

February 24, 2011

**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: Exchange of Documents in NFA Arbitration Proceedings – Proposed Amendments to the Interpretive Notice Entitled *Standard List of Documents to be Exchanged Under Section 8 of NFA's Code of Arbitration\**

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”) proposed amendments to the Interpretive Notice entitled *Standard List of Documents to be Exchanged Under Section 8 of NFA's Code of Arbitration*. NFA’s Board of Directors (“Board”) approved the proposal on February 17, 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.

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**PROPOSED AMENDMENTS**  
**(additions are underscored)**

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**9031 - STANDARD LIST OF DOCUMENTS TO BE EXCHANGED  
UNDER SECTION 8 OF NFA'S CODE OF ARBITRATION**  
(Board of Directors, December 1, 1997)

### **INTERPRETIVE NOTICE**

Section 8 of NFA's Code of Arbitration requires the parties to automatically exchange certain documents early in the discovery process. Under this procedure, NFA will identify the standard documents that are routinely relevant for the causes of action alleged in a particular case from this list of documents approved by NFA's Board of Directors. NFA will then notify the parties that they must automatically exchange the standard documents with each other no later than 15 days after the last pleading is due. Except for the list showing the customer's investment experience, a party is not required to obtain or exchange any documents that do not exist or that are not in the party's possession or control.

The parties may ask for other documents and information within 30 days after the last pleading is due. The parties may ask for documents on the list which have not been identified for automatic exchange if they believe those documents are also relevant to the claim or defense.

#### **A Customer May be Asked to Provide Any or All of the Following:**

- Account opening documents and forms for the customer's account including, but not limited to, account applications, account agreements, acknowledgment forms, margin agreements, option agreements, option disclosure statements, and other risk disclosure statements.
- Records (including billing records), tapes, notes, and transcriptions of tapes of telephone or in-person conversations between the customer and any party named in the arbitration or any employee of a party named in the arbitration.
- Any notes made by the customer concerning the customer's account or any transactions in the account.
- All contracts or written agreements between the customer and any party named in the arbitration.
- Any correspondence or agreements concerning the strategy to be used in trading the account.
- All powers-of-attorney giving someone other than the customer the right to trade the account.

- Daily confirmation statements for the customer's account.
- Monthly activity statements for the customer's account.
- A list, to be prepared by the customer, showing the customer's investment experience. For each type of investment the customer has made, the list must contain the type of investment, the names of the firms the customer has done or is doing business with, the account numbers for accounts at each firm, the dates the accounts were opened and, if applicable, the dates the accounts were closed.
- Research or marketing materials concerning any trading recommendations made to the customer or concerning any transaction made in the customer's account.
- The disclosure document(s) for any trading advisor trading the account.
- All notifications the customer received from any party (or employee thereof) named in the arbitration proceeding regarding any price adjustments or system operational difficulties that allegedly occurred on the dates in question.

**A Member and/or Associate May be Asked to Provide Any or All of the Following:**

- Account opening documents and forms for the customer's account including, but not limited to, account applications, account agreements, acknowledgment forms, margin agreements, option agreements, option disclosure statements, and other risk disclosure statements.
- Any correspondence or agreements concerning the strategy to be used in trading the customer's account.
- Daily confirmation statements for the customer's account.
- Monthly activity statements for the customer's account.
- Margin calls for the customer's account.
- All powers-of-attorney giving someone other than the customer the right to trade the account.

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- Records (including billing records), tapes, notes, and transcriptions of tapes of telephone or in-person conversations between the customer and the broker<sup>1</sup>, other firm personnel, or the trading advisor.
- Any notes made by the broker concerning the customer's account or any transactions in the account.
- Registration applications, biographies, resumes or similar documents showing employment history and educational background of the broker and any trading advisor.
- Floor and office order tickets and any other documents submitted at the time of the transactions for transactions made in the customer's account.
- Research and marketing materials prepared or distributed by the firm, the broker, or the trading advisor concerning any trading recommendation made to the customer or any transaction made in the customer's account.
- The index to the firm's compliance manual.
- Agreements, contracts or other documents, including guarantee agreements, governing the relationship between the firm introducing the account and the FCM or FDM carrying the account, or between the trading advisor and either the firm introducing the account or the FCM or FDM carrying the account.
- Commission runs for the broker who serviced the customer's account.
- The disclosure document(s) for any trading advisor trading the account.
- All notifications provided to the customer regarding any price adjustments or system operational difficulties that allegedly occurred on the dates in question. This includes notifications the firm received from the applicable counterparty or liquidity provider as well as the notes or internal correspondence regarding the disputed transactions.
- The firm's electronic Trading System Procedures required by NFA Interpretive Notice 9060 – NFA Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems for the period the customer's account was open.

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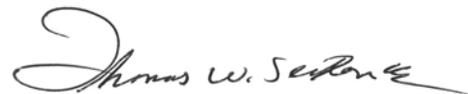
**EXPLANATION OF PROPOSED AMENDMENTS**

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Section 8(a) of NFA's Code of Arbitration ("Code") requires that, as part of the discovery process, all parties in an NFA arbitration proceeding automatically exchange certain documents that NFA has identified as routinely relevant for the cause of action alleged in a particular case (*i.e.*, commission runs for the broker who serviced the customer's account for a case that alleges churning) from a list of documents approved by NFA's Board. These documents are set forth in NFA Interpretive Notice 9031 – *Standard List of Documents to be Exchanged Under Section 8 of NFA's Code of Arbitration* ("Interpretive Notice"). When NFA's Board originally approved the list of relevant documents, NFA did not have arbitration jurisdiction over disputes that involved forex transactions. Although many of the documents included in the Interpretive Notice would apply to a case involving either commodity futures or forex transactions (*i.e.*, account opening documents), NFA's Board has identified a few additional documents that may be routinely relevant in a dispute that involves forex transactions. Therefore, NFA's Board approved an amendment to the Interpretive Notice to include documents that may be relevant to an arbitration claim involving forex. NFA's FDM Advisory Committee supported amending Section 8 of the Code to include these documents.

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 the Interpretive Notice entitled *Standard List of Documents to be Exchanged Under Section 8 of NFA's Code of Arbitration* 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 the Interpretive Notice Entitled *Standard List of Documents to be Exchanged Under Section 8 of NFA's Code of Arbitration* become effective April 15, 2011.