

September 22, 2011

Via Federal Express

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Retail Forex Transactions – Proposed Amendments to NFA Financial Requirements Section 13 and the Interpretive Notice Entitled Forex Transactions and NFA Compliance Rule 2-40 and the Related Interpretive Notice Entitled Procedures for the Assignment or Liquidation of Forex Positions; Cessation of Customer Business*

Dear Mr. Stawick:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended, National Futures Association (“NFA”) hereby submits to the Commodity Futures Trading Commission (“CFTC” or “Commission”) the proposed amendments to NFA Financial Requirements Section 13 and the Interpretive Notice entitled *Forex Transactions* and NFA Compliance Rule 2-40 and the related Interpretive Notice entitled *Procedures for the Assignment or Liquidation of Forex Positions; Cessation of Customer Business*. NFA’s Board of Directors (“Board”) approved the proposal on August 18, 2011.

NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”) and will 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.

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

COMPLIANCE RULES

**RULE 2-40. BULK ASSIGNMENT OR LIQUIDATION OF FOREX POSITIONS;
CESSATION OF CUSTOMER BUSINESS.**

(a) Bulk Assignment, Transfer, or Liquidation. A Forex Dealer Member or an IB may not enter into a bulk assignment, transfer, or liquidation of forex positions or accounts unless the assignment, liquidation, or transfer complies with CFTC Regulation 5.23 and the procedures established by NFA in the Interpretive Notice entitled NFA Compliance Rule 2-40: Procedures for Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business.

~~**(b) Obligation of Assignees.** If forex accounts are transferred to a Forex Dealer Member, the Member may not accept orders initiating new positions until it has either:~~

~~(1) Obtained personal and financial information from the customer and provided the disclosures required under Compliance Rule 2-36; or~~

~~**(2) If the assignor was a Forex Dealer Member, obtained the necessary personal and financial information pertaining to the customer from the assignor and obtained reliable written evidence (which may include electronic records) that the assignor provided the required disclosures.**~~

(b) Ceasing Business. A Forex Dealer Member must notify NFA by e-mail or facsimile seven calendar days prior to ceasing its forex business.

(c) ~~(d)~~ Definitions. For purposes of this rule, the term "forex" has the same meaning as in Bylaw 1507(b) and the term "customer" ~~has the same meaning as in Compliance Rule 2-36(i)~~ means a counterparty that is not an eligible contract participant as defined in 1(a)(12) of the Act.

FINANCIAL REQUIREMENTS

SECTION 13. FOREX DEALER MEMBER ~~WEEKLY~~ DAILY REPORTS.

(a) Each Forex Dealer Member must file ~~weekly~~ daily electronic reports showing liabilities to customers and any other financial or operational information required by NFA. The report must be prepared ~~as of the last~~ each business day of the

~~week~~ and must be filed by noon on the following business day in the format and using the electronic filing method provided by NFA.

(1) No Forex Dealer Member may access NFA's electronic financial reports database until NFA has assigned it a unique identifying code and password. Each Forex Dealer Member is responsible for maintaining the security and confidentiality of its identifying code and password and that of each person it authorizes to file ~~weekly~~ daily electronic reports on its behalf.

(2) Submitting the report certifies that the person filing it is a supervisory employee that is, or is under the ultimate supervision of, a listed principal who is also an NFA Associate; that the person filing it is duly authorized to bind the Forex Dealer Member; and that, to the best of that person's knowledge, all information in the report is true, correct, and complete.

(b) Each ~~weekly~~ daily report that is filed after it is due shall be accompanied by a fee of \$200 for each business day it is late. Payment and acceptance of the fee does not preclude NFA from filing a disciplinary action for failure to comply with the deadlines imposed by this rule.

INTERPRETIVE NOTICES

9053 - FOREX TRANSACTIONS

5. Financial Requirements Section 13

Section 13 obligates FDMs to file daily reports regarding an FDM's capital position and its ability to meet its obligation to retail Forex customers. Among other daily reporting obligations, FDMs must indicate the net aggregate notional value for all open futures and options Forex positions.

In addition, NFA requires FDMs to provide operational information on a monthly basis. These monthly reports must specify the number of retail and ECP Forex customers as well as how many customers are active, US domiciled or foreign domiciled. Also, FDMs must file monthly reports with respect to the FDM's risk management of its market exposure. NFA may require an FDM to file additional information on a monthly basis as needed. These monthly operational reports must be filed within seventeen business days of the month for which the report is prepared.

FDMs must also file quarterly reports containing the most updated performance disclosures required by CFTC Regulation 5.5(e)(1)(i) – (iii). This report must include the total number of non-discretionary retail forex customer accounts maintained by the FDM for the prior quarter, the percentage of such accounts that were profitable during the quarter and the percentage of accounts that were not profitable during the quarter. These quarterly reports must be filed within seventeen business days of the quarter for which the report is prepared.

NFA may also require FDMs to file other reports regarding the FDM's capital position, its operations or any other information which NFA deems relevant in assessing the FDM's overall compliance with NFA requirements.

9058 - NFA COMPLIANCE RULE 2-40: PROCEDURES FOR THE BULK ASSIGNMENT OR LIQUIDATION OF FOREX POSITIONS; CESSATION OF CUSTOMER BUSINESS

INTERPRETIVE NOTICE

In addition to the requirements of CFTC Regulation 5.23, A Forex Dealer Member ("FDM") must follow these procedures when seeking to employ a bulk assignment or liquidation of its customer's positions or a bulk transfer of customer accounts. NFA may waive or modify any of these procedures or impose additional requirements if doing so is in the FDM's customers' best interest or if the circumstances otherwise require.

BULK ASSIGNMENTS AND TRANSFERS

Permitted Assignees

An FDM must notify NFA's Compliance Department ("Compliance") prior to any bulk assignment of customer positions or bulk transfer of customer accounts. An FDM may only assign open positions to an entity that is an authorized counterparty enumerated in Section 2(c)(2)(B)(i)(II) of the Act, provided that entity is not prohibited from acting as a counterparty under 2(c)(2)(E) of the Act. Prior to the assignment or transfer, the FDM must conduct a reasonable investigation and determine that the assignee intends and is financially able to honor its commitments to the FDM's customers as a result of the assignment or transfer. The FDM must document this investigation and provide this information to NFA.

Written Consent or Prior Notice

Obligations of the Assignee/Transferee.

If forex positions or accounts are assigned or transferred to an FDM or an IB, the assignee/transferee FDM or IB may not accept orders initiating new positions until it obtains the personal and financial information pertaining to the retail forex customer that is required under Compliance Rule 2-36 from either the retail forex customer or the assignor/transferor FDM or IB.

In addition to the disclosures required by CFTC Regulation 5.23, the assignee/transferee FDM or IB must also provide the retail forex customer with the disclosures required under CFTC Regulation 5.5(e)((1)(i)-(iii) with respect to the assignee/transferee FDM (prior to accepting any orders initiating new positions) and must receive the required signed acknowledgement within sixty days of such assignment or transfer. The only exception to this requirement is when the assignee/transferee IB introduces the retail forex customer to the same FDM as the assignor/transferor IB and the assignee/transferee IB has clear written evidence that the assignor/transferor IB provided the retail forex customer with these disclosures with respect to the FDM.

Finally, the assignee/transferee FDM or IB must provide the disclosure required under 5.5(e)(1)(i)-(iii) with respect to the transferee FDM even in those situations when the assignment or transfer is at the retail forex customer's request.

RECORDS

For a bulk assignment, liquidation, or transfer, the assignor/transferor FDM should provide NFA's Compliance Department with all pertinent records pertaining to the transaction. At a minimum, the assignor/transferor FDM ~~should~~ must provide the following records:-

(A) At the time that the assignor/transferor FDM first contacts NFA's Compliance Department, ~~the FDM must provide:~~

1. representative copies of the customer agreements;
2. a list of the affected accounts, including:
 - a. customer names;
 - b. account numbers; and
 - c. account values as of the end of the previous day;
3. if an assignment or transfer, documentation regarding the assignor/transferor FDM investigation of the assignee/transferee's status

as an authorized counterparty and its financial ability to honor its commitments to the customers.

(B) Immediately after the bulk assignment, liquidation, or transfer, the assignee/transferee FDM must provide a list of the affected accounts and the value of each account as of the date of the transaction.

EXPLANATION OF PROPOSED AMENDMENTS

NFA Compliance Rule 2-40 and its related Interpretive Notice entitled *Procedures for the Assignment or Liquidation of Forex Positions; Cessation of Customer Business* sets forth the procedures an Forex Dealer Member ("FDM") must follow when it enters into a bulk assignment, transfer, or liquidation of forex positions for a retail forex customer. Amendments to Compliance Rule 2-40 indicate that an FDM and introducing brokers ("IB") engaging in this type of transaction must be in compliance with CFTC Regulation 5.23, as well as certain additional requirements imposed by NFA.

The amendments to the Interpretive Notice set forth the additional requirements. In particular, the amendments require the transferee/assignee FDM or IB to obtain (from either the customer or the transferring FDM or IB) the customer's personal and financial information required under Compliance Rule 2-36 before the FDM or IB accepts an order to initiate a new position. In addition, the amendments require the assignee/transferee FDM or IB to provide each retail forex customer with the disclosures required under CFTC Regulation 5.5(e)(1)(i)-(iii) regarding the percentage of profitable and unprofitable accounts maintained by the assignee/transferee FDM during the prior calendar quarter. Since these disclosures are unique to each FDM and contain material information that a customer would not have received from the transferor FDM or IB, NFA believes the transferee FDM or IB should provide this information to the customer. The only exception to this requirement occurs in cases where the transferee IB introduces the customers to the same FDM as the transferor IB since the customer would have already received the FDM's performance information from the transferor IB. Finally, the Interpretive Notice requires the assignee/transferee FDM or IB to provide CFTC Regulation 5.5(e)(1)(i)-(iii)'s disclosures even in those situations where the customer requests the transfer.

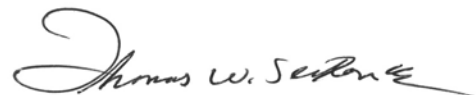
Financial Requirements Section 13 requires an FDM to file weekly reports with NFA regarding the FDM's capital position and its ability to meet its obligation to retail forex customers. For the past few years, however, in addition to weekly reports, NFA has also required FDMs to file daily reports containing both financial and other operational information applicable to the FDM. Therefore,

amendments to Section 13 reflect current practice. In addition, amendments to the Interpretive Notice entitled *Forex Transactions* specify some of the financial and operational information an FDM must provide to NFA.

NFA presented these changes to the FDM Advisory Committee and the Committee supported the rule changes.

As mentioned earlier, NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make the amendments to NFA Financial Requirements Section 13 and the Interpretive Notice entitled *Forex Transactions* and NFA Compliance Rule 2-40 and the related Interpretive Notice entitled *Procedures for the Assignment or Liquidation of Forex Positions; Cessation of Customer Business* effective 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,



Thomas W. Sexton
Senior Vice President and
General Counsel

* The proposed amendments to NFA Compliance Rule 2-40 and the Related Interpretive Notice entitled *Procedures for the Assignment or Liquidation of Forex Positions; Cessation of Customer Business* becomes effective November 15, 2011. The proposed amendments to NFA Financial Requirements Section 13 and the Interpretive Notice entitled *Forex Transactions* becomes effective January 2, 2012.