March 3, 2011

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: Forex Requirements – Proposed Amendments to Bylaws 301 and 306; Compliance Rules 2-10, 2-36 and 2-39; Code of Arbitration Section 1 and the Interpretive Notices Entitled *Forex Transactions; NFA Compliance Rule 2-40: Procedures for the Bulk Assignment or Liquidation of Forex Positions: Cessation of Customer Business;* and *Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems**

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 Bylaws 301 and 306; Compliance Rules 2-10, 2-36 and 2-39; Code of Arbitration Section 1 and the Interpretive Notices Entitled *Forex Transactions; NFA Compliance Rule 2-40: Procedures for the Bulk Assignment or Liquidation of Forex Positions: Cessation of Customer Business*; and *Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems*. NFA's Board of Directors ("Board") approved the proposal on February 17, 2011. NFA respectfully requests Commission review and approval of the proposed amendments.

PROPOSED AMENDMENTS
(additions are underscored and deletions are ~~stricken through~~)

BYLAWS

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CHAPTER 3
MEMBERSHIP AND ASSOCIATION WITH A MEMBER

BYLAW 301. REQUIREMENTS AND RESTRICTIONS.

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(j) Eligibility to Conduct Forex Activities

(i) ~~No~~ Any Member that is ~~required to be~~ registered with the Commission as an FCM, RFED, IB, CPO, or CTA ~~in connection with its~~ and engages in forex activities ~~may commence forex activities unless~~ must be approved as a forex firm by NFA.

(1) In addition to being approved by NFA as a forex firm, an RFED or an FCM that is a Forex Dealer Member must also be designated by NFA as an approved Forex Dealer Member.

(A) No FCM may be designated as an approved Forex Dealer Member unless such FCM provides NFA with satisfactory evidence that it meets the requirements in NFA Financial Requirements Section 11.

(ii) ~~No~~ Any person associated with a Member that is ~~required to be~~ registered with the Commission as an FCM, RFED, IB, CPO, or CTA ~~in connection with its~~ and engages in forex activities ~~may commence forex activities on behalf of such Member unless~~ must be approved as a forex associated person by NFA in order to engage in forex activities on behalf of such Member.

(iii) No Member may be approved as a forex firm unless at least one of its principals is registered as an "associated person" and approved as a forex associated person.

(1) If any Member that has been approved as a forex firm fails to have at least one principal that is registered as an "associated person" and approved as a forex associated person, then NFA shall deem such failure as a request to have the approval of the Member as a forex firm withdrawn and shall notify that Member accordingly.

(iv) Any request for designation as an approved Forex Dealer Member or approval as a forex firm or forex associated person must be filed electronically through NFA's Online Registration System.

(v) Any individual applying for designation as an approved Forex Dealer Member or approval as a forex firm or forex associated person shall not be granted designation as an approved Forex Dealer Member or approval as a forex firm or forex associated person unless:

(1) The applicant has satisfied the proficiency requirements under NFA Registration Rule 401(a) or 401(e) and:

(A) NFA has received satisfactory evidence that the applicant has taken and passed the Retail Off-Exchange Forex Examination (Series 34) on a date which is no more than two years prior to the date the application is received by NFA;

(B) NFA has received satisfactory evidence that the applicant has taken and passed the Retail Off-Exchange Forex Examination (Series 34) and since the date the applicant last passed such examination, there has been no period of two consecutive years during which the applicant has not been either registered as a FB, AP or principal of an FCM, RFED, IB, CTA, CPO, or LTM; or

(C) the applicant was duly registered under the Act as a FB, AP or sole proprietor FCM, IB, CTA, CPO or LTM on May 22, 2008, and there has been no period of two consecutive years since May 22, 2008, during which the applicant has not been registered as a FB, AP or principal of an FCM, RFED, IB, CTA, CPO or LTM.

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BYLAW 306. FOREX DEALER MEMBERS.

~~(a) Except as provided in section (b),~~ Members of NFA are Forex Dealer Members ~~if they are registered with the CFTC as a retail foreign exchange dealer (RFEDs) or~~ if they are the counterparty or offer to be the counterparty to forex transactions (as defined in Bylaw 1507(b)).

~~(b) Unless they are RFEDs, the following Members are not Forex Dealer Members:~~

~~(i) Entities described in subsection (aa) and subsections (dd) through (ff) of Section 2(c)(2)(B)(i)(II) of the Act;~~

~~(ii) Entities described in Section 2(c)(2)(B)(i)(II)(bb)(AA) of the Act that are members of a national securities association registered under Section 15A(b) of the Securities Exchange Act of 1934; and~~

~~(iii) Entities described in Section 2(c)(2)(B)(i)(II)(bb)(BB) if the affiliated broker or dealer is a member of a national securities association registered under Section 15A(b) of the Securities Exchange Act of 1934.~~

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COMPLIANCE RULES

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PART 2 – RULES GOVERNING THE BUSINESS CONDUCT OF MEMBERS REGISTERED WITH THE COMMISSION

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RULE 2-10. RECORDKEEPING.

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(b) Each FCM Member and Forex Dealer Member must: ~~either:~~

(1) Maintain an office in the continental United States, Alaska, Hawaii, or Puerto Rico responsible for preparing and maintaining financial and other records and reports required by CFTC and/or NFA rules under the supervision of a listed principal and registered AP of the FCM or Forex Dealer Member who is resident in that office; or

(2) If an FCM, ~~M~~ maintains an office in a jurisdiction that the CFTC has found to have a comparable regulatory scheme for purposes of Part 30 of the CFTC's rules and be subject to that regulatory scheme. This foreign office must be responsible for preparing and maintaining financial and other records and reports required by CFTC and/or NFA rules under the supervision of a listed principal and registered AP of the FCM who is resident in that office, and the Member must agree to reimburse NFA for any travel, translation, telephone, and similar expenses incurred in connection with inquiries, examinations and investigations of the Member that exceed the normal expenses incurred by NFA in examining an FCM Member located at the closest point in the continental United States, Alaska, Hawaii, or Puerto Rico.

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RULE 2-36. REQUIREMENTS FOR FOREX TRANSACTIONS

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(i) Customer Accounts

A~~n FDM~~ Forex Dealer Member must notify NFA prior to commencing customer business.

(j) FDM Chief Compliance Officer

Each ~~FDM~~ Forex Dealer Member shall designate one or more principal(s) to serve as Chief Compliance Officer(s) (CCO). Each CCO must certify annually to NFA that the FDM has a process in place to establish, maintain, review, modify and test policies and procedures that are reasonably designed to achieve compliance with the CEA, CFTC Regulations and orders thereunder, and NFA Requirements. Each CCO must also certify that the FDM has compliance processes in place and that the CCO has apprised the FDM's chief executive officer ~~CEO~~ (or equivalent management personnel) of the FDM's compliance efforts to date, as well as identified any significant compliance problems and the CCO's plan to address those problems. Each FDM must file this annual certification with NFA at the time it files it annual certified financial report.

(k) CFTC Forex Regulations

Any Member or Associate that violates any of CFTC Regulations 5.2, 5.5, 5.10 through 5.19 or 5.23, as applicable, shall be deemed to have violated an NFA Requirement.

(l) Customer Information and Risk Disclosure

(1) Each Member or Associate shall, in accordance with the provisions of this subsection, obtain information from all customers and provide such customers with disclosure of the risks of forex trading.

(2) The Member or Associate shall exercise due diligence to obtain the information and shall provide the risk disclosure at or before the time a customer first opens a forex trading account with or introduced by the Member or first authorizes the Member to exercise discretionary trading authority in a forex trading account. For an active customer who is an individual, the Member acting as the counterparty to the customer shall contact the customer, at least annually, to verify that the information obtained from the customer under paragraph (3) remains materially accurate, and provide the customer with an opportunity to correct and complete the information. Whenever the customer notifies the Member acting as the counterparty to the customer of any material changes to the information, a determination must be made as to whether additional risk disclosure is required to be provided to the customer based on the changed information. If an FCM or IB Member introduces the customer's account or a CTA Member exercises discretionary trading authority over the account, then the Member acting as the counterparty to the customer must notify that FCM, IB or CTA Member of the changes to the customer's information. The Member or Associate who currently solicits and communicates with the customer is responsible for determining if additional risk disclosure is required to be provided based on the changed information. In some cases, this may be the Member introducing or controlling the account; in other cases, it may be the Member acting as the counterparty to the customer account.

(3) The information to be obtained from the customer shall include at least the following:

(i) The customer's true name and address, and principal occupation or business;

(ii) For customers who are individuals, the customer's current estimated annual income and net worth. For all other customers, the customer's net worth or net assets and current estimated annual income, or where not available, the previous year's annual income;

(iii) For individuals, the customer's approximate age or date of birth;

(iv) An indication of the customer's previous investment, futures trading and forex trading experience; and

(v) Such other information deemed appropriate by such Member or Associate to disclose the risks of futures trading to the customer.

(4) The risk disclosure to be provided to the customer shall include at least the following:

(i) the Risk Disclosure Statement required by CFTC Regulation 5.5, if the Member is required by that Regulation to provide it; and

(ii) the Risk Disclosure Statement required by CFTC Regulation 4.34, if the Member is required by that Regulation to provide it.

(5) In the case of an account introduced by a Member or an account for which a Member CTA exercises discretionary trading authority, and except as otherwise provided in paragraph (2), it shall be the responsibility of the Member soliciting the account to comply with this Rule. However, if the account is introduced or managed by a non-NFA Member, it shall be the sole responsibility of the Member acting as a counterparty to the transaction to comply with this rule.

(6) A Member or Associate shall be entitled to rely on the customer (as the sole source) for the information obtained under paragraph (3) and shall not be required to verify such information.

(7) Each Member or Associate shall make or obtain a record containing the information obtained under paragraph (3) at the time the information is obtained. If a customer declines to provide the information set forth in paragraph (3), the Member or Associate shall make a record that the customer declined, except that such a record need not be made in the case of a non-U.S. customer. Each Member shall keep copies of all records made pursuant to this Rule in the form and for the period of time set forth in CFTC Regulation 1.31.

(8) Each Member shall establish and enforce adequate procedures to review all records made pursuant to this Rule and to supervise the activities of its

Associates in obtaining customer information and providing risk disclosure.

(9) Nothing herein shall relieve any Member from the obligation to comply with all applicable CFTC Regulations and NFA Requirements.

(m) Scope

This rule governs forex transactions as defined in Bylaw 1507(b).

(n) Exemptions for Certain Transactions

Transactions entered into through a Member to hedge currency exposure from positions on regulated exchanges are exempt from all forex requirements except sections (b) and (c) of this rule if the on-exchange transactions are handled by the same Member.

(o) Definition of Customer

For purposes of this rule, the term "customer" means a counterparty that is not an eligible contract participant as defined in Section 1a(12) of the Act.

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RULE 2-39. SOLICITING, INTRODUCING, OR MANAGING FOREX TRANSACTIONS OR ACCOUNTS.

(a) ~~Except for Members who meet the criteria of Bylaw 306(b) and Associates acting on their behalf~~, Members and Associates who solicit customers, introduce customers to a counterparty, or manage accounts on behalf of customers in connection with forex transactions shall comply with Sections (a), (b), (c), (d), (e), (g), (h) and (l).

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CODE OF ARBITRATION

SECTION 1. DEFINITIONS.

As used in this Code:

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(o)"Futures"—includes:

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(6) forex transactions (for purposes of jurisdiction under this Code)~~:~~

~~(i) forex transactions when the claim is brought against a Member or Associate who is subject to Compliance Rule 2-39; and~~

~~(ii) forex transactions that are between a Forex Dealer Member and a person that is not an eligible contract participant as defined in Section 1a(12) of the Act. Forex Dealer Members, their employees, and Members and Associates who solicit transactions on behalf of, introduce customers to, or manage accounts for customers that enter into transactions with a Forex Dealer Member are all subject to mandatory arbitration in connection with those transactions~~.

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INTERPRETIVE NOTICES

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¶9053 – FOREX TRANSACTIONS

INTERPRETIVE NOTICE

The Commodity Exchange Act (CEA or Act) gives the Commodity Futures Trading Commission (CFTC or Commission) ~~limited~~ jurisdiction over certain off-exchange foreign currency transactions offered to or entered into with retail customers. ~~As a result of those provisions, certain firms primarily engaged in the retail forex business have registered with the CFTC and become Members of NFA. NFA has adopted several requirements to govern the conduct of these firms and their associated persons.~~

As described below, NFA Bylaw 306 creates a Forex Dealer Member category for ~~certain~~ NFA Members who act as counterparties to forex transactions with retail customers. This category allows NFA to exercise appropriate regulatory

jurisdiction over the retail forex activities of these Members ~~without imposing unnecessary, and potentially duplicative, regulatory burdens on Members that are otherwise subject to regulatory oversight for their activities.~~

NFA Bylaw 1507(b) defines forex as foreign currency futures and options and any other agreement, contract, or transaction in foreign currency that is offered or entered into on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis that are:

- offered to or entered into with persons that are not eligible contract participants as defined in Section 1a(12) of the Act (retail customers); and
- not executed on or subject to the rules of a contract market, a derivatives transaction execution facility, a national securities exchange registered pursuant to Section 6(a) of the Securities Exchange Act of 1934, or a foreign board of trade.[1]

Bylaw 1507(b) also excludes the following from the forex definition if the transaction is not a futures or options contract:

- securities (other than security futures products);
- any contract of sale that results in actual delivery within two days; and
- any contract of sale that creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

Given the differences between off-exchange transactions and traditional exchange-traded futures and options, the Board of Directors does not believe that it is appropriate to apply the full array of NFA's futures rules to forex transactions. Therefore, rather than simply incorporating forex transactions into the definition of "futures," NFA adopted NFA Compliance Rule 2-36 to govern these transactions.

In developing its forex requirements, NFA's primary concern was to ensure that they provide adequate protection for retail customers without imposing undue burdens on NFA Members. NFA also believes that its requirements should, where consistent with customer protection, promote innovation and competition. In order to provide Members with as much flexibility as possible, NFA has chosen

to deal with a number of issues by providing guidance under NFA Compliance Rule 2-36 instead of by adopting additional rules.

NFA Compliance Rule 2-36 sets out the general standards that apply to Forex Dealer Members and their Associates in connection with forex transactions. Subsection (b) prohibits Forex Dealer Members and their Associates from engaging in fraudulent activities, subsection (c) requires Forex Dealer Members and their Associates to observe high standards of commercial honor and just and equitable principles of trade in connection with their forex business, subsection (d) prohibits Members from accepting forex orders or accounts from, handling a forex transaction for or on behalf of, receiving compensation for forex transactions from, or paying compensation for forex transactions to any non-Member of NFA that is required to be registered with the Commission as a FCM, RFED, IB, CPO, or CTA in connection with its forex activities, ~~and~~ subsection (e) requires Forex Dealer Members and their Associates with supervisory duties to supervise their employees and agents, subsection (f) requires Forex Dealer Members to provide customers (at account opening and annually thereafter) with written information regarding NFA's BASIC, subsection (g) provides that the Compliance Director may require a Forex Dealer Member to file copies of all promotional material with NFA for NFA's review and approval before it is used, subsection (h) requires Members to comply with Compliance Rule 2-29 with respect to any promotional material that includes a measurement or description or makes reference to hypothetical forex performance results, subsection (i) requires Forex Dealer Members to notify NFA prior to commencing customer business, subsection (j) requires Forex Dealer Members to designate a Chief Compliance Officer and subsection (l) requires Members and Associates to obtain specific customer information and provide required risk disclosure at the time of account opening. Compliance Rule 2-39 extends these provisions to other Members and their Associates who solicit, introduce or manage forex accounts ~~unless the Member meets the criteria in Bylaw 306(b)~~.

This notice has three sections. The first section explains who qualifies as a Forex Dealer Member under NFA Bylaw 306, the second section provides additional guidance about the requirements in Compliance Rule 2-36, and the third section covers other miscellaneous requirements.

A. BYLAW 306

~~In general,~~ Forex Dealer Members are NFA Members who act as counterparties to forex transactions. This is a self-executing requirement, which means that any Member who qualifies is automatically a Forex Dealer Member. There is no application form and no approval requirement.

Members who do not act as counterparties are not Forex Dealer Members, even if they introduce or manage forex accounts. Under NFA Compliance Rule 2-39, however, ~~most~~ Members who introduce or manage forex accounts are required to comply with subsections (a), (b), (c), (d), ~~and~~ (e), (g), (h) and (l) of NFA Compliance Rule 2-36.

~~Bylaw 306(b) excludes Members that are otherwise subject to regulatory oversight for their forex activities, which means that these Members are not Forex Dealer Members and do not have to comply with Compliance Rule 2-36.[2] The exclusions mostly follow Section 2(c)(2)(B)(i)(ll) of the CEA, although the exclusions for broker-dealers and their affiliates are not identical to those in the CEA. In particular, the following entities are not Forex Dealer Members unless they are registered as RFEDs:~~

- ~~financial institutions (e.g., banks and savings associations);~~
- ~~certain insurance companies and their regulated subsidiaries or affiliates;~~
- ~~financial holding companies;~~
- ~~investment bank holding companies;~~
- ~~registered broker-dealers that are members of FINRA;[3] and~~
- ~~Material Associated Persons of registered broker-dealers that are members of FINRA.[4]~~

B. COMPLIANCE RULE 2-36

As noted above, this section provides additional guidance on what Compliance Rule 2-36 requires. Certain sections specifically refer to Forex Dealer Members. ~~Except for Members that meet the criteria in Bylaw 306(b), a~~ All other provisions of this notice also apply to Members and their Associates who solicit, introduce or manage forex accounts.

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4. ~~*Know Your Customer*~~ *Customer Information and Risk Disclosure*~~-~~ Members and Associates ~~have a duty to~~ are required to acquaint themselves sufficiently with the personal and financial circumstances of each forex customer and provide the customer with certain required risk disclosures as well as other ~~to determine what further~~ facts, explanations and disclosures ~~are~~ needed in order for the customer to make an informed decision on whether to enter into forex transactions.

Every Member should determine what information it will obtain from a prospective forex customer. At a minimum, the Member soliciting the customer to engage in forex transactions ~~should~~ must obtain the information and provide the disclosures required by Compliance Rule 2-36(l) .~~customer's name, address, principal occupation or business, current estimated annual income and net worth, approximate age, and an indication of the customer's previous investment and trading experience~~. Members and their Associates need to ensure that each customer they solicit has received adequate information concerning the risks of forex transactions so that the customer can make an informed decision as to whether forex transactions are appropriate for the customer. There may be some customers for whom the additional disclosure will portray forex trading as too risky for that customer. In these instances, the only adequate risk disclosure by the Member and Associate is that forex trading is too risky for that customer. However, NFA believes that a determination of who those customers are cannot be made except on a case-by-case basis, because no objective criteria can be established that will apply to all customers. The essential feature of the Rule is the link between "knowing the customer" and providing risk disclosure. Once that has been done and the customer has been given adequate disclosure, the customer is free to make the decision whether to trade forex and the Member is permitted to accept the account. Members and Associates, however, are prohibited from making individualized recommendations to any customer for which the Member or Associate has or should have advised that forex trading is too risky for that customer. Finally, although it is the responsibility of the Member soliciting the account to comply with these requirements, Members may agree in writing that the Member acting as the counterparty to the transaction will be responsible for fulfilling the requirements of Compliance Rule 2-36(l). Members should refer to NFA Interpretive Notice 9004 – *NFA Compliance Rule 2-30: Customer Information and Risk Disclosure* for additional guidance on the requirements of this section.

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¶9058—NFA COMPLIANCE RULE 2-40: PROCEDURES FOR THE BULK ASSIGNMENT OR LIQUIDATION OF FOREX POSITIONS: CESSATION OF CUSTOMER BUSINESS

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BULK ASSIGNMENTS AND TRANSFERS

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Written Consent or Prior Notice

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Notice to Customers

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~~Where the customer positions and accounts are being assigned/ transferred to a firm that is an NFA Member but is not an FDM, the notice must include the following disclosure:~~

~~YOUR POSITIONS AND ACCOUNT WILL BE ASSIGNED TO A FIRM WHOSE OFF-EXCHANGE FOREX ACTIVITIES ARE NOT REGULATED BY NATIONAL FUTURES ASSOCIATION.~~

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¶9060—COMPLIANCE RULE 2-36(e): SUPERVISION OF THE USE OF ELECTRONIC TRADING SYSTEMS

INTERPRETIVE NOTICE

NFA Compliance Rule 2-36(e) places a continuing responsibility on every Forex Dealer Member (FDM) to diligently supervise its employees and agents in all aspects of its forex activities, and Compliance Rule 2-39 applies this same requirement to ~~certain~~ Members who solicit, introduce, or manage forex customer accounts.[~~1~~] These rules are broadly written to provide Members with flexibility in developing procedures tailored to meet their particular needs, so NFA uses interpretive notices to provide more specific guidance.[~~2~~1]

Although the Board of Directors firmly believes that supervisory standards do not change with the medium used, technology may affect how those standards are applied. The forex markets are highly automated, with virtually all

trading done on electronic platforms. Most orders are also placed electronically, usually entered directly with the platform via the Internet. Therefore, in order to fulfill their supervisory responsibilities, Members must adopt and enforce written procedures to address the security, capacity, credit and risk-management controls, and records provided by the firm's electronic trading systems.[~~3~~2] This includes electronic trading platforms, order-routing systems incorporated into electronic trading platforms, and separate order-routing systems (AORSs).[~~4~~3] For an electronic trading platform, the procedures must also address the integrity of the trades placed on it.

NFA recognizes that Members who solicit or manage accounts may not have control over the electronic platform where the customer places its trades. Nonetheless, if these Members ~~are subject to NFA Compliance Rule 2-39 and~~ are dealing with a counterparty that is not an FDM, they have a supervisory responsibility to conduct a reasonable investigation regarding security, capacity, credit and risk-management, records, and integrity of trades on the platform prior to entering into a relationship with that counterparty and periodically thereafter. Therefore, while they are not subject to the more specific requirements of this Notice, they should adopt written procedures addressing the steps they will take to investigate the platform and how they will respond if they have reason to believe that the platform does not meet the general standards set out after each major heading.[~~5~~4]

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[~~1~~] ~~Compliance Rule 2-39 and this Interpretive Notice apply to all Members except those who are described in Bylaw 306(b). It does not apply to Members who are registered as broker-dealers and members of the Financial Industry Regulatory Authority.~~

NOTE: Subsequent footnotes will be renumbered.

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EXPLANATION OF PROPOSED AMENDMENTS

NFA Bylaw 306 excludes certain entities from the definition of Forex Dealer Member, and NFA Compliance Rule 2-39 excludes these same entities that engage in soliciting or managing retail forex accounts from certain Forex Requirements.

The list of excluded entities currently includes, in part, NFA Members that are otherwise regulated financial institutions, financial holding companies, insurance companies, broker-dealers that are members of FINRA and material associated persons of broker-dealers (if the broker-dealer is a member of FINRA).

NFA's Board has determined that the exclusions for otherwise regulated entities should be eliminated because these exclusions lead to unintended and difficult to harmonize regulatory gaps. Specifically, the Board is concerned that an otherwise regulated entity that is not subject to any meaningful forex regulatory scheme may become an NFA Member for the primary – or sole purpose – of cloaking itself with a mantle of respectability for its retail forex activities. Because these entities are NFA Members, their customers or potential customers may mistakenly believe that NFA regulates their forex activities. Due to this false perception, NFA's Board concluded that if an NFA Member is engaging in retail forex transactions, then NFA should have jurisdiction over those activities.

Additionally, NFA's Board is concerned that a provision in the Dodd-Frank Act may create an impetus for broker-dealers to spin off their retail forex businesses to an affiliate that then becomes an NFA Member. Specifically, Section 2(c)(2)(E) of the Commodity Exchange Act, which becomes effective in July 2011, prohibits otherwise regulated entities with a federal regulator from engaging in retail forex futures transactions except pursuant to CFTC-type forex regulatory requirements promulgated by these other federal regulatory agencies. Therefore, unless the SEC adopts regulatory requirements for broker-dealers engaging in retail forex activities by July 2011, broker-dealers may no longer engage in retail forex business. However, Section 2(c)(2)(E)'s prohibition likely does not apply to material associated persons of a broker-dealer.

NFA's Board is concerned that as a result, certain broker-dealers may spin-off their retail forex businesses to separate material affiliates and register them as FCMs to cloak themselves with a mantle of respectability for their retail forex activities. Again, due to Bylaw 306's current exclusions, these entities would be NFA Members but not subject to NFA's forex requirements. Therefore, the Board approved amendments to Bylaw 306, Compliance Rule 2-39 and the Interpretive Notice entitled *Forex Transactions* to provide that any NFA Member engaging in forex transactions is subject to NFA's Forex Requirements. The Board also approved related technical clarifying amendments to NFA's Code of Arbitration Section 1, NFA's Interpretive Notice entitled *NFA Compliance Rule 2-40: Procedures for Bulk Assignment or Liquidation of Forex*

Positions: Cessation of Customer Business and NFA's Interpretive Notice entitled *Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems.*

NFA's Board also concluded, however, that it should not subject Member FCMs whose forex activities are limited to their futures customers using OTC forex to hedge their currency risk related to on-exchange transactions that settle in currencies other than their home currency to all of NFA's forex requirements for these limited forex transactions. Therefore, the Board adopted Compliance Rule 2-36(n), which exempts these transactions from all of the forex requirements except the anti-fraud and the responsibility to act according to just and equitable principles of trade provisions.

The Board also adopted an amendment to Bylaw 301(j), which governs the eligibility of Members to conduct forex activities. The amendment requires any Member that is registered with the Commission and conducting forex activities to be designated as a forex firm and any individual associated with the firm to be approved as a forex Associate in order to conduct forex activities for the Member. These firms will also be required to have at least one principal that is registered as an AP and approved as a forex AP. This person will be required to have passed the Retail Off-Exchange Forex Examination (Series 34). However, NFA will grandfather certain APs from this testing requirement as long as they were registered as a Floor Broker, AP or sole proprietor FCM, IB, CTA, CPO or LTM on the effective date of the *CFTC Reauthorization Act of 2008,* May 22, 2008, and there has been no period of two consecutive years since May 22, 2008 during which the AP was not so registered.

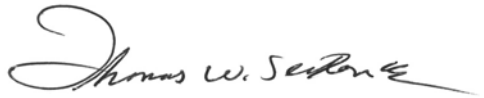
The Board also amended Compliance Rule 2-36 to add subsection (l) and the Interpretive Notice entitled *Forex Transactions to* impose the "know-your-customer" requirements set forth in NFA Compliance Rule 2-30 to Members' forex transactions. The Board adopted this amendment because it concluded that Members and Associates engaged in forex transactions should have the same "know-your-customer" obligations to their customers as Members and Associates engaged in futures transactions have to their customers.

The Board also amended Compliance Rule 2-10 to require FDMs to maintain an office in the continental United States, Alaska, Hawaii or Puerto Rico that is responsible for preparing and maintaining CFTC and NFA required financial records and reports and be under the supervision of a listed principal and registered AP of the FDM who resides in that office. FCMs are currently subject to these same requirements.

NFA's FCM, IB, CPO/CTA and FDM Advisory Committees fully supported the proposed changes described above.

NFA respectfully requests that the Commission review and approve the proposed amendments to Bylaws 301 and 306; Compliance Rules 2-10, 2-36 and 2-39; Code of Arbitration Section 1; and the Interpretive Notices Entitled *Forex Transactions*; *NFA Compliance Rule 2-40: Procedures for the Bulk Assignment or Liquidation of Forex Positions: Cessation of Customer Business*; and *Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems*.

Respectfully submitted,



Thomas W. Sexton
Senior Vice President and
General Counsel

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*The proposed amendments to Bylaws 301 and 306; Compliance Rules 2-10, 2-36 and 2-39; Code of Arbitration Section 1; and the relevant Interpretive Notices become effective October 1, 2011.