

March 5, 2020

Via Federal Express and E-mail (secretary@cftc.gov)

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: Proposed Technical Amendments to NFA Interpretive Notice 9025 – *Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results* and Interpretive Notice 9053 – *Forex Transactions*

Dear Mr. Kirkpatrick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("CEA" or "Act"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed technical amendments to NFA Interpretive Notice 9025 – *Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results* and Interpretive Notice 9053 – *Forex Transactions*. NFA's Board of Directors ("Board") unanimously approved the proposed amendments at its meeting on February 20, 2020.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make this proposal effective ten days after receipt of this submission by the Commission unless NFA is notified that the Commission has determined to review the proposal for approval.

PROPOSED AMENDMENTS

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

INTERPRETIVE NOTICES

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**9025 – COMPLIANCE RULE 2-29: USE OF PROMOTIONAL MATERIAL
CONTAINING HYPOTHETICAL PERFORMANCE RESULTS**

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Second, any FCM, IB, CPO or CTA Member or Associate utilizing promotional material that presents hypothetical performance results must also describe in the promotional material all of the material assumptions that were made in preparing the hypothetical results.² At a minimum, the description of material assumptions must cover points such as initial investment amount, reinvestment or distribution of profits, commission charges, management and incentive fees, and a general discussion of how performance was calculated (e.g., based on settlement prices, real time pricing). FCM, IB, CPO or CTA Members must also make all material disclosures necessary to place the hypothetical results in their proper context, which in most instances may go well beyond the prescribed disclaimer. Furthermore, FCM, IB, CPO or CTA Members and Associates must calculate hypothetical performance results in a manner consistent with that required under Part 4 of the CFTC's Regulations.

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9053 – FOREX TRANSACTIONS

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B. COMPLIANCE RULE 2-36

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5. *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 website address. Forex Dealer Members may comply with this requirement by providing customers with a copy of NFA's publication brochure entitled "BASIC: A Due Diligence Resource for the Investing Public ~~Background Affiliation Status Information Center: An Information Resource for the Investing Public~~," which is available in print and on NFA's website at www.nfa.futures.org. 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 website 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.

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EXPLANATION OF PROPOSED AMENDMENTS

NFA staff is proposing two technical amendments related to rule changes that were implemented as part of a prior proposal that was submitted to the Commission on August 29, 2019 and became effective on January 1, 2020. NFA staff recently became aware that important requirements related to the disclosure of material assumptions used to prepare hypothetical performance results were inadvertently deleted in the prior amendments to Interpretive Notice 9025 – *Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results*. The proposed technical amendment to this Interpretive Notice reinstates the deleted language, which requires that the disclosure of material assumptions include information on the initial investment amount and reinvestment or distribution of profits. In addition, the prior amendments moved a reference to a publication related to NFA BASIC from a footnote into the body of Interpretive Notice 9053 – *Forex Transactions*. This publication was recently renamed and reformatted. The technical amendment updates the reference to this NFA publication. NFA's Board unanimously approved both of these technical amendments on February 20, 2020.

As mentioned earlier, NFA is invoking the “ten-day” provision of Section 17(j) of the CEA. NFA intends to make the proposed technical amendments to Interpretive Notice 9025 – *Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results* and Interpretive Notice 9053 – *Forex Transactions* effective ten days after receipt of this submission by the Commission unless NFA is notified that the Commission has determined to review the proposal for approval.

Respectfully submitted,



Carol A. Wooding
Senior Vice President
and General Counsel