



August 25, 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 Amendments to NFA 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 amendments to NFA Interpretive Notice 9053 entitled *Forex Transactions* ("Forex Notice") to eliminate the annual inspection requirement in the Forex Notice for Forex Dealer Members ("FDMs") and instead direct Members to conform with the annual inspection requirements as set forth in NFA Interpretive Notice 9019 entitled *Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs* ("Supervision Notice"). NFA's Board of Directors ("Board") unanimously approved the proposed amendments at its meeting on August 20, 2020.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to issue a Notice to Members establishing an effective date for this proposal 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~~)

INTERPRETIVE NOTICES

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9053 – FOREX TRANSACTIONS

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B. COMPLIANCE RULE 2-36

As noted above, this section provides additional guidance on what Compliance Rule 2-36 requires. Certain sections specifically refer to Forex Dealer Members. All other provisions of this notice also apply to Members and their Associates who solicit, introduce or manage forex accounts.

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2. *Supervision* - Members and their Associates having supervisory responsibilities must diligently supervise the Member's forex business, including the activities of the Member's Associates and agents. Members must establish, maintain, and enforce written supervisory procedures.

NFA has provided Members with guidance on minimum standards of supervision through interpretive notices issued under NFA Compliance Rule 2-9.² In these interpretive notices NFA recognized that, given the differences in the size of and complexity of the operations of NFA Members, there must be some degree of flexibility in determining what constitutes "diligent supervision" for each firm. This principle also applies to the supervision of a Member's forex business.

Although Members have the flexibility to design procedures that are tailored to their own situation, an adequate program for supervision would include procedures for performing day-to-day monitoring. These procedures would include:

- screening prospective Associates to ensure that they are qualified and to determine the extent of supervision the person would require if hired;
- screening persons with whom the Member intends to do forex business to determine if they are required to be registered with the Commission and, if so, to ensure that they are Members of NFA;
- monitoring communications with the public, including sales solicitations and web sites, and approving promotional material;
- reviewing the information obtained from and the information provided to customers solicited by the firm and its employees to ensure that the necessary account information has been obtained and the appropriate information provided; and
- handling and resolving customer complaints;
- reviewing disclosures given to customers to ensure they are understandable, timely, and provide sufficient information;
- reviewing and analyzing the forex activity in customer accounts, including discretionary customer accounts; and

- handling customer funds, including accepting security deposits, if applicable.

A Forex Dealer Member and a listed principal that is also a registered associated person (see Financial Requirements 15(c)) must supervise the preparation of a Forex Dealer Member's financial books and records. Diligent supervision includes hiring and retaining qualified staff. In determining whether an individual responsible for preparing the Member's financial books and records is qualified, the firm and its financial principal should consider the following:

- Is the individual qualified for the position by experience or training?
- Does the individual exercise independent judgment?
- Has the individual ever been sanctioned or refused membership or licensing by NFA, the CFTC, the SEC, NASD or FINRA, the Public Company Accounting Oversight Board, or any other financial regulator?
- Has the individual ever been sanctioned or refused membership by the American Institute of Certified Public Accountants or any other accounting organization?
- Has any firm for which the individual performed auditing, accounting, or bookkeeping been subject to an emergency action or sanctioned by NFA, the CFTC, the SEC, NASD or FINRA, the Public Company Accounting Oversight Board, or any other financial regulator for failure to comply with financial requirements or for having inadequate books and records while the individual was engaged in those activities?
- Are there any pending actions against the individual or a firm for which the individual performed auditing, accounting, or bookkeeping?

This is not an exclusive list. If the individual or a firm for which the individual worked (either as an independent contractor or an employee) was subject to an emergency action, sanctioned by a financial regulator, or is subject to a pending action, the FDM and the listed principal/registered AP responsible for the FDM's financial books and records should consider the nature and seriousness of the conduct (or alleged conduct) and the individual's role in it. An NFA Member Responsibility Action or an emergency action by another financial regulator is always an extremely serious matter.

The Forex Dealer Member and its financial principal must also conduct due diligence and consider analogous information when selecting an independent public accountant to certify the firm's annual financial statements.

An adequate supervisory program should also include ~~annual~~ on-site visits to branch offices and guaranteed introducing brokers that conduct forex business on behalf of the Member. The Member needs to determine the frequency and nature of these visits. Members should refer to NFA Interpretive Notice 9019 - *Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs* for the minimum standards for a supervisory program for branch offices and guaranteed IBs, including the inspection requirement. ~~The number of visits will depend on the amount of business generated, the number of customer complaints received, the training and experience of the office~~

~~personnel, and the frequency and nature of problems that arise from the office. Members should refer to NFA Interpretive Notice 9019 – *Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs* for the minimum standards for a supervisory program for branch offices and guaranteed IBs.~~

Finally, a Member's supervisory responsibilities include the obligation to ensure that its employees are properly trained to perform their duties. The formality of a training program will depend on the size of the firm and the nature of its business. Procedures should be in place to ensure that supervisory personnel know and understand the firm's supervisory procedures and that employees receive adequate training to abide by NFA requirements and to properly handle customer accounts.

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EXPLANATION OF PROPOSED AMENDMENTS

NFA recently implemented several amendments to its Supervision Notice including changes to the Supervision Notice's requirement that Member firms conduct an annual inspection of each branch office and each guaranteed IB. The revised Notice permits Member firms to use a risk based approach to identify branch offices or guaranteed IBs for which the Member firm determines it may be appropriate to examine through an on-site inspection every other year rather than the previously required annual inspection. NFA FDMs are not subject to the requirements of the Supervision Notice. Rather, FDMs must comply with the requirements of the Forex Notice, which currently requires an annual on-site inspection for all branch offices and guaranteed IBs. NFA's Board has approved amendments to the supervision obligations in the Forex Notice to eliminate the annual on-site requirement and instead refer FDMs to the Supervision Notice for requirements involving the annual inspection requirement. This amendment will provide FDMs with the same flexibility as other Member firms with respect to the on-site inspection requirement. As stated earlier, NFA's Board unanimously approved the proposed amendments on August 20, 2020.

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 for the proposed amendments to the Forex Notice 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, looping initial 'C' and a long, sweeping tail.

Carol A. Wooding
Senior Vice President and
General Counsel