

November 20, 2012

Via Federal Express

Ms. Sauntia Warfield
Assistant Secretary
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Proficiency Requirements for Swaps –
Proposed Technical Amendments to NFA Registration Rule 401(e)(3)*

Dear Ms. Warfield:

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 technical amendments to NFA Registration Rule 401(e)(3) regarding proficiency requirements for swaps. NFA’s Board of Directors (“Board”) approved the proposal on November 15, 2012.

NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”) and will 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.

PROPOSED AMENDMENTS

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

REGISTRATION RULES

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RULE 401. QUALIFICATION TESTING REQUIREMENT.

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(e) Notwithstanding the provisions of Rule 401(a), a person applying to be registered as an AP will satisfy the proficiency requirements of this Rule if the

applicant's sole activities, subject to regulation by the Commission, are and will continue to be limited to:

- (1) the solicitation or acceptance on behalf of the sponsor of orders for swaps subject to the jurisdiction of the CFTC;
- (2) solicitation on behalf of the sponsor of funds, securities, or property for participation in a commodity pool that:
 - (i) exclusively trades swaps subject to the jurisdiction of the CFTC;
or
 - (ii) trades swaps subject to the jurisdiction of the CFTC in a commodity pool and the sponsor has been granted or is seeking a waiver from the Series 3 for its APs on the basis that but for the trading of swaps it would be eligible for the exclusion under CFTC Regulation 4.5(c)(2)(iii)(A) or (B) or the exemption under CFTC Regulation 4.13(a)(3).
- (3) the solicitation on behalf of the sponsor of clients to open discretionary accounts that exclusively trade swaps subject to the jurisdiction of the CFTC to be managed by registered CTAs or providing advice on behalf of the sponsor to a commodity pool described in subsection 2(i) or (ii) above;
or
- (4) the supervision on behalf of the sponsor of persons whose activities are so limited.

EXPLANATION OF PROPOSED AMENDMENTS

At its meeting in August 2012, NFA's Board adopted amendments to NFA Registration Rule 401(e)(2) to exempt from the proficiency requirements APs of a CPO that is required to be registered solely due to the firm's swaps activities. This rule provides an AP with an exemption from the proficiency requirements even if the CPO's commodity pool engages in a *de minimis* amount of futures trading. Specifically, NFA Registration Rule 401(e)(2)(ii) describes these pools as those in which, but for the trading of swaps, the CPO would be eligible for the exemption from registration under CFTC Regulation 4.13(a)(3) or the exclusion from the definition of a commodity pool under CFTC Regulation 4.5(c) because its commodity futures, commodity options contracts or swaps positions fall below either of the *de minimis* alternative trading tests

Ms. Sauntia Warfield

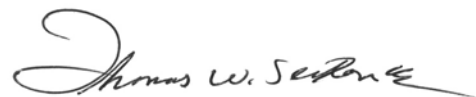
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set forth in CFTC Regulation 4.5(c)(2)(iii)(A) and (B), respectively. The CPO would have to obtain a waiver of the Series 3 requirement for its APs under Registration Rule 402 on that basis. The amendments to Registration Rule 401(e)(2) became effective on October 3, 2012.

The proposed technical amendment to NFA Registration Rule 401(e)(3) also exempts from the proficiency requirements APs of a commodity trading advisor that provides advice to a commodity pool that exclusively trades swaps subject to the jurisdiction of the CFTC or is the type of pool described in Registration Rule 401(e)(2)(ii). This technical amendment treats APs of CTAs analogous to APs of CPOs for purposes of the proficiency requirements with regard to these pools.

As mentioned earlier, NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make the amendments to NFA Registration Rule 401(e)(3) regarding proficiency requirements for swaps 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 the Registration Rule are effective February 21, 2013.