



May 20, 2020

Via Email (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's Rules and Interpretive Notices

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 Rules and Interpretive Notices. The amendments add a definition of Swap Execution Facility to NFA Compliance Rule 1-1, specify that the documents and notices required under NFA Compliance Rule 2-13(c) are filed electronically through NFA's filing system, update cross references and eliminate obsolete provisions. NFA's Board of Directors ("Board") unanimously approved the proposed amendments at its meeting on May 14, 2020.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and intends to make the proposed amendments effective as early as 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~~)

BYLAWS

* * *

CHAPTER 4. MEMBER MEETINGS AND ELECTIONS

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BYLAW 409 EXECUTIVE REPRESENTATIVE.

* * *

(a) Each Member shall designate, in a form and manner required by NFA, one (1) individual as the Member's Executive Representative. The Executive Representative shall have the sole authority on behalf of the Member to sign petitions to nominate candidates for Director or Nominating Committee positions in accordance with Article VII, Section ~~3(b)(1)~~ 3(b)(i) and to vote or authorize another person or persons to act for such Member by proxy at any meeting of Members. All notices of meetings of Members shall be delivered to the Executive Representative.

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COMPLIANCE RULES

PART 1 – DEFINITIONS

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RULE 1-1. DEFINITIONS.

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(ee) ~~(ff)~~ "Swap" — has the same meaning as in the Act and Commission Rules.

(ff) ~~(ee)~~ "Swap Dealer" or "SD" — means a person who is required to register or is registered as a swap dealer under the Act and Commission Rules.

(gg) "Swap Execution Facility" — has the same meaning as in the Act and Commission Rules.

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

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RULE 2-13. CPO/CTA REGULATIONS.



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* * *

(c) Each Member required to file any document with or give notice to the CFTC under CFTC Regulations 4.7, 4.12, 4.22, 4.26 or 4.36 shall file such document or notice electronically through NFA's filing system ~~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~~. Any CPO Member may file with NFA a request for an extension of time in which to file the annual report required by CFTC Regulation 4.22(c) or a request for approval of a change to its fiscal-year election electronically through NFA's filing system.

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RULE 2-25. REQUIREMENTS FOR DEALER OPTIONS TRANSACTIONS OF FCMs.

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Any Member who violates any of the CFTC Part 32 Regulations shall be deemed to have violated an NFA requirement. ~~Each Member required to file any documents with or give notice to the CFTC under the CFTC Part 32 Regulations 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.~~

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FINANCIAL REQUIREMENTS

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:

* * *

(vi) For a Member FCM that acts as counterparty to a forex transaction (as forex is defined in Bylaw 1507(b) but excluding the counterparty limitation contained in Bylaw ~~1507(b)(2)~~ 1507(b)(ii)), \$20,000,000, except that Forex Dealer Members must meet the requirements in Financial Requirements Section 11.



* * *

(d) No Member FCM may use forex customer equity as capital or may record forex customer equity as an asset without recording a corresponding liability. For purposes of this requirement:

(i) Forex customer means any person who is not an eligible contract participant, as defined in Section 1a(18) of the Act, who enters into forex transactions (as defined in Bylaw 1507(b)) with the FCM or any of its affiliates described in ~~section 2(c)(2)(B)(ii)(III)~~ Section 2(c)(2)(B)(i)(II)(cc)(BB) of the Act; and

(ii) Forex customer equity means money, securities, and property received by the FCM or any of its affiliates described in ~~section 2(c)(2)(B)(ii)(III)~~ Section 2(c)(2)(B)(i)(II)(cc)(BB) of the Act to margin, guarantee, or secure forex transactions between a forex customer and the FCM or any of its affiliates described in ~~section 2(c)(2)(B)(ii)(III)~~ Section 2(c)(2)(B)(i)(II)(cc)(BB) of the Act, or accruing to a forex customer as a result of such transactions.

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SECTION 4. FINANCIAL REQUIREMENTS AND TREATMENT OF CUSTOMER PROPERTY.

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(a) Any Member FCM, RFED, or IB who violates any of CFTC Regulations 1.10, 1.12, 1.16, 1.17, 1.20 through 1.30, 5.6, 5.7, 30.7 or 22.2 through ~~22.16~~ 22.17 (as applicable) shall be deemed to have violated an NFA Requirement.

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(d) In addition to the requirements of CFTC Regulation 30.7(e), in order to be an acceptable depository to hold customer secured amount accounts identified in CFTC Regulation 30.7, the depository must report balances in the FCM's customer secured amount account(s) held at the depository to NFA or a third party designated by NFA in the form and manner prescribed by NFA.

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SECTION 11. FOREX DEALER MEMBER FINANCIAL REQUIREMENTS.



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

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(i) \$20,000,000;

(ii) the amount required by subsection (a)(i) above plus:

(aa) 5% of all liabilities the Forex Dealer Member owes to customers (as customer is defined in Compliance Rule ~~2-36(q)(2)~~ 2-36(s)(2)) and to eligible contract participant counterparties that are not an affiliate of the Forex Dealer Member and are not acting as a dealer exceeding \$10,000,000; and

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REGISTRATION RULES

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PART 200. REGISTRATION REQUIREMENTS AND PROCEDURES

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RULE 204. REGISTRATION OF FUTURES COMMISSION MERCHANTS, NOTICE FUTURES COMMISSION MERCHANTS, RETAIL FOREIGN EXCHANGE DEALERS, FLOOR TRADER FIRMS, INTRODUCING BROKERS, NOTICE INTRODUCING BROKERS, COMMODITY POOL OPERATORS, COMMODITY TRADING ADVISORS AND LEVERAGE TRANSACTION MERCHANTS AND CONFIRMATION OF EXEMPTION FROM REGISTRATION PURSUANT TO COMMISSION REGULATION 30.5.

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(a) Application for Registration or Exemption from Registration.

(1)

* * *



(C) Each application for registration as a CPO also must be completed and filed in accordance with CFTC Regulation 4.13~~(e)~~(d).

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(G) Each application for registration as an SD or MSP also must be completed in accordance with CFTC Regulation 3.10(a)(1)(v).

* * *

(c) Duration of Registration.

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(2) A person registered as an IB who was a party to a guarantee agreement with an FCM or an RFED in accordance with CFTC Regulation 1.10(j) will be deemed to have requested a withdrawal of its registration effective 30 days after the termination of such guarantee agreement unless the procedures set forth in CFTC Regulation ~~1.10(j)(8)~~ 1.10(j)(9) are followed.

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PART 300. TEMPORARY LICENSES

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RULE 302. TEMPORARY LICENSING FOR GUARANTEED INTRODUCING BROKERS.

* * *

(c) Restrictions Upon Activities.

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Such written notice and new guarantee agreement must be submitted to NFA 10 days prior to the termination of the initial guarantee agreement or within such other period of time as NFA may allow for good cause shown, in accordance with NFA Requirements and CFTC Regulations ~~1.10(j)(4)(ii), (j)(6)~~ 1.10(j).

(d) Termination of a Temporary License.



(1) A TL shall terminate:

* * *

(C) immediately upon termination of the applicant's guarantee agreement in accordance with NFA Requirements and CFTC Regulations ~~1.10(j)(4)(ii), (j)(6)~~ 1.10(j) unless a new guarantee agreement is filed in accordance with paragraph (c)(2) of this Rule;

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RULE 303. TEMPORARY LICENSING FOR FLOOR BROKERS AND FLOOR TRADERS

* * *

(d) Termination of a Temporary License.

(1) A TL shall terminate:

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(B) immediately upon notification to the temporarily licensed applicant that the sponsor who filed the Acknowledgement of Conditioned Registration described in paragraph ~~(a)(1)(D)~~ (a)(4) of this Rule has terminated the sponsorship relationship;

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PART 400. PROFICIENCY REQUIREMENTS

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RULE 401. QUALIFICATION TESTING REQUIREMENT.

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(g) The applicant's sponsor must supervise the applicant's compliance with the limitations on the applicant's activities set forth in paragraphs ~~(b)(e)~~ (b)-(e) of this Rule. Any failure of the applicant to adhere to such limitations may be cause for, among other things, disciplinary action by NFA against the sponsor for violation of NFA Compliance Rule 2-9. The limitations set forth in paragraphs ~~(b)(e)~~ (b)-(e) of this Rule shall remain in effect until the applicant or the applicant's sponsor submits to NFA satisfactory



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evidence of having taken and passed the National Commodity Futures Examination (Series 3).

(h) An individual may contemporaneously engage in any activity permitted pursuant to the provisions of paragraphs (b)(2), (c)(4) and (e) provided that the individual meets the other pertinent requirements of paragraphs ~~(b)(e)~~ (b)-(e).

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**PART 500. PROCEEDINGS TO DENY, CONDITION, SUSPEND AND
REVOKE REGISTRATION**

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RULE 502. GENERAL PROVISIONS.

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(b) A copy of any notice served in accordance with paragraph (a)~~(4)~~ of this Rule shall also be served upon:

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RULE 508. ORDERS.

* * *

(a) Final Orders and Withdrawals of Notice of Intent. All orders granting, denying, conditioning, suspending or revoking registration under this Part 500 (except an interim order suspending registration pursuant to Rule 504(b)(d)) and all orders denying motions to vacate default orders under this Part 500 shall become a Final Order of NFA on the date of service upon the applicant or registrant. All Withdrawals of Notice of Intent shall become final on the date of service upon the applicant or registrant. A copy of each Final Order and Withdrawal of Notice of Intent issued by NFA shall be served upon the Commission at the same time it is served upon the applicant or registrant. All Final Orders shall inform the applicant or registrant of his right to petition the Commission for review under Section 17(o) of the Act and applicable Commission Regulations and of the right to petition the Commission for a stay of the effective date of the Final Order in accordance with Commission Regulation 171.22.

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INTERPRETIVE NOTICES

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9006 – NFA COMPLIANCE RULE 2-13: GUIDELINE FOR THE DISCLOSURE BY CPOS AND CTAS OF "UP FRONT" FEES AND ORGANIZATIONAL AND OFFERING EXPENSES

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¹ Section 709 of the Internal Revenue Code, 26 U.S.C. ~~§700709~~, governs whether or not organization or syndication expenses incurred to organize and to promote the sale of interests in a partnership can be amortized.

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9035 – RULE 2-35. CPO/CTA DISCLOSURE DOCUMENTS

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(iii) For a pool that has been in operation for a full fiscal year, the compensation paid to all major CTAs for the most recent fiscal year as a percentage of average net assets. For a pool that has not been in operation for a full fiscal year, a general statement of



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what the major CTAs' fees will be as a percentage of average net assets. (Major CTAs are defined in CFTC Regulation 4.1((i) 4.10(i));

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9047 – NFA COMPLIANCE RULE 2-37: FAIR COMMISSIONS

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³ See Interpretive Notice 9005 – Interpretation of NFA Compliance Rule 2-4: Guideline for the Disclosure by FCMs and IBs of Costs Associated With Futures Transactions, 9005, NATIONAL FUTURES ASSOCIATION MANUAL.

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9054 – COMPLIANCE RULE 2-34: CTA PERFORMANCE REPORTING AND DISCLOSURES

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⁵ This same materiality test can be used in other contexts. For example, Interpretive Notice 9029 – NFA's interpretive notice entitled "NFA Compliance Rule 2-10: The Allocation of Bunched Orders for Multiple Accounts" (paragraph 9029) requires CTAs to modify their allocation methods if accounts in the same trading program have materially different performance results. This is another instance where materiality would be measured using gross trading profits and losses.

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9057 – COMMISSIONS, FEES AND OTHER CHARGES

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² This Notice does not apply to security futures products, which are governed by NFA Compliance Rule 2-37(g) and its Interpretive Notice 9047 – NFA Compliance Rule 2-37: Fair Commissions, relating to fair commissions. See NFA Manual paragraph 9047.

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

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¹⁰ A Member should assess each individual customer's ability to accept risk as part of the Member's obligation to know its customers. (See NFA Interpretive Notice 9053 – entitled "*Forex Transactions*," NFA Manual, paragraph 9053).

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9066 – NFA FINANCIAL REQUIREMENTS SECTION 16: FCM FINANCIAL PRACTICES AND EXCESS SEGREGATED FUNDS/SECURED AMOUNT/CLEARED SWAPS CUSTOMER COLLATERAL DISBURSEMENTS

* * *

In addition to obtaining the CEO's, CFO's or Financial Principal's approval, subsection 16(b)(~~ii~~)(iii) requires the FCM to file a written notice with NFA immediately after the FCM's CEO, CFO or Financial Principal pre-approves in writing the disbursement whereby the FCM exceeds or will exceed the 25% threshold. The notice to NFA must be signed by the FCM's CEO, CFO or Financial Principal and subsection 16(b)(~~ii~~)(iii)(1)-(4) provides that the notice must include the following:

* * *

Importantly, Financial Requirements subsections 16(b)(~~iii~~)(iv), (c)(~~iii~~)(iv) and (d)(~~iii~~)(iv) place a key qualification on the disbursements utilized to calculate whether an FCM has or will exceed the 25% threshold. Specifically, these subsections provide that for purposes of calculating the 25% threshold an FCM shall exclude any segregated funds disbursement(s), secured amount funds disbursement(s) or cleared swaps customer collateral disbursement(s) that are made to or for the benefit of customers.

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Additionally, subsections 16(b)(~~ii~~)(iii)(1), (c)(~~ii~~)(iii)(1) and (d)(~~ii~~)(iii)(1) require an FCM to utilize the daily segregated funds, secured amount funds and cleared swaps customer collateral calculations as of the close of business on the previous business day, respectively, to determine whether the FCM has made or intends to make disbursement(s) that exceeds or will exceed 25% of the FCM's residual interest in segregated funds, secured amount funds and cleared swaps customer collateral.

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EXPLANATION OF PROPOSED AMENDMENTS

NFA's Board has approved several technical amendments to NFA Rules and Interpretive Notices. These amendments include adding a definition of Swap Execution Facility to NFA Compliance Rule 1-1, updating NFA Compliance Rule 2-13 to



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specify that the documents and notices required under paragraph (c) of that Rule are to be filed electronically through NFA's filing system, updating cross references and eliminating obsolete provisions in several NFA Rules and Interpretive Notices. The changes do not impose any additional obligations on Members.

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 the following Rules and Interpretive Notices: NFA Bylaw 409; Compliance Rules 1-1, 2-13, and 2-25; Financial Requirements Sections 1, 4, and 11; Registration Rules 204, 302, 303, 401, 502, and 508; Interpretive Notices 9006 – *NFA Compliance Rule 2-13: Guideline for the Disclosure by CPOs and CTAs of "Up Front" Fees and Organizational and Offering Expenses*; 9035 – *Rule 2-35: CPO/CTA Disclosure Documents*; 9047 – *NFA Compliance Rule 2-37: Fair Commissions*; 9054 – *Compliance Rule 2-34: CTA Performance Reporting and Disclosures*; 9057 – *Commissions, Fees and Other Charges*; 9060 – *Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems*; and 9066 – *NFA Financial Requirements Section 16: FCM Financial Practices and Excess Segregated Funds/Secured Amount/Cleared Swaps Customer Collateral Disbursements* effective as early as 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,

A handwritten signature in black ink that reads "Carol A. Wooding". The signature is written in a cursive style with a large, sweeping flourish at the end.

Carol A. Wooding
Senior Vice President and
General Counsel