

OMB APPROVAL

OMB Number: 3235-0553
 Expires: June 30, 2010
 Estimated average burden
 hours per response.....17.7

Page 1 of 2

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

File No. SR - 2008 - 02

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

Initial Amendment Withdrawal

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Technical amendments to the Interpretive Notice Regarding Compliance Rule 2-9: Enhanced Supervisory Requirements.

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 Philip Last Name Raleigh
 Title Assistant General Counsel
 E-mail praleigh@nfa.futures.org
 Telephone (312) 781-1405 Fax (312) 781-1672

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).

NFA's Board of Directors approved the proposed rule change on August 21, 2008.

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 09/05/2008 Vice President and General Counsel
 By Thomas W. Sexton
 (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 Sexton, tsexton@nfa.futures.org

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

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

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 Request that Proposed Rule Change is not Necessary: Attach a copy of any request submitted to the CFTC for determination 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-2008-02)

SELF-REGULATORY ORGANIZATIONS; National Futures Association;
Proposed Rule Change Relating to Technical Amendments to the Interpretive
Notice Regarding Compliance Rule 2-9: Enhanced Supervisory Requirements

Pursuant to Section 19b(7) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-7 under the Act,² notice is hereby given that on September 5, 2008, 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed this proposed rule change concurrently with the Commodity Futures Trading Commission ("CFTC").

NFA on September 5, 2008 has requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary. The CFTC has not yet made such determination.

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

The Board adopted two revisions to NFA Compliance Rule 2-9's Interpretive Notice entitled "Enhanced Supervisory Requirements" ("Notice").

The changes include a limited expansion of an existing exemption for some APs

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

who worked at a Disciplined Firm more than ten years ago from being counted for purposes of calculating whether a Member that hires such an individual is required to adopt the enhanced supervisory procedures. The second change is to the language in the Notice describing the enhanced capital component to change the requirement for Forex Dealer Members ("FDMs") from a fixed amount to 150% of their capital requirement to cover recent changes and to make the provision more flexible in addressing future changes.

The text of the proposed rule change 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, the self-regulatory organization 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. The self-regulatory organization 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 Act³ makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members ("Members") who are registered as brokers or dealers under Section 15(b)(11) of the Act.⁴ NFA's

³ 15 U.S.C. 78o-3(k).

⁴ 15 U.S.C. 78o(b)(11).

Interpretive Notice entitled "Compliance Rule 2-9: Enhanced Supervisory Requirements" applies to all Members who meet the criteria in the Interpretive Notice and could apply to Members registered under Section 15(b)(11).

NFA's Board of Directors first adopted NFA Compliance Rule 2-9's Interpretive Notice entitled "Enhanced Supervisory Requirements" ("Notice") in January 1993. It requires a Member to undertake enhanced supervisory requirements if its sales force includes a specified number of individuals who have worked at Disciplined Firms, or if a principal of the firm has been a principal of another firm that has been subject to the enhanced supervisory requirements, or, under certain circumstances, when a Member becomes subject to a disciplinary action.

The Board has amended the Notice from time to time based on various changes affecting the membership and on practical lessons learned from administering the Notice. Over the past several years, the Board has recognized that some APs who were counted as having worked at a Disciplined Firm under the original version of the Notice had personal employment histories that indicated that they posed no more risk to the public than the AP population at large. The Board recognized that employers may be wary of hiring such individuals despite years of Associate membership without disciplinary problems. This is particularly true with small firms, where hiring one of these individuals might trigger the enhanced supervisory procedures and require the firm to apply for a waiver. In addition, some firms are simply loath to hire any individual who

would be counted as having come from a Disciplined Firm, even if doing so would not trigger the enhanced supervisory procedures.

Currently, the Notice provides for two types of exemptions, which focus on an AP's length of employment at a Disciplined Firm (i.e., less than sixty days) and the time since an AP has been employed at a Disciplined Firm (i.e., more than ten years). The Board decided to grant relief to these defined groups because staff's analysis showed that given their background they pose minimal risk. With regard to the second type of exemption, the Notice currently provides that APs are exempt from being counted as having worked at a Disciplined Firm if: 1) they worked at only one Disciplined Firm; 2) that employment terminated more than ten years ago; 3) they have not personally been subject to a disciplinary action by NFA or the CFTC; 4) they have been registered as APs and Associate Members of NFA for eight of the last ten years; and 5) since working for the Disciplined Firm they have not worked for any other firm that has been subject to a sales practice action.

In practice, this latter condition acts as a de facto perpetual bar to receiving the exemption even if the AP's employment at the second firm subject to a sales practice action also occurred many years in the past.

NFA performed an analysis of the effect of applying a ten-year time limit not only to the length of time since an AP was employed at a Disciplined Firm but also to the condition that the AP not work at a firm that had a sales practice action since being employed at the Disciplined Firm. This analysis showed that the current exemption could prudently be revised to include APs who met the

other existing criteria, and who had worked more than ten years ago at a firm that was subject to a sales practice action. This change would afford this exemption to approximately 85 additional individuals who, based upon their employment histories, do not appear to pose any greater risk of using fraudulent sales tactics than the general population of APs.⁵

Excluding these APs from the calculation that triggers a firm's obligation to comply with the enhanced supervisory procedures is consistent with the reasoning behind the existing exemptions. Ultimately, the proposed expanded exemption would have the effect of removing some non-problematic individuals and Member firms from the waiver process.

The Notice also provides that one of the enhanced supervisory requirements is an increased adjusted net capital ("ANC") level. The Notice currently provides that FDMs that are required to undertake the enhanced supervisory requirements are obligated to maintain ANC of at least \$2,000,000. When the Board adopted that provision, FDMs that were not subject to the enhanced supervisory requirements had a minimum ANC of \$1,000,000. However, revisions to NFA Financial Requirements Section 11 in December 2007 raised the required minimum level of ANC for all FDMs to \$5,000,000, thus rendering the \$2,000,000 requirement irrelevant. Furthermore, the CFTC Reauthorization Act of 2008 further increases the ANC for FDMs, phasing in the increase to an eventual \$20 million.

⁵ There are more than 13,000 individuals who have ever worked as an AP at a Disciplined Firm. Approximately 2,100 of those individuals are exempted from having to be included in a firm's calculation of whether it has triggered enhanced supervision under the current exemptions provided for in the Notice.

The proposed revisions to the enhanced supervisory requirements would reinstate an increased ANC level for FDMs and make the provision more flexible in addressing future changes. These revisions tie the enhanced ANC level for FDMs to the early warning requirement under CFTC rules, which is currently 150% of the required ANC.

Under the proposal (and assuming the CFTC's early warning percentage remains unchanged), a triggering FDM would currently have to maintain an enhanced ANC of \$7,500,000, increasing to \$30,000,000 as the minimum ANC for FDMs increases from \$5,000,000 to \$20,000,000 over the next year. This revision would not only have the effect of bringing the current enhanced ANC obligation into harmony with the revisions made to NFA Financial Requirements Section 11 in December 2007, it would also keep the obligation in harmony with any future changes to the level of ANC required of FDMs without requiring further amendments to the Notice.

Amendments to the Notice were previously filed in SR-NFA-2001-01, SR-NFA-2002-07, SR-NFA-2003-01, SR-NFA-2005-01, SR-NFA-2006-01, SR-NFA-2007-03, and SR-NFA-2007-07.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k)(2)(B) of the Act.⁶ 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 general, to protect investors and the public interest, including rules governing sales practices and advertising of

⁶ 15 U.S.C. 78o-3(k)(2)(B).

security futures products. The Notice accomplishes this by imposing enhanced supervisory requirements on firms at risk for sales practice fraud, and the proposed rule change makes technical amendments to conform the Notice to NFA's experience with the rule and to upcoming changes to the capital requirements.

This proposal is not designed to regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the association. To the extent that this proposal regulates activities and transactions other than security futures, the authority for regulating those activities and transactions comes from the Commodity Exchange Act rather than the securities laws.

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

The changes to the events that trigger application of the rule will lessen the burden on competition by exempting additional firms and individuals from the enhanced supervision requirements, which are imposed on NFA Member firms that hire a significant amount of their sales force from firms that have been barred from the industry for sales practice fraud. This part of the rule change should decrease the number of firms who are subject to the requirements.

The changes to the capital requirement will impose additional burdens on firms subject to the rule. However, the primary impetus for this change is Congressional legislation raising the capital requirement for firms that act as counterparties to retail off-exchange foreign currency transactions to an amount far in excess of the requirement currently set by the rule. While a small number

of those firms may be registered as brokers or dealers under Section 15(b)(11) of the Act, the capital requirement is based on activities unrelated to that registration. Furthermore, the Board has considered the burden on competition and has determined a larger capital requirement is necessary and appropriate to protect customers from unethical practices by firms subject to the rule.

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

NFA did not publish the rule changes to the membership for comment.

NFA did not receive comment letters concerning the rule changes.

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

The proposed rule change is not effective because the CFTC has not yet determined that review of the proposed rule change is not necessary.

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 Act.

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 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. Please include File Number SR-NFA-2008-02.

Paper Comments

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

All submissions should refer to File Number SR-NFA-2008-02. 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 a.m. and 3 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-2008-02 and should be submitted on or before _____.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence Harmon

Acting Secretary

⁷ 17 CFR 200.30-3(a)(73).

Exhibit 2

(Not applicable)

Exhibit 3

(Not applicable)

Exhibit 4

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

* * *

INTERPRETIVE NOTICE

I. INTRODUCTION

Over the years, NFA's Board of Directors has adopted strict and effective rules to prohibit deceptive sales practices, and those rules have been vigorously enforced by NFA's Business Conduct Committee. The Board notes, however, that by their very nature, enforcement actions occur after the customer abuse has taken place. The Board recognizes that NFA's goal must be not only to punish such deception of customers through enforcement actions but to prevent it, or minimize its likelihood, through fair and effective regulation.

One NFA rule designed to prevent abusive sales practices is NFA Compliance Rule 2-9. Subsection (a) of this rule places a continuing responsibility on every Member to diligently supervise its employees and agents in all aspects of their futures activities, including sales practices. Although NFA has not attempted to prescribe a set of supervisory requirements to be followed by all NFA Members, NFA's Board of Directors believes that Member firms which are identified as having a sales force and/or principals that have been affected by questionable sales practice training and firms which charge commissions and fees well above the industry norm should be required to adopt enhanced supervisory requirements designed to prevent sales practice abuse. Subsection (b) authorizes the Board of Directors to require Members, which meet certain criteria established by the Board, to adopt specific supervisory procedures designed to prevent abusive sales practices. Subsection (b) covers all activities regulated by NFA, including the off-exchange retail forex activities of Members subject to NFA Compliance Rule 2-36.

The Board believes that in order for the criteria used to identify firms subject to the enhanced supervisory requirements to be useful, those criteria must be specific, objective and readily measurable. The Board also believes that any supervisory requirements imposed on a Member must be designed to quickly identify potential problem areas so that the Member will be

able to take corrective action before any customer abuse occurs. The purpose of this Interpretive Notice is to set forth the criteria established by the Board which obligate a Member to adopt the enhanced supervisory requirements and to specify the 2 enhanced supervisory requirements which are required of firms meeting these criteria.

In developing the criteria, the Board concluded that it would be helpful to review Member firms which had been disciplined through enforcement actions taken by the CFTC or NFA for deceptive sales practices. The Board's purpose was to identify factors common to these Member firms and probative of their sales practice problems, which could be used to identify other Member firms with potential sales practice problems.

One factor identified by the Board as common to these firms and directly related to their sales practice problems is the employment history and training of their sales forces and firm principals. For many of these Members, a significant portion of these individuals were previously employed and trained by one or more Member firms which had been disciplined for fraud. The Board believes that the employment history of a Member's APs and principals is a relevant factor to consider in identifying firms with potential sales practice problems. If a Member firm is disciplined by NFA or the CFTC for fraud related to widespread telemarketing or promotional material problems or by Financial Industry Regulatory Authority or the SEC for fraud related to its sales practices regarding security futures products as defined in Section 1a (32) of the Commodity Exchange Act ("Act"), it is reasonable to conclude that the training and supervision of its sales force was wholly inadequate or inappropriate. It is also reasonable to conclude that an AP or principal who received inadequate or inappropriate training and supervision may have learned improper sales tactics, which he will carry with him to his next job. Therefore, the Board believes that a Member firm employing such a sales force must have stringent supervisory procedures in place in order to ensure that the improper training its APs and principals have previously received does not taint their sales efforts on behalf of the Member.

The Board notes further that there have been instances in which Members and Associates have subverted the Board's purpose in imposing the enhanced supervisory requirements by closing a firm once it qualifies for those requirements and opening another firm or firms that have a mix of employees that does not meet the criteria for adopting the requirements. The new firms typically have individuals who have worked for firms that have been disciplined for fraud related to telemarketing or promotional material and who worked at the original qualifying firm, but they are redistributed so as to keep the employee mix below the threshold for becoming subject to the enhanced supervisory requirements. The Board has determined to apply the enhanced supervisory requirements to firms that use this strategy.

The Board also notes that Members that assess commissions, fees and other charges that total well above the industry norm comprise a disproportionately high share of firms that have been subject to disciplinary action for sales practice abuses. Some of the abuses that have been cited relate to the creation of a misleading impression of the likelihood of achieving profits by investing with a Member through misstatements or material omissions concerning the impact of commissions and fees.

The Board believes that when a Member charges its customers commissions, fees and other charges that total well above the industry norm it is incumbent on that Member to exercise a very high degree of supervision of solicitations made by its APs so as to ensure that customers are given accurate information regarding the impact of those expenses on the likelihood of achieving profit. Consistent with its approach in other situations involving an increased likelihood of misleading solicitations, the Board believes that the enhanced supervisory requirements provide a practical opportunity for a Member that charges commissions, mark-ups, fees and other charges that are well above the industry norm to monitor solicitations and correct problems with those solicitations in an expeditious manner.

II. OBLIGATIONS OF MEMBERS SUBJECT TO THE ENHANCED SUPERVISORY REQUIREMENTS

A. Recording of all conversations 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. The Board believes that recording these conversations 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 that are required to record their conversations must retain such recordings for a period of five years from the date each recording is created and the recordings shall be readily accessible during the first two years of the five-year period. In retaining the recorded conversations, Member firms must catalog the recordings 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 on each day. A Member firm must be able to promptly produce, upon request from NFA or the CFTC, all conversations relating to a specific AP, and only that AP, for a given date. Members that are required to record under this Interpretive Notice are further required to promptly

provide NFA or the CFTC with appropriate resources for listening to their recordings upon request.

B. Enhanced capital requirement

Any Member introducing broker, commodity trading advisor or commodity pool operator meeting the criteria is required to either operate pursuant to a guarantee agreement, as applicable, or maintain adjusted net capital of at least \$250,000 during the entire period for which the Member is required to adopt the enhanced supervisory requirements. Eligible guarantor futures commission merchants ("FCMs") are those that meet the eligibility requirements for executing a Supplemental Guarantor Certification Statement pursuant to NFA Registration Rule 509(b)(5). Any Member opting to maintain the higher level of adjusted net capital shall also be subject to the financial record-keeping and reporting requirements applicable to FCMs.

Any Forex Dealer Member ("FDM") meeting the criteria is required to maintain adjusted net capital of at least [\$2,000,000] the early warning requirement under CFTC rules. Any FCM Member that is not an FDM is required to maintain adjusted net capital of at least \$1,000,000.

C. Filing promotional material with NFA

Those Member firms meeting the criteria will be required to file all promotional material, as defined in NFA Compliance Rule 2-29(i), with NFA at least 10 days prior to its first use.

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. 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 month. 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.

III. QUALIFICATION FOR THE ENHANCED SUPERVISORY REQUIREMENTS

A. Definitions, treatment of individuals and firms and exemptions

1. Definition of Disciplined Firm

A current list of the firms which meet the definition of a Disciplined Firm is maintained on NFA's Web site at www.nfa.futures.org. For purposes of this Interpretive Notice, a Disciplined Firm is defined very narrowly to include those firms that fall into one of the following two groups:

a. Firms that have been disciplined by NFA or the CFTC

Members that qualify as Disciplined Firms based on their disciplinary histories with the CFTC or NFA include those firms for which:

1. the firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices or promotional material;
2. those charges have been resolved; and
3. the firm has either been permanently barred from the industry at any time as a result of those charges or has been sanctioned in any way within the preceding five years as a result of those charges.

b. Firms that have been disciplined in connection with sales practices involving security futures products

Members that qualify as Disciplined Firms based on their disciplinary histories related to sales practices involving security futures products include any broker-dealer that, in connection with sales practices involving the offer, purchase, or sale of any security futures product as defined in Section 1a(32) of the Act has at any time been expelled from membership or participation in any securities industry self-regulatory organization ("Securities SRO") or is subject to an order of the SEC revoking its registration as a broker-dealer or has been sanctioned in any way within the preceding five years in connection with sales practices involving the offer, purchase, or sale of any security futures product as defined in Section 1a(32) of the Act.

2. Treatment of principals who previously worked at a Disciplined Firm

For purposes of determining whether a Member will be required to adopt the enhanced supervisory requirements based on the employment histories of its APs and principals, principals of a firm, who are not also APs of that firm and who have been previously employed as an AP by one or more Disciplined Firms, shall be counted as if they were APs of the firm.

3. Treatment of FCMs that guarantee introducing brokers

For purposes of determining whether an FCM Member will be required to adopt the enhanced supervisory requirements, an FCM and its guaranteed introducing brokers ("GIBs") will be considered a single firm. Therefore, for FCMs with GIBs, the APs of its GIBs will be treated as APs of the FCM for determining whether the FCM meets the requirements. If the FCM Member firm meets the requirements, then the FCM and all its GIBs shall be required to adopt the supervisory procedures specified herein. Of course, individual FCMs or GIBs will be required to adopt the enhanced supervisory requirements provided the FCM or GIB meets the requirements on its own.

4. Exemptions from being counted as an AP who worked at a Disciplined Firm

The Board recognizes that there are identifiable populations of APs who are included in the general population of APs who have worked at Disciplined Firms in the past who, further analysis suggests, do not raise the same concerns regarding their previous supervision and training that are raised by the majority of APs who have worked at Disciplined Firms. Generally, these APs worked at Disciplined Firms fairly long ago and are free of additional factors of concern in their employment histories.

A number of the APs in this group worked at Disciplined Firms for only a short period of time many years ago and have not worked at a Disciplined Firm since or been personally subject to disciplinary action. Others worked at a single Disciplined Firm for a somewhat lengthier period and have subsequently been employed for a substantial length of time by Members that have not shown a propensity for customer abuse and the AP has not been personally subject to disciplinary action.

The Board has determined that APs who have not been personally subject to a disciplinary action by NFA or the CFTC and who meet the following criteria shall not be counted by a Member that hires them as having been employed by a Disciplined Firm for purposes of calculating whether the composition of the Member's sales force triggers the enhanced supervisory requirements:

- a. they have been previously employed by Disciplined Firms for a cumulative total of less than 60 days and have not been employed by any Disciplined Firm during the 5 years preceding the determination of whether a Member firm is required to employ the enhanced supervisory requirements established in this Interpretive Notice. In addition, the AP may not have been employed by a Member that has been subject to any sales practice action by NFA

or the CFTC, or by any Securities SRO or the SEC in connection with sales practices involving the offer, purchase or sale of any security futures product as defined in Section 1a (32) of the Act since leaving the last Disciplined Firm by which they were employed; or

- b. they worked at only one Disciplined Firm more than 10 years preceding the determination of whether a Member firm is required to employ the enhanced supervisory requirements and they have not been employed by a Member that has been subject to any sales practice action by NFA or the CFTC, or by any Securities SRO or the SEC in connection with sales practices involving the offer, purchase or sale of any security futures product as defined in Section 1a(32) of the Act [since leaving the Disciplined Firm] within the 10 years preceding the determination, and they have been an NFA Member or Associate Member for at least eight of the ten years preceding the determination.

B. Criteria that obligate a Member to adopt the enhanced supervisory requirements

Member firms will be required to adopt the enhanced supervisory requirements if they fall into any of the categories described below.

1. Obligation based on employment histories of APs and principals:

Firms that meet any of the following numerical criteria are required to adopt the enhanced supervisory requirements:

- For firms with less than five APs, 2 or more of its APs have been employed by one or more Disciplined Firms;
- For firms with at least 5 but less than 10 APs, 40 percent or more of its APs have been employed by one or more Disciplined Firms;
- For firms with at least 10 but less than 20 APs, four or more of its APs have been employed by one or more Disciplined Firms; or
- For firms with at least 20 APs, 20 percent or more of its APs have been employed by one or more Disciplined Firms.¹

¹ The Board notes that NFA Registration Rule 206(d) requires sponsors to file a Form 8-T with NFA reporting the termination of an AP within 20 days of their termination. Members should be aware that, notwithstanding that Rule, a Member's obligation to adopt the enhanced supervisory requirements is conclusively established on any day on which its sales force meets one of the listed numerical criteria and that the obligation shall not be extinguished by the effect of the subsequent filing of a Form 8-T for a terminated AP even if the form is filed within 20 days of an AP's termination.

2. Obligation based on affiliations of principals:

Once a Member firm meets the criteria to adopt the enhanced supervisory requirements, any other Members of which the principals of that Member firm are, or become, principals must also adopt the enhanced supervisory requirements or seek a waiver therefrom.

3. Obligation based on assessing commissions, fees and other charges well above the industry norm

Any Member firm that charges 50% or more of its active customers round-turn commissions, fees and other charges that total \$100 or more per futures, forex or option contract is required to adopt the enhanced supervisory requirements. Any Member that charges 50% or more of its active customers round-turn commissions, fees and other charges in the amount specified above must promptly inform NFA of that fact. In addition, upon request by NFA, Members shall have the burden of demonstrating to NFA that they charge more than 50% of their active customers round-turn commissions, fees and other charges that are less than the specified amounts. The term "active customers" as used in this section means any customers who are entitled to a monthly statement under the provisions of CFTC Regulations Section 1.33(a).

4. Obligation based on the initiation of disciplinary action

a. Members that have fulfilled the enhanced supervisory requirements that become subject to subsequent disciplinary action

Any Member that has previously been required to adopt the enhanced supervisory requirements; has, in fact, fulfilled that requirement either by adopting the enhanced supervisory requirements for a prescribed period or by receiving a full or partial waiver from the enhanced supervisory requirements from the Telemarketing Procedures Waiver Committee; and subsequently becomes subject to a CFTC or NFA enforcement or disciplinary proceeding alleging deceptive sales practices, shall, within 30 days of being served with notice of the action, adopt all of the enhanced supervisory requirements and may not seek a waiver therefrom. This obligation shall continue until after the disciplinary or enforcement proceeding is closed and all appeals are completed or the time for appeal has passed without an appeal being filed or perfected.

b. Members already subject to the enhanced supervisory requirements

If an NFA Business Conduct Committee disciplinary proceeding or CFTC enforcement proceeding has been filed against a Member firm required to adopt the enhanced supervisory requirements, then the enhanced supervisory

requirements will remain in effect for the applicable time period specified or until after the disciplinary or enforcement proceeding is closed and all appeals are completed or the time for appeal has passed without an appeal being filed or perfected, whichever occurs latest.

IV. WAIVER PROCEDURE

Any Member required to adopt the enhanced supervisory requirements may seek a waiver by filing a petition with the Telemarketing Procedures Waiver Committee within 30 days of the date of being notified by NFA that it is required to adopt the enhanced supervisory requirements. NFA may grant such a waiver upon a satisfactory showing that the Member's current supervisory procedures provide 9 effective supervision over its employees, including enabling the Member to identify potential problem areas before customer abuse occurs. Additionally, if a Member meets the criteria and trades security futures products, then the Member firm must also make a satisfactory showing that the Member's supervisory procedures ensure compliance with all applicable securities laws and regulations. Should a Member fail to file a petition seeking a waiver within 30 days or should it file a petition that is denied by the Telemarketing Procedures Waiver Committee, either in whole or in part, the Member may not petition for a full or partial waiver again until at least two years have elapsed since the Member adopted the required enhanced procedures.

Some of the factors that the three-member Waiver Committee may consider in evaluating a waiver request include:

- the total number and the backgrounds of APs sponsored by the Member;
- number of branch offices and GIBs operated by the Member;
- the experience and background of the Member's supervisory personnel;
- the number of the Member's APs who had received training from firms which have been closed for fraud, the length of time those APs worked for those firms and the amount of time which has elapsed since those APs worked for the disciplined firms;
- the results of any previous NFA examinations;
- the cost effectiveness of the taping requirement in light of the firm's net worth, operating income and related telemarketing expenses;
- whether the Member assesses commissions, fees and other charges that are based on all of the relevant circumstances, including the expense of executing orders and the value of services the Member renders based on its experience and knowledge; and
- whether the Member adequately discloses the amount of commissions, fees and other trading charges before transactions occur in light of a retail customer's trading experience and the impact that

the commissions, fees and other charges may have on the likelihood of profit.

Conditions that the Telemarketing Procedures Waiver Committee shall impose on any Member to which it grants a full or partial waiver include requirements that the firm: notify NFA of any action charging the firm with a violation of CFTC, SEC or Self Regulatory Organization ("SRO") regulations or rules; notify NFA of any customer complaint involving sales practices or promotional material; not change ownership; not have any material deficiencies noted during any SRO examination; not hire additional APs from Disciplined Firms; execute a written acknowledgement that the firm understands the conditions of the waiver; and may include any other conditions deemed by the Committee to be appropriate in consideration of a total or partial waiver from the enhanced supervisory requirements. Violation of any of those conditions may serve as cause for the Telemarketing Procedures Waiver Committee to review and amend or revoke the waiver.

A Member firm that does not comply with this Interpretive Notice will violate NFA Compliance Rule 2-9(b) and will be subject to disciplinary action.

Exhibit 5

September 5, 2008 letter from Thomas W. Sexton to David A. Stawick is
attached.

September 5, 2008

Via Federal Express

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

Re: National Futures Association: Proposed Technical Amendments to the Interpretive Notice Regarding Compliance Rule 2-9: Enhanced Supervisory Requirements

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 amendments to the Interpretive Notice regarding Compliance Rule 2-9: Enhanced Supervisory Requirements. This proposal was approved by NFA's Board of Directors ("Board") on August 21, 2008.

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 underscored and deletions are ~~stricken through~~)

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

INTERPRETIVE NOTICE

I. INTRODUCTION



Mr. David A. Stawick

September 5, 2008

Over the years, NFA's Board of Directors has adopted strict and effective rules to prohibit deceptive sales practices, and those rules have been vigorously enforced by NFA's Business Conduct Committee. The Board notes, however, that by their very nature, enforcement actions occur after the customer abuse has taken place. The Board recognizes that NFA's goal must be not only to punish such deception of customers through enforcement actions but to prevent it, or minimize its likelihood, through fair and effective regulation.

One NFA rule designed to prevent abusive sales practices is NFA Compliance Rule 2-9. Subsection (a) of this rule places a continuing responsibility on every Member to diligently supervise its employees and agents in all aspects of their futures activities, including sales practices. Although NFA has not attempted to prescribe a set of supervisory requirements to be followed by all NFA Members, NFA's Board of Directors believes that Member firms which are identified as having a sales force and/or principals that have been affected by questionable sales practice training and firms which charge commissions and fees well above the industry norm should be required to adopt enhanced supervisory requirements designed to prevent sales practice abuse. Subsection (b) authorizes the Board of Directors to require Members, which meet certain criteria established by the Board, to adopt specific supervisory procedures designed to prevent abusive sales practices. Subsection (b) covers all activities regulated by NFA, including the off-exchange retail forex activities of Members subject to NFA Compliance Rule 2-36.

The Board believes that in order for the criteria used to identify firms subject to the enhanced supervisory requirements to be useful, those criteria must be specific, objective and readily measurable. The Board also believes that any supervisory requirements imposed on a Member must be designed to quickly identify potential problem areas so that the Member will be able to take corrective action before any customer abuse occurs. The purpose of this Interpretive Notice is to set forth the criteria established by the Board which obligate a Member to adopt the enhanced supervisory requirements and to specify the 2 enhanced supervisory requirements which are required of firms meeting these criteria.

In developing the criteria, the Board concluded that it would be helpful to review Member firms which had been disciplined through enforcement actions taken by the CFTC or NFA for deceptive sales practices. The Board's purpose was to identify factors common to these Member firms and probative of their sales practice problems,



Mr. David A. Stawick

September 5, 2008

which could be used to identify other Member firms with potential sales practice problems.

One factor identified by the Board as common to these firms and directly related to their sales practice problems is the employment history and training of their sales forces and firm principals. For many of these Members, a significant portion of these individuals were previously employed and trained by one or more Member firms which had been disciplined for fraud. The Board believes that the employment history of a Member's APs and principals is a relevant factor to consider in identifying firms with potential sales practice problems. If a Member firm is disciplined by NFA or the CFTC for fraud related to widespread telemarketing or promotional material problems or by Financial Industry Regulatory Authority or the SEC for fraud related to its sales practices regarding security futures products as defined in Section 1a (32) of the Commodity Exchange Act ("Act"), it is reasonable to conclude that the training and supervision of its sales force was wholly inadequate or inappropriate. It is also reasonable to conclude that an AP or principal who received inadequate or inappropriate training and supervision may have learned improper sales tactics, which he will carry with him to his next job. Therefore, the Board believes that a Member firm employing such a sales force must have stringent supervisory procedures in place in order to ensure that the improper training its APs and principals have previously received does not taint their sales efforts on behalf of the Member.

The Board notes further that there have been instances in which Members and Associates have subverted the Board's purpose in imposing the enhanced supervisory requirements by closing a firm once it qualifies for those requirements and opening another firm or firms that have a mix of employees that does not meet the criteria for adopting the requirements. The new firms typically have individuals who have worked for firms that have been disciplined for fraud related to telemarketing or promotional material and who worked at the original qualifying firm, but they are redistributed so as to keep the employee mix below the threshold for becoming subject to the enhanced supervisory requirements. The Board has determined to apply the enhanced supervisory requirements to firms that use this strategy.

The Board also notes that Members that assess commissions, fees and other charges that total well above the industry norm comprise a disproportionately high share of firms that have been subject to disciplinary action for sales practice abuses. Some of the abuses that have been cited relate to the creation of a misleading



Mr. David A. Stawick

September 5, 2008

impression of the likelihood of achieving profits by investing with a Member through misstatements or material omissions concerning the impact of commissions and fees.

The Board believes that when a Member charges its customers commissions, fees and other charges that total well above the industry norm it is incumbent on that Member to exercise a very high degree of supervision of solicitations made by its APs so as to ensure that customers are given accurate information regarding the impact of those expenses on the likelihood of achieving profit. Consistent with its approach in other situations involving an increased likelihood of misleading solicitations, the Board believes that the enhanced supervisory requirements provide a practical opportunity for a Member that charges commissions, mark-ups, fees and other charges that are well above the industry norm to monitor solicitations and correct problems with those solicitations in an expeditious manner.

II. OBLIGATIONS OF MEMBERS SUBJECT TO THE ENHANCED SUPERVISORY REQUIREMENTS

A. Recording of all conversations 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. The Board believes that recording these conversations 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 that are required to record their conversations must retain such recordings for a period of five years from the date each recording is created and the recordings shall be readily accessible during the first two years of the five-year period. In retaining the recorded conversations, Member firms must catalog the recordings 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 on each day. A Member firm must be able to promptly produce, upon request from NFA or the CFTC, all conversations relating to a specific AP, and only that AP, for a given date. Members that are required to record under this Interpretive Notice are further required to promptly provide NFA or the CFTC with appropriate resources for listening to their recordings upon request.



Mr. David A. Stawick

September 5, 2008

B. Enhanced capital requirement

Any Member introducing broker, commodity trading advisor or commodity pool operator meeting the criteria is required to either operate pursuant to a guarantee agreement, as applicable, or maintain adjusted net capital of at least \$250,000 during the entire period for which the Member is required to adopt the enhanced supervisory requirements. Eligible guarantor futures commission merchants ("FCMs") are those that meet the eligibility requirements for executing a Supplemental Guarantor Certification Statement pursuant to NFA Registration Rule 509(b)(5). Any Member opting to maintain the higher level of adjusted net capital shall also be subject to the financial record-keeping and reporting requirements applicable to FCMs.

Any Forex Dealer Member ("FDM") meeting the criteria is required to maintain adjusted net capital of at least ~~\$2,000,000~~ the early warning requirement under CFTC rules. Any FCM Member that is not an FDM is required to maintain adjusted net capital of at least \$1,000,000.

C. Filing promotional material with NFA

Those Member firms meeting the criteria will be required to file all promotional material, as defined in NFA Compliance Rule 2-29(i), with NFA at least 10 days prior to its first use.

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. 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 month. 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.



Mr. David A. Stawick

September 5, 2008

III. QUALIFICATION FOR THE ENHANCED SUPERVISORY REQUIREMENTS

A. Definitions, treatment of individuals and firms and exemptions

1. Definition of Disciplined Firm

A current list of the firms which meet the definition of a Disciplined Firm is maintained on NFA's Web site at www.nfa.futures.org. For purposes of this Interpretive Notice, a Disciplined Firm is defined very narrowly to include those firms that fall into one of the following two groups:

a. Firms that have been disciplined by NFA or the CFTC

Members that qualify as Disciplined Firms based on their disciplinary histories with the CFTC or NFA include those firms for which:

1. the firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices or promotional material;
2. those charges have been resolved; and
3. the firm has either been permanently barred from the industry at any time as a result of those charges or has been sanctioned in any way within the preceding five years as a result of those charges.

b. Firms that have been disciplined in connection with sales practices involving security futures products

Members that qualify as Disciplined Firms based on their disciplinary histories related to sales practices involving security futures products include any broker-dealer that, in connection with sales practices involving the offer, purchase, or sale of any security futures product as defined in Section 1a(32) of the Act has at any time been expelled from membership or participation in any securities industry self-regulatory organization ("Securities SRO") or is subject to an order of the SEC revoking its registration as a broker-dealer or has been sanctioned in any way within the preceding five years in connection with sales practices involving the offer, purchase, or sale of any security futures product as defined in Section 1a(32) of the Act.



Mr. David A. Stawick

September 5, 2008

2. Treatment of principals who previously worked at a Disciplined Firm

For purposes of determining whether a Member will be required to adopt the enhanced supervisory requirements based on the employment histories of its APs and principals, principals of a firm, who are not also APs of that firm and who have been previously employed as an AP by one or more Disciplined Firms, shall be counted as if they were APs of the firm.

3. Treatment of FCMs that guarantee introducing brokers

For purposes of determining whether an FCM Member will be required to adopt the enhanced supervisory requirements, an FCM and its guaranteed introducing brokers ("GIBs") will be considered a single firm. Therefore, for FCMs with GIBs, the APs of its GIBs will be treated as APs of the FCM for determining whether the FCM meets the requirements. If the FCM Member firm meets the requirements, then the FCM and all its GIBs shall be required to adopt the supervisory procedures specified herein. Of course, individual FCMs or GIBs will be required to adopt the enhanced supervisory requirements provided the FCM or GIB meets the requirements on its own.

4. Exemptions from being counted as an AP who worked at a Disciplined Firm

The Board recognizes that there are identifiable populations of APs who are included in the general population of APs who have worked at Disciplined Firms in the past who, further analysis suggests, do not raise the same concerns regarding their previous supervision and training that are raised by the majority of APs who have worked at Disciplined Firms. Generally, these APs worked at Disciplined Firms fairly long ago and are free of additional factors of concern in their employment histories.

A number of the APs in this group worked at Disciplined Firms for only a short period of time many years ago and have not worked at a Disciplined Firm since or been personally subject to disciplinary action. Others worked at a single Disciplined Firm for a somewhat lengthier period and have subsequently been employed for a substantial length of time by Members that have not shown a propensity for customer abuse and the AP has not been personally subject to disciplinary action.

The Board has determined that APs who have not been personally subject to a disciplinary action by NFA or the CFTC and who meet the following criteria shall not



Mr. David A. Stawick

September 5, 2008

be counted by a Member that hires them as having been employed by a Disciplined Firm for purposes of calculating whether the composition of the Member's sales force triggers the enhanced supervisory requirements:

- a. they have been previously employed by Disciplined Firms for a cumulative total of less than 60 days and have not been employed by any Disciplined Firm during the 5 years preceding the determination of whether a Member firm is required to employ the enhanced supervisory requirements established in this Interpretive Notice. In addition, the AP may not have been employed by a Member that has been subject to any sales practice action by NFA or the CFTC, or by any Securities SRO or the SEC in connection with sales practices involving the offer, purchase or sale of any security futures product as defined in Section 1a(32) of the Act since leaving the last Disciplined Firm by which they were employed; or
- b. they worked at only one Disciplined Firm more than 10 years preceding the determination of whether a Member firm is required to employ the enhanced supervisory requirements and they have not been employed by a Member that has been subject to any sales practice action by NFA or the CFTC, or by any Securities SRO or the SEC in connection with sales practices involving the offer, purchase or sale of any security futures product as defined in Section 1a(32) of the Act ~~since leaving the Disciplined Firm~~ within the 10 years preceding the determination, and they have been an NFA Member or Associate Member for at least eight of the ten years preceding the determination.

B. Criteria that obligate a Member to adopt the enhanced supervisory requirements

Member firms will be required to adopt the enhanced supervisory requirements if they fall into any of the categories described below.

1. Obligation based on employment histories of APs and principals:

Firms that meet any of the following numerical criteria are required to adopt the enhanced supervisory requirements:



Mr. David A. Stawick

September 5, 2008

- For firms with less than five APs, 2 or more of its APs have been employed by one or more Disciplined Firms;
- For firms with at least 5 but less than 10 APs, 40 percent or more of its APs have been employed by one or more Disciplined Firms;
- For firms with at least 10 but less than 20 APs, four or more of its APs have been employed by one or more Disciplined Firms; or
- For firms with at least 20 APs, 20 percent or more of its APs have been employed by one or more Disciplined Firms.¹

2. Obligation based on affiliations of principals:

Once a Member firm meets the criteria to adopt the enhanced supervisory requirements, any other Members of which the principals of that Member firm are, or become, principals must also adopt the enhanced supervisory requirements or seek a waiver therefrom.

3. Obligation based on assessing commissions, fees and other charges well above the industry norm

Any Member firm that charges 50% or more of its active customers round-turn commissions, fees and other charges that total \$100 or more per futures, forex or option contract is required to adopt the enhanced supervisory requirements. Any Member that charges 50% or more of its active customers round-turn commissions, fees and other charges in the amount specified above must promptly inform NFA of that fact. In addition, upon request by NFA, Members shall have the burden of demonstrating to NFA that they charge more than 50% of their active customers round-turn commissions, fees and other charges that are less than the specified amounts. The term "active customers" as used in this section means any customers who are

¹ The Board notes that NFA Registration Rule 206(d) requires sponsors to file a Form 8-T with NFA reporting the termination of an AP within 20 days of their termination. Members should be aware that, notwithstanding that Rule, a Member's obligation to adopt the enhanced supervisory requirements is conclusively established on any day on which its sales force meets one of the listed numerical criteria and that the obligation shall not be extinguished by the effect of the subsequent filing of a Form 8-T for a terminated AP even if the form is filed within 20 days of an AP's termination.



Mr. David A. Stawick

September 5, 2008

entitled to a monthly statement under the provisions of CFTC Regulations Section 1.33(a).

4. Obligation based on the initiation of disciplinary action
 - a. Members that have fulfilled the enhanced supervisory requirements that become subject to subsequent disciplinary action

Any Member that has previously been required to adopt the enhanced supervisory requirements; has, in fact, fulfilled that requirement either by adopting the enhanced supervisory requirements for a prescribed period or by receiving a full or partial waiver from the enhanced supervisory requirements from the Telemarketing Procedures Waiver Committee; and subsequently becomes subject to a CFTC or NFA enforcement or disciplinary proceeding alleging deceptive sales practices, shall, within 30 days of being served with notice of the action, adopt all of the enhanced supervisory requirements and may not seek a waiver therefrom. This obligation shall continue until after the disciplinary or enforcement proceeding is closed and all appeals are completed or the time for appeal has passed without an appeal being filed or perfected.

- b. Members already subject to the enhanced supervisory requirements

If an NFA Business Conduct Committee disciplinary proceeding or CFTC enforcement proceeding has been filed against a Member firm required to adopt the enhanced supervisory requirements, then the enhanced supervisory requirements will remain in effect for the applicable time period specified or until after the disciplinary or enforcement proceeding is closed and all appeals are completed or the time for appeal has passed without an appeal being filed or perfected, whichever occurs latest.

IV. WAIVER PROCEDURE

Any Member required to adopt the enhanced supervisory requirements may seek a waiver by filing a petition with the Telemarketing Procedures Waiver Committee within 30 days of the date of being notified by NFA that it is required to adopt the enhanced supervisory requirements. NFA may grant such a waiver upon a satisfactory showing that the Member's current supervisory procedures provide 9 effective supervision over its employees, including enabling the Member to identify potential problem areas before customer abuse occurs. Additionally, if a Member meets the criteria and trades security futures products, then the Member firm must also make



Mr. David A. Stawick

September 5, 2008

a satisfactory showing that the Member's supervisory procedures ensure compliance with all applicable securities laws and regulations. Should a Member fail to file a petition seeking a waiver within 30 days or should it file a petition that is denied by the Telemarketing Procedures Waiver Committee, either in whole or in part, the Member may not petition for a full or partial waiver again until at least two years have elapsed since the Member adopted the required enhanced procedures.

Some of the factors that the three-member Waiver Committee may consider in evaluating a waiver request include:

- the total number and the backgrounds of APs sponsored by the Member;
- number of branch offices and GIBs operated by the Member;
- the experience and background of the Member's supervisory personnel;
- the number of the Member's APs who had received training from firms which have been closed for fraud, the length of time those APs worked for those firms and the amount of time which has elapsed since those APs worked for the disciplined firms;
- the results of any previous NFA examinations;
- the cost effectiveness of the taping requirement in light of the firm's net worth, operating income and related telemarketing expenses;
- whether the Member assesses commissions, fees and other charges that are based on all of the relevant circumstances, including the expense of executing orders and the value of services the Member renders based on its experience and knowledge; and
- whether the Member adequately discloses the amount of commissions, fees and other charges before transactions occur in light of a retail customer's trading experience and the impact that the commissions, fees and other charges may have on the likelihood of profit.

Conditions that the Telemarketing Procedures Waiver Committee shall impose on any Member to which it grants a full or partial waiver include requirements that the firm: notify NFA of any action charging the firm with a violation of CFTC, SEC or Self Regulatory Organization ("SRO") regulations or rules; notify NFA of any customer complaint involving sales practices or promotional material; not change ownership; not have any material deficiencies noted during any SRO examination; not hire additional APs from Disciplined Firms; execute a written acknowledgement that the firm understands the conditions of the waiver; and may include any other conditions deemed by the Committee to be appropriate in consideration of a total or partial waiver from the



Mr. David A. Stawick

September 5, 2008

enhanced supervisory requirements. Violation of any of those conditions may serve as cause for the Telemarketing Procedures Waiver Committee to review and amend or revoke the waiver.

A Member firm that does not comply with this Interpretive Notice will violate NFA Compliance Rule 2-9(b) and will be subject to disciplinary action.

EXPLANATION OF PROPOSED AMENDMENTS

NFA's Board of Directors first adopted NFA Compliance Rule 2-9's Interpretive Notice entitled "Enhanced Supervisory Requirements" ("Notice") in January 1993. It requires a Member to undertake enhanced supervisory requirements if its sales force includes a specified number of individuals who have worked at Disciplined Firms, or if a principal of the firm has been a principal of another firm that has been subject to the enhanced supervisory requirements, or, under certain circumstances, when a Member becomes subject to a disciplinary action.

The Board has amended the Notice from time to time based on various changes affecting the membership and on practical lessons learned from administering the Notice. Over the past several years, the Board has recognized that some APs who were counted as having worked at a Disciplined Firm under the original version of the Notice had personal employment histories that indicated that they posed no more risk to the public than the AP population at large. The Board recognized that employers may be wary of hiring such individuals despite years of Associate membership without disciplinary problems. This is particularly true with small firms, where hiring one of these individuals might trigger the enhanced supervisory procedures and require the firm to apply for a waiver. In addition, some firms are simply loath to hire any individual who would be counted as having come from a Disciplined Firm, even if doing so would not trigger the enhanced supervisory procedures.

Currently, the Notice provides for two types of exemptions, which focus on an AP's length of employment at a Disciplined Firm (i.e., less than sixty days) and the time since an AP has been employed at a Disciplined Firm (i.e., more than ten years). The Board decided to grant relief to these defined groups because staff's analysis showed that given their background they pose minimal risk. With regard to the second type of exemption, the Notice currently provides that APs are exempt from being counted as having worked at a Disciplined Firm if: 1) they worked at only one Disciplined Firm; 2) that employment terminated more than ten years ago, 3) they have not personally been subject to a disciplinary action by NFA or the CFTC; 4) they have been registered as APs and



Mr. David A. Stawick

September 5, 2008

Associate Members of NFA for eight of the last ten years; and 5) since working for the Disciplined Firm they have not worked for any other firm that has been subject to a sales practice action.

In practice, this latter condition acts as a de facto perpetual bar to receiving the exemption even if the AP's employment at the second firm subject to a sales practice action also occurred many years in the past.

NFA performed an analysis of the effect of applying a ten-year time limit not only to the length of time since an AP was employed at a Disciplined Firm but also to the condition that the AP not work at a firm that had a sales practice action since being employed at the Disciplined Firm. This analysis showed that the current exemption could prudently be revised to include APs who met the other existing criteria, and who had worked more than ten years ago at a firm that was subject to a sales practice action. This change would afford this exemption to approximately 85 additional individuals who, based upon their employment histories, do not appear to pose any greater risk of using fraudulent sales tactics than the general population of APs.²

Excluding these APs from the calculation that triggers a firm's obligation to comply with the enhanced supervisory procedures is consistent with the reasoning behind the existing exemptions. Ultimately, the proposed expanded exemption would have the effect of removing some non-problematic individuals and Member firms from the waiver process.

The Notice also provides that one of the enhanced supervisory requirements is an increased adjusted net capital ("ANC") level. The Notice currently provides that FDMs that are required to undertake the enhanced supervisory requirements are obligated to maintain ANC of at least \$2,000,000. When the Board adopted that provision, FDMs that were not subject to the enhanced supervisory requirements had a minimum ANC of \$1,000,000. However, revisions to NFA Financial Requirements Section 11 in December 2007 raised the required minimum level of ANC for all FDMs to \$5,000,000, thus rendering the \$2,000,000 requirement irrelevant. Furthermore, the CFTC Reauthorization Act of 2008 further increases the ANC for FDMs, phasing in the increase to an eventual \$20 million.

² There are more than 13,000 individuals who have ever worked as an AP at a Disciplined Firm. Approximately 2,100 of those individuals are exempted from having to be included in a firm's calculation of whether it has triggered enhanced supervision under the current exemptions provided for in the Notice.



Mr. David A. Stawick

September 5, 2008

The proposed revisions to the enhanced supervisory requirements would reinstate an increased ANC level for FDMs and make the provision more flexible in addressing future changes. These revisions tie the enhanced ANC level for FDMs to the early warning requirement under CFTC rules, which is currently 150% of the required ANC.

Under the proposal (and assuming the CFTC's early warning percentage remains unchanged), a triggering FDM would currently have to maintain an enhanced ANC of \$7,500,000, increasing to \$30,000,000 as the minimum ANC for FDMs increases from \$5,000,000 to \$20,000,000 over the next year. This revision would not only have the effect of bringing the current enhanced ANC obligation into harmony with the revisions made to NFA Financial Requirements Section 11 in December 2007, it would also keep the obligation in harmony with any future changes to the level of ANC required of FDMs without requiring further amendments to the Notice.

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 the Interpretive Notice regarding 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 proposal for approval.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Sexton", is written over a horizontal line.

Thomas W. Sexton
Vice President and General Counsel

cc: William Penner

TWS:jac(m:/jac/SubmissionLtrs\CR2_9IntNotc EnhancSupervRequire082208)