March 4, 2013

Via Federal Express

Mr. Christopher Kirkpatrick
Deputy Secretary
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: Prohibition of Loans by Commodity Pools to CPOs and Affiliated Entities – Proposed Amendments to NFA Compliance Rule 2-45 and its Related Interpretive Notice*

Dear Mr. Kirkpatrick:

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 Compliance Rule 2-45 and the Interpretive Notice entitled Prohibition of Loans by Commodity Pools to CPOs and Related Entities. NFA's Board of Directors ("Board") approved the proposal on February 20, 2013.

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~~)

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COMPLIANCE RULES

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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; *provided, however*, that certain specified transactions set forth in the related Interpretive Notice entitled *Prohibition of Loans by Commodity Pools to CPOs and Related Entities* are not prohibited by this rule.

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INTERPRETIVE NOTICES

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PROHIBITION OF LOANS BY COMMODITY POOLS TO CPOS AND RELATED ENTITIES

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INTERPRETIVE NOTICE

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 principal(s), 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~~ certain CPOs exempt from registration prior to December 31, 2012 may have caused pools that they operate to make ~~made~~ these types of loan or advance arrangements prior to the CPOs becoming NFA Members and subject to NFA Compliance Rule 2-45~~'s effective date~~. ~~These~~ A CPO~~s are~~ is required to notify NFA of these existing arrangements within thirty (30) days of either (i) ~~Compliance Rule 2-45's~~ the effective date of any amendments to Compliance Rule 2-45 or this Interpretive Notice or (ii) becoming an NFA Member CPO, whichever occurs latest.

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.

NFA has received a number of inquiries from prospective CPOs about whether certain transactions are prohibited by Compliance Rule 2-45. Certain pools engage in these transactions on a regular basis as part of their normal course of business. The following transactions under the circumstances described below (i) associated with short securities sales, cash financings, guarantee obligations, repurchase or reverse-repurchase agreements, and tax-related distributions engaged in by a CPO operating a pool that is a registered investment company (RIC), business development company (BDC), exempt pursuant to CFTC Regulations 4.7 or 4.13(a)(3), excluded from registration pursuant to Sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (ICA) or securities registered under the Securities Act of 1933 (ii) engaged in pursuant to a loan arrangement permitted by the ICA (ICA), exemptive rules under the ICA, an exemptive order issued by the Securities and Exchange Commission (SEC) or in accordance with a no-action letter issued by SEC staff under Section 17 or Section 57 of the ICA by a CPO operating a pool that is a RIC or BDC are examples of the types of transactions that are not considered a prohibited loan or advance under NFA Compliance Rule 2-45.

Certain Securities Borrowings/Securities Loans

In order to take a short position in a security, a pool must locate and borrow the security that is being sold short and deliver it to the purchaser in order to settle the short sale. A pool that is selling a security short may locate and borrow the security from a pool operated by the same CPO – from which the security can be easily located – since the CPO of both pools is fully aware of the securities that are available in the lending pool's portfolio. This type of transaction would not violate Compliance Rule 2-45 provided that no later than the close of business on the day of the securities loan, the pool lending the security has received from the pool borrowing the security collateral with a market value at least equal to the market value of the borrowed security.

Securities Loans for Cash Financing

A pool may raise cash using otherwise idle securities positions held by it by "loaning" these securities to an affiliate as part of a prime brokerage service, and receiving cash based on the market value of these securities. These transactions are typically documented and effected in accordance with a standard form agreement – Master Securities Loan Agreement (MSLA) – provided to the industry by the Securities Industry and Financial Markets Association. Although the transaction is documented as a securities loan, from the pool's perspective the transaction involves the borrowing of cash from its affiliate secured by the pool's long securities position. This type of transaction does not violate NFA Compliance Rule 2-45, provided that: (i) the transaction is cleared by an affiliated prime broker that is registered with the Securities and Exchange Commission as a broker-dealer, is a member of FINRA, the Depository Trust Company and the National Securities Clearing Corporation; and (ii) the transaction is documented under a MSLA.

Guarantee Obligations

One or more pools may make a direct or indirect debt or equity investment in a subsidiary or other affiliated entity for tax, legal, regulatory, or other reasons. Because, among other reasons, the entity will often have a limited amount of capital, the pool(s) will often guarantee or otherwise support (e.g., by pledging collateral) certain of the entity's obligations and a pool will provide such guarantees or support in accordance with the pool's relative investment in the entity from time to time. If the obligee draws upon the guarantee or other credit support, then the amount drawn may become a debt to the pool(s). This type of investment and guarantee or other credit support does not violate NFA Compliance Rule 2-45 provided that a pool is not liable for an amount that is materially above its proportionate share (based on the pool's relative investment in the entity from time to time).

Repurchase Agreements and Reverse Repurchase Agreements

Affiliated pools may engage in repurchase agreements/reverse repurchase agreements in which there is a sale of securities combined with a contemporaneous agreement for the seller to buy back the securities at a later date at a higher price. The party that originally buys the securities effectively acts as a lender of cash. The party that originally sells the securities effectively

acts as a borrower of cash using its securities as collateral for the cash loan at a fixed rate of interest. For the party selling the securities and agreeing to repurchase them in the future, this transaction is considered a repurchase agreement. For the party buying the securities and agreeing to resell them at a later date, this transaction is considered a reverse repurchase agreement. These types of transactions between affiliated pools do not violate NFA Compliance Rule 2-45 because the buyer's possession of the securities effectively collateralizes the buyer's exposure in respect to the seller's obligation to repurchase the securities.

Tax-Related Distributions

Tax rules relating to pools treated as partnerships for tax purposes are complex and give rise to circumstances that are difficult to predict and plan for. In particular, the CPO (or a related party) is often required to pay tax on its share of a pool's income whether or not it has actually received an income distribution from the pool. Accordingly, many pools have contractual provisions, disclosed to and agreed to by its participants, that expressly permit the CPO (or a related party) to receive distributions from the pool based upon the CPO's (or a related party's) share of the pool's taxable income. In addition, some pools may make loans or advances to the CPO (or a related party) to enable it to meet tax obligations. These tax-related loans, advances, or distributions (collectively, distribution) do not violate NFA Compliance Rule 2-45 provided that (a) they are made in strict accordance with the provisions of the pool's organizational documents that expressly permit the distribution; (b) they relate solely to the CPO's (or related party's) taxable income arising from the pool (and not to any other income), and (c) if the CPO's (or related party's) taxable income arising from operating the pool is ultimately lower than that on which the distribution was based, thus resulting in an excess distribution amount having been made, the CPO shall ensure that repayment is made to the pool, in a manner determined by the CPO and as promptly as reasonably practicable, of (i) any portion of the excess distribution not already paid to an applicable tax authority and (ii) with respect to any portion of the excess already paid to a tax authority, any refund or credit received with respect to such payment.

Transactions Permitted by the Investment Company Act of 1940 (ICA) and its Exemptive Rules; and Exemptive Orders issued by the SEC and No-Action Letters Issued by SEC Staff under Sections 17 and 57 of the ICA

Sections 17 of the ICA restricts transactions between RICs and their affiliates, and Section 57 of the ICA restricts transactions between BDCs and their affiliates, which in each case may include loans or advances of pool assets prohibited under NFA Compliance Rule 2-45. However, RICs and BDCs are permitted to engage in certain loans or advances of fund assets pursuant to the ICA, exemptive rules under the ICA, exemptive orders issued by the SEC and no-action letters issued by SEC staff subject to specific conditions set forth in the rule, exemptive order or no-action letter, as applicable, that are designed to ensure that the inter-fund loans only occur in circumstances that are favorable to both funds, and not in circumstances when an affiliate might cause a fund to engage in transactions that are detrimental to the interest of one of the funds. Therefore, transactions by a pool that is also a RIC or BDC that are permitted pursuant to the ICA, exemptive rules promulgated under the ICA, and exemptive orders issued by the SEC or no-action letters issued by SEC staff pursuant to Sections 17 or 57 of the ICA, as applicable, do not violate NFA Compliance Rule 2-45.

EXPLANATION OF PROPOSED AMENDMENTS

In September 2009, NFA adopted NFA Compliance Rule 2-45, which prohibits a Member CPO 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's Board determined that this prohibition was necessary due to a series of disciplinary actions NFA had taken in which CPOs and CPO principals directly or indirectly loaned or advanced pool assets to themselves or an affiliated person or entity. Via these arrangements, the CPOs' principals used the loan proceeds 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.

Due to the CFTC's recent changes to Part 4, a number of fund operators that were previously exempt or excluded from CPO registration are required to register. Over the past few months, some of these prospective CPOs or their counsel contacted NFA regarding transactions their funds engage in with related funds or other related entities that have characteristics similar to a loan but which the fund operator does not believe should violate NFA Compliance Rule 2-45. The pools engage in these transactions on a regular basis as part of their normal course of business. These fund

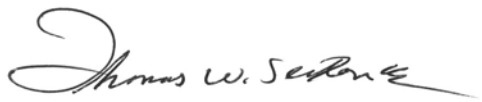
operators provided NFA staff with details of these transactions and requested that NFA provide written assurances that these transactions do not violate Compliance Rule 2-45.

NFA carefully reviewed these requests and determined that most of the transactions raised did not appear to be of the type that Rule 2-45 was intended to prohibit. Therefore, the proposed amendments to NFA Compliance Rule 2-45 reference its related Interpretive Notice entitled *Prohibition of Loans by Commodity Pools to CPOs and Related Entities,* which describes these transactions in detail and specifically excludes them from the rule's prohibition.

NFA's CPO/CTA Advisory Committee discussed the proposed amendments to Compliance Rule 2-45 and the Interpretive Notice. This Committee agreed that the types of above-described transactions occurring in the normal course of business should not be a violation of NFA Compliance Rule 2-45 and therefore should be excluded from the rule's prohibition.

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 Compliance Rule 2-45 and the Interpretive Notice entitled Prohibition of Loans by Commodity Pools to CPOs and Related Entities, 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 amendments to Compliance Rule 2-45 and its related Interpretive Notice became effective September 13, 2013.