

August 26, 2009

**Via Federal Express**

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

Re: National Futures Association: Prohibition of Loans by Pools to Commodity Pool Operators and Related Parties – Proposed Adoption of Compliance Rule 2-45 and Interpretive Notice\*

Dear Mr. Stawick:

On May 27, 2009, National Futures Association (“NFA”) submitted proposed new Compliance Rule 2-45 to the Commodity Futures Trading Commission (“CFTC” or “Commission”) for its review and approval. NFA hereby withdraws that submission and, pursuant to Section 17(j) of the Commodity Exchange Act, as amended, hereby resubmits the proposed Compliance Rule 2-45 and related Interpretive regarding prohibition of loans by pools to CPOs and related parties. Compliance Rule 2-45 was approved by NFA's Board of Directors (“Board”) on May 21, 2009, and the Interpretive Notice was approved by the Board on August 20, 2009.

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.

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**PROPOSED AMENDMENTS  
(additions are underscored)**

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**COMPLIANCE RULES**

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

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**RULE 2-45. PROHIBITION OF LOANS BY COMMODITY POOLS TO CPOS AND AFFILIATED ENTITIES.**

No Member CPO may permit a commodity pool to use any means to make a direct or indirect loan or advance of pool assets to the CPO or any other affiliated person or entity.

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**INTERPRETIVE NOTICES**

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**COMPLIANCE RULE 2-45: PROHIBITION OF LOANS BY COMMODITY POOLS TO CPOS AND RELATED ENTITIES**

NFA has recently taken a number of Member Responsibility Actions (MRAs) against commodity pool operators (CPOs) and CPO principals who directly or indirectly loaned or advanced pool assets to themselves or an affiliated person or entity. Many of these arrangements were used by these principals to purchase luxury items, while others went to related entities that did not have sufficient assets to repay the loans. In each case, the transaction resulted in significant losses to participants' funds.

The Board of Directors has determined that direct or indirect loans or advances from pools to their CPOs, the CPO's principals, or related entities should be prohibited. Therefore, NFA Compliance Rule 2-45 prohibits CPOs from permitting a commodity pool to use any means to make a direct or indirect loan or advance of pool assets to the CPO or any other affiliated person or entity.

NFA understands that a few pools may have made these types of loan or advance arrangements prior to Compliance Rule 2-45's effective date. These CPOs are required to notify NFA of these existing arrangements within thirty (30) days of Compliance Rule 2-45's effective date.

These arrangements violate NFA's existing compliance rules if the arrangements are not consistent with the pool's current disclosure document or offering materials and both the loan(s) or advance(s) and the conflict of interest

are not fully disclosed to participants. Existing arrangements also violate NFA's rules if the loan or advance is not secured by marketable, liquid assets (e.g. a CPO participant's pro-rata interest in the pool's liquid assets) and, therefore, the arrangement could have a material effect upon the pool's ability to meet its obligations to participants.

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### **EXPLANATION OF PROPOSED AMENDMENTS**

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In February, NFA took two Member Responsibility Actions ("MRAs") against three NFA Member commodity pool operators ("CPOs"). Although the basis of both MRAs was the CPOs' failure to cooperate with NFA in an investigation, the limited investigation that NFA was able to perform revealed that the CPOs had misappropriated pool funds through improper loans from pools to the CPOs or related entities. The CFTC charged all three of the CPOs with misappropriating pool assets through improper loans, and all three were charged criminally with fraud.

These two matters are not the first instances of CPOs misappropriating pool participant funds through direct or indirect loans from a pool to the CPO or a related entity. Over the years, there have been a number of regulatory actions involving this type of fraud. Given the significant losses suffered by pool participants as a result of these improper loans, NFA is proposing to prohibit direct or indirect loans from commodity pools to the CPO or any affiliated person or entity.

NFA staff discussed this matter with NFA's CPO/CTA Advisory Committee, which supported prohibiting loans because it believes that absent extraordinary circumstances there is no legitimate reason for a pool to make a direct or indirect loan to its CPO or a related party.

At its May 2009 meeting, the Board approved Compliance Rule 2-45. Although the rule provides for a complete prohibition, the Board was somewhat concerned that there might be some unforeseen very limited circumstances where a carve-out to this prohibition would be appropriate. As a result, the Board instructed staff to handle these situations on a case-by-case basis, with the CPO seeking no-action relief from NFA.

After NFA submitted the proposed rule to the Commission for approval, Commission staff informed NFA that although they supported the overall concept, they had concerns regarding NFA's granting of no-action relief. In light of the Commission's concerns and the fact that there are few, if any, foreseeable situations in which NFA

Mr. David A. Stawick

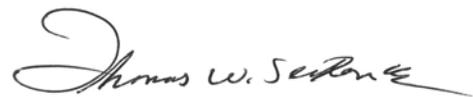
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should permit a loan arrangement, the Board reconsidered its original position regarding no-action relief.

Nonetheless, the Board recognizes that there are a few loan arrangements currently in place that have been fully disclosed and are adequately collateralized. Therefore, the Interpretive Notice provides that CPOs will not be required to immediately sell other assets to repay these existing loans. CPOs will, however, be required to notify NFA of any such current arrangements within 30 days of Compliance Rule 2-45's effective date. NFA will review these arrangements to ensure, among other things, that participants were provided with full disclosure of the arrangements and that the loans are secured by marketable, liquid assets. Moreover, as NFA has done in several recent MRAs, we will not hesitate to recommend disciplinary action if we find those loans involve fraud, inadequate disclosure or are not properly collateralized.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make proposed Compliance Rule 2-45 and the related Interpretive Notice regarding the prohibition of loans by pools to CPOs and related parties 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

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\* The proposed adoption of Compliance Rule 2-45 and Interpretive Notice became effective September 11, 2009.