



U.S. COMMODITY FUTURES TRADING COMMISSION

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**Office of the
Secretariat**

Melissa D. Jurgens
Secretary of the Commission

January 8, 2014

VIA MAIL

Daniel J. Roth
President and CEO
National Futures Association
300 S. Riverside Plaza, #1800
Chicago, Illinois 60606-6615

Re: Amended Regulation Governing Suspicious Activity Reports filed by Futures
Commission Merchants and Introducing Brokers (31 CFR § 1026.320)

Dear Mr. Roth:

On December 3, 2010, the Financial Crimes Enforcement Network ("FinCEN") published in the *Federal Register* (75 Fed. Reg. 75593) amendments to its regulations governing suspicious activity reports ("SARs"). The amendments interpret the general prohibition against the disclosure of SARs set forth in the Bank Secrecy Act ("BSA"), and the SAR regulation applicable to futures commission merchants ("FCMs") and introducing brokers in commodities ("IBs"). As relevant herein, the amendments clarify that FCMs and IBs are permitted to make SARs and related SAR information available to any self-regulatory organization that examines the FCM or IB for compliance with the requirements of 31 CFR § 1026.320 (the "SAR Regulation"), *upon the request of the Commission*.

In accordance with these amendments, the Commission is requesting that all FCMs and IBs that are subject to examination by NFA for compliance with the requirements of the SAR Regulation make all (1) SARs; (2) information revealing the existence or non-existence of SARs; and (3) SAR supporting documentation available to NFA upon request of NFA. Such a request may relate to any examination, investigation or for risk assessment purposes.

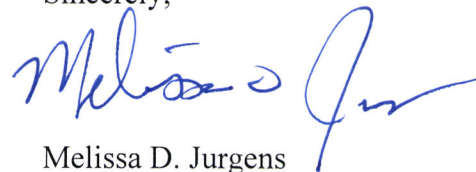
Registered commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") are not obligated by the BSA to prepare and file SARs; however, they may file SARs voluntarily under 31 U.S.C. § 5318(g)(2)(A), which extends to them the BSA's prohibition on disclosure of a SAR, and under 31 U.S.C. § 5318(g)(3)(A), which extends the safe harbor from liability for filing SARs. The amended SAR Regulation does not apply to SARs filed on a voluntary basis by CPOs and CTAs. However, the BSA does extend the safe harbor to a CPO or CTA that provides a SAR or SAR-related information to a government agency, such as the

Commission. Accordingly, the Commission hereby requests that all registered CPOs and CTAs that voluntarily file a SAR make (1) SARs; (2) information revealing the existence or non-existence of SARs; and (3) SAR supporting documentation available to the Commission upon request of NFA. Such a request may relate to any examination, investigation or for risk assessment purposes.

The Commission cautions that revised Regulation 1026.320(e)(3) prohibits NFA or any of its directors, officers, employees or agents from disclosing a SAR or any information revealing a SAR's existence, except as necessary to fulfill self-regulatory duties upon the request of the Commission, in a manner consistent with Title II of the BSA. Should NFA wish to make a disclosure of a SAR or related information to an outside party, NFA will need to seek the authorization of the Commission, and it may do so by directing its request to the Director of the Division of Swap Dealer and Intermediary Oversight or its successor.

This letter serves to confirm the Commission's request that FCMs, IBs, CPOs and CTAs provide SARs and SAR related information to NFA or the Commission, as the case may be, and the Commission expects NFA will share this letter with its membership as appropriate.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melissa D. Jurgens", with a stylized flourish at the end.

Melissa D. Jurgens

cc: Gary Barnett, DSIO
Jennifer Shasky Calvery, FinCEN