December 12, 2014

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: Prohibition of Loans by Commodity Pools to CPOs and Related Entities – Amendments to the Interpretive Notice to NFA Compliance Rule 2-45*

Dear Mr. Kirkpatrick:

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 the Interpretive Notice to NFA Compliance Rule 2-45 entitled Prohibition of Loans by Commodity Pools to CPOs and Related Entities. NFA's Board of Directors ("Board") approved the proposal on November 20, 2014.

NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("CEA") and plans to make the 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 AMENDMENT
(additions are underscored and deletions are ~~stricken through~~)

INTERPRETIVE NOTICES

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NFA COMPLIANCE RULE 2-45:

Mr. Christopher J. Kirkpatrick December 12, 2014

PROHIBITION OF LOANS BY COMMODITY POOLS TO CPOS AND RELATED ENTITIES

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NFA has taken a number of Member Responsibility Actions (MRAs) against commodity pool operators (CPOs) and CPO principals who directly or indirectly loaned or advanced pool assets to themselves or an affiliated person or entity. Many of these arrangements were used by these principals to purchase luxury items, while others went to related entities that did not have sufficient assets to repay the loans. In each case, the transaction resulted in significant losses to participants' funds.

The Board of Directors has determined that direct or indirect loans or advances from pools to their CPOs, the CPO's principal(s), or related entities should be prohibited. Therefore, NFA Compliance Rule 2-45 prohibits CPOs from permitting a commodity pool to use any means to make a direct or indirect loan or advance of pool assets to the CPO or any other affiliated person or entity.

NFA understands that certain CPOs exempt from registration prior to December 31, 2012 may have caused pools that they operate to make these types of loan or advance arrangements prior to the CPOs becoming NFA Members and subject to NFA Compliance Rule 2-45. A CPO is required to notify NFA of these existing arrangements within thirty (30) days of either (i) the effective date of any amendments to Compliance Rule 2-45 or this Interpretive Notice or (ii) becoming an NFA Member CPO, whichever occurs latest.

These arrangements violate NFA's existing compliance rules if the arrangements are not consistent with the pool's current disclosure document or offering materials and both the loan(s) or advance(s) and the conflict of interest are not fully disclosed to participants. Existing arrangements also violate NFA's rules if the loan or advance is not secured by marketable, liquid assets (e.g. a CPO participant's pro-rata interest in the pool's liquid assets) and, therefore, the arrangement could have a material effect upon the pool's ability to meet its obligations to participants.

NFA has received a number of inquiries from ~~prospective~~ CPOs about whether ~~certain~~ the following transactions, which may be engaged in on a regular basis and as part of the normal course of business, are prohibited by Compliance Rule 2-45~~.~~: ~~Certain pools~~

~~engage in these transactions on a regular basis as part of their normal course of business. Transactions that are:~~

(i) those associated with short securities sales, cash financings, guarantee obligations, repurchase or reverse-repurchase agreements, wholly-owned subsidiaries, ~~and~~ tax-related distributions engaged in by a CPO operating a pool that is a registered investment company (RIC), business development company (BDC), exempt pursuant to CFTC Regulations 4.7 or 4.13(a)(3), excluded from registration pursuant to Sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (ICA) or securities registered under the Securities Act of 1933; or

(ii) those engaged in pursuant to a loan arrangement permitted by the ICA, exemptive rules under the ICA, an exemptive order issued by the Securities and Exchange Commission (SEC) or in accordance with a no-action letter issued by SEC staff under Section 17 or Section 57 of the ICA by a CPO operating a pool that is a RIC or BDC~~;~~.

Provided these transactions ~~which~~ are engaged in under the circumstances described below, as applicable, they are not considered a prohibited loan or advance under NFA Compliance Rule 2-45. Furthermore, Member CPOs are reminded of their obligation pursuant to NFA Compliance Rules 2-10 and 2-5 to make any books and records available upon request to NFA relating to any of the transactions described below, including the books and records of any wholly-owned subsidiary of a commodity pool.

Certain Securities Borrowings/Securities Loans

In order to take a short position in a security, a pool must locate and borrow the security that is being sold short and deliver it to the purchaser in order to settle the short sale. A pool that is selling a security short may locate and borrow the security from a pool operated by the same CPO — from which the security can be easily located — since the CPO of both pools is fully aware of the securities that are available in the lending pool's portfolio. This type of transaction would not violate Compliance Rule 2-45 provided that no later than the close of business on the day of the securities loan, the pool lending the security has received from the pool borrowing the security collateral with a market value at least equal to the market value of the borrowed security.

Securities Loans for Cash Financing

A pool may raise cash using otherwise idle securities positions held by it by "loaning" these securities to an affiliate as part of a prime brokerage service, and receiving cash based on the market value of these securities. These transactions are typically documented and effected in accordance with a standard form agreement — Master Securities Loan Agreement (MSLA) — provided to the industry by the Securities Industry and Financial Markets Association. Although the transaction is documented as a securities loan, from the pool's perspective the transaction involves the borrowing of cash from its affiliate secured by the pool's long securities position. This type of transaction does not violate NFA Compliance Rule 2-45, provided that: (i) the transaction is cleared by an affiliated prime broker that is registered with the Securities and Exchange Commission as a broker-dealer, is a member of FINRA, the Depository Trust Company and the National Securities Clearing Corporation; and (ii) the transaction is documented under a MSLA.

Guarantee Obligations

One or more pools may make a direct or indirect debt or equity investment in a subsidiary or other affiliated entity for tax, legal, regulatory, or other reasons. Because, among other reasons, the entity will often have a limited amount of capital, the pool(s) will often guarantee or otherwise support (e.g., by pledging collateral) certain of the entity's obligations and a pool will provide such guarantees or support in accordance with the pool's relative investment in the entity from time to time. If the obligee draws upon the guarantee or other credit support, then the amount drawn may become a debt to the pool(s). This type of investment and guarantee or other credit support does not violate NFA Compliance Rule 2-45 provided that a pool is not liable for an amount that is materially above its proportionate share (based on the pool's relative investment in the entity from time to time).

Wholly-Owned Subsidiaries of a Pool

A CPO may for tax, legal, regulatory, or other similar reasons, cause a loan to be made from a pool to a wholly-owned subsidiary[1], without violating Compliance Rule 2-45 provided that:

[1] For purposes of this exclusion only, a subsidiary will be considered to be wholly-owned even though a general partner, managing member, or similar entity (collectively, a “managing entity”) controlled by the CPO owns a small equity interest (i.e., less than

(a) The CPO causes a single pool to make a loan directly or indirectly[2] to a single wholly-owned subsidiary that is formed for trading or investment purposes and is operated by a registered CPO provided that: (1) the subsidiary is formed solely to benefit the pool that made the loan; (2) the financial statements of the subsidiary and the pool making the loan are prepared in accordance with U.S. GAAP[3]; (3) any outside participant in the pool qualifies as a qualified eligible participant[4]; (4) the loan is not used for a purpose that is otherwise prohibited by NFA rules (*e.g.,* as a conduit for an indirect loan to the CPO or an affiliate of the CPO); or

(b) The CPO or affiliated CPOs cause pools[5] to make loans directly or indirectly to a wholly-owned subsidiary (collectively owned by the pools) that is a registered broker-dealer and/or registered futures commission merchant provided that: (1) the subsidiary is formed solely to provide clearing and other prime brokerage services to the pools that made the loan; (2) the pools make any loans on the same terms; (3) the loan amounts are proportionate in size to each pool's relative equity ownership of the subsidiary; (4) any outside pool participants in the pools making the loans receive a separate complete disclosure of the terms of the loan,

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5%) in the subsidiary. The managing member's equity interest in the subsidiary should be in proportion to the size of the managing member's relative debt/equity contribution to the subsidiary. Moreover, if a managing entity makes a loan to the subsidiary, then the managing entity's loan should be on terms no more favorable than the pool(s).

[2] For example, a pool may make a loan to a first-tier wholly owned subsidiary that, in turn, makes an equity contribution or loan to a second-tier wholly owned subsidiary.

[3] The financial statements of the subsidiary and the pool making the loan may be prepared, as applicable, in accordance with International Financial Reporting Standards provided it is permitted by the CFTC's rules and requirements.

[4] The provision relating to qualified eligible participants does not apply to pools registered under the Investment Company Act of 1940.

[5] Provided the conditions in this subsection are satisfied, a single CPO may cause a loan to be made from a single pool to a wholly-owned subsidiary of the pool for tax, legal, regulatory, or other similar reasons.

> including but not limited to, the loan's principal amount, interest rate and repayment schedule, and any other material information regarding the transaction prior the loan(s) being made; (5) any outside pool participants in a pool making a loan(s) is given a right to redeem in full prior to the loan(s) being made; (6) the loans are not used for a purpose that is otherwise prohibited by NFA rules (*e.g.,* as a conduit for an indirect loan to the CPO or an affiliate of the CPO); and (7) the CPO provides NFA's Compliance Department with written notification of the loan(s) and the disclosure provided to outside pool participants prior to the loan(s) being made.

Repurchase Agreements and Reverse Repurchase Agreements

Affiliated pools may engage in repurchase agreements/reverse repurchase agreements in which there is a sale of securities combined with a contemporaneous agreement for the seller to buy back the securities at a later date at a higher price. The party that originally buys the securities effectively acts as a lender of cash. The party that originally sells the securities effectively acts as a borrower of cash using its securities as collateral for the cash loan at a fixed rate of interest. For the party selling the securities and agreeing to repurchase them in the future, this transaction is considered a repurchase agreement. For the party buying the securities and agreeing to resell them at a later date, this transaction is considered a reverse repurchase agreement. These types of transactions between affiliated pools do not violate NFA Compliance Rule 2-45 because the buyer's possession of the securities effectively collateralizes the buyer's exposure in respect to the seller's obligation to repurchase the securities.

Tax-Related Distributions

Tax rules relating to pools treated as partnerships for tax purposes are complex and give rise to circumstances that are difficult to predict and plan for. In particular, the CPO (or a related party) is often required to pay tax on its share of a pool’s income whether or not it has actually received an income distribution from the pool. Accordingly, many pools have contractual provisions, disclosed to and agreed to by its participants, that expressly permit the CPO (or a related party) to receive distributions from the pool based upon the CPO's (or a related party's) share of the pool's taxable income. In addition, some pools may make loans or advances to the CPO (or a related party) to enable it to meet tax obligations. These tax-related loans, advances, or distributions (collectively, distribution) do not violate NFA Compliance Rule 2-45 provided that (a)

they are made in strict accordance with the provisions of the pool's organizational documents that expressly permit the distribution; (b) they relate solely to the CPO's (or related party's) taxable income arising from the pool (and not to any other income), and (c) if the CPO's (or related party's) taxable income arising from operating the pool is ultimately lower than that on which the distribution was based, thus resulting in an excess distribution amount having been made, the CPO shall ensure that repayment is made to the pool, in a manner determined by the CPO and as promptly as reasonably practicable, of (i) any portion of the excess distribution not already paid to an applicable tax authority and (ii) with respect to any portion of the excess already paid to a tax authority, any refund or credit received with respect to such payment.

Transactions Permitted by the Investment Company Act of 1940 (ICA) and its Exemptive Rules; and Exemptive Orders Issued by the SEC and No-Action Letters Issued by SEC Staff under Sections 17 and 57 of the ICA

Sections 17 of the ICA restricts transactions between RICs and their affiliates, and Section 57 of the ICA restricts transactions between BDCs and their affiliates, which in each case may include loans or advances of pool assets prohibited under NFA Compliance Rule 2-45. However, RICs and BDCs are permitted to engage in certain loans or advances of fund assets pursuant to the ICA, exemptive rules under the ICA, exemptive orders issued by the SEC and no-action letters issued by SEC staff subject to specific conditions set forth in the rule, exemptive order or no-action letter, as applicable, that are designed to ensure that the inter-fund loans only occur in circumstances that are favorable to both funds, and not in circumstances when an affiliate might cause a fund to engage in transactions that are detrimental to the interest of one of the funds. Therefore, transactions by a pool that is also a RIC or BDC that are permitted pursuant to the ICA, exemptive rules promulgated under the ICA, and exemptive orders issued by the SEC or no-action letters issued by SEC staff pursuant to Sections 17 or 57 of the ICA, as applicable, do not violate NFA Compliance Rule 2-45.

EXPLANATION OF PROPOSED AMENDMENTS

NFA's Board adopted NFA Compliance Rule 2-45 and its related Interpretive Notice in 2009 because several CPOs had misappropriated pool participant funds through direct or indirect loans from a pool to the CPO or related entity. Effective

December 31, 2012, the CFTC rescinded a number of widely-held exemptions from CPO registration, which were previously available to large and complex CPO entities. As a result, a number of these large entities had to register as CPOs and become NFA Members.

In February 2013, NFA's Board recognized that these large CPOs engage in transactions with related funds and affiliates as part of their normal course of business and these types of transactions implicate Rule 2-45's prohibition. As a result, NFA Compliance Rule 2-45's Interpretive Notice was amended to describe these transactions (i.e., certain securities borrowings/securities loans, securities loans for cash financing, guarantee obligations, repurchase agreements and reverse repurchase agreements, tax-related distributions, and transactions permitted by the Investment Company Act of 1940 (ICA) and its exemptive rules, and exemptive orders issued by the SEC and no-action letters issued by SEC staff under Sections 17 and 57 of the ICA) and exclude them from Rule 2-45's prohibition. The Commission approved these amendments on September 13, 2013.

The newly proposed amendments to the Interpretive Notice to NFA Compliance Rule 2-45 entitled *Prohibition of Loans by Commodity Pools to CPOs and Related Entities* exclude from NFA Compliance Rule 2-45's prohibition two additional types of transactions made between a pool and a wholly-owned subsidiary of the pool generally for tax efficiency purposes. NFA does not believe that either of these transactions is the type of loan transaction that NFA Compliance Rule 2-45 is designed to prohibit.

Specifically, proposed subsection (a) of the "Wholly-Owned Subsidiaries of the Pool" section of the Interpretive Notice, excludes from the prohibition a type of loan transaction that CPOs may in the normal course of business cause a pool to enter into with a wholly-owned subsidiary of the pool that is formed for trading and investment purposes. These wholly-owned subsidiaries are generally formed to engage in trading in foreign markets, and the CPO desires the pool to capitalize the wholly-owned subsidiary via debt rather than equity because it is tax advantageous to the pool. Proposed subsection (a) provides a narrowly-tailored exclusion for this type of transaction from NFA Compliance Rule 2-45's prohibition, and places certain accounting and outside participant eligibility (*i.e.*, qualified eligible participant) restrictions on any pool making these loans. Moreover, subsection (a) makes clear that the subsidiary must be operated by a registered CPO; is formed solely to benefit the pool that made

the loan; and the loans cannot be used for a purpose that is otherwise prohibited by NFA rules (*e.g.,* as a conduit for an indirect loan to the CPO or an affiliate of the CPO).

The exclusion from Compliance Rule 2-45's prohibition under proposed subsection (b) is also narrowly tailored and governs a type of transaction that at least one CPO has indicated is of significant interest. This CPO plans for several of its commodity pools to capitalize a wholly-owned subsidiary of the pools by using, in part, loans from the pools to the subsidiary. The subsidiary would then utilize the pools' funds to capitalize a registered broker-dealer (BD) and/or registered futures commission merchant that is formed solely to provide clearing and other prime brokerage services to the pools that made the loan. The CPO explains that a capitalization structure that relies, in part, on debt is tax advantageous to the pools and represents an efficient use of the pools' free cash balances.

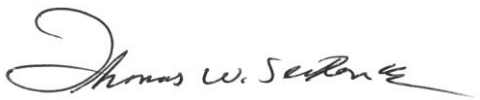
The CPO further explains that the BD is formed for the benefit of the pools and enhances the pools' diversification of funding sources, mitigates industry wide concentration of credit exposures, and improves the pools' ability to withstand market stress. The CPO notes that these benefits allow the pools to have greater operational and funding certainty to conduct their investment activities, and further separate its pools' investment activities from the firm's proprietary trading activities and risk. The CPO states that the BD will be registered with the SEC, and a member of FINRA, the Depository Trust Company, and the National Securities Clearing Corporation.

Subsection (b) is designed to place stringent requirements upon any CPO that elects to engage in this type of transaction. Specifically, subsection (b) provides that a CPO or affiliated CPOs may cause pools to make loans directly or indirectly to a wholly-owned subsidiary (collectively owned by the pools) that is a registered broker-dealer and/or registered futures commission merchant provided that: (1) the subsidiary is formed solely to provide clearing and other prime brokerage services to the pools that made the loan; (2) the pools make any loans on the same terms; (3) the loan amounts are proportionate in size to each pool's relative equity ownership of the subsidiary; (4) any outside pool participants in the pools making a loan receive a separate full and complete disclosure of the terms of the loan, including but not limited to, the loan's principal amount, interest rate and repayment schedule, and any other material information regarding the transaction prior to the loan(s) being made; (5) any outside pool participant in a pool making a loan(s) is given a right to redeem in full prior to the loan(s) being made; (6) the loans are not used for a purpose that is otherwise prohibited

by NFA rules (e.g., as a conduit for an indirect loan to the CPO or an affiliate of the CPO); and (7) the CPO provides NFA's Compliance Department with written notification of the loan(s) and the disclosure provided to outside pool participants prior to the loan(s) being made.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make the proposed amendments to the Interpretive Notice to NFA Compliance Rule 2-45 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

*The proposed amendments to NFA's Interpretive Notice to NFA Compliance Rule 2-45: Prohibition of Loans by Commodity Pools to CPOs and Related Entities became effective February 5, 2015.