

December 2, 2008

**Via Federal Express**

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

Re: National Futures Association: Forex Customer Statements – Proposed Adoption of Compliance Rule 2-44 and Amendments to the Interpretive Notice Regarding Forex Transactions\*

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”) proposed Compliance Rule 2-44 regarding Forex Customer Statements and related amendments to the Interpretive Notice regarding Forex Transactions. This proposal was approved by NFA’s Board of Directors (“Board”) on November 20, 2008. NFA respectfully requests Commission review and approval.

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**PROPOSED AMENDMENTS**

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

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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 2-44. FOREX CUSTOMER STATEMENTS**

Forex Dealer Members must provide customers with confirmations, daily statements, and monthly statements as provided in this rule.

### **(a) Confirmations**

Written confirmations must be provided to customers within one business day after any activity in the customer's account, including offsetting transactions, rollovers, deliveries, option exercises, option expirations, trades that have been reversed or adjusted, and monetary adjustments. The confirmations must contain the following information regarding the transaction and the funds in the account:

- (1) Transaction date;
- (2) Transaction type (e.g., new position, offsetting position, rollover, adjustment);
- (3) Currency pair
- (4) Buy or sell (if a new or offsetting position);
- (5) Size
- (6) Price or premium (for new or offsetting positions or price adjustments);
- (7) Price or premium change (for price adjustments);
- (8) Monetary adjustments (debit or credit);
- (9) Net profit or loss for offsetting positions; and
- (10) Charges for each transaction (e.g., rollover interest and/or fees).

### **(b) Daily Statements**

Daily statements must show the account equity as of the end of the previous day. The daily statements may be provided electronically as long as they are readily accessible to customers. The daily statements may be combined with the confirmations but, in that event, they may not be provided electronically without the customer's consent.

**(c) Monthly or Quarterly Statements**

Monthly statements are required for all accounts that have open positions at the end of the month or changes in the account balance or equity since the prior statement. Quarterly statements are required for all other open accounts. The monthly or quarterly statements must contain the following information regarding the transactions during the reporting period and the funds in the account:

- (1) The account equity at the beginning of the reporting period;
- (2) All initiating or offsetting transactions, deliveries, option exercises, or option expirations that occurred during the reporting period, with the following information for each: date, currency pair, buy or sell, size, and price or premium (with any price or premium adjustment noted);
- (3) All open positions in the account, with the following information for each position: date initiated, currency pair, long or short, size, price or premium at which it was initiated (with any price or premium adjustment noted), and the unrealized profit or loss;
- (4) All deposits and withdrawals during the reporting period;
- (5) All other monetary adjustments (debits and credits) to the account;
- (6) The amount of cash in the account (excluding non-cash collateral and unrealized profits and losses);
- (7) A breakdown by type of all fees and charges during the period, including commissions and interest expense or rollover fees; and
- (8) The account equity at the end of the reporting period.

**(d) Options**

For options transactions, Forex Dealer Members must provide the following additional information:

- (1) On confirmations and monthly or quarterly statements, strike price and expiration date; and
- (2) For open positions on monthly or quarterly statements, the value of the option marked to the market.

**(e) Account Equity**

Each daily, monthly, or quarterly statement must prominently display the account equity. The account equity is the sum of all realized profits and losses, all unrealized profits and losses, and any other cash and collateral in the account.

**(f) Electronic Delivery**

Daily statements may be provided on-line or by other electronic means as long as they are readily accessible to customers. Confirmations and monthly/quarterly statements may be provided on-line or transmitted by other electronic means if the customer consents to the specific method used.

**(g) Adjustments**

For purposes of this Rule, the term "adjustment" means any change to the price or premium of an initiating or offsetting transaction and any debit or credit to the account that has the same effect (monetary adjustment).

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## INTERPRETIVE NOTICES

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## FOREX TRANSACTIONS

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### B. COMPLIANCE RULE 2-36

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#### **2. *Reporting*—Forex Dealer Members must provide forex customers with timely and accurate notice of the status of their accounts.**

Forex Dealer Members should provide written confirmations within one business day after any activity in the customer's account, including offsetting transactions, rollovers, ~~and deliveries,~~ option exercises, option expirations, trades that have been reversed or adjusted, and monetary adjustments. The confirmation should include the information required by Compliance Rule 2-44 ~~details of the transaction as well as all commissions, costs, fees and other charges incurred by the customer in connection with the transaction, including commissions and similar charges collected on behalf of third parties who introduce business to or manage accounts carried by the Forex Dealer Member.~~

Forex Dealer Members should provide regular monthly ~~summaries~~ of statements showing all forex transactions and other account activity to customers for all accounts that have open positions at the end of the month or changes in the account balance or equity since the prior statement. Forex Dealer Members should provide ~~summaries~~ statements at least quarterly for all other open accounts. The monthly or quarterly

statements should include the information required by Compliance Rule 2-44.

With the customer's consent, eConfirmations and monthly/quarterly statements summaries may be provided on-line or transmitted by other electronic means if the customer consents to the specific method used.

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### **EXPLANATION OF PROPOSED AMENDMENTS**

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Although FDMs must currently provide confirmations and monthly statements to customers, the content requirements are fairly general. The NFA Interpretive Notice entitled "Forex Transactions" states that confirmations must "include the details of the transaction as well as all commissions, costs, fees and other charges incurred by the customer in connection with the transaction," and monthly statements must merely be "summaries of all forex transactions and other account activity."

Unfortunately, our experience has found that FDM confirmations and monthly statements lack uniformity and are hard to follow, and some are missing information that NFA believes is essential for understanding the transactions and the status of the account. Further, in our experience, the harder a statement is to understand, the easier it is for a broker or account manager to mislead a customer about the value of the customer's account and the success of the customer's trades.

The FDM statements contrast with FCM statements for on-exchange futures transactions, where the more detailed CFTC requirements have produced greater consistency and clarity. Therefore, new Compliance Rule 2-44 spells out the information that must be included in FDM confirmations and monthly statements.

NFA solicited comments on the proposed rule from FDMs. All of the commenters supported the rule, although several suggested modifications.

Proposed Compliance Rule 2-44 is modeled after CFTC Regulation 1.33, which governs on-exchange transactions. There are several significant differences, however.

First, in addition to the transactions that require a confirmation under Regulation 1.33, proposed Compliance Rule 2-44 requires confirmations for rollovers and any adjustments to an account, including those that debit or credit the account rather than changing the price. The forex interpretive notice currently requires confirmations for rollovers, and many FDMs provide confirmations for price and account adjustments even though it is not technically required at this time.

Second, Regulation 1.33 requires monthly statements to show all options transactions during the month even if the position is closed by the end of the month, but this information is not required for futures contracts. NFA believes that the same information should be provided for both forex options and non-options contracts, so we are proposing that the monthly statement show all transactions (i.e., initiating and offsetting) as well as all open positions. We are not, however, requiring firms to show rollovers on the monthly statement as that would provide an unwieldy amount of information and make it harder to locate the initiating and offsetting transactions.

Third, Regulation 1.33 requires monthly statements to show how much an open option is in-the-money, if it is. NFA believes that the statements should be consistent for both in-the-money and out-of-the-money options, and we originally proposed adding a requirement that monthly statements also show how much an option is out-of-the-money.

Two FDMs commented that it is unnecessary for monthly statements to show how much an option is in or out-of-the-money, since the statements will include enough information for customers to calculate the option's status. On further consideration, NFA has concluded that requiring statements to show the amount an option is in or out-of-the-money provides diminishing returns. Therefore, the proposed rule does not include this requirement.

On another issue, some brokers point customers to the cash balance in the account when those customers ask how much the account is worth. Since the cash balance does not include unrealized profits and losses, it presents a distorted and misleading picture of account value. Therefore, the proposed amendments require FDMs to provide daily statements that show the account equity as of the previous day and to prominently display the account equity on daily statements, confirmations, and monthly statements. Proposed NFA Compliance Rule 2-44 defines account equity as

Mr. David Stawick

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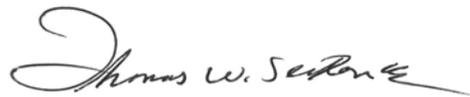
the sum of all realized profits and losses, all unrealized profits and losses, and any other cash and collateral in the account.

Since virtually all retail forex trading is done online, every FDM offers its customers access to daily information on their trades and the status of their accounts. NFA believes that this daily access should include information on the value of the account, as mentioned above, so Compliance Rule 2-44 requires FDMs to provide daily information on the account equity.

Although the rule would allow FDMs to provide electronic access to this daily information, commenters suggested that they should also be allowed to provide electronic access to confirmations and monthly statements rather than being required to push them out to customers (electronically or otherwise). Electronic access is the common practice, and forex customers are used to it. Therefore, the delivery requirements permit electronic access where the customer consents to that delivery method.

NFA respectfully requests that the Commission review and approve proposed Compliance Rule 2-44 regarding Forex Customer Statements and the related amendments to the Interpretive Notice regarding Forex Transactions.

Respectfully submitted,



Thomas W. Sexton  
Vice President and General Counsel

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\* The proposed adoption of Compliance Rule 2-44 and amendments to the Interpretive Notice regarding Forex Transactions become effective June 1, 2009.