULES

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Part 2 – RULES GOVERNING THE BUSINESS CONDUCT OF MEMBERS REGISTERED WITH THE COMMISSION

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RULE 2-24. QUALIFICATION TESTING OF ASSOCIATED PERSONS.

(a) Testing Requirement.

- (1) Subject to the provisions of paragraphs (d) and (e) of Bylaw 301, no FCM, RFED, IB, CPO, CTA or LTM Member of NFA shall have associated with it (See Bylaw 301(b)) any person who has not satisfied the applicable proficiency requirements set forth in Registration Rule 401.
- (2) Subject to the provisions of paragraphs (d) and (e) of Bylaw 301, no FCM, IB, CPO or CTA Member of NFA shall have associated with it (See Bylaw 301(b)) any person engaging in activity involving swaps subject to the jurisdiction of the Commission who has not satisfied NFA's Swaps Proficiency Requirements set forth in Bylaw 301(l) and the related Interpretive Notice entitled *Proficiency Requirements for Swap APs*.
- (3) No SD or MSP shall have associated with it any person who is an associated person as defined in subsection 6 of the Associated Person definition under CFTC Regulation 1.3 who has not satisfied NFA's Swaps Proficiency Requirements set forth in the Interpretive Notice entitled *Proficiency Requirements for Swap APs*.

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INTERPRETIVE NOTICE

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NFA BYLAW 301 and COMPLIANCE RULE 2-24: PROFICIENCY REQUIREMENTS FOR SWAP APS

Section 17(p) of the Commodity Exchange Act (Act) requires NFA "to establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the provisions of the Act, supervisors of such persons..." This provision of the Act is not limited to those who are required to be registered as associated persons (AP).

NFA requires that APs engaging in commodity futures and forex activities take and pass a proficiency examination that tests both their market knowledge and their knowledge of regulatory requirements. NFA's Board of Directors has determined that APs engaging in swaps activities at FCMs, IBs, CPOs and CTAs, as well as individuals acting as APs at SDs and MSPs¹, should be required to meet a minimum proficiency standard that tests both their market knowledge and their knowledge of regulatory requirements involving swaps activities. Accordingly, NFA is imposing proficiency requirements on individuals approved as swap APs at FCMs, IBs, CPOs and CTAs in NFA Bylaw 301(l). NFA is also requiring that SD and MSP Members ensure that individuals acting as APs have satisfied these proficiency requirements in NFA Compliance Rule 2-24 (NFA's Swaps Proficiency Requirements).

Specifically, NFA Bylaw 301(l) requires an individual to satisfy NFA's Swaps Proficiency Requirements in order to be approved as a swap associated person at an FCM, IB, CPO or CTA (intermediary swap AP).² Additionally, Compliance Rule 2-24 prohibits an SD or MSP from having associated with it any individual who is acting as an associated person as defined in subsection 6 of the Associated Person definition under CFTC Regulation 1.3 who has not satisfied NFA's Swaps Proficiency Requirements.³ NFA's Swaps Proficiency Requirements referenced in Bylaw 301(l) and Compliance Rule 2-24 are detailed in this Interpretive Notice.

¹ Under Commodity Futures Trading Commission Regulation 1.3, subsection (6) of the Associated Person definition, an individual acts as an AP of an SD or MSP if the person solicits or accepts swaps (other than in a clerical or ministerial capacity) or supervises any person engaged in those activities.

² NFA Bylaw 301(l) also requires individuals applying for approval as an FCM, IB, CPO or CTA Member swap firm to satisfy the Swaps Proficiency Requirements.

³ Although not necessary to impose the Swaps Proficiency Requirements on intermediary swap APs, Compliance Rule 2-24 also prohibits an FCM, IB, CPO or CTA from having a swap AP who has not satisfied the Swaps Proficiency Requirements.

NFA's Swaps Proficiency Requirements

NFA's Swaps Proficiency Requirements cover the topics included in the content outline developed by NFA, which is available on NFA's website at www.nfa.futures.org. NFA's Swaps Proficiency Requirements will be administered via the internet through a number of individual modules covering specific topic areas, each of which contains both a training and testing component.

NFA recognizes that there are differences in the type of swaps activity performed by an individual based on whether the individual works for an SD or an intermediary. NFA also recognizes that some individuals acting as APs at SDs perform more limited functions than others. Accordingly, NFA has developed two proficiency tracks—a Long Track and a Short Track.

- SDs must ensure that individuals designated as APs in the sales and trading areas who negotiate, price and/or execute swaps with counterparties on behalf of the SD and/or manage the SD's swaps related risks satisfy the Long Track. The SD must ensure that designated APs who are responsible for supervising APs acting in this capacity at the SD satisfy the Long Track.
- An SD that has designated APs who perform functions other than those described above has the option of permitting those individuals to satisfy either the Long Track or the Short Track. SDs also have the option to allow designated APs who are responsible for supervising these APs to satisfy the Long Track or the Short Track. However, if the responsibilities of any AP who has satisfied the Short Track expands to the sales and trading areas as described above, the SD must ensure that the AP satisfies the remaining modules in the Long Track before engaging in these new activities.
- Intermediary swap APs are required to satisfy the Short Track. Individuals responsible for supervising intermediary swap APs are also required to satisfy the Short Track.

Additional information regarding the two tracks can be found in the FAQs at www.nfa.futures.org.

Obligations of SDs

Individuals acting as APs at SDs are not required to register with the CFTC and are not NFA Associate Members. Therefore, SDs are responsible for ensuring that any individual acting as an AP as defined in subsection 6 of the Associated Person definition under CFTC Regulation 1.3 has satisfied NFA's Swaps Proficiency Requirements prior

to engaging in the defined activities on behalf of the SD. For individuals who satisfied NFA's Swaps Proficiency Requirements prior to joining the SD, the SD will meet its obligation if it ensures:

- The individual satisfied the track of NFA's Swap Proficiency Requirements (i.e., Long Track or Short Track) required by the functions of the AP within the prior two years; or
- The individual satisfied the track of NFA's Swaps Proficiency Requirements required by the functions of the AP and since the date of doing so, there has been no period of two consecutive years during which the individual has not been employed by an SD (or its affiliated entity) that is a Member of NFA, approved as a swap AP of an FCM, IB, CPO or CTA or approved as a swap firm that is a Member of NFA.

SDs are not required to (nor should they) notify NFA when an individual satisfies NFA's Swaps Proficiency Requirements. However, each SD must maintain records that demonstrate that the individuals have satisfied NFA's Swaps Proficiency Requirements applicable to the person's functions as an AP and be able to provide those records to NFA during an examination or otherwise upon request. Examples of adequate documentation include a log identifying individuals and dates of completion or copies of the certificate of completion that an individual will receive upon successfully completing NFA's Swaps Proficiency Requirements.

Individuals acting as APs at SDs located outside of the U.S. (including non-U.S. branch offices of a U.S. SD) who solely solicit or accept swaps with counterparties that are non-U.S. persons and/or non-U.S. branch offices of U.S. SDs are excluded from NFA's Swaps Proficiency Requirements. The framework for the exclusion of certain Non-U.S. APs is described in more detail in the FAQs at www.nfa.futures.org.

Implementation

The Compliance Date to complete NFA's Swaps Proficiency Requirements is January 31, 2021. All individuals who are approved as swap APs at an FCM, IB, CPO or CTA Member firm or are acting as APs at SDs on the Compliance Date are required to satisfy the applicable NFA Swaps Proficiency Requirements (i.e., no grandfathering provision) by that date in order to remain approved as a swap AP or continue acting as an AP at an SD after the Compliance Date. Any individual seeking approval as a swap AP at an FCM, IB, CPO or CTA after January 31, 2021 must satisfy NFA's Swaps Proficiency Requirements prior to being approved as a swap AP and engaging in swaps activities. SDs must ensure that any individual seeking to act as an AP after January 31, 2021 satisfy the applicable track of NFA's Swaps Proficiency Requirements required by the functions of the AP prior to engaging in swaps activity at the SD.

Additional information on these requirements can be found in the FAQs located on NFA's website at www.nfa.futures.org.

EXPLANATION OF PROPOSED AMENDMENTS

Section 17(p) of the CEA requires NFA "to establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the provisions of the Act, supervisors of such persons. . ." Section 17(p) is not limited to those who are required to be registered as APs. CFTC Chairman Giancarlo's 2015 White Paper entitled *Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank* recommended adopting proficiency requirements to raise the knowledge, skills, professionalism, ethics and conduct of key personnel at FCMs, IBs and SDs, among other entities acting in the swaps markets. Given Section 17(p) and the White Paper's recommendation, NFA's Board approved the development of a swaps proficiency requirement in the form of an internet-based training and testing program to raise the professional standards for all APs engaging in swaps activities.

As described more fully below, NFA's Board has approved amendments to NFA Bylaw 301 and NFA Compliance Rule 2-24 and adopted an Interpretive Notice entitled *NFA Bylaw 301 and Compliance Rule 2-24: Proficiency Requirements for Swap APs* ("Interpretive Notice") that will effectively require registered APs of NFA Member FCMs, IBs, CPOs and CTAs and individuals acting as APs at NFA Member SDs, who are engaged in Commission regulated swaps activities, to satisfy NFA's Swaps Proficiency Requirements. NFA's Board has also approved a technical amendment to update a cross-reference in NFA Bylaw 301(j)(v).

Amendments to NFA Bylaw 301 and NFA Compliance Rule 2-24

NFA Bylaw 301(l) requires FCM, IB, CPO and CTA Members engaged in Commission regulated swaps activities, and registered APs of these Members whose activities involve Commission regulated swaps, to be approved by NFA as a swap firm or swap associated person (intermediary swap AP), respectively. NFA's Board is amending NFA Bylaw 301(l) to specify that any individual applying for approval as an FCM, IB, CPO or CTA Member swap firm or swap associated person of an FCM, IB, CPO or CTA Member must take and pass NFA's Swaps Proficiency Requirements to be granted approval as a swap firm or swap AP. NFA's Board is also amending NFA Compliance Rule 2-24 to prohibit an FCM, IB, CPO or CTA Member from having a person engaging in Commission regulated swaps activities associated with it unless that person has satisfied NFA's Swaps Proficiency Requirements.

NFA's Board is also amending NFA Compliance Rule 2-24 to prohibit an SD Member from having associated with it any person who is acting as an AP of an SD

unless that person has satisfied NFA's Swaps Proficiency Requirements. NFA is not imposing these requirements directly on individuals acting as APs at SDs because these individuals are not required to register with the CFTC and therefore are not NFA Associate members subject to NFA's jurisdiction.

Adoption of Interpretive Notice

NFA's Board is also adopting an Interpretive Notice entitled *NFA Bylaw 301 and Compliance Rule 2-24: Proficiency Requirements for Swap APs* to provide swap APs with more detailed information on satisfying NFA's Swaps Proficiency Requirements. The Interpretive Notice establishes two proficiency tracks – a Long Track and a Short Track¹ – and specifies the criteria based upon an AP's job function for determining an AP's eligibility for each track. Specifically, the Interpretive Notice requires SD Members to ensure that their APs that engage in certain specified activities in the sales and trading areas satisfy the Long Track. For those SD APs who engage in functions other than those specified, the Interpretive Notice provides the SD with the option of permitting those individuals to satisfy either the Long Track or the Short Track. The Interpretive Notice requires intermediary swap APs to satisfy the Short Track and individuals acting in a supervisory capacity to satisfy the same track required by the individuals being supervised.

The Interpretive Notice also imposes a recordkeeping requirement on SDs and provides for a one-year compliance period to provide current swap APs with sufficient time to satisfy the proficiency requirements. Consistent with NFA's other proficiency requirements, the rule changes and Interpretive Notice require individuals who cease being approved as a swap AP of an intermediary firm, cease being approved as a swap firm that is a Member of NFA² or cease being employed by an SD (or its affiliated entity) that is a Member of NFA for a continuous period of more than two years to again satisfy NFA's Swaps Proficiency Requirements in order to be able to engage in swaps activities at a Member firm.

The Interpretive Notice provides that individuals acting as APs at SDs located outside the U.S., including non-U.S. branch offices of a U.S. SD (Non-U.S. APs), who solely solicit or accept swaps with counterparties that are non-U.S. persons and/or non-U.S. branch offices of U.S. SDs are excluded from NFA's Swaps Proficiency Requirements. NFA's rationale for excluding certain Non-U.S. APs from NFA's Swaps

¹ The Long Track consists of eight modules (swaps products and applications, regulation of the swaps market, onboarding, transactional disclosures, swap dealer anti-fraud and ethical practices, trade execution/clearing/margin, risk management and supervision) and will take approximately eight hours to complete. The Short Track consists of four modules (swaps products and applications, regulation of the swaps market, supervision and intermediary compliance, anti-fraud and other requirements) and will take approximately four hours to complete.

² This refers to individuals that are registered as an FCM, IB, CPO or CTA (*i.e.*, sole proprietorship).

Proficiency Requirements is based upon CFTC Regulation 3.12(h)(iv), which exempts from registration as an AP any individual who engages in AP activities from a location outside the U.S. solely with customers located outside the U.S., as well as the Commission's 2013 cross-border interpretive guidance and policy statement and 2016 proposed rules exploring the cross-border application of the Commission's external business conduct rules to SDs. NFA's framework to exclude certain non-U.S. APs from NFA's Swaps Proficiency Requirements will be set forth in a related FAQ to the Interpretive Notice.

NFA's Swaps Proficiency Requirements Advisory Committee, which was appointed by NFA's Board to advise staff on the development of the Swaps Proficiency Requirements, supported the proposed rule amendments and Interpretive Notice. NFA's Swap Participant, IB, FCM and CPO/CTA Advisory Committees each supported the proposed rule changes and Interpretive Notice for implementing NFA's Swaps Proficiency Requirements. As stated earlier, NFA's Board unanimously approved the proposed rule amendments and the Interpretive Notice.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA. NFA intends to make the proposed amendments to NFA Bylaw 301 and NFA Compliance Rule 2-24 and the proposed Interpretive Notice entitled *NFA Bylaw 301 and Compliance Rule 2-24: Proficiency Requirements for Swap APs* 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,

A handwritten signature in cursive script, reading "Carol A. Wooding".

Carol A. Wooding
Vice President and General Counsel