

August 23, 2021

**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 Amendments to NFA's  
Interpretive Notice: *Registration Requirements: Branch Offices*

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's Interpretive Notice entitled *Registration Requirements: Branch Offices*. NFA's Board of Directors ("Board") unanimously approved the proposal on August 19, 2021.

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

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**PROPOSED AMENDMENTS**

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

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**NATIONAL FUTURES ASSOCIATION**

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**NFA INTERPRETIVE NOTICES**

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**9002 - REGISTRATION REQUIREMENTS: BRANCH OFFICES**

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**Form 7-R, Branch Offices**

Each FCM, RFED, IB, CPO and CTA is required to list on Form 7-R each of its branch offices. A branch office is defined as follows:

Any location, other than the main business address at which an FCM, RFED, IB, CPO or CTA employs one or more persons engaged in activities requiring registration as an AP, excluding any location where one or more APs from the same household live or rent/lease provided the location is not held out to the public as an office of the Member; the AP(s) does not meet in-person with customers or physically handle customer funds at the location; and any CFTC or NFA required records created at the non-branch office location are accessible for inspection at the Member firm's main or applicable listed branch office as required under CFTC Regulation 1.31 and NFA Compliance Rule 2-10. is a branch office. This is true even if there is only one person at the location.

If the firm has one or more branch offices, NFA's registration records on the firm must include the names of all persons who are branch office managers. Each location must have a branch office manager, and that person's status as a branch office manager should be listed in the Registration Categories section of the person's Form 8-R even if previously listed as a principal in the Registration Categories section of the person's Form 8-R. Each branch office must have a different manager.

The address must also be given for each branch office. A P.O. Box is not sufficient. Anyone with a status as branch office manager must also be currently registered as an AP or have applied for such registration. Whenever a new branch office is established it must be reported, with all the required information, to NFA by filing an update electronically to the firm's Form 7-R. The closing of an existing branch office should also be reported by filing an update electronically to the firm's Form 7-R.

~~IF YOUR FIRM CURRENTLY HAS PERSONS OPERATING OUT OF LOCATIONS OTHER THAN ITS MAIN BUSINESS ADDRESS, THOSE LOCATIONS MUST IMMEDIATELY BE REPORTED TO NFA BY FILING AN UPDATE ELECTRONICALLY TO THE FIRM'S FORM 7-R AND BY ADDING BRANCH OFFICE MANAGER STATUS ON EACH BRANCH OFFICE MANAGER'S FORM 8-R.~~

NFA may take disciplinary action against any Member which fails to properly list all of its offices.

An important point to recognize is that a branch office may not itself be a separate corporation or partnership. CFTC Regulation 166.4 requires each branch office to use the name of the firm of which it is a branch for all purposes and to hold itself out to the public under such name. Also, in CFTC Interpretive Letter No. 84-10 (May 29, 1984) it was concluded that a branch office could not maintain a separate identity from the

Member. One obvious conclusion to be drawn from this information is that each AP in a branch office must be paid directly by the Member. Payment through any intermediary would lead to the assumption that the intermediary would be required to register as an IB.

The requirement that a branch office hold itself out to the public under the name of the Member is intended to ensure that customers are always aware of the Member with which they are doing business. It is necessary that any branch office AP, even one operating out of a residence or an unrelated place of business, make sure that customers understand who they are doing business with.

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### **EXPLANATION OF PROPOSED AMENDMENTS**

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NFA Interpretive Notice 9002 entitled *Registration Requirements: Branch Offices* (Branch Office Definition Interpretive Notice) requires a Member firm, other than a swap dealer, to list as a branch office on its Form 7-R any location other than the Member's main business address from which APs engage in activities requiring registration. NFA also requires that each branch office have a branch office manager who has successfully completed the Branch Manager Examination (Series 30). Additionally, the firm is required to conduct an annual inspection of each branch office.

In March 2020, due to the Covid-19 pandemic, NFA issued a Notice to Members (Notice) providing Members with relief from these requirements recognizing that Member firms would be operating pursuant to their business continuity plans and permit employees, including registered APs, to work remotely from locations that had not been listed as a branch office. The Notice required Members that allowed APs to work remotely, to implement alternative supervisory methods to adequately supervise APs' activities and meet recordkeeping requirements. The relief provided by this Notice remains in effect.

NFA understands that Member firms, similar to other businesses, may adopt hybrid work environments that will permit employees, including registered APs, to work from their homes or other remote locations. NFA's Board does not believe that, under appropriate circumstances, there is a sufficient regulatory benefit to require Members to list these types of locations as branch offices and impose the branch office requirements upon a firm for each of these locations.

Therefore, the Board amended the definition of branch office in the Interpretive Notice to specifically exclude locations where one or more APs from the same household work or rent/lease the location, provided:

- The AP(s) does not hold the location out to the public as the Member's office;
- The AP(s) does not meet with customers or physically handle customer funds at the location; and
- Any CFTC or NFA required records created at the remote location are accessible at the firm's main or applicable listed branch office as required under CFTC Regulation 1.31 and NFA Compliance Rule 2-10.

This definition is designed to capture both work from home arrangements as well as flexible shared workspace arrangements. Firms may delist locations that are currently identified as branch offices if those locations fall outside the amended definition.

NFA's FCM, IB and CPO/CTA Member Advisory Committees supported amending the branch office definition in the Interpretive Notice. NFA's Executive Committee also supports the proposed amendments. As stated earlier, NFA's Board unanimously approved the proposed amendments on August 19, 2021.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA. NFA intends to issue a Notice to Members establishing an effective date of the proposed amendments to NFA's Interpretive Notice entitled *Registration Requirements: Branch Offices* effective as early as ten days after 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,



Carol A. Wooding  
Senior Vice President and  
General Counsel