

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 2

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-7

File No.\* SR - 2018 - \*02

Amendment No. (req for Amendments \*)

Proposed Rule Change by \* National Futures Association  
Pursuant to Rule 19b-7 under the Securities Exchange Act of 1934

Initial \*

Amendment \*

Withdrawal

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Proposed change to the Interpretive Notice to NFA Compliance Rule 2-9: Enhanced Supervisory Requirements:  
Requiring NFA Members to Maintain a Record of All Electronic Written Communications.**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \* Elizabeth

Last Name \* Sheridan

Title \* Senior Attorney

E-mail \* esheridan@nfa.futures.org

Telephone \* (312) 781-1479

Fax

**SRO Governing Body Action**

Describe action on the proposed rule change taken by the members or board of directors or other governing body of the SRO (limit 250 characters, required \*).

On November 16, 2017, NFA's Board of Directors unanimously approved the proposed change to the Interpretive Notice to NFA Compliance Rule 2-9.

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 06/12/2018

President and CEO

By Thomas W. Sexton III

(Name \*)

(Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Thomas W Sexton III,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-7 instructions please refer to the EFFF website.

**Exhibit 1- Notice of Proposed Rule Change (required when Initial)**

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal.

The Notice section of this Form 19b-7 must comply with the guidelines for publication in the Federal Register, as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC and CFTC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases and Commodities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction E, they shall be filed in accordance with Instruction F.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. If such documents cannot be filed electronically in accordance with Instruction E, they shall be filed in accordance with Instruction F.

Exhibit Sent As Paper Document

**Exhibit 4 - Proposed Rule Text**

The self-regulatory organization must attach as Exhibit 4 proposed changes to rule text. Exhibit 4 shall be considered part of the proposed rule change.

**Exhibit 5 - Date of Effectiveness of Proposed Rule Change (required when Initial)**

The self-regulatory organization must attach one of the following:

- CFTC Certification  
 CFTC Request that Review of Proposed Rule Change is not Necessary  
 Request for CFTC Approval of Proposed Rule Change  
 CFTC Determination that Review of Proposed Rule Change is not Necessary  
 Indication of CFTC Approval of Proposed Rule Change

CFTC Determination that Review of the Proposed Rule Change is Not Necessary: Attach a copy of any indication from the CFTC that it has determined that review of the proposed rule change is not necessary.

Exhibit Sent As Paper Document

**Partial Amendment**

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission staff's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-NFA-2018-02)

SELF-REGULATORY ORGANIZATIONS; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Change to the Interpretive Notice to NFA Compliance Rule 2-9: Enhanced Supervisory Requirements: Requiring NFA Members to Maintain a Record of All Electronic Written Communications.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-7 under the Exchange Act<sup>2</sup> notice is hereby given that on June 12, 2018, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On November 27, 2017, NFA also filed this proposed rule change with the Commodity Futures Trading Commission ("CFTC") and requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary. By letter dated December 11, 2017, the CFTC notified NFA of its determination not to review the proposed rule change.<sup>3</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> See letter from Matthew Kulkin, Director CFTC, to Carol A. Wooding, General Counsel, NFA ("Letter").

I. Self-Regulatory Organization's Description and Text of the Proposed Rule Change

NFA's Interpretive Notice to NFA Compliance Rule 2-9 entitled "NFA Compliance Rule 2-9: Enhanced Supervisory Requirements" ("Interpretive Notice") requires NFA Member ("Member") firms that meet certain criteria identified by NFA's Board of Directors ("Board") to comply with specific enhanced supervisory requirements ("Requirements") that are designed to prevent abusive sales practices. NFA's Board is amending the Interpretive Notice to require all Members subject to the Requirements to maintain a record of all electronic written communications between associated persons ("APs") and customers or potential customers, including but not limited to, email, text messages, instant messages, and any other communication that occurs in a chat room or on any social media platform. The proposed rule change also requires all Member firms subject to the Requirements of the Interpretive Notice to prepare a catalog of electronic written communications and for APs to maintain a log of those written electronic communications. The text of the proposed rule change to the Interpretive Notice is found in Exhibit 4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NFA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The

text of these statements may be examined at the places specified in Item IV below. NFA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

Section 15A(k) of the Exchange Act<sup>4</sup> makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.<sup>5</sup> NFA's Interpretive Notice applies to all NFA Members who meet the criteria in the Interpretive Notice, including those that are registered as security futures brokers or dealers under Section 15(b)(11) of the Exchange Act.

NFA's Interpretive Notice to Compliance Rule 2-9(b) authorizes NFA's Board to require Members to adopt certain enhanced supervisory requirements based upon the regulatory background of either its APs or principals. The Interpretive Notice is designed to, among other things, minimize the likelihood of a Member engaging in deceptive sales practices. One of the more important Requirements with respect to minimizing sales practice problems is the requirement that firms make audio recordings of all telephone conversations between APs and

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<sup>4</sup> 15 U.S.C. 78o-3(k).

<sup>5</sup> 15 U.S.C. 78o(b)(11).

customers. At the time this Interpretive Notice was adopted, telephone communications were the most common method that APs used to solicit customers. However, since that time, other electronic written communications, such as text or instant messages, have become one of the primary methods of communication between APs and customers. NFA's Interpretive Notice, however, does not specifically require a Member firm subject to the Requirements to maintain a record of electronic written communications, prepare a catalog of electronic written communications, or require its APs to maintain a log of those communications. NFA relies on the catalog of communications and the AP sales solicitation logs when examining a Member for compliance with the Requirements.

Given the popularity of electronic written communications, NFA's Board is amending the Interpretive Notice to explicitly state that all Members subject to the Requirements are required to maintain a record of all electronic written communications, including but not limited to, emails, text messages, instant messages, and any other communication that occurs in a chat room or on any social media platform. NFA's Board is also amending the Interpretive Notice to require Member firms subject to the Requirements to prepare a catalog of electronic written communications and require APs to maintain a log of those written electronic communications. This modification to the Interpretive Notice merely parallels the current cataloging and AP log requirement for

telephone sales solicitations and ensures that, for firms subject to the Requirements, all sales solicitations—regardless of the method by which they occur—are maintained, cataloged, and logged by the firm's APs.

Amendments to the Interpretive Notice were previously filed with the SEC in SR-NFA-2002-07, Exchange Act Release No. 34-47147 (Jan. 9, 2003), 68 FR 2383 (Jan. 16, 2003); SR-NFA-2003-01, Exchange Act Release No. 34-47533 (Mar. 19, 2003), 68 FR 14733 (March 26, 2003); SR-NFA-2005-01, Exchange Act Release No. 34-52808 (Nov. 18, 2005), 70 FR 71347 (Nov. 28, 2005); SR-NFA-2006-01 Exchange Act Release No. 34-53568 (Mar. 29, 2006), 71 FR 16850 (Apr. 4, 2006); SR-NFA-2007-03, Exchange Act Release No. 34-55710 (May 4, 2007), 72 FR 26858 (May 11, 2007); SR-NFA-2007-07, Exchange Act Release No. 34-57142 (Jan. 14, 2008), 73 FR 3502 (Jan. 18, 2008); SR-NFA-2008-02, Exchange Act Release No. 34-58709 (Oct. 1, 2008), 73 FR 59011 (Oct. 8, 2008); SR-NFA-2010-04, Exchange Act Release No. 34-63602 (Dec. 22, 2010), 76 FR 202 (Jan. 3, 2011); and SR-NFA-2014-05, Exchange Act Release No. 34-72514 (July 2, 2014), 79 FR 39046 (July 9, 2014).

## 2. Statutory Basis

The proposed rule change is authorized by, and consistent with, Section 15A(k)(2)(B) of the Exchange Act.<sup>6</sup> That Section requires NFA to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

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<sup>6</sup> 15 U.S.C. 78o-3(k).

general, to protect investors and the public interest, including rules governing sales practices and advertising of security futures products. The proposed rule change accomplishes this by imposing enhanced supervisory requirements on Member firms that meet certain criteria that NFA's Board has determined indicates a greater potential for sales practice fraud to occur.

B. Self-Regulatory Organization's Statement on Burden on Competition

At first glance, the proposed rule change appears to impose additional burdens on NFA Members subject to the Requirements. In practice, however, CFTC Regulation 1.35<sup>7</sup> requires Futures Commission Merchants ("FCMs"), Retail Foreign Exchange Dealers ("RFEDs"), and Introducing Brokers ("IBs"), as well as Commodity Pool Operators ("CPOs") and Commodity Trading Advisors ("CTAs") that are members of a designated contract market ("DCM") or swaps execution facility ("SEF") to maintain a record of electronic written communications. Therefore, the proposed rule imposes no new or additional requirements on FCMs, RFEDs and IBs as well as CTAs and CPOs that are Members of a SEF or DCM.

However, CFTC Regulation 1.35 does not apply to CPOs and CTAs that are not a member of a DCM or SEF. NFA and NFA's Member Committees realize that this proposed rule would

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<sup>7</sup> 17 CFR 1.35.



impose an additional recordkeeping requirement and additional costs to CPOs and CTAs that are not a member of a DCM or a SEF. However, NFA and NFA's Member Committees believe that this consideration is outweighed by the fact that, in NFA's experience, firms that qualify to adopt the Requirements are more likely to engage in deceptive sales solicitations and requiring these firms to maintain records of electronic written communications may reduce the likelihood of deceptive sales practices. Therefore, this burden is necessary and appropriate to help minimize deceptive sales solicitations.

Additionally, the other portion of the proposed rule change – the cataloging and AP log requirement for electronic written communication – poses minimal burden on impacted firms because it merely parallels the current cataloging and AP log requirement for telephone sales solicitations. This minimal burden is necessary and appropriate to minimize the likelihood of abusive sales practices.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NFA worked with Member Committees in developing the proposed rule change. NFA did not, however, publish the proposed rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On December 11, 2017, the CFTC notified NFA of its determination not to review the proposed rule change.<sup>8</sup> The proposed rule change became effective on January 31, 2018.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.<sup>9</sup>

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NFA-2018-02 on the subject line.

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<sup>8</sup> See Letter, *Supra* note 3.

<sup>9</sup> 15 U.S.C. 78s(b)(1).

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NFA-2018-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NFA-2018-02 and should

be submitted on or before ***[insert date 21 days from publication in the  
Federal Register.]***

For the Commission, by the Division of Trading and Markets,  
pursuant to delegated authority.<sup>10</sup>

Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(73).

File No. SR-NFA-2018-02

**Exhibit 2**

(Not applicable)

File No. SR-NFA-2018-02

**Exhibit 3**

(Not applicable)

**Exhibit 4**

**INTERPRETIVE NOTICES**

\* \* \*

**COMPLIANCE RULE 2-9: ENHANCED SUPERVISORY REQUIREMENTS**

\* \* \*

**INTERPRETIVE NOTICE**

\* \* \*

**II. OBLIGATIONS OF MEMBERS SUBJECT TO THE ENHANCED SUPERVISORY REQUIREMENTS**

**A. Recording of all conversations and maintaining electronic written communications with existing and potential customers**

Those Member firms meeting the criteria requiring them to adopt the enhanced supervisory requirements will be required to make complete audio recordings of all telephone conversations that occur between their APs and both existing and potential customers, including existing and potential retail forex customers of Members subject to NFA Compliance Rule 2-36. Additionally, those Members will be required to maintain a record of all electronic written communications that occur between their APs and customers or potential customers. Electronic written communications include, but are not limited to, email, text messages, instant messages conducted via any web-based messaging system (including instant messages sent via a social media application), and any other communication that occurs in a chat room or on any social media platform. The Board believes that recording these conversations and requiring Members to maintain records of electronic written communications provides these Members with the best opportunity to monitor closely the activities of their APs and also provides these Members with complete and immediate feedback on each AP's method of soliciting customers. Members subject to the enhanced supervisory requirements [that are required to record their conversations] must retain such audio recordings and records of electronic written communications for a period of five years from the date each recording is created or written electronic communication occurs and the recordings and/or records of electronic written communications shall be readily accessible during

the first two years of the five-year period. In retaining the recorded conversations or records of electronic written communications, Member firms must catalog the recordings and electronic written communications by AP and date. Additionally, any Member firm meeting the criteria must require all its APs to maintain a daily log for sales solicitations which reflects at a minimum the identity of each customer or prospective customer the AP spoke with or transmitted electronic written communications to on each day and the method of communication. A Member firm must be able to promptly produce, upon request from NFA or the CFTC, all conversations or records of electronic written communications relating to a specific AP, and only that AP, for a given date. Members that are required to record or maintain records of electronic communications under this Interpretive Notice are further required to promptly provide NFA or the CFTC with appropriate resources for listening to their recordings or viewing the records of electronic communications upon request.

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#### **D. Written supervisory procedures**

Those Members meeting the criteria shall have written supervisory procedures that include the titles, registration status and locations of the firm's supervisory personnel as these relate to the firm's commodity futures business, retail forex business, and applicable securities laws and regulations for the trading of security futures products. The written procedures must include at a minimum:

- a description of the steps taken to supervise and monitor calls which identify how often monitoring of recordings will take place; who will conduct the monitoring; and how the results of monitoring will be documented;
- specific information identifying the recording equipment being used;
- a description of the steps taken to supervise and monitor APs' electronic written communications with customers which identify how the Member will monitor them, how often the Member will monitor them, who will conduct the monitoring and how the results of that monitoring will be documented;
- a description of the method for cataloging and maintaining recordings and written electronic communications; and
- a description and sample format of the daily logs prepared by APs that includes, at a minimum, the identity of each customer or prospective customer the AP spoke or transmitted an electronic written communication with on each day and the method of communication.

Member firms shall also maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which the designation is or was effective. Additionally, a Member meeting the criteria



shall file with NFA's Compliance Department a report relating to the Member firm's compliance with the supervisory requirements contained herein within 15 days after the end of each calendar quarter. Member firms shall retain the internal record and report(s) for a period of five years, the first two years in an easily accessible place.

\* \* \*

**Exhibit 5**

- (a) November 27, 2017 letter from Carol A. Wooding to Christopher J. Kirkpatrick.
- (b) December 11, 2017 letter from Matthew Kulkin to Carol A. Wooding.



November 27, 2017

**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's  
Interpretive Notice: *Compliance Rule 2-9: Enhanced Supervisory  
Requirements*

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's Interpretive Notice entitled *Compliance Rules 2-9: Enhanced Supervisory Requirements*. NFA's Board of Directors ("Board") unanimously approved the proposal on November 16, 2017.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to 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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**INTERPRETIVE NOTICES**

\* \* \*



Mr. Christopher J. Kirkpatrick

November 27, 2017

## COMPLIANCE RULE 2-9: ENHANCED SUPERVISORY REQUIREMENTS

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### INTERPRETIVE NOTICE

\* \* \*

## II. OBLIGATIONS OF MEMBERS SUBJECT TO THE ENHANCED SUPERVISORY REQUIREMENTS

### A. Recording of all conversations and maintaining electronic written communications with existing and potential customers

Those Member firms meeting the criteria requiring them to adopt the enhanced supervisory requirements will be required to make complete audio recordings of all telephone conversations that occur between their APs and both existing and potential customers, including existing and potential retail forex customers of Members subject to NFA Compliance Rule 2-36. Additionally, those Members will be required to maintain a record of all electronic written communications that occur between their APs and customers or potential customers. Electronic written communications include, but are not limited to, email, text messages, instant messages conducted via any web-based messaging system (including instant messages sent via a social media application), and any other communication that occurs in a chat room or on any social media platform. The Board believes that recording these conversations and requiring Members to maintain records of electronic written communications provides these Members with the best opportunity to monitor closely the activities of their APs and also provides these Members with complete and immediate feedback on each AP's method of soliciting customers. Members subject to the enhanced supervisory requirements that are required to record their conversations must retain such audio recordings and records of electronic written communications for a period of five years from the date each recording is created or written electronic communication occurs and the recordings and/or records of electronic written communications shall be readily accessible during the first two years of the five-year period. In retaining the recorded conversations or records of electronic written communications, Member firms must catalog the recordings and electronic written communications by AP and date. Additionally, any Member firm meeting the criteria must require all its APs to maintain a daily log for sales solicitations which reflects at a minimum the identity of each customer or prospective customer the AP spoke with or transmitted electronic written communications to on each day and the method of communication. A Member firm must be able to promptly produce, upon request from NFA or the CFTC, all conversations or records of electronic written



Mr. Christopher J. Kirkpatrick

November 27, 2017

communications relating to a specific AP, and only that AP, for a given date. Members that are required to record or maintain records of electronic communications under this Interpretive Notice are further required to promptly provide NFA or the CFTC with appropriate resources for listening to their recordings or viewing the records of electronic communications upon request.

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#### **D. Written supervisory procedures**

Those Members meeting the criteria shall have written supervisory procedures that include the titles, registration status and locations of the firm's supervisory personnel as these relate to the firm's commodity futures business, retail forex business, and applicable securities laws and regulations for the trading of security futures products. The written procedures must include at a minimum:

- a description of the steps taken to supervise and monitor calls which identify how often monitoring of recordings will take place; who will conduct the monitoring; and how the results of monitoring will be documented;
- specific information identifying the recording equipment being used;
- a description of the steps taken to supervise and monitor APs' electronic written communications with customers which identify how the Member will monitor them, how often the Member will monitor them, who will conduct the monitoring and how the results of that monitoring will be documented;
- a description of the method for cataloging and maintaining recordings and written electronic communications; and
- a description and sample format of the daily logs prepared by APs that includes, at a minimum, the identity of each customer or prospective customer the AP spoke or transmitted an electronic written communication with on each day and the method of communication.

Member firms shall also maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which the designation is or was effective. Additionally, a Member meeting the criteria shall file with NFA's Compliance Department a report relating to the Member firm's compliance with the supervisory requirements contained herein within 15 days after the end of each calendar quarter. Member firms shall retain the internal record and report(s) for a period of five years, the first two years in an easily accessible place.

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## EXPLANATION OF PROPOSED AMENDMENTS

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NFA's Interpretive Notice to Compliance Rule 2-9 entitled *Compliance Rule 2-9: Enhanced Supervisory Requirements* (Notice) requires a Member to adopt certain enhanced supervisory requirements (Requirements) based upon the regulatory background of either its associated persons (APs) or principals. The Notice is designed to, among other things, minimize the likelihood of a Member engaging in deceptive sales practices. One of the more important Requirements with respect to minimizing sales practice problems is the requirement that firms make audio recordings of all telephone conversations between APs and customers. At the time this Notice was adopted, telephone communications were the most common method that APs used to solicit customers. However, since that time, other electronic written communications, such as text or instant messages, have become one of the primary methods of communication between APs and customers. NFA's Notice, however, does not specifically require a Member firm subject to the Requirements to maintain a record of electronic written communications, prepare a catalog of electronic written communications and require its APs to maintain a log of those communications. NFA relies on the catalog of communications and the AP sales solicitation logs when examining a Member for compliance with the Requirements.

Given the popularity of electronic written communications, NFA's Board is amending the Notice to explicitly state that all Members subject to the Requirements are required to maintain a record of all electronic written communications, including but not limited to, emails, text messages, instant messages and any other communication that occurs in a chat room or on any social media platform. Likewise, NFA's Board is amending the Notice to require Member firms subject to the Requirements to prepare a catalog of electronic written communications and require APs to maintain a log of those written electronic communications. This modification to the Notice merely parallels the current cataloging and AP log requirement for telephone sales solicitations and ensures that, for firms subject to the Requirements, all sales solicitations—regardless of the method by which they occur—are maintained, cataloged and logged by the firm's APs.

NFA's FCM, IB and CPO/CTA Advisory Committees support the proposed amendments to the Interpretive Notice. NFA's Board unanimously approved the proposed amendments to the Interpretive Notice.



Mr. Christopher J. Kirkpatrick

November 27, 2017

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's Interpretive Notice entitled *Compliance Rule 2-9: Enhanced Supervisory Requirements* 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.

Respectfully submitted,

A handwritten signature in black ink that reads "Carol A. Wooding". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Carol A. Wooding  
Vice President and General Counsel

cc: Matthew B. Kulkin  
Frank Fisanich  
Tom Smith

M:jac/Submission Ltrs/Proposed Amendments to NFA Interpretive Notice C.R. 2-9 Enhanced Supervisory Requirements



**COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5213  
[mkulkin@cftc.gov](mailto:mkulkin@cftc.gov)

Division of Swap Dealer  
and  
Intermediary Oversight

Matthew Kulkin  
Director

Carol A. Wooding, Esq.  
Vice President and General Counsel  
National Futures Association  
300 South Riverside Plaza, Suite 1800  
Chicago, Illinois 60606

December 11, 2017

Re: National Futures Association: NFA Compliance Rule 2-9: Enhanced Supervisory Requirements – Records of Electronic Communications.

Dear Ms. Wooding:

By letter dated November 27, 2017 and received November 28, 2017, the National Futures Association (“NFA”) submitted to the Commodity Futures Trading Commission (the “Commission”), pursuant to Section 17(j) of the Commodity Exchange Act (the “Act”), its proposal to amend NFA’s Compliance Rule 2-9: Enhanced Supervisory Requirements to require retention of records of electronic communications (the “Proposal”). In its letter, NFA invoked the “ten-day” provision of Section 17(j) of the Act, and stated that it intended to make the Proposal effective ten days after receipt of the letter by the Commission, unless the Commission determined to review the Proposal for approval and notified NFA of this determination.

Please be advised that as of this date the Commission has not determined to review the Proposal, as provided under Section 17(j) of the Act.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew Kulkin", is written over the typed name.

Matthew Kulkin

Director

Division of Swap Dealer and  
Intermediary Oversight

