December 12, 2013

<u>Via Federal Express</u>

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

Re: National Futures Association: Allocation of Bunched Orders - Proposed Amendments to NFA's Interpretive Notice Entitled *NFA Compliance Rule 2-10: The Allocation of Bunched Orders for Multiple Accounts* and NFA's Interpretive Notice Entitled *NFA Compliance Rule 2-10: The Allocation of Bunched Retail Forex Orders for Multiple Accounts* *

Dear Ms. Jurgens:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") the proposed amendments to NFA's Interpretive Notice Entitled *NFA Compliance Rule 2-10: The Allocation of Bunched Orders for Multiple Accounts* and NFA's Interpretive Notice Entitled *NFA Compliance Rule 2-10: The Allocation of Bunched Retail Forex Orders for Multiple Accounts*. NFA's Board of Directors ("Board") approved the proposal on November 21, 2013.

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 <u>underscored</u> and deletions are ~~stricken through~~)

INTERPRETIVE NOTICES

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NFA COMPLIANCE RULE 2-10: THE ALLOCATION OF BUNCHED ORDERS FOR MULTIPLE ACCOUNTS

INTERPRETIVE NOTICE

NFA Compliance Rule 2-10 adopts by reference CFTC Regulation 1.35, which, among other things, imposes on futures commission merchants ("FCMs") and introducing brokers (IBs) recordkeeping requirements relating to customer orders on futures and options on futures contracts. The purpose of the regulation is to prevent various forms of customer abuse, such as fraudulent allocation of trades, by providing an adequate audit trail that allows customer orders to be tracked at every step of the order processing system. In general, Regulation 1.35 requires ~~futures commission merchant (~~"FCMs~~")~~and IBs receiving a customer order to prepare a written record of the order immediately upon receipt, including an appropriate account identifier.

With respect to bunched orders placed by an account manager on behalf of multiple clients, the CFTC ~~had~~ interpreted Regulation 1.35[1] to require that, at or before the time the order is placed, the account manager must provide the FCM with information that identified the accounts included in the bunched order and specified the number of contracts to be allotted to each account.[2] [3] ~~An exception to this requirement was set forth in~~ The CFTC adopted an exception to this requirement in CFTC Regulation 1.35(a-1)(5), which authorized certain eligible account managers, including registered commodity trading advisors (CTAs), to enter bunched orders for a limited class of eligible clients and to allocate them to individual accounts no later than the end of the day ("post-execution allocation procedures").

~~How the basic requirements of CFTC Regulation 1.35 applied to bunched orders for multiple accounts had been the source of considerable difficulty and confusion. In June 1997, therefore, NFA published an Interpretive Notice to provide guidance to its Members in complying with these requirements ("1997 Notice"). While this Notice did not attempt to address all of the issues that can arise in this context, it provided guidance on recurring questions.~~

In 2003, the CFTC ~~recently adopted an amendment to~~ amended Regulation 1.35(a-1)(5) ~~This amendment~~ to effectively remove~~s the~~ certain limitations on the account managers that may take advantage of post-execution allocation procedures as well as the limitations on the types of clients on whose behalf the account managers may employ post-execution allocation procedures. In particular, at that time, Regulation 1.35(a-1)(5) permitted ~~all registered commodity trading advisors~~ ~~("~~CTAs~~") that are Members of NFA may~~ to take advantage of the procedures in Regulation 1.35(a-1)(5) for the accounts of all clients who granted written investment discretion to the CTA.

The CFTC's most recent amendment to Regulation 1.35 (effective January 2, 2013), which in addition to redesignating 1.35(a-1)(5) as 1.35(b)(5), expands the list of eligible account managers that may employ post-execution allocation procedures to include FCMs and IBs. Under this amendment, CTAs, IBs and FCMs (collectively "Eligible Account Managers") may now take advantage of the procedures in Regulation 1.35 (b)(5) for the accounts of all clients who grant written investment discretion to the CTA, IB or FCM. However, unlike CTAs, FCMs and IBs are prohibited by CFTC Regulations 155.3 and 155.4 from including proprietary trades in a bunched order with customer trades.

The amendment ~~also clarifies~~ does not alter the obligations currently imposed on eligible account managers that wish to take advantage of these post-execution allocation procedures as well as FCMs that execute or clear these transactions. Among other things, the rule requires that contracts executed pursuant to bunched orders be allocated in a fair and equitable manner so that no account or group of accounts consistently receives favorable or unfavorable treatment over time. The rule further provides that ~~CTAs~~ Eligible Account Managers bear the responsibility for the fair and equitable allocation of bunched orders, while FCMs that execute or clear the trade retain the responsibility to monitor for unusual allocation activity.

~~Because all NFA CTA Members may now take advantage of post-execution allocation procedures under Regulation 1.35(a-1)(5), NFA has determined to revise the 1997 Notice.~~ This ~~revised~~ Notice sets out certain core principles that govern all allocation methodologies and the respective responsibilities of ~~CTAs~~ Eligible Account Managers, as well as the FCMs that execute or carry the accounts of the ~~CTA's~~ Eligible Account Managers' clients. ~~The Notice then restates certain methodologies described in the~~ prior version of this ~~1997 Notice.~~ The Notice also describes certain methodologies that generally meet these core principles. Although these methodologies were developed to assure compliance with the requirement that ~~a CTA provide~~ allocation instructions be provided at or before the time a bunched order is placed, they also apply ~~elect to CTAs, that to use~~ to post-execution allocation procedures.

Core Principles and Responsibilities

Allocation instructions for trades made through bunched orders for multiple accounts must deal with two separate issues. The first, which arises in all such orders, involves the question of how the total number of contracts should be allocated to the various accounts included in the bunched order. For some ~~CTAs~~ Eligible Account Managers, this allocation may remain relatively constant. For others, although their basic allocation methodology does not change, the specific allocation instructions produced by the methodology may change on a daily basis.

The second issue involves the allocation of split or partial fills. For example, an ~~CTA~~ Eligible Account Manager may place a bunched order of 100 contracts for multiple accounts. In many instances, however, a market order for 100 contracts may be filled at a number of different prices. Similarly, if an order is to be filled at a particular price, the FCM that executes the trade may be able to execute some but not all of the 100 lot order. In either example, the question arises of how the different prices or the contracts in the partial fill should be allocated among the accounts included in the block order.

The same set of core principles govern the procedures to be used in handling both of these issues. Any procedure for the general allocation of trades or the allocation of split and partial fills must be:

- designed to meet the overriding regulatory objective that allocations are non-preferential and are fair and equitable over time, such that no account or group of accounts receive consistently favorable or unfavorable treatment;[4]
- sufficiently objective and specific to permit independent verification of the fairness of the allocations over time and that the allocation methodology was followed for any particular bunched order; and

- timely, in that the ~~CTA~~ Eligible Account Manager must provide the allocation information to FCMs that execute or clear the trade as soon as practicable after the order is filled and, in any event, sufficiently before the end of the trading day to ensure that clearing records identify the ultimate customer for each trade.

As noted above, the responsibility for allocating contracts executed through a bunched order rests solely with the ~~CTA~~ Eligible Account Manager.[5] The ~~CTA~~ Eligible Account Manager must confirm, on a daily basis, that all its accounts have the correct allocation of contracts. An ~~CTA~~ Eligible Account Manager must also analyze each trading program at least once a quarter to ensure that the allocation method has been fair and equitable (i.e., customers in the same trading program achieve similar allocation results over time). Allocation fairness over time, rather than trade-by-trade, is the critical element in this evaluation. If materially divergent performance results exist over time among accounts in the same trading program, such results must be shown to be attributable to factors other than the ~~CTA's~~ Eligible Account Manager's trade allocation procedures. Applicable CFTC and NFA interpretations have addressed permitted reasons for divergent performance results among accounts in the same trading program. If those results indicate that the allocation method has not been fair and equitable over time, however, then the ~~CTA~~ Eligible Account Manager must revise its allocation methodology or adopt a different allocation method for application on a prospective basis only. An ~~CTA~~ Eligible Account Manager must document its internal audit procedures and results and maintain these audit procedures and results as firm records subject to review during an NFA examination ~~audit~~.

Although the ~~CTA~~ Eligible Account Manager is responsible for the allocation of each bunched order, the FCM that executes or clears the trade has certain obligations as well. In particular, each FCM that executes or clears the trade must receive from an Eligible ~~a~~Account ~~m~~Manager sufficient information to allow it to perform its functions. For executing FCMs in a give-up arrangement, this includes, at a minimum, information that identifies the Eligible ~~a~~Account ~~m~~Manager at the time the order is placed and instructions, which the FCM may receive following execution of the order, for the contracts to be given up to each clearing FCM. Information concerning the number of contracts to be allocated to each account included in the bunched order along with instructions for the allocation of split and partial fills among accounts must be provided to the clearing FCM.[6]

Regulation 1.35~~(a-1)(5)~~ (b)(5) requires each FCM that executes or carries accounts eligible for post-execution allocation to maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which the contracts were allocated. One means by which an FCM can meet this recordkeeping requirement is to maintain a copy of the allocation instructions provided by the Eligible ~~a~~Account ~~m~~Manager by facsimile, e-mail, or other form of electronic transmission. If the allocation is provided orally, however, the FCM must create a written record and maintain that record.

Also, if the FCM has actual or constructive notice that allocations for its customers may be fraudulent, the FCM must take appropriate action. For example, if an FCM has notice of unusual allocation activity, the FCM must make a reasonable inquiry into the matter and, if appropriate, refer the matter to the proper regulatory authorities (e.g., the CFTC or NFA or its DSRO). Whether an FCM has such notice depends upon the particular facts involved.

Obviously, one of the most significant factors is the amount of information available to the FCM. An FCM that both executes and clears an entire bunched order will possess more information than an FCM that executes or clears only a portion of an order. Where there are multiple FCMs executing and clearing the bunched order, some FCMs may have more information available than others, and it is likely that no single FCM would have enough information to determine if there is unusual allocation activity. Likewise, in situations where an investment adviser uses bunched orders for hedging purposes, the FCM may not possess adequate information to evaluate the allocation activity. However, if the FCM has actual or constructive notice that the allocations may be fraudulent, the FCM must take appropriate action.

Examples of Allocation Methodologies

~~In the 1997 Notice, NFA set out~~ The following are examples of procedures for the allocation of split and partial fills that generally satisfy the core principles described above. These methodologies ~~were~~ are the most common that NFA has observed in performing ~~audits~~ examinations. ~~NFA believes they are still~~

~~relevant.~~ However, they are not the exclusive means of achieving compliance with Regulation 1.35~~(a-1)(5)~~ (b)(5). The appropriateness of any particular method, of course, will depend on the ~~CTA's~~Eligible Account Manager's trading strategy.[7]

Example #1 - Rotation of Accounts
One basic allocation procedure involves a rotation of accounts on a regular cycle, usually daily or weekly, which receive the most favorable fills. For example, if a firm has 100 accounts trading a particular trading program, in the first phase of the cycle, Account #1 receives the best fill, Account #2 the second best, etc. In phase 2 of the cycle, Account #2 receives the best fill and Account #1 moves to the end of the line and receives the least favorable fill.

Example #2 - Random Allocation
Some firms prepare on a daily basis a computer generated random order of accounts and allocate the best price to the first account on the list and the worst to the last. This method would satisfy the standards stated above.

Example #3 - Highest Prices to the Highest Account Numbers
Some firms rank accounts in order of their account numbers and then allocate the highest fill prices to the accounts with the highest account numbers. Any advantage the higher numbered accounts enjoy on the sell order are theoretically offset by the disadvantage on the buy orders. Although under certain market conditions this may not always be true, the method generally complies with the standards.

Example #4 - Average Price
With regard to split fills, firms may have internal programs which calculate the average price for each bunched order. The program will then assign the average price to each allocated contract. In the alternative, the program will allocate the actual fill prices among the accounts included in the order to approximate, as closely as possible, the average fill price. Either average price allocation method offers a consistent non-preferential method for allocating trades.

If any Member has questions concerning how this Interpretive Notice would apply to its operations, please contact NFA's Compliance Department.

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[1] 58 FR 26270 (May 3, 1993)

[2] Bunched orders can provide customers with the advantages of better pricing and more efficient execution of orders. With the explosive growth of the managed funds business, the frequency of "give-ups" and the increasing use of electronic order entry systems, it is not at all uncommon for some account managers to place bunched orders for hundreds of accounts on markets around the world, with orders executed by one or more FCMs and cleared by other FCMs.

[3] Consistent with the provisions of CFTC Regulation 1.35~~(a-1)(5)~~ (b)(5), Eligible ~~a~~Account ~~m~~Managers that place orders for a single account must still provide account identification information at the time of order entry.

[4] Because customers must have access to information that allows them to assess the fairness of the allocation process, ~~CTAs~~ Eligible Account Managers are required to make the following information available to customers upon request: (1) the general nature of the ~~CTA's~~ Eligible Account Manager's allocation methodology; (2) whether accounts in which the CTA may have an interest may be included with customer accounts in bunched orders; and (3) summary or composite data sufficient for that customer to compare its allocation results with the allocation results of other comparable customers and, if applicable, any account in which the ~~CTA~~ Eligible Account Manager has an interest.

[5] However, NFA rules do not preclude an FCM from agreeing to undertake this responsibility, whether it clears or executes the trades, pursuant to either its own procedures or to those supplied by the ~~CTA~~ Eligible Account Manager. For example, the ~~CTA~~ Eligible Account Manager and the FCM that executes or clears the trade may agree that the FCM that executes or clears the trade will allocate a bunched order in accordance with instructions that the ~~CTA~~ Eligible Account Manager files with the FCM that executes or clears the trade either prior to or concurrently with placing the bunched order. Any division of responsibilities

agreed to by the FCM that executes or clears the trade and ~~CTA~~ Eligible Account Manager should be clearly documented.

[6] As noted, an Eligible ~~a~~Account ~~m~~Manager must provide all of this information to the appropriate FCM as soon as practicable after the order is filled and sufficiently before the end of the trading day during which the order is executed to ensure that clearing records identify the ultimate customer for each trade.

[7] For example, certain allocation methodologies may satisfy the general standards for ~~CTAs~~ Eligible Account Managers who trade on a daily basis but be inappropriate for ~~CTAs~~ Eligible Account Managers who trade less frequently.

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NFA COMPLIANCE RULE 2-10: THE ALLOCATION OF BUNCHED RETAIL FOREX ORDERS FOR MULTIPLE ACCOUNTS

INTERPRETIVE NOTICE

NFA Compliance Rule 2-10 adopts by reference CFTC Regulation 1.35, which, among other things, imposes on futures commission merchants ("FCMs") and retail foreign exchange dealers ("RFEDs") certain recordkeeping requirements relating to customer forex[1] orders. The purpose of the regulation is to prevent various forms of customer abuse, such as the fraudulent allocation of trades, by providing an adequate audit trail that allows customer orders to be tracked at every step of the order processing system. In general, Regulation 1.35 requires FCMs and RFEDs receiving a customer order to prepare a written record of the order immediately upon receipt, including an appropriate account identifier.

With respect to bunched orders placed by a commodity trading advisor ("CTA") on behalf of multiple clients, the CFTC has interpreted Regulation 1.35 to require that, at or before the time the order is placed, the CTA must provide the FCM with information that identifies the accounts included in the bunched order and specifies the number of contracts to be allotted to each account,[2] [3] (unless the order is done in accordance with the post-execution allocation of bunched order requirements)[4]. Recent NFA examinations have found that many CTAs who manage retail Forex customer accounts are using a percentage allocation management module ("PAMM") to allocate bunched orders placed by them on behalf of multiple clients.

CTAs utilizing PAMM trade an unlimited number of customer accounts under one "Master Account" at an FCM or RFED. Each individual customer then has a sub-account under the Master Account. CTAs utilize the total equity of the Master Account—the aggregate of all individual customers' funds—to place a bunched order for forex lots or contracts and then subsequently allocate a percentage of the lot(s) or contract(s) to each individual customer's sub-account based on each customer's account equity as a percentage of the overall total equity in the Master Account.[5]

If PAMM resulted in the fair and non-preferential allocation of regularly offered and tradable sized lot(s) or contract(s)[6] to each customer's sub-account—and was not based on the customer's account equity as a percentage of the overall total equity in the Master Account—then this method would be consistent with prior interpretations of Regulation 1.35. However, CTAs trading customer accounts and FCMs and RFEDs acting as counterparty to these accounts do not apply PAMM in this manner. Specifically, NFA found that CTAs determine the quantity of regularly offered and tradable sized lots or contracts for a bunched order based on the Master Account's equity, rather than on the quantity of regularly offered and tradable sized lots or contracts that would be permitted based on the margin equity in each individual account, which is often too low to place a trade for a regularly offered and tradable sized lot or contract. Therefore, after the FCM or RFED executes the order, PAMM's application does not result in regularly offered and tradable sized lot(s) or contract(s) being allocated to the individual sub-accounts. Rather, pursuant to PAMM, a percentage of the lot(s) or contract(s) are allocated to each customer based upon their percentage of equity in the Master Account. For example, if two customers had equity that equaled 40% and 12.5% of the Master Account's equity, respectively, then the customers would be allocated .4 and .125 of the regularly offered and tradable sized lot or contract, respectively, if the account manager traded one contract.

The placement of trades based upon the Master Account's total equity and subsequent allocation of a percentage of the lot(s) or contract(s) to individual client accounts pursuant to PAMM, rather than based upon the equity in each individual account causes these individual accounts to be treated similar to a commodity pool's participant units—without the Master Account being legally structured as a commodity pool. Moreover, PAMM leads to certain client accounts not being treated fairly and in a non-preferential manner. Specifically, because FCMs and RFEDs are likely to only act as counterparty with respect to the regularly offered and tradable sized lot(s) or contract(s) margined and traded at the Master Account level, PAMM often restricts the ability of account managers to offset an open position in a smaller percentage lot or contract without affecting the positions of all the sub-accounts underlying the Master Account.

NFA also noted that each FCM and RFED that utilizes PAMM imposes varying restrictions applicable to the process by which customers withdraw and add funds to their accounts. In the extreme situation, individual client withdrawal requests are held up indefinitely because the customer's percentage lot open forex position may not be offset until the regularly offered and tradable sized position is offset for all customers at the Master Account level. In another situation, NFA found that if an individual customer is removed from the PAMM module without their open percentage position being offset, then this customer account may not incur a profit or loss for this position and the original regularly offered and tradable lot sized position is simply subsequently reallocated to the remaining sub-accounts thereby immediately increasing the percentage of equity each individual account has in the regularly offered and tradable sized position established based on the Master Account's equity. Due to these restrictions, NFA is concerned that customers may not be able to close their accounts and have timely access to their funds, and customers are not being treated fairly as a result of this trade allocation method.

In summary, CTAs managing retail forex customer accounts may use bunched orders. However, in determining the quantity of lots or contracts for a bunched order, the CTA may not exceed the sum of the quantity of regularly offered and tradable sized contracts that would be permitted based on the equity in each individual account, not the overall equity in the Master Account. In addition, prior to or at the time the CTA places a bunched order with an FCM or RFED, the CTA must inform the FCM or RFED of the number of regularly offered and tradable sized contracts each individual customer account will receive if the order is filled. The CTA must allocate regularly offered and tradable sized lots or contracts to each individual account using a non-preferential predetermined allocation methodology. Further, all customers should be allowed to make additions and withdrawals in a fair and timely manner, and in a manner that does not affect other customers who are managed by the CTA in the same trading program. Given the significant allocation issues with the use of PAMM, NFA at this time is detailing for forex CTAs the longstanding core principles and responsibilities applicable to the allocation of customer bunched orders.

Core Principles and Responsibilities

Allocation instructions for trades made through bunched orders for multiple accounts must address how the total number of contracts should be allocated to the various accounts included in the bunched order. For some CTAs, this allocation may remain relatively constant. For others, although their basic allocation methodology does not change, the specific allocation instructions produced by the methodology may change on a daily basis.

The second issue may be somewhat less applicable to retail forex transactions given the counterparty nature of these transactions but involves the allocation of split or partial fills. For example, a CTA may place a bunched order of 100 contracts for multiple accounts. This order may be either filled at a number of different prices or if an order is to be filled at a particular price the FCM or RFED may be willing to act as counterparty for some but not all of the 100 lot order. In either example, the question arises of how the different prices of the contracts in the split or partial fill should be allocated among the accounts included in the block order.

The same set of core principles govern the procedures to be used in handling both of these issues. Any procedure for the general allocation of trades or the allocation of split and partial fills must be:

- designed to meet the overriding regulatory objective that allocations are non-preferential and are fair and equitable over time, such that no account or group of accounts receive consistently favorable or unfavorable treatment;[7]

- sufficiently objective and specific to permit independent verification of the fairness of the allocations over time and that the allocation methodology was followed for any particular bunched order; and

- timely, in that the CTA must provide the allocation information to FCMs and RFEDs as soon as practicable at the time the order is placed or after the order is filled.[8]

The responsibility for allocating contracts executed through a bunched order rests solely with the CTA.[9] The CTA must confirm, on a daily basis, that all its accounts have the correct allocation of contracts. A CTA must also analyze each trading program at least once a quarter to ensure that the allocation method has been fair and equitable (i.e., customers in the same trading program achieve similar allocation results over time).[10] Allocation fairness over time, rather than trade-by-trade, is the critical element in this evaluation. If materially divergent performance results exist over time among accounts in the same trading program, such results must be shown to be attributable to factors other than the CTA's trade allocation procedures. Applicable CFTC and NFA interpretations have addressed permitted reasons for divergent performance results among accounts in the same trading program. If those results indicate that the allocation method has not been fair and equitable over time, however, then the CTA must revise its allocation methodology or adopt a different allocation method for application on a prospective basis only. A CTA must document its internal audit procedures and results and maintain these audit procedures and results as firm records subject to review during an NFA ~~audit~~ examination.

Although the CTA is responsible for the allocation of each bunched order, FCMs and RFEDs have certain obligations as well. In particular, each FCM and RFED must receive from an account manager sufficient information to allow it to perform its functions, including information concerning the number of contracts to be allocated to each account included in the bunched order along with instructions, if applicable, for the allocation of split and partial fills among accounts. One means by which an FCM or RFED can meet this recordkeeping requirement is to maintain a copy of the allocation instructions provided by the account manager by facsimile, e-mail, or other form of electronic transmission. If the allocation is provided orally, however, the FCM or RFED must create a written record and maintain that record.

Also, if an FCM or RFED has actual or constructive notice that allocations may be fraudulent, the FCM or RFED must take appropriate action. For example, if an FCM or RFED has notice of unusual allocation activity, the FCM or RFED must make a reasonable inquiry into the matter and, if appropriate, refer the matter to the proper regulatory authorities (e.g., the CFTC or NFA or its DSRO). Whether an FCM or RFED has such notice depends upon the particular facts involved.

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[1] For purposes of the Notice, the term "forex" has the same meaning as in Bylaw 1507(b).

[2] Bunched orders can provide customers with the advantages of better pricing and more efficient execution of orders.

[3] Consistent with the provisions of CFTC Regulation 1.35~~(a-1)(1)~~(b)(1), account managers that place orders for a single account must still provide account identification information at the time of order entry.

[4] CFTC Regulation 1.35~~(a-1)(1)~~(b)(5)'s language governing the post-execution allocation of bunched orders appears inapplicable to retail Forex bunched orders.

[5] FCMs and RFEDs acting as counterparties to retail Forex customer accounts traded as part of a block order have an obligation to ensure that they have collected and maintained for each individual customer the applicable security deposit requirement pursuant to NFA Financial Requirements Section 12 for each lot or contract placed in a customer's account by a CTA.

[6] Forex positions are often regularly traded in the following lot sizes: Standard (100,000 units), Mini (10,000 units) and Micro (1,000 units). CTAs must disclose to their customers the lot size they intend to use.

[7] Because customers must have access to information that allows them to assess the fairness of the allocation process, CTAs are required to make the following information available to customers upon request: (1) the general nature of the CTA's allocation methodology; (2) whether accounts in which the CTA may

have an interest may be included with customer accounts in bunched orders; and (3) summary or composite data sufficient for that customer to compare its allocation results with the allocation results of other comparable customers and, if applicable, any account in which the account manager has an interest.

[8] In 1997, NFA adopted *Interpretive Notice 9029-NFA Compliance Rule 2-10: The Allocation of Bunched Orders for Multiple Accounts* and in the Notice set out examples of methodologies for the allocation of bunched orders that generally satisfy the core principles described above. Although these methodologies were set forth with regard to on-exchange futures and options transactions, their application may be equally applicable to retail forex transactions.

[9] However, NFA rules do not preclude an FCM or RFED from agreeing to undertake this responsibility, pursuant to either its own procedures or to those supplied by the CTA. For example, the CTA and FCM or RFED may agree that an FCM or RFED will allocate a bunched order in accordance with instructions that the CTA files with the FCM or RFED either prior to or concurrently with placing the bunched order. Any division of responsibilities agreed to by the FCM and CTA should be clearly documented.

[10] CTAs must review customer performance at the individual client account level and not the master account level. Moreover, CTAs must maintain the necessary records and calculate customer performance for each trading program in conformity with the CFTC's Part 4 Regulations.

EXPLANATION OF PROPOSED AMENDMENTS

As a result of the CFTC's amendments to Regulation 1.35[1], NFA has amended the Interpretive Notice entitled *NFA Compliance Rule 2-10: The Allocation of Bunched Orders for Multiple Accounts* and the Interpretive Notice entitled *NFA Compliance Rule 2-10: The Allocation of Bunched Retail Forex Orders for Multiple Accounts.* The amendments to the Interpretive Notices reflect the CFTC's changes to Regulation 1.35 as well as several technical amendments.

[1] *See* 77 FR 66288 (November 2, 2012)

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make the proposed amendments to the Interpretive Notice Entitled *NFA Compliance Rule 2-10: The Allocation of Bunched Orders for Multiple Accounts* and the Interpretive Notice Entitled *NFA Compliance Rule 2-10: The Allocation of Bunched Retail Forex Orders for Multiple Accounts* effective ten days after receipt of this submission by the Commission, unless the Commission notifies NFA that the Commission has determined to review the proposal for approval.

Respectfully submitted,

Thomas W. Sexton
Senior Vice President and
General Counsel

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* Went into effect on March 21, 2014.