

September 28, 2010

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 Amendments to NFA Bylaws 306 and 1301, NFA Compliance Rules 1-1, 2-13, 2-23, 2-24, 2-36, 2-38, 2-39, 2-41, 2-42 and 2-44, Code of Arbitration Sections 1, 2, 3, and 6, Member Arbitration Rules Section 6, Financial Requirements Sections 1, 3, 4, 8, 10, 11 and 12, and the Interpretive Notices entitled *NFA Financial Requirements: The Electronic Filing of Financial Reports; Forex Transactions; and Bulk Assignments and Transfers.**

Dear Mr. Stawick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("Act"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed amendments to NFA Bylaws 306 and 1301, NFA Compliance Rules 1-1, 2-13, 2-23, 2-24, 2-36, 2-38, 2-39, 2-41, 2-42 and 2-44, Code of Arbitration Sections 1, 2, 3, and 6, Member Arbitration Rules Section 6, Financial Requirements Sections 1, 3, 4, 8, 10, 11 and 12, and the Interpretive Notices entitled *NFA Financial Requirements: The Electronic Filing of Financial Reports; Forex Transactions; and Bulk Assignments and Transfers.* NFA's Board of Directors ("Board") approved the proposal on August 21, 2008. NFA's Executive Committee, as authorized by the Board, approved additional amendments on September 27, 2010, to conform the proposal to the CFTC's Forex rules issued on August 30, 2010. The Board will ratify the Executive Committee's action at its November 18, 2010 meeting.

NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("CEA") and will make these proposals effective on October 18, 2010 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~~)

BYLAWS

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CHAPTER 3
MEMBERSHIP AND ASSOCIATION WITH A MEMBER

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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 ~~(I)(aa)~~ and subsections ~~(IV)(dd)~~ through ~~(VI) (ff)~~ of Section 2(c)(2)(B)~~(ii)(I)~~ of the Act;
- (ii) Entities described in ~~subsection (II) of Section 2(c)(2)(B)(ii)~~ Section 2(c)(2)(B)(i)(II)(bb)(AA) of the Act that are members of ~~another futures association registered under Section 17 of the Act or of a national securities association registered under Section 15A(b) of the Securities Exchange Act of 1934; and~~
- (iii) Entities described in ~~subsection (III) of Section 2(c)(2)(B)(ii) of the Act based on their affiliation with an entity described in subsection (II) of Section 2(c)(2)(B)(ii) of the Act that~~ Section 2(c)(2)(B)(i)(II)(bb)(BB) if the affiliated broker or dealer is a member of ~~another futures association registered under Section 17 of the~~

~~Act or of a national securities association registered under Section 15A(b) of the Securities Exchange Act of 1934).~~

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BYLAW 1301. SCHEDULE OF DUES AND ASSESSMENTS

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e) Forex Dealer Members.

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~~(ii) Each Forex Dealer Member that is subject to discipline for the activities of solicitors and account managers shall pay a separate annual fee as follows payable on the firm's annual renewal date — for 1 to 4 solicitors and account managers, the fee is \$5,000; for 5 to 19 solicitors and account managers the fee is \$10,000; for 20 to 99 solicitors and account managers the fee is \$25,000; and for 100 or more solicitors and account managers the fee is \$50,000. In determining whether this fee applies, a Forex Dealer Member must calculate the highest number of solicitors and account managers it was responsible for at any one point of time during the year. This number does not include solicitors and account managers that are Members of NFA, meet the criteria in Bylaw 306(b), or would be exempt from Commission registration if they were acting in the same capacity in connection with exchange-traded futures contracts.~~

~~(ii)(iii)~~ Each Forex Dealer Member shall pay an assessment of .0001% on the notional value of each initiating (non-rollover) forex transaction (as forex is defined in Bylaw 1507(b)). For transactions with a notional value less than \$10,000, the Forex Dealer Member may aggregate separate transactions and pay \$.01 on each multiple of \$10,000.

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COMPLIANCE RULES

Part 1—DEFINITIONS

RULE 1-1. DEFINITIONS

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(aa) “Retail Foreign Exchange Dealer” or “RFED”—means a retail foreign exchange dealer as that term is used in the Commodity Exchange Act, and that is required to be registered as such under the Act and Commission Rules.

(bb) “Security Futures Products”—has the same meaning as in Section 1a(32) of the Act.

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RULE 2-13. CPO/CTA REGULATIONS.

(a) Any Member who violates any of CFTC Regulations 4.1, 4.7, 4.12, and 4.16 through 4.41 shall be deemed to have violated an NFA requirement. Members are also subject to the requirements of CFTC Regulation 5.4.

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RULE 2-23. FCM AND RFED RESPONSIBILITY FOR GUARANTEED MEMBER IBS.

Any Member FCM or RFED which enters into a guarantee agreement, pursuant to CFTC Regulation 1.10(j), with a Member IB, shall be jointly and severally subject to discipline under NFA Compliance Rules for acts and omissions of the Member IB which violate NFA requirements occurring during the term of the guarantee agreement.

RULE 2-24. QUALIFICATION TESTING OF ASSOCIATED PERSONS ~~OF FCMs.~~

(a) Testing Requirement.

Subject to the provisions of paragraphs (d) and (e) of Bylaw 301, no FCM, RFED, IB, CPO, CTA or LTM Member of NFA shall have associated with it (See Bylaw 301(b)) any person who has not satisfied the applicable proficiency requirements set forth in Registration Rule 401.

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RULE 2-36. REQUIREMENTS FOR FOREX TRANSACTIONS

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(d) Doing Business with Non-Members

~~A Forex Dealer Member that is the counterparty, or offers to be the counterparty, to forex transactions for customers shall be subject to discipline for the activities of any person that solicits or introduces a customer to the Member or that manages such customer's accounts, unless such person is a Member or Associate of NFA, meets the criteria in Bylaw 306(b), or would be exempt from Commission registration if it were acting in the same capacity in connection with exchange-traded futures contracts. No Member may carry a forex account for, accept a forex order or account from, handle a forex transaction for or on behalf of, receive compensation (directly or indirectly) for forex transactions from, or pay compensation (directly or indirectly) for forex transactions to any non-Member of NFA, or suspended Member, that is required to be registered with the Commission as an FCM, RFED, IB, CPO, or CTA in connection with its forex activities and that is acting in respect to the account, order, or transaction for a forex customer, a forex pool or participant therein, a forex client of a commodity trading advisor, or any other person unless:~~

- ~~(1) the non-Member is a member of another futures association registered under Section 17 of the Act or is exempted from this prohibition by Board resolution; or~~
- ~~(2) the suspended Member is exempted from this prohibition by the Appeals Committee.~~

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(f) Affiliates

~~Each Forex Dealer Member that has an affiliate that is authorized to engage in forex transactions solely by virtue of its affiliation with the Forex Dealer Member shall supervise its affiliate's forex activities for compliance with the same requirements that apply to the Forex Dealer Member, including section (a) of this rule. The Forex Dealer Member shall make the affiliate's books and records available to NFA staff upon request and shall be subject to discipline for acts and omissions of the affiliate that violate the standards imposed by NFA requirements.~~

(f) Basic Disclosure

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(g) Filing Promotional Materials with NFA

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(h) Hypothetical Results

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(i) Customer Accounts

An FDM must notify NFA prior to commencing customer business.

(j) FDM Chief Compliance Officer

Each FDM 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 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 its 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) Scope

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

(m) 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 2-38. BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN.

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(b) Each Member must provide NFA with the name of and contact information for an individual who NFA can contact in the event of an emergency, and the Member must update that information upon request. Each IB, CPO, and CTA Member that has more than one principal and each FCM Member and RFED must also provide NFA with the name of and contact information for a second individual who can be contacted if NFA cannot reach the primary contact, and the Member must update that information upon request. These individuals must be authorized to make key decisions in the event of an emergency

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

(a) Except for Members who meet the criteria in 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), and (h) and (l) of Compliance Rule 2-36.

~~(b) No Member except a Forex Dealer Member or a Member who meets the criteria in Bylaw 306(b) may accept forex orders or accounts or receive compensation—directly or indirectly—for forex transactions from any person unless that person is a Member or Associate of NFA, meets the criteria in NFA Bylaw 306(b), or would be exempt from Commission registration if it were acting in the same capacity in connection with exchange-traded futures products.~~

~~(c) For purposes of this rule, the term “customer” means a person that is not an eligible contract participant as defined in Section 1a(12) of the Act and includes persons who participate in pooled accounts.~~

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~~RULE 2-41. FOREX POOL OPERATORS AND TRADING ADVISORS~~

~~(a) **Pool Operators.** Except for Members who meet the criteria in Bylaw 306(b) and Associates acting on their behalf, any Member or Associate operating or soliciting funds, securities, or property for a pooled investment vehicle that is not an eligible contract participant as defined in Section 1a(12) of the Act must comply with this section (a) if it enters into or intends to enter into any transaction described in NFA Bylaw 1507(b)(1) except as described in NFA Bylaw 1507(b)(3). For purposes of this section, a pooled investment vehicle may not claim to be an eligible contract participant by virtue of Section 1a(12)(A)(v)(II) or (III) of the Act.~~

~~(1) For each such pooled investment vehicle, the Member or Associate must prepare a Disclosure Document and must file it with NFA at least 21 days before soliciting the first potential pool participant that is not an eligible contract participant.~~

~~(2) The Member or Associate must deliver the Disclosure Document to a prospective pool participant who is not an eligible contract participant no later than the time it delivers the subscription agreement for the pool. Any information delivered before the Disclosure Document must be consistent with the information in the Disclosure Document.~~

~~(3) The Disclosure Document must comply with the requirements in CFTC Regulations 4.24, 4.25, and 4.26 as if operating a pool trading on-exchange futures contracts. The term "commodity interest" in those regulations should be read to include forex transactions, and the Risk Disclosure Statement required by CFTC Regulation 4.24(b)(1) must be replaced by the following if the pool does not trade on-exchange contracts and must be added as a separate statement if the pool trades both on-exchange contracts and forex.~~

~~RISK DISCLOSURE STATEMENT~~

~~YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A POOLED INVESTMENT VEHICLE. IN SO DOING, YOU SHOULD BE AWARE THAT THIS POOL ENTERS INTO TRANSACTIONS THAT ARE NOT TRADED ON AN EXCHANGE, AND THE FUNDS THE POOL INVESTS IN THOSE TRANSACTIONS MAY NOT RECEIVE THE SAME PROTECTIONS AS FUNDS USED TO MARGIN OR GUARANTEE EXCHANGE-TRADED FUTURES AND OPTIONS CONTRACTS. IF THE COUNTERPARTY BECOMES INSOLVENT AND THE POOL HAS A CLAIM FOR AMOUNTS DEPOSITED OR PROFITS EARNED ON TRANSACTIONS WITH THE COUNTERPARTY, THE POOL'S CLAIM MAY NOT RECEIVE A PRIORITY. WITHOUT A PRIORITY, THE POOL IS A GENERAL CREDITOR AND ITS CLAIM WILL BE PAID, ALONG WITH THE CLAIMS OF OTHER GENERAL CREDITORS, FROM ANY MONIES STILL AVAILABLE AFTER PRIORITY CLAIMS ARE PAID. EVEN POOL FUNDS THAT THE COUNTERPARTY KEEPS SEPARATE FROM ITS OWN OPERATING FUNDS MAY NOT BE SAFE FROM THE CLAIMS OF OTHER GENERAL AND PRIORITY CREDITORS.~~

~~FOREX TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.~~

~~INVESTMENTS IN THE POOL MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, ADVISORY, AND BROKERAGE FEES, AND THE POOL MAY NEED TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETING OR EXHAUSTING ITS ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH EXPENSE (SEE PAGE [insert page number]) AND A STATEMENT OF THE PERCENTAGE RETURN NECESSARY TO BREAK-EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT (SEE PAGE [insert page number]).~~

~~THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER FACTORS NECESSARY TO EVALUATE YOUR PARTICIPATION IN THIS POOL. THEREFORE, BEFORE YOU DECIDE TO PARTICIPATE YOU SHOULD CAREFULLY REVIEW THIS DISCLOSURE DOCUMENT, INCLUDING A DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT (SEE PAGE [insert page number]).~~

~~NATIONAL FUTURES ASSOCIATION HAS NEITHER PASSED UPON THE MERITS OF PARTICIPATING IN THIS POOL NOR THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.~~

~~(b) **Trading Advisors.** Except for Members who meet the criteria in Bylaw 306(b) and Associates acting on their behalf, any Member or Associate managing, directing or guiding, or soliciting to manage, direct, or guide, accounts or trading on behalf of a client that is not an eligible contract participant as defined in Section 1a(12) of the Act by means of a systematic program must comply with this section (b) if it intends to manage, direct, or guide the client's account or trade in transactions described in NFA Bylaw 1507(b).~~

~~(1) The Member or Associate must prepare a Disclosure Document and must file it with NFA at least 21 days before soliciting the first potential client that is not an eligible contract participant.~~

~~(2) The Member or Associate must deliver the Disclosure Document to a prospective client who is not an eligible contract participant no later than the time it delivers the agreement to manage, direct, or guide the client's account or~~

~~trading. Any information delivered before the Disclosure Document must be consistent with the information in the Disclosure Document.~~

~~(3) The Disclosure Document must comply with the requirements in CFTC Regulations 4.34, 4.35, and 4.36 as if managing, directing, or guiding accounts or trading in on-exchange futures contracts. The term "commodity interest" in these regulations should be read to include forex transactions, and the Risk Disclosure Statement required by CFTC Regulation 4.34(b)(1) must be replaced by the following if the managed, directed, or guided account or trading will not include transactions in on-exchange contracts and must be added as a separate statement if it will include transactions in both on-exchange contracts and forex.~~

~~RISK DISCLOSURE STATEMENT~~

~~THE RISK OF LOSS IN FOREX TRADING CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD ALSO BE AWARE OF THE FOLLOWING:~~

~~FOREX TRANSACTIONS ARE NOT TRADED ON AN EXCHANGE, AND THOSE FUNDS DEPOSITED WITH THE COUNTERPARTY FOR FOREX TRANSACTIONS MAY NOT RECEIVE THE SAME PROTECTIONS AS FUNDS USED TO MARGIN OR GUARANTEE EXCHANGE-TRADED FUTURES AND OPTIONS CONTRACTS. IF THE COUNTERPARTY BECOMES INSOLVENT AND YOU HAVE A CLAIM FOR AMOUNTS DEPOSITED OR PROFITS EARNED ON TRANSACTIONS WITH THE COUNTERPARTY, YOUR CLAIM MAY NOT RECEIVE A PRIORITY. WITHOUT A PRIORITY, YOU ARE A GENERAL CREDITOR AND YOUR CLAIM WILL BE PAID, ALONG WITH THE CLAIMS OF OTHER GENERAL CREDITORS, FROM ANY MONIES STILL AVAILABLE AFTER PRIORITY CLAIMS ARE PAID. EVEN CUSTOMER FUNDS THAT THE COUNTERPARTY KEEPS SEPARATE FROM ITS OWN OPERATING FUNDS MAY NOT BE SAFE FROM THE CLAIMS OF OTHER GENERAL AND PRIORITY CREDITORS.~~

~~THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN FOREX TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.~~

~~MANAGED ACCOUNTS MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES AND THE ACCOUNT MAY NEED TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETING OR EXHAUSTING ITS ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE ACCOUNT MANAGER. (SEE PAGE [insert page number]).~~

~~THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND SIGNIFICANT ASPECTS OF THE FOREX MARKETS. THEREFORE, YOU SHOULD CAREFULLY REVIEW THIS DISCLOSURE DOCUMENT BEFORE YOU TRADE, INCLUDING THE DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT (SEE PAGE [insert page number]).~~

~~NATIONAL FUTURES ASSOCIATION HAS NEITHER PASSED UPON THE MERITS OF PARTICIPATING IN THIS TRADING PROGRAM NOR THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.~~

~~RULE 2-42. FOREX POOL REPORTING~~

~~(a) Except for Members who meet the criteria in Bylaw 306(b), any Member operating a pool that is not an eligible contract participant as defined in Section 1a(12) of the Act and that trades forex must comply with the requirements in CFTC Regulation 4.22 in the same manner as would be applicable to the operation of a pool trading on-exchange futures contracts. The term "commodity interest" in that regulation should be read to include forex transactions. For purposes of this section, a pool may not claim to be an eligible contract participant by virtue of Section 1a(12)(A)(v)(II) or (III) of the Act.~~

~~(b) A Member may file with NFA a request for an extension of time in which to file the annual report in the same form as provided for in CFTC Regulation 4.22(f).~~

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~~RULE 2-44. FOREX CUSTOMER STATEMENTS~~

~~Forex Dealer Members must provide customers with confirmations, daily statements, and monthly statements as provided in this rule.~~

~~(a) Confirmations~~

~~Written confirmations must be provided to customers within one business day after any activity in the customer's account, including offsetting transactions, rollovers, deliveries, option exercises, option expirations, trades that have been reversed or adjusted, and monetary adjustments. The confirmations must contain the following information regarding the transaction and the funds in the account:~~

- ~~(1) Transaction date;~~
- ~~(2) Transaction type (e.g., new position, offsetting position, rollover, adjustment);~~
- ~~(3) Currency pair~~
- ~~(4) Buy or sell (if a new or offsetting position);~~
- ~~(5) Size~~
- ~~(6) Price or premium (for new or offsetting positions or price adjustments);~~
- ~~(7) Price or premium change (for price adjustments);~~
- ~~(8) Monetary adjustments (debit or credit);~~
- ~~(9) Net profit or loss for offsetting positions; and~~
- ~~(10) Charges for each transaction (e.g., rollover interest and/or fees).~~

~~(b) Daily Statements~~

~~Daily statements must show the account equity as of the end of the previous day. The daily statements may be provided electronically as long as they are readily accessible to customers. The daily statements may be combined with the confirmations but, in that event, they may not be provided electronically without the customer's consent.~~

~~(c) Monthly or Quarterly Statements~~

~~Monthly statements are required for all accounts that have open positions at the end of the month or changes in the account balance or equity since the prior statement.~~

~~Quarterly statements are required for all other open accounts. The monthly or quarterly statements must contain the following information regarding the transactions during the reporting period and the funds in the account:~~

- ~~(1) The account equity at the beginning of the reporting period;~~
- ~~(2) All initiating or offsetting transactions, deliveries, option exercises, or option expirations that occurred during the reporting period, with the following information for each: date, currency pair, buy or sell, size, and price or premium (with any price or premium adjustment noted);~~
- ~~(3) All open positions in the account, with the following information for each position: date initiated, currency pair, long or short, size, price or premium at which it was initiated (with any price or premium adjustment noted), and the unrealized profit or loss;~~
- ~~(4) All deposits and withdrawals during the reporting period;~~
- ~~(5) All other monetary adjustments (debits and credits) to the account;~~
- ~~(6) The amount of cash in the account (excluding non-cash collateral and unrealized profits and losses);~~
- ~~(7) A breakdown by type of all fees and charges during the period, including commissions and interest expense or rollover fees; and~~
- ~~(8) The account equity at the end of the reporting period.~~

(d) Options

~~For options transactions, Forex Dealer Members must provide the following additional information:~~

- ~~(1) On confirmations and monthly or quarterly statements, strike price and expiration date; and~~
- ~~(2) For open positions on monthly or quarterly statements, the value of the option marked to the market.~~

(e) Account Equity

~~Each daily, monthly, or quarterly statement must prominently display the account equity. The account equity is the sum of all realized profits and losses, all unrealized profits and losses, and any other cash and collateral in the account.~~

(f) ~~Electronic Delivery~~

~~Daily statements may be provided on-line or by other electronic means as long as they are readily accessible to customers. Confirmations and monthly/quarterly statements may be provided on-line or transmitted by other electronic means if the customer consents to the specific method used.~~

(g) Adjustments

~~For purposes of this Rule, the term "adjustment" means any change to the price or premium of an initiating or offsetting transaction and any debit or credit to the account that has the same effect (monetary adjustment).~~

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CODE OF ARBITRATION

SECTION 1. DEFINITIONS.

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(y) “Retail Foreign Exchange Dealer” or “RFED”—means a retail foreign exchange dealer as that term is used in the Commodity Exchange Act, and that is required to be registered as such under the Commodity Exchange Act and Commission Rules.

(y) (z) “Secretary”—means the Secretary of NFA.

(z) (aa) “Third-party Claim”—means a claim filed by a Respondent against a person not a party to the action.

SECTION 2. ARBITRABLE DISPUTES.

(a) Mandatory Arbitration.

(1) Claims. Except as provided in Sections 5 and 6 of this Code with respect to timeliness requirements, the following disputes shall be arbitrated under this Code if the dispute involves commodity futures contracts:

- (i) a dispute for which arbitration is sought by a customer against a Member or employee thereof, or Associate, provided that:
 - (A) the customer is not an FCM, floor broker, Member or Associate;
 - (B) the dispute does not solely involve cash market transactions that are not part of or directly connected with a commodity futures transaction; and
 - (C) if brought against a Member or employee thereof, the Member is an FCM, an RFED, an IB, a CPO, a CTA or an LTM.

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SECTION 3. PRE-DISPUTE ARBITRATION AGREEMENTS.

Any pre-dispute arbitration agreement between a customer and an FCM, RFED, IB, CPO, CTA, or LTM Member or Associate thereof that does not comply with Commission Rule 166.5 shall be unenforceable under this Code.

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SECTION 6. INITIATION OF ARBITRATION.

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(d) Notice to Respondent.

(1) NFA shall promptly serve a copy of the completed Arbitration Claim on each person named therein as a Respondent, ~~and a copy of any agreement to arbitrate.~~

(2) If a guaranteed IB is named in the Arbitration Claim as a Respondent, NFA shall promptly serve a copy of the completed Arbitration Claim on the Member FCM or RFED that guaranteed the IB during the time of the acts and transactions involved in the claim. That Member FCM or RFED may intervene in the arbitration proceeding if it chooses to.

(e) Answer to an Arbitration Claim.

A Respondent shall serve its Answer on NFA and concurrently serve a copy on the Claimant within the time period provided below. Any Member FCM or RFED served with an Arbitration Claim under Section 6(d)(2) above that wishes to intervene in the arbitration proceeding must serve an Answer and written notice of intervention on NFA and concurrently serve a copy on the Claimant within the time period provided below for filing the Answer. An allegation in the Arbitration Claim that is not denied in the Answer shall be deemed by the Panel to be admitted.

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MEMBER ARBITRATION RULES

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SECTION 5. INITIATION OF ARBITRATION.

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(d) Notice to Respondent.

(1) NFA shall promptly serve a copy of the completed Arbitration Claim on each person named therein as a Respondent ~~and a copy of any agreement to arbitrate.~~

(2) If a guaranteed IB is named in the Arbitration Claim as a Respondent, NFA shall promptly serve a copy of the completed Arbitration Claim on the Member FCM or RFED that guaranteed the IB during the time of the acts and transactions involved in the claim. That Member FCM or RFED may intervene in the arbitration proceeding if it chooses to.

(e) Answer to an Arbitration Claim.

A Respondent shall serve its Answer on NFA and concurrently serve a copy on the Claimant within the time period provided below. Any Member FCM or RFED served with an Arbitration Claim under Section 5(d)(2) above that wishes to intervene in the arbitration proceeding must serve an Answer and written notice of intervention on NFA and concurrently serve a copy on the Claimant within the time period provided below for filing the Answer. An allegation in the Arbitration Claim that is not denied in the Answer shall be deemed by the Panel to be admitted.

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FINANCIAL REQUIREMENTS

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SECTION 1. FUTURES COMMISSION MERCHANT FINANCIAL REQUIREMENTS

(a) Each NFA Member that is registered or required to be registered with the Commodity Futures Trading Commission (hereinafter "CFTC") as a Futures Commission Merchant (hereinafter "Member FCM") must maintain "Adjusted Net Capital" (as defined in CFTC Regulation 1.17) equal to or in excess of the greatest of:

(i) \$1,000,000;

(ii) For Member FCMs with less than \$2,000,000 in Adjusted Net Capital, \$6,000 for each remote location operated (i.e., proprietary branch offices, main office of each guaranteed IB and branch offices of each guaranteed IB);

(iii) For Member FCMs with less than \$2,000,000 in Adjusted Net Capital, \$3,000 for each AP sponsored (including APs sponsored by guaranteed IBs);

(iv) For securities brokers and dealers, the amount of net capital specified in Rule 15c3-1(a) of the Regulations of the Securities and Exchange Commission (17 CFR 240.15c3-1(a));

(v) Eight (8) percent of domestic and foreign domiciled customer and non-customer (excluding proprietary) risk maintenance margin/performance bond requirements for all domestic and foreign futures, options on futures contracts and cleared over-the counter derivatives positions excluding the risk margin associated with naked long option positions;

~~(vi) For Member FCMs with an affiliate described in section 2(c)(2)(B)(i)(II)(cc)(BB) of the Act that engages in forex transactions (as defined in Bylaw 1507(b)) and that is authorized to engage in those transactions solely by virtue of its affiliation with a registered FCM, \$7,500,000; or~~

~~(vii) For Member FCMs that are counterparties to forex options transactions (as forex in defined in Bylaw 1507(b)), \$5,000,000, except that Forex Dealer Members must meet the higher requirement in Financial Requirements Section 11.~~

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SECTION 3. RELIEF REQUESTS.

A Member FCM, for which NFA is DSRO, RFED, or IB that may file a request for relief from certain provisions of CFTC Regulations 1.10, 1.12, 1.16, and 1.17, 5.6 and 5.7 with its DSRO may file such relief with NFA. NFA may grant the relief request without receiving the prior concurrence of the CFTC unless such concurrence is required by CFTC Regulations. Any such grant of relief shall be valid and shall remain in full force and effect unless or until reversed by the CFTC or withdrawn by NFA.

SECTION 4. FINANCIAL REQUIREMENTS AND TREATMENT OF CUSTOMER PROPERTY.

Any Member FCM, RFED, or IB who violates any of CFTC Regulations 1.10, 1.12, 1.16, 1.17, or 1.20 through 1.30, 5.6 or 5.7 (as applicable) shall be deemed to have violated an NFA requirement.

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SECTION 8. ADDITIONAL INFORMATION REQUESTS.

If requested by NFA, a Member FCM, RFED, or IB must promptly submit such additional reports and supplemental financial information which NFA deems necessary.

* * *

SECTION 10. LATE FINANCIAL REPORTS.

Each financial report required by Section 1, 5, ~~or 6,~~ or 11 that is filed after it is due shall be accompanied by a fee of \$200 for each business day it is late. Payment and acceptance of the fee does not preclude NFA from filing a disciplinary action under the Compliance Rules for failure to comply with the deadlines imposed by NFA Financial Requirements or CFTC rules.

SECTION 11. FOREX DEALER MEMBER FINANCIAL REQUIREMENTS.

(a) Each Forex Dealer Member must maintain "Adjusted Net Capital" (as defined in CFTC Regulation 5.7 ~~4.17~~) equal to or in excess of the greatest of:

- (i) ~~10,000,000 through January 16, 2009, \$15,000,000 from January 17, 2009 through May 15, 2009, and \$20,000,000 from May 15, 2009 forward;~~
- (ii) the amount required by subsection (a)(i) above plus 5% of all liabilities owed to customers (as customer is defined in Compliance Rule 2-36(i) (m)) exceeding \$10,000,000, ~~except that any Forex Dealer Member that uses straight-through processing for all customer transactions is not subject to this requirement;~~ or
- (iii) For FCMs, any other amount required by Section 1 of these Financial Requirements.

(b) A Forex Dealer Member may not include assets held by an affiliate (unless approved by NFA) or an unregulated person in its current assets for purposes of determining its adjusted net capital under CFTC Regulation 5.7 ~~Rule 4.17~~. An affiliate is

any person that controls, is controlled by, or is under common control with the Forex Dealer Member.

For purposes of this section and section (c), a person is unregulated unless it is:

- (i) a financial institution regulated by a U.S. banking regulator;
- (ii) a broker-dealer registered with the U.S. Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority;
- (iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;
- (iv) a retail foreign exchange dealer registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;
- (v) an insurance company regulated by any U.S. state; or
- (vi) any other entity approved by NFA.

(c) A Forex Dealer Member may not use an affiliate (unless approved by NFA) or an unregulated person, as defined in section (b), to cover its currency positions for purposes of CFTC Regulation 5.7(b)(2)(v)(A) ~~Rule 1.17(c)(5)~~.

~~(d) Each RFED must file financial reports with NFA for each month-end, including its fiscal year-end, within 17 business days of the date for which the report is prepared. All financial reports must be filed on the forms required by CFTC regulations, and all financial reports except those required to be certified by a Certified Public Accountant must be filed electronically using an electronic media approved by NFA.~~

~~(e)~~(d) An FDM for which NFA is the DSRO that is required to file any document with or give any notice to its DSRO under CFTC Regulations 5.6 [Maintenance of minimum financial requirements by retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions], 5.7 [Minimum financial requirements for retail foreign exchange dealers and future commission merchants offering or engaging in retail forex transactions] and 5.12 [Financial reports of retail foreign exchange dealers], or is required to file any financial report or statement with

any other securities or futures self-regulatory organization of which it is a member shall also file one copy of such document with or give such notice to NFA at its Chicago office no later than the date such document or notice is due to be filed with or given to the CFTC or the self-regulatory organization.

- (e) For purposes of this rule:
- (1) "Forex" has the same meaning as in Bylaw 1507(b);
 - (2) "Forex Dealer Member" has the same meaning as in Bylaw 306; and
 - (3) As used in section (c), "currency" refers to open foreign currency positions with counterparties regardless of whether those counterparties are eligible contract participants as defined in Section

* * *

SECTION 12. SECURITY DEPOSITS FOR FOREX TRANSACTIONS WITH FOREX DEALER MEMBERS.

(a) Each Forex Dealer Member shall collect and maintain the following minimum security deposit for each forex transaction between the Forex Dealer Member and a person that is not an eligible contract participant as defined in Section 1a(12) of the Act:

- (i) ~~4%~~ 2% of the notional value of transactions in the British pound, the Swiss franc, the Canadian dollar, the Japanese yen, the Euro, the Australian dollar, the New Zealand dollar, the Swedish krona, the Norwegian krone, and the Danish krone;
- (ii) ~~4%~~ 5% of the notional value of other transactions;
- (iii) for short options, the above amount plus the premium received; and
- (iv) for long options, the entire premium.

(b) The Executive Committee may temporarily increase these requirements under extraordinary market conditions.

(c) For purposes of this rule:

(1) "Forex" has the same meaning as in Bylaw 1507(b); and

(2) "Forex Dealer Member" has the same meaning as in Bylaw 306.

(d) In addition to cash, a Forex Dealer Member may accept as collateral those instruments described in CFTC Rule 1.25 for customers' security deposit obligations. The collateral must be in the FDM's possession and control and is subject to the haircuts in CFTC Rule 1.17.

(e) An FDM is required to collect additional security deposits from a retail forex customer, or liquidate the retail forex customer's positions, if the amount of the retail forex customer's security deposits maintained with the FDM is not sufficient to meet the requirements of this section.

* * *

INTERPRETIVE NOTICES

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[¶9028] - NFA FINANCIAL REQUIREMENTS: THE ELECTRONIC FILING OF FINANCIAL REPORTS

NFA Financial Requirements require each FCM for which NFA is DSRO, each RFED and each IB which is not operating pursuant to a guarantee agreement to file financial reports with NFA. FCMs and RFEDs must file reports monthly while IBs file on a semi-annual basis. FCMs and RFEDs file reports on CFTC [Form 1-FR-FCM](#) while IBs use [Form 1-FR-IB](#). FCMs or IBs which are also registered as securities brokers or dealers may use the SEC FOCUS Report in lieu of the Form 1-FR for their financial reports.

NFA, in partnership with the Chicago Mercantile Exchange and the Chicago Board of Trade, has developed computer software which allows FCMs, RFEDs and IBs to electronically file financial reports with NFA, the CME, CBOT and the CFTC. This software is being used industry-wide. The software accommodates filing of the [Form 1-FR-FCM](#), [Form 1-FR-IB](#), FOCUS II and FOCUS IIA Reports. All FCMs and IBs for which

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NFA is the DSRO and RFEDs must file their financial reports electronically using this software.

NFA's filing software also includes procedures for the appropriate representative of the NFA Member FCM, RFED or IB to attest to the completeness and accuracy of the financial report in order to comply with NFA and CFTC certification and attestation requirements. Each authorized signer must apply to NFA for a Personal Identification Number using an application form approved by NFA.

Full details about the software and electronic filing procedures and the application form for obtaining a PIN number are available by accessing the Compliance Section, Issues for FCMs, RFEDs and IBs, of NFA's web site at <http://www.nfa.futures.org/> or by contacting the Information Center at (312) 781-1410. Information is also available on the Joint Audit Committee's web site at www.wjammer.com/jac/.

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[¶ 9053] FOREX TRANSACTIONS

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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 any non-Member of NFA that is required to be registered with the Commission 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. ~~Other subsections address a Forex Dealer Member's responsibility for its unregulated affiliates and third-party solicitors and make Forex Dealer Members subject to discipline for the conduct of certain non-Members with which they do business.~~ 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).

* * *

A. BYLAW 306

* * *

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)(ii)(I)(II) of the CEA, although the exclusions for broker-dealers and their affiliates ~~are conditioned on Financial Industry Regulatory Authority ("FINRA") membership~~ 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

* * *

1. *Disclosure* - Members must provide forex customers with understandable and timely disclosure on essential features of forex trading.

At or before the time a customer first engages in a forex transaction, a Forex Dealer Member and its Associates should provide the customer sufficient information concerning the characteristics and particular risks of entering into forex transactions. Members and Associates introducing or managing accounts should know what information has been provided and should supplement it when necessary. At or before the time a customer first engages in a forex transaction, a Member and its Associates should also disclose how the Member will be compensated for the services it will provide to the customer. Forex Dealer Members should provide both the bid and the

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offer when the customer enters an order. Members should update any material information that has changed prior to entering into new transactions with current customers if failing to update the information would make it misleading.

~~This information must include the following statement prominently displayed:~~

~~The transactions you are entering into with [Member] are not traded on an exchange. Therefore, under the U.S. Bankruptcy Code, your funds may not receive the same protections as funds used to margin or guarantee exchange-traded futures and options contracts, which receive a priority in bankruptcy. Since that same priority has not been given to funds used for off-exchange forex trading, if [Member] becomes insolvent and you have a claim for amounts deposited or profits earned on transactions with [Member], your claim may not receive a priority. Without a priority, you are a general creditor and your claim will be paid, along with the claims of other general creditors, from any monies still available after priority claims are paid. Even customer funds that [Member] keeps separate from its own operating funds may not be safe from the claims of other general and priority creditors.~~

~~Additionally, a Forex Dealer Member must describe to the customer the nature of these foreign currency transactions. Therefore, a Forex Dealer Member must provide, and the customer must separately acknowledge receipt of, either the following disclosure language or other appropriate language (based upon the Forex Dealer Member's business model) approved by NFA staff, which must be prominently displayed in all uppercase letters and in 10 point size type or larger but in any event no smaller than any surrounding type:~~

~~THE FOREIGN CURRENCY TRADING YOU ARE ENTERING INTO IS NOT CONDUCTED ON AN EXCHANGE. [MEMBER] IS ACTING AS A COUNTERPARTY IN THESE TRANSACTIONS AND, THEREFORE, ACTS AS THE BUYER WHEN YOU SELL AND THE SELLER WHEN YOU BUY. AS A RESULT, [MEMBER]'S INTERESTS MAY BE IN CONFLICT WITH YOURS. UNLESS OTHERWISE SPECIFIED IN YOUR WRITTEN AGREEMENT OR OTHER WRITTEN DOCUMENTS [MEMBER] ESTABLISHES THE PRICES AT WHICH IT OFFERS TO TRADE WITH YOU. THE PRICES [MEMBER] OFFERS MIGHT NOT BE THE BEST PRICES AVAILABLE AND [MEMBER] MAY OFFER DIFFERENT PRICES TO DIFFERENT CUSTOMERS.~~

~~IF [MEMBER] ELECTS NOT TO COVER ITS OWN TRADING EXPOSURE, THEN YOU SHOULD BE AWARE THAT [MEMBER] MAY MAKE MORE MONEY IF THE MARKET GOES AGAINST YOU. ADDITIONALLY, SINCE [MEMBER] ACTS AS THE BUYER OR SELLER IN THE TRANSACTION, YOU SHOULD CAREFULLY EVALUATE ANY TRADE RECOMMENDATIONS YOU RECEIVE FROM [MEMBER] OR ANY OF ITS SOLICITORS.~~

~~**2. Reporting - Forex Dealer Members must provide forex customers with timely and accurate notice of the status of their accounts.**~~

~~Forex Dealer Members should provide written confirmations within one business day after any activity in the customer's account, including offsetting transactions, rollovers, deliveries, option exercises, option expirations, trades that have been reversed or adjusted, and monetary adjustments. The confirmation should include the information required by Compliance Rule 2-44.~~

~~Forex Dealer Members should provide regular monthly statements showing all forex transactions and other account activity to customers for all accounts that have open positions at the end of the month or changes in the account balance or equity since the prior statement. Forex Dealer Members should provide statements at least quarterly for all other open accounts. The monthly or quarterly statements should include the information required by Compliance Rule 2-44.~~

~~Confirmations and monthly/quarterly statements may be provided on-line or transmitted by other electronic means if the customer consents to the specific method used.~~

~~**32. Supervision – Members and their Associates having supervisory responsibilities must diligently supervise the Member's forex business, including the activities of the Member's Associates and agents. Members must establish, maintain, and enforce written supervisory procedures.**~~

~~* * *~~

~~Although Members have the flexibility to design procedures that are tailored to their own situation, an adequate program for supervision would include procedures for performing day-to-day monitoring. These procedures would include:~~

- ~~screening employees who will solicit transactions from or provide advice to customers or manage customer accounts to see if they are subject to any of the statutory disqualifications in Section 8a of the CEA and, if so, to determine what supervision they will require;~~
- screening prospective Associates to ensure that they are qualified and to determine the extent of supervision the person would require if hired;
- screening persons with whom the Member intends to do forex business to determine if they are required to be registered with the Commission and, if so, to ensure that they are Members of NFA;
- monitoring communications with the public, including sales solicitations and web sites, and approving promotional material;
- reviewing the information obtained from and the information provided to customers solicited by the firm and its employees to ensure that the necessary account information has been obtained and the appropriate information provided; and
- handling and resolving customer complaints.

~~For Forex Dealer Members, these procedures would also include:~~

- ~~screening prospective Associates to ensure that they are registered with the Commodity Futures Trading Commission as associated persons;⁶~~
- ~~screening persons who introduce customer business or manage customer accounts to see if the firm or any of its principals is subject to a statutory disqualification under Section 8a of the CEA and, if so, determining if the Forex Dealer Member should perform additional due diligence on that person;⁷~~
- reviewing disclosures given to customers to ensure they are understandable, timely, and provide sufficient information;
- reviewing and analyzing the forex activity in customer accounts, including discretionary customer accounts; and
- handling customer funds, including accepting security deposits, if applicable.

* * *

An adequate supervisory program should also include ~~periodic~~ annual on-site visits to branch offices ~~and~~ guaranteed introducing brokers, ~~and otherwise unregulated affiliates~~ that conduct forex business on behalf of the Member. The Member needs to determine

the frequency and nature of these visits. The number of visits will depend on the amount of business generated, the number of customer complaints received, the training and experience of the office personnel, and the frequency and nature of problems that arise from the office. Members should refer to NFA Interpretive Notice 9019 - *Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs* for the minimum standards for a supervisory program for branch offices and guaranteed IBs.

* * *

~~**4. Recordkeeping – Members must keep books and records relating to their forex operations for a period of five years from the date thereof and shall keep them readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by NFA.**~~

~~Members should adopt and enforce reasonable procedures to create current and accurate books and records and to keep them from being altered or destroyed. Such records must include, among other things, financial records substantiating a Members assets and liabilities, including liabilities owed to customers and receivables from other persons. The Member should be able to promptly produce its records in a format that NFA can read and reproduce.~~

5.3. Communications with the Public and Promotional Material - No Member or Associate shall make any communication with potential or current customers that operates as a fraud or deceit; uses a high-pressure approach; or implies that forex transactions are appropriate for all persons.

Promotional material used by the Member or Associate shall not:

- Deceive the public or contain any material misstatement of fact or omit a fact that makes the promotional material misleading,⁸⁶
- Include any statements of opinion unless they are clearly identified as such and have a reasonable basis in fact;
- Mention the possibility of profit unless accompanied by an equally prominent statement of the risk of loss;
- Include any reference to actual past trading profits without mentioning that past results are not necessarily indicative of future results;

- Include any statistical or numerical information about past performance of actual accounts unless the Member can demonstrate that the performance is representative of actual performance of all reasonably comparable accounts for the same period (calculated in accordance with the formula in CFTC Regulation 4.35(a)(6) and NFA Compliance Rule 2-34); or
- Include testimonials unless they are representative of all reasonably comparable accounts, the material prominently states that the testimonial is not indicative of future performance or success, and the material prominently states that they are paid testimonials (if applicable).

No Member or Associate may represent that forex funds deposited with a Forex Dealer Member are given special protection under the bankruptcy laws. No Member or Associate may represent or imply that any assets necessary to satisfy its obligations to customers are more secure because the Member keeps some or all of those assets at a regulated entity in the United States or a money center country.

No Member or Associate may represent that its services are commission free without prominently disclosing how it is compensated in near proximity to that representation.

No Member or Associate may represent that it offers trading with "no-slippage" or that it guarantees the price at which a transaction will be executed or filled, unless:

- It can demonstrate that all orders for all customers have been executed and fulfilled at the price initially quoted on the trading platform when the order was placed;⁹⁷ and
- No authority exists, pursuant to a contract, agreement, or otherwise, to adjust customer accounts in a manner that would have the direct or indirect effect of changing the price at which an order was executed.^{40 8}

Members and Associates may not solicit customers based on the leverage available unless they balance any discussion regarding the advantages of leverage with an equally prominent contemporaneous disclosure that increasing leverage increases risk.

No Member shall use or directly benefit from any radio or television advertisement that recommends specific forex transactions or describes the extent of any profit obtained in the past or that can be obtained in the future unless the member submits the

advertisement to NFA's Promotional Material Review Team for its review and approval at least 10 days prior to its first use or such shorter period as NFA may allow.⁴⁹

Every Member should adopt and enforce written procedures to supervise communications with potential and current customers and promotional material. A supervisory employee that is, or is under the ultimate supervision of, a listed principal who is also an NFA Associate should review and approve all promotional material and make a written record of such review and approval.¹²

All promotional material should be maintained by each Member and be available for examination for the periods specified in the recordkeeping section of this notice, measured from the date of last use.

64. *Know Your Customer* – Members and Associates have a duty to acquaint themselves sufficiently with the personal and financial circumstances of each forex customer 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 obtain the customer's name, address, principal occupation or business, current estimated annual income and net worth, approximately 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. ~~These obligations fall on the Forex Dealer Member when a non-Member solicits the customer.~~

~~**7. *Doing Business with Non-Members.* – Forex Dealer Members are subject to discipline for the activities of most non-Members who solicit or introduce forex customers to the Forex Dealer Member or manage accounts for those customers.**~~

~~If a customer is solicited or introduced by a non-Member of NFA, or if the customer's account is managed by a non-Member, the Forex Dealer Member is subject to discipline for the non-Member's conduct if that conduct would violate NFA requirements when~~

~~engaged in by an NFA Member. In other words, a Forex Dealer Member is subject to an NFA disciplinary action for the non-Member's activities when soliciting, introducing, or managing accounts for the Forex Dealer Member's customers even if the non-Member was not the Forex Dealer Member's agent.~~

~~The rule allows NFA to bring a disciplinary action even if the Forex Dealer Member acts diligently and has no knowledge of the third-party's conduct. As a practical matter, however, NFA will not take disciplinary action unless the Forex Dealer Member knew or should have known of the third-party's conduct or failed to exercise due diligence when establishing and maintaining the relationship with the third-party.~~

~~A Forex Dealer Member should adopt and enforce written procedures to review the activities of non-Member third parties. The procedures should include, among other things, a regular review of the trading being conducted in the accounts solicited, introduced, or managed by these non-Members. The Member should also have procedures for following up on any customer complaints received by the firm, including a written description of the investigation made by the Member and any resolution of the complaint. Further, supervisory procedures should include a regular review of all promotional material used by any non-Member third party. The Member should maintain copies of all promotional materials reviewed, along with a written record of the review conducted and any deficiencies corrected, and make them available for examination for the periods specified in the recordkeeping section of this notice. A supervisory employee that is, or is under the ultimate supervision of, a listed principal who is also an NFA Associate should conduct the review of the non-Member's activities.~~

~~The Forex Dealer Member is not subject to discipline for the actions of non-Members who are described in NFA Bylaw 306(b). It is also not subject to discipline for the actions of non-Members who would be exempt from Commission registration if they were acting in the same capacity in connection with exchange-traded futures contracts, such as foreign persons that solicit, introduce, or manage accounts for foreign customers only.⁴³ The Forex Dealer Member does, of course, have certain basic duties to its customers, including a duty to supervise its own activities in a way designed to ensure that it treats its customers fairly. Specifically, the Forex Dealer Member would violate this duty if it has actual or constructive notice that one of these entities engaged in fraudulent conduct and fails to take appropriate action.~~

~~8. Affiliates - Forex Dealer Members must supervise and are subject to discipline for the activities of affiliates that are authorized to engage in forex transactions solely by virtue of their affiliation with a Forex Dealer Member.~~

~~The CEA authorizes affiliates of FCMs to act as counterparties to forex transactions if the affiliate directly or indirectly controls, is controlled by, or is under common control with the FCM and the FCM makes and keeps records regarding the financial activities of the affiliate for purposes of the Commission's risk assessment requirements.⁴⁴ If a Forex Dealer Member has one or more affiliates that act as counterparty to forex customers solely on the basis of that affiliation, the Forex Dealer Member must supervise the affiliate's forex activities and is subject to discipline for that affiliate's activities.⁴⁵ The Forex Dealer Member must also make these affiliates' books and records available to NFA upon request. Additionally, the Forex Dealer Member must assure that its affiliates do not act as counterparties to forex transactions unless they are authorized to do so under the Act.~~

95. BASIC Disclosure - Members must provide forex customers with information on NFA's BASIC system.

NFA Compliance Rule 2-36(g) requires Forex Dealer Members to provide customers with written information regarding NFA's Background Affiliation Status Information Center (BASIC), including the web site address ⁴⁶⁻¹¹. This information must be provided when the customer first opens an account and at least once a year thereafter.

Forex Dealer Members may provide the information electronically but must do it in a way that ensures each customer is aware of it. For example, merely having the information on the Member's web site is not adequate, but sending customers an e-mail including a link to that information and explaining what the link is would be sufficient in most circumstances.

~~10. Discretion - No Forex Dealer Member, or Associate of a Forex Dealer Member acting in such capacity, may exercise discretionary trading authority over a customer account for which the Forex Dealer Member is, or is offering to be, the counterparty to the transactions in the customer account.~~

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C. OTHER REQUIREMENTS

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1. Bylaw 1301

~~Under NFA Compliance Rule 2-36(d), a Forex Dealer Member is subject to discipline for the activities of any person that solicits or introduces a customer to the Member or manages a customer's account unless that person is a Member or Associate of NFA, is otherwise regulated based on the criteria in Bylaw 306(b), or would be exempt from CFTC registration if it were acting in the same capacity in connection with exchange-traded futures contracts. Any Forex Dealer Member that is responsible under Compliance Rule 2-36(d) for solicitors and account managers is required to pay a separate annual fee on the firm's annual renewal date based on the number of unregulated solicitors and account managers. In determining whether this fee applies, the Forex Dealer Member should take the highest number of separate legal entities, including individuals acting as sole proprietors, that it was responsible for at any one time during the year. The following table shows this graduated fee.~~

Number of Unregulated Entities	Annual Fee
0	\$—0
1-4	\$ 5,000
5-19	\$10,000
20-99	\$25,000
100 or more	\$50,000

2. Financial Requirements Section 11(a)

Forex Dealer Members must maintain adjusted net capital equal to or in excess of the greatest amount specified in subsections (a)(i), (a)(ii), and (a)(iii) (if applicable).

Subsection (a)(ii) applies to Forex Dealer Members that execute any customer transactions ~~other than by using straight through processing and~~ that also have liabilities to customers of more than \$10 million. Where it applies, the Member's capital requirement is the minimum capital required by subsection (a)(i) plus 5% of the liabilities over \$10 million. The formula is:

$$\text{Amount required by (a)(i) + .05(customer liabilities - \$10,000,000)}$$

For example, if the minimum capital requirement is \$20 million, a Forex Dealer Member that operates a dealing desk and has \$208 million in liabilities to customers would be required to maintain adjusted net capital equal to or in excess of \$29.9 million.

~~Forex Dealer Members with over \$10 million in customer liabilities are subject to this alternative requirement unless they execute all customer transactions using straight-through processing. Straight-through processing refers to platforms that automatically (without human intervention and without exception) enter into an identical but opposite transaction with another counterparty, creating an offsetting position in the Forex Dealer Member's own name. A Forex Dealer Member that offers several platforms will be exempt from this requirement only if each platform executes all customer orders using straight-through processing.~~

~~This requirement that all customer trades be executed by straight-through processing is not, however, meant to limit a firm's ability to provide for other methods in its disaster recovery procedures. As long as those other methods are used only when dictated by those procedures and both the procedures and the firm's trading platform are designed to ensure that the need will rarely arise, the FDM will not lose its exemption by implementing other execution methods in disaster recovery situations.~~

3. Financial Requirements Section 11(b)

Section 11(b) prohibits a Forex Dealer Member from including assets held by an affiliate (unless approved) or an unregulated person in the firm's current assets for purposes of determining its adjusted net capital under CFTC Rule ~~1.17) Regulation 5.7(b)(2)(v)(A)~~. This means an FCM may not count any part of those assets for capital purposes.⁴⁷¹²

The rule does not prohibit Forex Dealer Members from entering into positions with unregulated or unapproved counterparties. They may not, however, count positions with

those counterparties when calculating their covered positions for purposes of CFTC ~~Rule 1.17(c)(5)~~ Regulation 5.7(b)(2)(v)(A).

Any Forex Dealer Member may ask NFA to approve an otherwise unregulated person for purposes of Financial Requirements Sections 11(b) and (c). In determining whether to approve an unregulated person that is not an affiliate, NFA will consider a number of factors, including:

- Whether the person is regulated in another jurisdiction and, if so, the type and extent of regulation;
- The person's capital; and
- The person's credit rating.

NFA's approval of a particular person means that all unaffiliated Forex Dealer Members may treat that person as regulated under Sections 11(b) and (c). NFA may also approve categories of counterparties (e.g., banks regulated in a particular jurisdiction or with a particular credit rating).

A Forex Dealer Member may not engage in Section 11(b) or (c) transactions with a regulated affiliate without NFA's approval. The Member may, however, ask NFA to authorize it to cover its positions with specified affiliates (including unregulated affiliates). An affiliate is any entity that controls, is controlled by, or is under common control with the Forex Dealer Member. The standards for approving affiliated persons are significantly higher than those for unaffiliated persons. For example, NFA will also consider:

- The parent company's and affiliated person's capital;
- Whether the parent company and the affiliated person are regulated entities;
- Whether the parent company will guarantee the obligations of the affiliated person (unless the parent company and the affiliated person are the same entity);
- The parent company's credit rating;
- Whether the affiliated person has strong risk-management policies to limit its value-at-risk; and
- For purposes of Section 11(c), whether the affiliated person limits the amount of offsetting transactions it enters into with unregulated counterparties.

For purposes of Section 11(c) Forex Dealer Members have four different types of counterparties. In particular:

- ~~Account holders are those counterparties for whom it carries accounts and includes both retail customers and eligible contract participants.~~
- ~~Trading partners are counterparties with whom the Member trades but who do not have accounts with the Member. For purposes of the calculations under Section 11(c), this category does not include affiliates (approved or unapproved) or regulated counterparties.~~
- ~~Affiliates are entities that control, are controlled by, or are under common control with the Forex Dealer Member. For purposes of Section 11(c) only, this category does not include affiliates who have been approved by NFA under Section 11(b).~~
- ~~Regulated entities are those counterparties that meet the definition in Section 11(b) and include entities including affiliates approved by NFA under that Section.~~

A Forex Dealer Member may net its exposure across account holders, across trading partners, and across affiliates, but it may not net its exposure between these categories. The Member may, however, net its exposure in any of these categories against regulated counterparties. Here is the information in chart form.

<i>Type of Counterparty</i>	<i>Account Holders</i>	<i>Trading Partners</i>	<i>Affiliates</i>	<i>Regulated Entities</i>
<i>Account Holders</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>Yes</i>
<i>Trading Partners</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>
<i>Affiliates</i>	<i>No</i>	<i>No</i>	<i>Yes</i>	<i>Yes</i>
<i>Regulated Entities</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>

A Forex Dealer Member is required to take a charge on the larger of its unnetted long or short position but not on both.

Example

Assume a Forex Dealer Member has the following Euro positions:

Type	Long	Short	Net Long	Net Short
Account Holders	11,154,912	6,011,794	5,143,118	
Trading Partners	4,987,345	7,299,886		2,312,541
Affiliates	3,790,754	2,640,553	1,150,201	
Regulated Entities	1,280,555	4,125,018		2,844,463

In determining the uncovered amount for purposes of the 6% haircut, the Forex Dealer Member can offset its net long position with account holders against the net short position with regulated entities but cannot offset its position with its trading partners or its position with unapproved affiliates against any category except regulated entities.

The math works this way (using only absolute numbers):

Net long position with account holders	5,143,118
Minus net short position with regulated entities	-2,844,463
	2,298,655
Uncovered long position with account holders	2,298,655
Plus net long position with affiliates	+1,150,201
Total uncovered long position	3,448,856
Net short position with trading partners	2,312,541
Larger of net long or short position	3,448,856
Haircut on Euros (3,448,856 X .06)	

* * *

5. Financial Requirements Section 12

Forex Dealer Members must collect security deposits from forex customers equal to 1% of the notional value of transactions in specified foreign currencies and 4% of the notional value of all other transactions. Where the two currencies are in different categories, the Forex Dealer Member must collect the higher amount. If the transaction pairs a foreign currency with the U.S. dollar, the security deposit is based on the foreign currency. If the transaction pairs a currency that qualifies for a 1% deposit with a currency that does not, the Forex Dealer Member must collect a 4% security deposit for the entire transaction. For example:

Currency Pair	Security Deposit
EUR/USD	1%
CND/JPY	1%
CND/BRL	4%
USD/MXN	4%
BRL/MXN	4%

For short options, the Forex Dealer Member must collect this amount plus the premium the customer received. For long options, the Forex Dealer Member must simply collect the entire premium from the customer.

³ Bylaw 306(b)(ii) and (iii) excludes broker-dealers and certain affiliates of broker-dealers that are members of any fully-registered national securities association and FCMs that are members of another registered futures association. At this time, however, FINRA is the only fully-registered national securities association and NFA is the only registered futures association.

* * *

⁶ ~~The Commodity Futures Trading Commission has stated that all employees of an FCM who solicit or accept orders for forex transactions from retail customers must be registered with the Commission as an associated person of the FCM. See Division of Trading and Markets Advisory Concerning Foreign Currency Trading by Retail Customers (March 2002).~~

⁷ ~~The screening process should include 1) checking BASIC and any other readily available sources and 2) asking the third-party to represent that neither it nor any of its principles is subject to a statutory disqualification or to identify and explain any statutory disqualifications.~~

[Current footnotes 6 and 7 and 13-15 were removed.]

[Current footnotes 16 and 17 become footnotes 11 and 12.]

* * *

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

* * *

BULK ASSIGNMENTS AND TRANSFERS

Permitted Assignees

An FDM must notify NFA's Compliance Department ("Compliance") prior to any bulk assignment of customer positions or bulk transfer of customer accounts. An FDM may only assign open positions to an entity that is an authorized counterparty enumerated in Section 2(c)(2)(B)(ii)(i)(II) of the Act. Prior to the assignment or transfer, the FDM must conduct a reasonable investigation and determine that the assignee intends and is financially able to honor its commitments to the FDM's customers as a result of the assignment or transfer. The FDM must document this investigation and provide this information to NFA.

* * *

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

* * *

Trade Integrity

* * *

Rollovers. If an electronic trading platform automatically rolls over open positions, the trading platform should be designed to ensure that the rollover complies with the terms disclosed in the customer agreement, including those provisions dictating how the rollover price is determined. Forex Dealer Members should adopt and enforce a written policy detailing the procedures it follows to calculate rollover or interest charges and payments. The policy must include the factors that are considered as well as the names of any sources for these factors. The Member should document the underlying factors reviewed in completing the calculation, including any related transactions entered into by the Forex Dealer Member, so it can be replicated.

EXPLANATION OF PROPOSED AMENDMENTS

The CFTC's recently issued Forex rules for firms engaged in retail, off-exchange foreign exchange activity become effective on October 18, 2010. As described below, these rules require NFA to make a number of conforming amendments to its Forex requirements.

NFA Bylaw 306

NFA is proposing to amend Bylaw 306, which defines the term Forex Dealer Member. As currently written, NFA Bylaw 306(a) defines two types of FCM-only firms as FDMs – those that are engaged in a traditional on exchange business but have some retail forex customers and those that are registered as FCMs for the sole purpose of engaging in retail forex. Under the Commission's Forex rules, this latter group of FCMs will become RFEDs. The changes to Bylaw 306(a) are, therefore, simply designed to maintain the status quo and ensure that both these groups are classified as FDMs that continue to be regulated under the same umbrella.

The other changes to Bylaw 306 conform the current Bylaw's language to the 2008 amendments to Section 2(c)(2)(B)(i)(II) of the Act. Bylaw 306's treatment of Member firms that are broker/dealers or affiliates of broker/dealers and counterparties to retail forex transactions remains unchanged unless they become RFEDs.

Changes Related to Unregistered Affiliates/Account Managers and Solicitors

NFA is proposing an amendment to Bylaw 1301 to eliminate the additional annual fee paid by FDMs based on the number of unregulated solicitors and account managers that it does business with since those entities are now required to be registered. The language to Compliance Rule 2-36, as well as the related Interpretive Notice, and Financial Requirements Section 1 are also being amended to eliminate requirements related to these unregulated entities. Language is also being added to Rule 2-36 that prohibits a Member from doing business with a non-Member that is required to be registered with the Commission as an FCM, RFED, IB, CPO, or CTA in connection with its forex activities, similar to the provision in Bylaw 1101 applicable to commodity futures.

Compliance Rules

NFA is amending Compliance Rule 2-36 to require FDMs to designate a Chief Compliance Officer. The amendments also delete Compliance Rules 2-41 (Forex Pool Operators and Trading Advisors), 2-42 (Forex Pool Reporting) and 2-44 (Forex Customer Statements) as well as a number of requirements in the Interpretive Notice entitled *Forex Transactions* because the Commission's Forex regulations include specific requirements in all these areas. In lieu of these rules, NFA added a subsection (k) to Rule 2-36 to indicate that Members and Associates that violate one of the specific Commission requirements will be deemed to have violated an NFA Requirement. The requirements related to Part 4 are currently covered by Compliance Rule 2-13. This is consistent with the manner by which NFA addresses compliance with CFTC requirements for exchange traded products.

Most of the remaining changes to the Compliance Rules simply add reference to the term RFED. The amendments make it clear that RFEDs have the same responsibility as FCMs for guaranteed IBs; that APs of RFEDs must meet the proficiency requirements; that RFEDs must notify NFA prior to commencing customer

business; and that RFEDs must develop a business continuity and disaster recovery plan.

Financial Requirements

NFA amended Financial Requirements Section 11 in October 2008 to phase in the Forex Dealer Member \$20,000,000 capital requirement, which became effective May 16, 2009. The current amendments eliminate the references to the phase-in capital increases, as well as eliminate the exception from including 5% of customer liabilities in the capital computation for FDMs that use straight through processing for all customers. The proposed amendments also modify Financial Requirements Section 12 to require FDMs to collect security deposits of 2% of the notional value of major currencies and 5% of the notional value of all other transactions. Additionally, the amendments require FDMs to liquidate customer positions if a customer fails to deposit additional security deposits to remain in compliance with the security deposit requirements. Finally, the Interpretive Notice entitled *NFA Financial Requirements: The Electronic Filing of Financial Reports* is amended to impose these reporting requirements on RFEDs.

Code of Arbitration and Member Arbitration Rules

The Code of Arbitration and the Member Rules are being amended to subject RFEDs to the same requirements as other Members. In addition, the proposed changes will require RFEDs to comply with the CFTC's requirements for pre-dispute arbitration agreements.

Technical Amendments

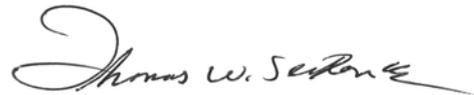
Finally, the proposed amendments also include a number of purely technical changes. These changes primarily replace now incorrect citations to particular sections of the Act and change references to CFTC Regulations.

Mr. David A. Stawick

September 28, 2010

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 above noted NFA Requirements effective on October 18, 2010 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 "Thomas W. Sexton, III". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas W. Sexton, III
Senior Vice President and
General Counsel

* The proposed amendments to NFA Bylaws 306 and 1301, NFA Compliance Rules 1-1, 2-13, 2-23, 2-24, 2-36, 2-38, 2-39, 2-41, 2-42 and 2-44, Code of Arbitration Sections 1, 2, 3, and 6, Member Arbitration Rules Section 6, Financial Requirements Sections 1, 3, 4, 8, 10, 11 and 12, and the Interpretive Notices entitled *NFA Financial Requirements: The Electronic Filing of Financial Reports; Forex Transactions; and Bulk Assignments and Transfers* become effective on October 18, 2010.