

May 25, 2017

Via Federal Express

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 Interpretive Notice to NFA
Compliance Rule 2-49: Swap Valuation Dispute 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 the [Interpretive Notice entitled NFA Compliance Rule 2-49: Swap Valuation Dispute Filing Requirements](#). NFA's Board of Directors ("Board") unanimously approved the adoption of this Interpretive Notice on May 18, 2017, and NFA respectfully requests Commission review and approval of the Interpretive Notice.

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

NATIONAL FUTURES ASSOCIATION

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INTERPRETIVE NOTICES

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NFA Compliance Rule 2-49: Swap Valuation Dispute Filing Requirements

Commodity Futures Trading Commission (CFTC or Commission) Regulation 23.502(c) requires Swap Dealers and Major Swap Participants (collectively SDs) to promptly notify the Commission (and other enumerated regulators) of any swap valuation dispute that exceeds \$20 million (or equivalent amount in another currency) (the \$20 million Reporting Threshold) within certain timeframes depending on counterparty type (the Resolution Period).¹ On January 21, 2016, the Commission issued an Order authorizing NFA to, among other things, receive and review notices of reportable swap valuation disputes.²

NFA Compliance Rule 2-49 authorizes NFA to require SDs to promptly submit relevant information to NFA in the form and manner prescribed by NFA. Beginning March 1, 2016, NFA required SDs to submit notices of reportable swap valuation disputes to NFA. Based on NFA's experience with these notices, NFA has determined that the notices will be more useful for NFA's monitoring and risk profiling of SDs if NFA collects standardized information that can be easily tracked and analyzed across SDs and the industry. Therefore, SDs will be required to electronically notify NFA of a reportable swap valuation dispute by completing an NFA form requiring specified information. NFA will notify SDs of the specified information well in advance of the effective date of the new reporting requirements.

NFA has determined that swap valuation dispute information is relevant for risk monitoring purposes. SDs will be required to file notices of disputes involving collateral pursuant to an eligible Master Agreement, including any applicable Schedule and Credit Support Annex (Collateralized Eligible Master Netting Agreement)³ that exceed the \$20 million Reporting Threshold (after the Resolution Period). This reporting requirement is applicable to disputes involving the exchange of collateral regardless of whether the CFTC margin requirements are applicable to the swaps transactions. For transactions with a counterparty with which the SD does not exchange collateral, the SD will be required to report disputes involving the portfolio valuation when the counterparty

¹ "Resolution Period" as defined in CFTC Regulation 23.502(c) (i.e., within three business days where the counterparty is an SD and within five business days for all others).

² See Performance of Certain Functions by the National Futures Association Related to Notices of Swap Valuation Disputes Filed by Swap Dealers and Major Swap Participants, 81 Fed. Reg. 3390 (Jan. 21, 2016).

³ If no master netting agreement exists, the SD must report at the transaction level.

notifies the SD that it is disputing any reported valuation by the SD and the disputed amount exceeds the \$20 million threshold (after the Resolution Period).

The purpose of this Interpretive Notice is to provide SDs with more information on the required filings.

Required Filings

With regard to each of the filings described below, if the dispute involves two SD counterparties, then each SD is required to file a separate notice of the dispute.

a. Initial Margin Disputes

Counterparties to one or more swap transactions may not agree on the amount of initial margin (IM) that is to be posted or collected by each party pursuant to a Collateralized Eligible Master Netting Agreement. An SD is required to file a notice of any dispute regarding the amount of IM to be posted or collected if the amount in dispute exceeds the \$20 million Reporting Threshold (after the Resolution Period).

b. Variation Margin Disputes

Counterparties to one or more swap transactions may also disagree on the amount of collateral to be exchanged from one party to the other for variation margin pursuant to a Collateralized Eligible Master Netting Agreement. An SD is required to file a notice of any dispute regarding the amount of variation margin to be exchanged if the amount in dispute exceeds the \$20 million Reporting Threshold (after the Resolution Period).

c. Swaps Transactions Where Collateral Is Not Exchanged

For those counterparties with which the SD does not exchange collateral, if the counterparty notifies the SD that it is disputing any valuation provided by the SD, the SD must report the dispute if it exceeds the \$20 million Reporting Threshold (after the Resolution Period).

d. Other Filings

1. Notice Amendments for All Dispute Filing Types

SDs should not file a daily notice of a previously reported dispute even if the valuation dispute amount changes. SDs are required, however, to notify NFA of certain changes

to the dispute amount on the 15th (or the following business day if the 15th is a weekend or holiday) and last business day of each month by amending any previously filed notice where the dispute amount has increased in \$20 million incremental bands. For example, if a SD files a notice of a \$30 million dispute, an amended notice updating the dispute amount is required if that dispute increases to \$40 million or more and each subsequent \$20 million increment (i.e., dispute amount increases to \$60 million or more, \$80 million or more, etc.). SDs are also required to amend a previously filed notice to update the dispute amount if the amount decreases at these \$20 million increments. The determination of whether an amended notice is required is based on the dispute amount on the reporting date.

In the event an SD identifies any errors in the information reported in an open notice, the SD must amend the notice to provide the correct information.

2. Dispute Termination

SDs are also required to terminate disputes that are no longer reportable under CFTC Regulation 23.502(c) or this Interpretive Notice. Therefore, any SD that is a party to the originally filed dispute must electronically notify NFA by terminating the notice when the dispute is resolved. Termination notices are also due on the 15th (or the following business day if the 15th is a weekend or holiday) and the last business day of the month based on the dispute amount on the reporting date.

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EXPLANATION OF PROPOSED INTERPRETIVE NOTICE

On January 21, 2016, the CFTC issued an Order authorizing NFA to receive, review, maintain and serve as the official custodian of swap valuation dispute notices that SDs are required to file under CFTC Regulation 23.502(c) (Order). NFA began receiving those notices on March 1, 2016.

Given NFA's experience with these notices to date, NFA has determined that in order for the notices to be more useful for SD monitoring and risk profiling purposes, as well as providing the Commission with summaries and periodic reports, the notices should contain certain standardized information that can be tracked and monitored across SDs and the industry. Additionally, there must be consistency regarding the types of disputes that SDs report. In order to achieve this goal, NFA is proposing an interpretive notice that will, among other things, clearly identify the types of disputes that must be reported and standardize the information that SDs are required

to report. The CFTC's Order specifically provides NFA with the authority to prescribe the form and manner of the filing of swap valuation dispute notices and NFA Compliance Rule 2-49 authorizes NFA to require SDs to submit relevant information to NFA in the form and manner prescribed by NFA.

The proposed Interpretive Notice requires SDs to electronically submit a notice of a reportable swap valuation dispute by completing an NFA form that requires specific information. The Notice does not specify the required data elements to be reported in the dispute notice because those data elements may change over time as NFA gains more experience with the notices. NFA's Board has approved a list of required standardized data elements and authorized staff to require SDs to report these data elements on the swap valuation dispute notices. Once the CFTC approves the proposed Interpretive Notice, staff will notify SDs through a Notice to Members of the required data elements well in advance of the effective date of the proposed Interpretive Notice.

The proposed Interpretive Notice also specifies the types of disputes that must be reported, which varies depending on whether the counterparty is one with which the SD exchanges collateral or a counterparty with which the SD does not exchange collateral. This distinction recognizes that for counterparties that exchange collateral, the most relevant disputes for monitoring and risk profiling purposes are those that impact the exchange of collateral. In particular, the proposed Interpretive Notice requires SDs, with respect to disputes involving a counterparty with which the SD exchanges collateral, to report (1) disputes involving the amount of initial margin to be posted or collected pursuant to a Collateralized Eligible Master Netting Agreement; and (2) disputes involving the amount of variation margin that is to be posted or collected pursuant to a Collateralized Eligible Master Netting Agreement. The proposed Interpretive Notice also requires SDs, with respect to a counterparty with which it does not exchange collateral, to report disputes involving individual swap transactions or portfolio valuations if the counterparty notifies the SD that is disputing any valuation provided by the SD.

Further, the Interpretive Notice requires SDs to amend any previously filed notice on the 15th and last business day of the month if the amount of the dispute has increased or decreased in \$20 million incremental bands. Finally, SDs are required to terminate a previously filed dispute when it is resolved. Termination notices are also due on the 15th and last business day of the month.

NFA's Swap Participant Advisory Committee supports the proposed Interpretive Notice. NFA's Board of Directors unanimously approved the proposed

Mr. Christopher J. Kirkpatrick

May 25, 2017

Interpretive Notice on May 18, 2017. NFA respectfully requests that the Commission review and approve the proposed adoption of the Interpretive Notice entitled *NFA Compliance Rule 2-49: Swap Valuation Dispute Filing Requirements*.

Respectfully submitted,

A handwritten signature in black ink that reads "Carol A. Wooding". The signature is written in a cursive style with a large, looping "C" at the beginning and a long, sweeping underline at the end.

Carol A. Wooding
Vice President and General Counsel

*The proposed adoption of the Interpretive Notice entitled *NFA Compliance Rule 2-49: Swap Valuation Dispute Filing Requirements* will become effective January 2, 2018.