

September 6, 2016

**Via Federal Express**

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 Requirements to Conform to Definitions in Section 1a of the Commodity Exchange Act\*

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 technical amendments to the following NFA Requirements: NFA Bylaw 1507; NFA Compliance Rules 1-1, 2-30, and 2-39; NFA Code of Arbitration Sections 1 and 20; NFA Financial Requirements Section 1; and NFA Registration Rules Part 200.

Moreover, pursuant to Section 17(j) of the CEA, NFA also submits the proposed technical amendments to NFA Requirements as set forth in the following Interpretive Notices: (i) *NFA Compliance Rule 2-9: Enhanced Supervisory Requirements*; (ii) *Forex Transactions*; (iii) *NFA Bylaw 1101, Compliance Rules 2-9 and 2-29: Guidelines Relating to the Registration of Third-Party Trading System Developers and the Responsibility of NFA Members for Promotional Material that Promotes Third-Party Trading System Developers and Their Trading Systems*; and (iv) *NFA Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems*.

NFA's Board of Directors approved all of the above proposed technical amendments on August 18, 2016.

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

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

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**BYLAWS OF NATIONAL FUTURES ASSOCIATION**

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**CHAPTER 15**  
**MISCELLANEOUS PROVISIONS**

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**BYLAW 1507. DEFINITIONS.**

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(a) The term "futures" as used in these Bylaws shall include:

- (1) option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts;
- (2) foreign futures and foreign options transactions made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's rules;
- (3) leverage transactions as that term is defined in the Commission's rules; and
- (4) security futures products, as that term is defined in Section 1a~~(32)~~(45) of the Act.

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**COMPLIANCE RULES**

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**Part 1 – DEFINITIONS**

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**RULE 1-1. DEFINITIONS.**

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**(p) "Futures"** includes—

- (1) futures and option contracts traded on a contract market;
- (2) option contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's rules that it is qualified to grant such option contracts;
- (3) foreign futures and foreign options made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures or foreign options customers as those terms are defined in the Commission's rules;
- (4) leverage transactions as that term is defined in the Commission's rules;  
and
- (5) security futures products, as that term is defined in Section 1a(32)(45) of the Act.

\* \* \*

**(bb) "Security Futures Products"** - has the same meaning as in Section 1a(32)(45) of the Act.

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

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**RULE 2-30. CUSTOMER INFORMATION AND RISK DISCLOSURE.**

- (a) Each Member or Associate shall, in accordance with the provisions of this Rule, obtain information from all individual customers and any other customers who are not eligible contract participants (as defined in Section 1 ~~(a)(12)~~(18) of the Act) and provide such customers with disclosure of the risks of futures trading.

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**RULE 2-39. SOLICITING, INTRODUCING, OR MANAGING FOREX TRANSACTIONS OR ACCOUNTS.**

\* \* \*

- (b) For purposes of this rule, the term "customer" means a person that is not an eligible contract participant as defined in Section 1a~~(12)~~(18) of the Act and includes persons who participate in pooled accounts.

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**CODE OF ARBITRATION**

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**SECTION 1. DEFINITIONS.**

\* \* \*

**(o) "Futures" - includes:**

- (1) futures and options contracts traded on a Commission-licensed exchange;

- (2) options contracts granted by a person that has registered with the Commission under Section 4c(d) of the Act as a grantor of such option contracts or has notified the Commission under the Commission's Rules that it is qualified to grant such option contracts;
- (3) foreign futures and foreign options transactions made or to be made on or subject to the rules of a foreign board of trade for or on behalf of foreign futures and foreign options customers as those terms are defined in the Commission's rules;
- (4) leverage transactions as that term is defined in the Commission's Rules;
- (5) security futures products, as that term is defined in Section 1a~~(32)~~(45) of the Act; and
- (6) forex transactions (for purposes of jurisdiction under this Code).

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**SECTION 20. OTHER LEGAL PROCEEDINGS.**

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During an arbitration proceeding filed by a customer that is not an eligible contract participant as defined in Section 1a~~(12)~~(18) of the Act, no party to the arbitration may institute any suit, legal action, or proceeding outside of the arbitration proceeding against any other party that concerns or would resolve any of the matters raised in the arbitration.

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**FINANCIAL REQUIREMENTS**

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**SECTION 1. FUTURES COMMISSION MERCHANT FINANCIAL REQUIREMENTS.**

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(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~~(12)~~(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); 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) 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) or accruing to a forex customer as a result of such transactions.

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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,  
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.**

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(4)(A) A broker or dealer that is registered with the Securities and Exchange Commission ("SEC") shall be registered as an FCM or IB upon the filing of a written Notice Form 7-R, completed and filed with NFA in accordance with all pertinent instructions, if: the broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or registered derivatives transaction facility, to security futures products as defined in Section 1a(32)(45) of the Act; the registration of the broker or dealer is not suspended pursuant to an order of the SEC; and the broker or dealer is a member of a national securities association registered pursuant to Section 15A of the Securities Exchange Act of 1934 and that membership is not suspended.

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**INTERPRETIVE NOTICES**

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**NFA COMPLIANCE RULE 2-9: ENHANCED SUPERVISORY REQUIREMENTS**

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## I. INTRODUCTION

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One factor identified by the Board as common to these firms and directly related to their sales practice problems is the employment history and training of their sales forces and firm principals. For many of these Members, a significant portion of these individuals were previously employed and trained by one or more Member firms which had been disciplined for fraud. The Board believes that the employment history of a Member's APs and principals is a relevant factor to consider in identifying firms with potential sales practice problems. If a Member firm is disciplined by NFA or the CFTC for fraud related to widespread telemarketing or promotional material problems or by the Financial Industry Regulatory Authority or the SEC for fraud related to its sales practices regarding security futures products as defined in Section 1a-~~(32)~~(45) of the Commodity Exchange Act ("Act"), it is reasonable to conclude that the training and supervision of its sales force was wholly inadequate or inappropriate. It is also reasonable to conclude that an AP or principal who received inadequate or inappropriate training and supervision may have learned improper sales tactics, which he will carry with him to his next job. Therefore, the Board believes that a Member firm employing such a sales force must have stringent supervisory procedures in place in order to ensure that the improper training its APs and principals have previously received does not taint their sales efforts on behalf of the Member.

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## III. QUALIFICATION FOR THE ENHANCED SUPERVISORY REQUIREMENTS

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### 1. Definition of Disciplined Firm

A current list of the firms which meet the definition of a Disciplined Firm is maintained on NFA's Web site at <https://www.nfa.futures.org/ereg>. For purposes of this Interpretive Notice, a Disciplined Firm is defined very narrowly to include those firms that fall into one of the following two groups:



a. Firms that have been disciplined by NFA or the CFTC

Members that qualify as Disciplined Firms based on their disciplinary histories with the CFTC or NFA include those firms for which:

1. the firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices or promotional material;
2. those charges have been resolved; and
3. the firm has either been permanently barred from the industry at any time as a result of those charges or has been sanctioned in any way within the preceding five years as a result of those charges.

b. Firms that have been disciplined in connection with sales practices involving security futures products

Members that qualify as Disciplined Firms based on their disciplinary histories related to sales practices involving security futures products include any broker-dealer that, in connection with sales practices involving the offer, purchase, or sale of any security futures product as defined in Section 1a-~~(32)~~(45) of the Act has at any time been expelled from membership or participation in any securities industry self-regulatory organization ("Securities SRO") or is subject to an order of the SEC revoking its registration as a broker-dealer or has been sanctioned in any way within the preceding five years in connection with sales practices involving the offer, purchase, or sale of any security futures product as defined in Section 1a-~~(32)~~(45) of the Act.

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4. Exemptions from being counted as an AP who worked at a Disciplined Firm

The Board recognizes that there are identifiable populations of APs who are included in the general population of APs who have worked at Disciplined Firms in the past who, further analysis suggests, do not raise the same concerns regarding their previous supervision and training that are raised by the majority of APs who have worked at Disciplined Firms. Generally, these APs worked at Disciplined Firms fairly long ago and are free of additional factors of concern in their employment histories.

A number of the APs in this group worked at Disciplined Firms for only a short period of time many years ago and have not worked at a Disciplined Firm since or been personally subject to disciplinary action. Others worked at a single Disciplined Firm for a somewhat lengthier period and have subsequently been employed for a substantial length of time by Members that have not shown a propensity for customer abuse and the AP has not been personally subject to disciplinary action.

The Board has determined that APs who have not been personally subject to a disciplinary action by NFA or the CFTC and who meet the following criteria shall not be counted by a Member that hires them as having been employed by a Disciplined Firm for purposes of calculating whether the composition of the Member's sales force triggers the enhanced supervisory requirements:

- a. they have been previously employed by Disciplined Firms for a cumulative total of less than 60 days and have not been employed by any Disciplined Firm during the 5 years preceding the determination of whether a Member firm is required to employ the enhanced supervisory requirements established in this Interpretive Notice. In addition, the AP may not have been employed by a Member that has been subject to any sales practice action by NFA or the CFTC, or by any Securities SRO or the SEC in connection with sales practices involving the offer, purchase or sale of any security futures product as defined in Section 1a-~~(32)~~(45) of the Act since leaving the last Disciplined Firm by which they were employed; or
- b. they worked at only one Disciplined Firm more than 10 years preceding the determination of whether a Member firm is required to employ the enhanced supervisory requirements and they have not been employed by a Member that has been subject to any sales practice action by NFA or the CFTC, or by any Securities SRO or the SEC in connection with sales practices involving the offer, purchase or sale of any security futures product as defined in Section 1a-~~(32)~~(45) of the Act within the 10 years preceding the determination, and they have been an NFA Member or Associate Member for at least eight of the ten years preceding the determination.

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## FOREX TRANSACTIONS

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The Commodity Exchange Act (CEA or Act) gives the Commodity Futures Trading Commission (CFTC or Commission) jurisdiction over certain off-exchange foreign currency transactions offered to or entered into with retail customers.

As described below, NFA Bylaw 306 creates a Forex Dealer Member category for NFA Members who act as counterparties to forex transactions with retail customers. This category allows NFA to exercise appropriate regulatory jurisdiction over the retail forex activities of these Members.

NFA Bylaw 1507(b) defines forex as foreign currency futures and options and any other agreement, contract, or transaction in foreign currency that is offered or entered into on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis that are:

- offered to or entered into with persons that are not eligible contract participants as defined in Section 1a(42)(18) of the Act (retail customers); and
- not executed on or subject to the rules of a contract market, a derivatives transaction execution facility, a national securities exchange registered pursuant to Section 6(a) of the Securities Exchange Act of 1934, or a foreign board of trade.<sup>1</sup>

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## **NFA BYLAW 1101, COMPLIANCE RULES 2-9 AND 2-29: GUIDELINES RELATING TO THE REGISTRATION OF THIRD-PARTY TRADING SYSTEM DEVELOPERS AND THE RESPONSIBILITY OF NFA MEMBERS FOR PROMOTIONAL MATERIAL THAT PROMOTES THIRD-PARTY TRADING SYSTEM DEVELOPERS AND THEIR TRADING SYSTEMS**

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<sup>1</sup> The Board of Directors has declared that these transactions are a proper subject of NFA regulation and oversight under Article XVIII, paragraph (k).

## REGISTRATION REQUIREMENTS FOR THIRD-PARTY SYSTEM DEVELOPERS

Section 1a-(6)(12) of the Commodity Exchange Act ("CEA") defines a CTA as any person who for compensation or profit, engages in the business of advising others, directly or through publications, writings, or electronic media, as to the value of or the advisability of trading commodity futures. Generally, Section 4m of the CEA requires individuals who fall within this definition to register with the CFTC. In March 2000, the CFTC adopted CFTC Rule 4.14(a)(9) to create an exemption from the CEA's registration requirements for CTAs that provide standardized advice by means of media such as newsletters, pre-recorded telephone hotlines, Internet web sites, and non-customized computer software.

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

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### Reporting to NFA

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**Assessment Fee Reports.** Electronic trading platforms should generate month-end assessment fee reports for each FDM using the platform. The report should summarize the number of forex transactions executed during the month and the size of those transactions.<sup>14</sup>

<sup>14</sup> The report should exclude transactions by eligible contract participants as that term is defined in Section 1a(12)(18) of the CEA.

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Mr. Christopher J. Kirkpatrick

September 6, 2016

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**EXPLANATION OF PROPOSED AMENDMENTS**

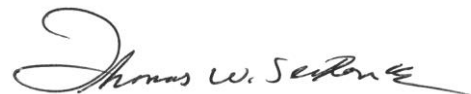
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**Proposed Technical Amendments to NFA Requirements to Conform to the Definitions in Section 1a of the Commodity Exchange Act**

The Dodd-Frank Act added a number of new terms to the definitions in Section 1a of the CEA, which resulted in changes to specific subsection numbers of certain existing terms. NFA recently identified several references to Section 1a definitions in NFA Requirements that should be amended to reflect the updated subsection number.

As mentioned earlier, NFA is invoking the “ten-day” provision of Section 17(j) of the CEA. NFA intends to make the proposed amendments effective ten days after receipt of this submission by the Commission, unless the Commission notifies NFA that the Commission has determined to review the proposals for approval.

Respectfully submitted,



Thomas W. Sexton  
Senior Vice President and  
General Counsel

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\*The proposed technical amendments to NFA Bylaw 1507; NFA Compliance Rules 1-1, 2-30, and 2-39; NFA Code of Arbitration Sections 1 and 20; NFA Financial Requirements Section 1; NFA Registration Rules Part 200 and the corresponding Interpretive Notices became effective September 19, 2016.