December 4, 2017

<u>Via Federal Express</u>

Mr. Christopher J. Kirkpatrick
Secretary
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Disclosure of Retail Forex Costs to Customers – Proposed Amendments to NFA Compliance Rule 2-36; Requirements for Forex Transactions and NFA Compliance Rule 2-43: Forex Orders

Dear Mr. Kirkpatrick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("CEA"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") the proposed amendments to NFA Compliance Rules 2-36 and 2-43 regarding disclosure of retail forex costs. NFA's Board of Directors ("Board") unanimously approved these amendments on November 16, 2017, and NFA respectfully requests Commission review and approval of the proposed amendments.

PROPOSED AMENDMENTS
(additions are <u>underscored</u> and deletions are ~~stricken through~~)

NATIONAL FUTURES ASSOCIATON

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COMPLIANCE RULES

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

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Compliance Rules

Rule 2-36. REQUIREMENTS FOR FOREX TRANSACTIONS

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(o) Disclosure of Transaction Data to Customers

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(3) Each FDM must inform customers of their ability to request this information by a notice prominently displayed on the FDM's website, each customer's trading ~~portal~~ platform and each customer transaction confirmation statement.

(p) Transaction Disclosures

Each Forex Dealer Member shall:

(1) Disclose the following, if applicable, to each customer on a per-trade basis in the same currency as the base currency of the account on the customer transaction confirmation statement:

- (i) Commission and any other fees;
- (ii) For transactions where a Forex Dealer Member is using straight-through processing, any mark-up or mark-down the Forex Dealer Member imposes on the price the Forex Dealer Member received for the offsetting positon to the customer's order; and
- (iii) For transactions where a Forex Dealer Member is not using straight-through processing, the mid-point spread cost.

(2) Forex Dealer Members not using straight through processing must provide customers with a description of the mid-point spread cost in a form and manner required by NFA.

~~(p)~~(q) Scope

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

~~(q)~~(r) Exemptions for Certain Transactions

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

~~(r)~~(s) Definitions

For purposes of this rule:

* * *

(2) "Customer" means a counterparty that is not an eligible contract participant as defined in Section 1a(18) of the Act; and

(3) "Dealer" means any person that (i) holds itself out as a dealer in forex or in retail commodity transactions as defined in 2(c)(2)(D) of the Act; (ii) makes a market in forex or in retail commodity transactions as described in 2(c)(2)(D) of the Act; (iii) regularly enters into forex or in retail commodity transactions as described in 2(c)(2)(D) of the Act with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in forex or in retail commodity transactions as described in 2(c)(2)(D) of the Act. Dealer includes other FDMs, as well as any entity acting in this manner that is not required to be an FDM.

(4) "Mid-point spread cost" means the difference between the price at which the Forex Dealer Member executes a customer's order and the mid-point of the bid/offer spread at the time the Forex Dealer Member receives the customer's order for market orders, and at the time the order's execution is triggered for conditional orders.

(5) "Straight-through processing" means when a Forex Dealer Member automatically executes (without human intervention and without exception) an offsetting position to a customer order with another counterparty prior to providing an execution to the customer order.

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Rule 2-43. FOREX ORDERS

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(a) Price Adjustments

(1) A Forex Dealer Member may not cancel an executed customer order or adjust a customer account in a manner that would have the direct or indirect effect of changing the price of an executed order except when:

(i) the cancellation or adjustment is favorable to the customer and is done as part of a settlement of a customer complaint, provided, however, that individual customer complaints are not required in order for a Forex Dealer Member to favorably adjust all customer orders that were adversely affected by ~~technical problems with the trading platform or by similar factors~~ circumstances beyond the customer's control and that are unrelated to market price movements (except that the Forex Dealer Member must adjust all customer orders adversely affected and may not, except as provided in section (a)(1)(ii), adjust any order that received a favorable price due to the problem); or

(ii) if a Forex Dealer Member exclusively uses straight-through processing, as defined in NFA Compliance Rule 2-36(s)(5).~~such that the Forex Dealer Member automatically (without human intervention and without exception) enters into the identical but opposite transaction with another counterparty (creating an offsetting position in its own name)~~ and that counterparty cancels or adjusts the price at which the position was executed.

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EXPLANATION OF PROPOSED AMENDMENTS

NFA's Board is amending NFA Compliance Rule 2-36 to provide retail forex customers with greater transparency regarding the costs associated with their forex transactions. In adopting the amendment, the Board recognized that the current forex dealer members ("FDM") operate using one of two business models, and that the costs associated with a forex transaction may differ depending on the business model used. The Board determined, however, that customers should be provided with adequate information to assess all costs that impact the pricing of a forex transaction.

In particular, some FDMs operate using a straight-through processing ("STP") model. Under this model, the FDM offers to act as a counterparty to its customers at the bid/ask prices it receives from its liquidity provider(s). The FDM is the counterparty to the customer and to a liquidity provider on an offsetting transaction. The pricing of these transactions is determined by the FDM's liquidity provider. The FDMs that currently use this model are compensated by charging a commission for each transaction.[1] Although not a current practice, certain FDMs using an STP model previously were compensated by adding a mark-up or mark-down to the price received from the liquidity provider. The Board concluded that if an STP FDM in the future added a mark-up or mark down, then these costs are easily identifiable and should be disclosed on the customer's confirmation statement.

Other FDMs operate using a dealer model whereby the firms determine the bid/ask spread offered to customers based on the prices received from their liquidity providers. FDMs using the dealer model do not immediately offset a particular customer transaction with a corresponding transaction with a liquidity provider. Rather, the firm carries the risks of its customer transactions and only after the FDM reaches certain risk tolerance limits in a particular currency will it execute trades with its liquidity providers to reduce that risk. The Board believes that customers utilizing a dealer model should be aware that they still incur a cost to execute these transactions that is embedded in the bid/ask spread. Although the Board concluded that it was not possible to determine the exact cost of a transaction, the FDM could provide a close approximation by providing the customer a "mid-point spread cost." The mid-point spread cost is based on the concept that the theoretical price of what a particular forex contract is worth at the time of execution is the mid-point between the FDM's displayed best bid and ask to the customer. The cost to the customer is the difference between the customer's execution price and the mid-point of the bid/ask spread at the time an FDM receives a customer's order for market orders and at the time the order's execution is triggered for conditional orders.

NFA's Board amended NFA Compliance Rule 2-36 to require FDMs to disclose to customers on a per-trade basis the following applicable information: any commissions or other fees charged; for STP firms, any mark-up or mark-down an FDM imposes to the price received from the LP for the offsetting position; and for non-STP

[1] The Board recognizes that FDMs currently disclose commissions on the confirmation statement but concluded to codify this disclosure in Compliance Rule 2-36.

firms, the mid-point spread cost. The amendment also requires FDMs not using the STP model to provide customers with a description of the mid-point spread cost in a form and manner acceptable to NFA.

NFA staff discussed these proposed amendments with representatives from three FDMs and they generally supported the proposal.

NFA's Board also amended NFA Compliance Rule 2-43 to clarify that the prohibition on price adjustments does not include situations when an FDM favorably adjusts all customer orders that were adversely affected by *circumstances* beyond the customer's control (*e.g.*, issues with third party vendors, including liquidity providers, trading platforms and related connectivity providers). The current rule limits these price adjustments to customer orders that were adversely affected by *technical problems with the platform or similar factors* beyond the customer's control. The amendment also includes a technical change that references the definition of straight-through processing being added to Compliance Rule 2-36.

NFA's Board unanimously approved the proposed amendments on November 16, 2017. NFA respectfully requests that the Commission review and approve the proposed amendments to NFA Compliance Rules 2-36 and 2-43 regarding disclosure of retail forex costs.

Respectfully submitted,

Carol A Wooding

Carol A. Wooding
Vice President and General Counsel