

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-_____; File No. SR-NFA-2009-01)

SELF-REGULATORY ORGANIZATIONS; National Futures Association;
Proposed Rule Change Relating to Amendments to Compliance Rule 2-29(h)
and the Adoption of an Interpretive Notice Regarding the Use of On-Line Social
Networking Groups to Communicate with the Public

Pursuant to Section 19b(7) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-7 under the Act,² notice is hereby given that on December 9, 2009, National Futures Association (“NFA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed this proposed rule change concurrently with the Commodity Futures Trading Commission (“CFTC”).

NFA on December 8, 2009 has requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary. The CFTC has not yet made such determination.

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

The amendments to Compliance Rule 2-29(h) require that certain audio and video advertisements that appear on the Internet – like similar radio and television advertisements – be submitted to NFA in advance for review and

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

approval. The proposed Interpretive Notice reminds Members that on-line communications are subject to the same standards as other types of communications.

The text of the proposed rule change and Interpretive Notice is found in Exhibit 4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

Section 15A(k) of the Act³ makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members ("Members") who are registered as brokers or dealers under Section 15(b)(11) of the Act.⁴ NFA Compliance Rule 2-29(h) applies to all Members including those registered under Section 15(b)(11).

³ 15 U.S.C. 78o-3(k).

⁴ 15 U.S.C. 78o(b)(11).

In December 2008, NFA's FCM, IB, and CPO/CTA Advisory Committees considered the growing use of social networking groups such as blogs, chat rooms, and forums to communicate with and solicit customers. As a result of those discussions, all three committees felt it would be helpful to issue written guidance reminding Members of their responsibilities in connection with these on-line communications.

As part of the process, NFA staff reviewed FINRA's response to the same issue. FINRA guidance states that blogs and bulletin boards are considered advertisements and are subject to the same requirements as other advertisements, while participating in a chat room is a public appearance subject to those rules. The guidance also states that "Member firms must supervise the operation of any securities-related blog, bulletin board or chat room hosted by an RR or by the firm itself to ensure compliance with FINRA Conduct Rules and the federal securities laws."⁵ The guidance also reminds members that their supervisory procedures can prohibit employees from using electronic media to discuss securities investments if the firm decides the medium is too hard to supervise.

FINRA has also produced several podcasts discussing on-line communications. In one podcast, FINRA staff suggest limiting posting access to a firm's blog or bulletin board to the firm's registered representatives. If the firm opens it up to a wider audience, however, the podcast advises requiring users to

⁵ FINRA, "Guide to the Internet for Registered Representatives," www.finra.org/Industry/Issues/Advertising/p006118, accessed July 20, 2009.

register and agree to the firm's terms of use.⁶ In another podcast, FINRA staff state that publicly available social networking sites are advertisements and those with restricted access are sales literature, subject to the same content, pre-approval, filing, and recordkeeping requirements applicable to other types of advertisements and sales literature.⁷

The proposed Interpretive Notice provides guidance that is similar to the FINRA guidance. It reminds Members that on-line communications are subject to the same standards as other types of communications.

NFA has also noticed that profit claims that used to appear on radio and television are moving to the Internet and showing up on sites such as YouTube. Therefore, the proposed amendments to Compliance Rule 2-29(h) require that these videos – like similar radio and television advertisements – be submitted to NFA in advance for review and approval.

Amendments to Compliance Rule 2-29 were previously filed in SR-NFA-2001-01.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k)(2)(B) of the Act.⁸ That Section requires NFA to have rules that are

⁶ FINRA February 23, 2009 podcast on “Electronic Communications: Blogs, Bulletin Boards and Chat Rooms,” www.finra.org/Industry/Education/OnlineLearning/Podcasts/index.htm, accessed July 20, 2009.

⁷ FINRA March 10, 2009 podcast on “Electronic Communications: Social Networking Sites,” www.finra.org/Industry/Education/OnlineLearning/Podcasts/index.htm, accessed July 20, 2009.

⁸ 15 U.S.C. 78o-3(k)(2)(B).

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and advertising of security futures products. The proposed changes accomplish this by requiring that videos showing profit claims that appear on the Internet – like similar radio and television advertisements – be submitted to NFA in advance for review and approval. Additionally, the proposed Interpretive Notice makes clear that communications through on-line social networking groups are subject to the same standards as other types of communications.

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

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

The proposed rule change will have little or no impact on competition. The proposed Interpretive Notice does not impose new requirements on Members, but rather makes clear that existing requirements regarding communications with the public are the same regardless of the medium used for such communications. Similarly, the proposed amendments to Compliance Rule 2-29(h) require that audio or video advertisements that would have to be submitted to NFA for prior approval if used on the radio or television must also be submitted

to NFA if they are distributed through publicly accessible media, e.g., the Internet. Although there may be some burden on members who have avoided this requirement by only using the Internet to distribute such advertisements, it is necessary and appropriate to ensure that communications by NFA Members are not misleading or otherwise inappropriate.

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

NFA worked with Member Committees in developing the rule change. NFA did not, however, publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

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

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

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NFA-2009-01.

Paper Comments

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

All submissions should refer to File Number SR-NFA-2009-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NFA. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NFA-2009-01 and should be submitted on or before _____.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Elizabeth M. Murphy
Secretary

⁹ 17 CFR 200.30-3(a)(73).

Exhibit 2

(Not applicable)

Exhibit 3

(Not applicable)

Exhibit 4

COMPLIANCE RULES

* * *

**Part 2—RULES GOVERNING THE BUSINESS CONDUCT
OF MEMBERS REGISTERED WITH THE COMMISSION**

* * *

**RULE 2-29. COMMUNICATIONS WITH THE PUBLIC AND
PROMOTIONAL MATERIAL**

* * *

(h) Radio and Television Advertisements.

No Member shall use or directly benefit from any radio or television advertisement or any other audio or video advertisement distributed through media accessible by the public if the advertisement [that] makes any specific trading recommendation or refers to or describes the extent of any profit obtained in the past that can be achieved 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 first use or such shorter period as NFA may allow in particular circumstances.

* * *

INTERPRETIVE NOTICES

* * *

**Use of On-Line Social Networking Groups to Communicate with the
Public**

On-line social networking groups have changed the way people make trading decisions. A number of NFA Members sponsor blogs, chat rooms, and forums (also called message or bulletin boards), and some use sites like Facebook or Twitter for business purposes. Associates may also sponsor or participate in these groups. Unfortunately, these on-line

communities provide opportunities for posters to spread unsubstantiated rumors and intentional misrepresentations. The form of communication does not change the obligations of Members and Associates who host or participate in these groups, and electronic communications must comply with Compliance Rules 2-9, 2-29, 2-36, and 2-39.

NFA's interpretive notice entitled NFA Compliance Rule 2-9: Supervisory Procedures for E-Mail and the Use of Web Site," (NFA Manual, ¶ 9037) provides guidance on how NFA's promotional material and supervision rules relate to e-mail and web sites but does not specifically address other types of electronic communications.¹ This notice discusses a Member or Associate's responsibilities in connection with on-line social networking facilities such as blogs, chat rooms, forums, Facebook, and Twitter.

Obviously, any electronic content that can be viewed by the general public, or even by a more closed community that includes current and potential customers, can be promotional material. For example, blogs dealing with commodity futures or options are promotional material when written by an NFA Member or Associate, and forex blogs are promotional material when written by a Member or Associate subject to the forex rules. Therefore, content generated by the Member or Associate is subject to the requirements of NFA Compliance Rules 2-29, 2-36, or 2-39. The same is true for futures, options, or forex content written by a Member or Associate and posted on a third party's site.

The issue becomes more complicated for user-generated comments responding to a Member or Associate's blog and for Members and Associates who host chat rooms or forums. What is their responsibility for posts from customers or others over whom the Member or Associate has no direct control? When inadequately monitored, social networking sites may contain misleading information, lure customers into trades that they would not normally make, or be used in an attempt to manipulate prices.

If a Member or Associate hosts a blog, a chat room, or a forum where futures or forex are discussed, the Member or Associate is required to supervise the use of that community. This requires, at a minimum, that the Member or Associate regularly monitor the content of the sites it hosts, take down any misleading or otherwise fraudulent posts, and ban users for egregious or repeat violations. Not only are these actions required by NFA's supervision rules, they are both common sense and common practice. Similar requirements apply to Facebook and other sites that allow others to post to the Member or Associate's "wall" or other assessable area.

Audio pod-casts and videos on the Internet—whether on the Member or Associate’s Web site or on an independent site such as YouTube—are similar to radio and television advertisements. If they make specific trading recommendations or refer to profits that have been obtained in the past or can be achieved in the future, NFA Compliance Rule 2-29(h) requires the Member or Associate to submit them to NFA for approval ten days prior to use.

Members should have policies regarding employee conduct. These policies could require employees to notify the employer if they participate in any on-line trading or financial communities and provide screen names so that the employer can monitor employees’ posts periodically. Alternatively, the policy could simply prohibit participation in such communities. The Member must, of course, take reasonable steps to enforce whatever policies it adopts.

¹ The interpretive notice also states that Members are responsible for supervising their employees and agents who decide whether to include a hyperlink to another web site. While Members are not necessarily accountable for the content on the hyperlinked site, they are responsible for monitoring that content and removing the hyperlink if they have reason to believe the content is misleading. This includes hyperlinks to third-party blogs, chat rooms, and forums.

Exhibit 5

- (a) December 8, 2009 letter from Thomas W. Sexton to David A. Stawick



December 8, 2009

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: On-line Social Networking Groups -
Proposed Amendments to NFA's Compliance Rule 2-29(h) and Adoption
of Interpretive Notice

Dear Mr. Stawick:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed amendments to NFA's Compliance Rule 2-29(h) and the adoption of a related Interpretive Notice. NFA's Board of Directors ("Board") approved the proposal on November 19, 2009.

NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("CEA") and will make these proposals effective ten days after receipt of this submission by the Commission unless the Commission notifies NFA that the Commission has determined to review the proposals for approval.

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

COMPLIANCE RULES

* * *

**Part 2—RULES GOVERNING THE BUSINESS CONDUCT
OF MEMBERS REGISTERED WITH THE COMMISSION**

* * *



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INTERPRETIVE NOTICES

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Members should have policies regarding employee conduct. These policies could require employees to notify the employer if they participate in any on-line trading or financial communities and provide screen names so that the employer can monitor employees' posts periodically. Alternatively, the policy could simply prohibit participation in such communities. The Member must, of course, take reasonable steps to enforce whatever policies it adopts.

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EXPLANATION OF PROPOSED AMENDMENTS

In December 2008, NFA's FCM, IB, and CPO/CTA Advisory Committees considered the growing use of social networking groups such as blogs, chat rooms, and forums to communicate with and solicit customers. As a result of those discussions, all three committees felt it would be helpful to issue written guidance reminding Members of their responsibilities in connection with these on-line communications.

As part of the process, NFA staff reviewed FINRA's response to the same issue. FINRA guidance states that blogs and bulletin boards are considered advertisements and are subject to the same requirements as other advertisements, while participating in a chat room is a public appearance subject to those rules. The guidance also states that "Member firms must supervise the operation of any securities-related blog, bulletin board or chat room hosted by an RR or by the firm itself to ensure compliance with FINRA Conduct Rules and the federal securities laws."¹ The guidance

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FINRA has also produced several podcasts discussing on-line communications. In one podcast, FINRA staff suggest limiting posting access to a firm's blog or bulletin board to the firm's registered representatives. If the firm opens it up to a wider audience, however, the podcast advises requiring users to register and agree to the firm's terms of use.² In another podcast, FINRA staff state that publicly available social networking sites are advertisements and those with restricted access are sales literature, subject to the same content, pre-approval, filing, and recordkeeping requirements applicable to other types of advertisements and sales literature.³

NFA has prepared an Interpretive Notice that is similar to the FINRA guidance. The proposed Notice reminds Members that on-line communications are subject to the same standards as other types of communications.

On a related issue, NFA compliance staff has noticed that the profit claims that used to appear on radio and television are moving to the Internet and showing up on sites such as YouTube. Therefore, the amendments to Compliance Rule 2-29(h) require that these videos - like similar radio and television advertisements - be submitted to NFA in advance for review and approval.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make the amendments to NFA Compliance Rule 2-29(h) and the related Interpretive Notice effective ten days after

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³ FINRA March 10, 2009 podcast on "Electronic Communications: Social Networking Sites," www.finra.org/Industry/Education/OnlineLearning/Podcasts/index.htm, accessed July 20, 2009.



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receipt of this submission by the Commission, unless the Commission notifies NFA that the Commission has determined to review the proposal for approval.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Thomas W. Sexton", with a long, sweeping underline that extends to the right.

Thomas W. Sexton
Senior Vice President and
General Counsel

cc: William Penner

TWS:jac(m:/jac/SubmissionLtrs\CR2-29&IntNotc re OnLine Social Networking 120209)