

March 5, 2021

Via Email (secretary@cftc.gov)

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 NFA Compliance Rule 2-50 and related Interpretive Notice entitled *NFA Compliance Rule 2-50: CPO Notice Filing Requirements*

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 adoption of NFA Compliance Rule 2-50 and the related Interpretive Notice entitled *NFA Compliance Rule 2-50: CPO Notice Filing Requirements*. On February 18, 2021, NFA's Board of Directors ("Board") unanimously approved the adoption of the proposed rule and Interpretive Notice.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make NFA Compliance Rule 2-50 and the proposed Interpretive Notice effective as early as 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.

**PROPOSED RULE AND INTERPRETIVE NOTICE
(additions are underscored)**

NATIONAL FUTURES ASSOCIATION

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Compliance Rules

Rule 2-50. CPO NOTICE FILING REQUIREMENTS

Each CPO Member must provide prompt notification, in the form and manner prescribed by NFA no later than 5:00 p.m. (CT) of the next business day upon the occurrence of one of the following events, in accordance with the related Interpretive Notice entitled *CPO Notice Filing Requirements*:

- (a) CPO Member operates a commodity pool that is unable to meet a margin call(s);
- (b) CPO Member operates a commodity pool that is unable to satisfy redemption requests in accordance with its subscription agreements;
- (c) CPO Member operates a commodity pool that has halted redemptions and the halt on redemptions is not associated with pre-existing gates or lockups, or a pre-planned cessation of operations; or
- (d) CPO Member receives notice from a swap counterparty that a pool the CPO Member operates is in default.

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Interpretive Notices

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XXXX – NFA COMPLIANCE RULE 2-50: CPO NOTICE FILING REQUIREMENTS

NFA Compliance Rule 2-50 requires CPO Members to file notice with NFA when a market or other event affects the ability of a commodity pool to fulfill its obligations to participants.¹ This Rule is designed to ensure that CPO Members timely notify NFA of potential financial issues that may impact a CPO's ability to fulfill its obligations to pool participants or which may result in a pool's unplanned liquidation. In particular, Compliance Rule 2-50 will assist NFA in readily identifying CPO Members with pools that have been adversely impacted by a market or other event. Specifically, NFA Compliance Rule 2-50 requires that CPOs provide prompt notification, in the form and manner prescribed by NFA no later than 5:00 p.m. (CT) of the next business day in the following circumstances:

¹ NFA recognizes that CPO Members are currently required to report some of these events to NFA in a PQR filing or pool annual report. However, this reporting does not provide NFA with timely information about critical events that impact NFA Members and their pool participants.

- CPO Member operates a commodity pool that is unable to meet a margin call(s);
- CPO Member operates a commodity pool that is unable to satisfy redemption requests in accordance with its subscription agreements;
- CPO Member operates a commodity pool that has halted redemptions and the halt on redemptions is not associated with pre-existing gates or lockups, or a pre-planned cessation of operations; or
- CPO Member receives notice from a swap counterparty that a pool the CPO Member operates is in default.

NFA recognizes that there may be circumstances that technically fall within one of the above events but is not the type of event that should require a CPO Member to notify NFA. The purpose of this Interpretive Notice is to provide guidance that more fully clarifies the circumstances that require notice under Compliance Rule 2-50.

A Commodity Pool is Unable to Meet a Margin Call

A commodity pool may experience a routine margin call that it may not be able to meet on the day of the call, but is able to meet within the time period imposed by its FCM or broker by altering its portfolio or accessing other means to meet the call. A CPO Member is not required to file notification on the day the pool receives a margin call if the CPO Member reasonably expects to meet the margin call within the prescribed time period. However, once a CPO Member determines that one of its commodity pools will be unable to meet a margin call, including in situations where the CPO disputes the amount or appropriateness of the margin call,² the CPO Member must file the notice required by Compliance Rule 2-50 within the required time period.

A Commodity Pool is Unable to Satisfy Redemption Requests

In determining whether it is obligated to file a notice under this provision, a CPO Member should consider the terms of the pool's subscription agreement, including any grace period or other provisions that impact the timing of a redemption payment. The mere fact that a pool is unable to meet the request on the day received is not controlling. For example, a pool may have securities that will mature within the grace period and can be used to satisfy the redemption. In some instances, a CPO Member

² A CPO is not required to file a notice in situations that it disputes the amount and appropriateness of a margin call provided the commodity pool has sufficient assets to meet the greatest of the disputed amount.

may also be able to offer a participant a payment-in-kind or provide for the creation of a side pocket when dealing with illiquid investments. Provided a CPO Member is able to meet a redemption request in accordance with the subscription agreement, no notice is required. However, once a CPO Member determines that a pool will not be able to meet a redemption request within the terms of the subscription agreement, the CPO Member must file notice within the required time period, even if the grace period has not expired.

A Commodity Pool Halts Redemptions

Pool subscription agreements often identify pre-determined gates or lockups dependent on a base level of funding. When a CPO Member decides to liquidate a pool in the ordinary course of business (i.e., not due to a market or other unexpected event), there may also be a halt on redemptions until a final accounting can occur. A CPO Member is not required to file notice for its pool(s) in these instances. However, a CPO Member is required to file notice within the required time period when one of its pools unexpectedly halts redemptions, either temporarily or permanently, as a result of a market or other event that impacts the pool's ability to meet redemptions.

A Commodity Pool is Declared in Default by Swap Counterparty

A Member CPO may receive notification if one of its pools is in default to a swap counterparty on a margin call, resulting in a deficit that the pool will not be able to cover or address by adding additional funds. NFA requires a Member CPO to file notice with NFA within the required time period once notified that a pool is in default to a swap counterparty if the CPO Member does not reasonably believe the pool can cure the default within the previously agreed to cure period regardless of whether the pool is in negotiations with the swap counterparty to liquidate positions or disputes the default notice.

EXPLANATION OF PROPOSED RULE AND INTERPRETIVE NOTICE

NFA's Board has adopted Compliance Rule 2-50 and a related Interpretive Notice to require that CPO Members notify NFA when a commodity pool operated by a CPO Member is impacted by a market or other event that affects the ability of the pool to fulfill its obligations to participants. Similar to CFTC and NFA notification requirements regarding financial issues already in place for FCMs and IBs, NFA Compliance Rule 2-50 and the related Interpretive Notice are intended to provide NFA with important information regarding CPO Members and their pools during a market or other event.

NFA Compliance Rule 2-50 requires CPO Members to promptly notify NFA in the following circumstances:

- CPO Member operates a pool that cannot meet its margin call(s);
- CPO Member operates a pool that is unable to satisfy redemption requests in accordance with its subscription agreements;
- CPO Member operates a pool that has halted redemptions (not related to existing gates or lockups, or a pre-planned cessation of operations); or
- CPO Member receives notice from a swap counterparty that a pool it operates is in default.

The related Interpretive Notice recognizes that there may be circumstances that technically fall within one of the events identified in Compliance Rule 2-50 but is not the type of circumstance that should require a CPO Member to notify NFA. To address this issue, the Interpretive Notice more clearly defines each of the notification events identified in Compliance Rule 2-50 and provides guidance on events that do not trigger the requirement (*e.g.*, a CPO decides to liquidate a pool in the ordinary course of business and halts redemptions until a final accounting occurs).

Compliance Rule 2-50 applies to circumstances that occur in an exempt pool operated by an NFA Member CPO, which is consistent with the application of NFA Compliance Rule 2-45. NFA's Board determined this application was appropriate given that the regulatory policy of the rule is to assist NFA with its oversight of CPO Members and their pools during times of extreme market stress. In particular, the Board determined that this information would be useful especially in situations where an exempt pool was unable to meet a margin call issued by an NFA Member FCM or was defaulting on a swap with another NFA Member.

In approving the proposed rule and Interpretive Notice, NFA's Board determined that the narrowly tailored notification requirements for CPO Members will provide NFA with important information during a market event without being unduly burdensome.

NFA's CPO/CTA Advisory Committee supported proposed NFA Compliance Rule 2-50 and the related Interpretive Notice, which were unanimously approved by NFA's Board. As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the CEA. NFA intends to issue a Notice to Members establishing an effective date for proposed NFA Compliance Rule 2-50 and the proposed Interpretive Notice entitled *NFA Compliance Rule 2-50: CPO Notice Filing Requirements* as early as ten days after receipt of this submission by the Commission,

Mr. Christopher J. Kirkpatrick

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unless the Commission notifies NFA that the Commission has determined to review the proposal for approval.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carol A. Wooding". The signature is written in a cursive style with a large, looping initial "C".

Carol A. Wooding
Senior Vice President and
General Counsel