

November 27, 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 Amendments to NFA's
Interpretive Notice: *Compliance Rule 2-9: Enhanced Supervisory
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 amendments to NFA's Interpretive Notice entitled [Compliance Rules 2-9: Enhanced Supervisory Requirements](#). NFA's Board of Directors ("Board") unanimously approved the proposal on November 16, 2017.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to 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 underscoring and deletions are ~~stricken through~~)

INTERPRETIVE NOTICES

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COMPLIANCE RULE 2-9: ENHANCED SUPERVISORY REQUIREMENTS

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INTERPRETIVE NOTICE

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II. OBLIGATIONS OF MEMBERS SUBJECT TO THE ENHANCED SUPERVISORY REQUIREMENTS

A. Recording of all conversations and maintaining electronic written communications with existing and potential customers

Those Member firms meeting the criteria requiring them to adopt the enhanced supervisory requirements will be required to make complete audio recordings of all telephone conversations that occur between their APs and both existing and potential customers, including existing and potential retail forex customers of Members subject to NFA Compliance Rule 2-36. Additionally, those Members will be required to maintain a record of all electronic written communications that occur between their APs and customers or potential customers. Electronic written communications include, but are not limited to, email, text messages, instant messages conducted via any web-based messaging system (including instant messages sent via a social media application), and any other communication that occurs in a chat room or on any social media platform. The Board believes that recording these conversations and requiring Members to maintain records of electronic written communications provides these Members with the best opportunity to monitor closely the activities of their APs and also provides these Members with complete and immediate feedback on each AP's method of soliciting customers. ~~Members subject to the enhanced supervisory requirements that are required to record their conversations~~ must retain such audio recordings and records of electronic written communications for a period of five years from the date each recording is created or written electronic communication occurs and the recordings and/or records of electronic written communications shall be readily accessible during the first two years of the five-year period. In retaining the recorded conversations or records of electronic written communications, Member firms must catalog the recordings and electronic written communications by AP and date. Additionally, any Member firm meeting the criteria must require all its APs to maintain a daily log for sales solicitations which reflects at a minimum the identity of each customer or prospective customer the AP spoke with or transmitted electronic written communications to on each day and the method of communication. A Member firm must be able to promptly produce, upon request from NFA or the CFTC, all conversations or records of electronic written

communications relating to a specific AP, and only that AP, for a given date. Members that are required to record or maintain records of electronic communications under this Interpretive Notice are further required to promptly provide NFA or the CFTC with appropriate resources for listening to their recordings or viewing the records of electronic communications upon request.

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D. Written supervisory procedures

Those Members meeting the criteria shall have written supervisory procedures that include the titles, registration status and locations of the firm's supervisory personnel as these relate to the firm's commodity futures business, retail forex business, and applicable securities laws and regulations for the trading of security futures products. The written procedures must include at a minimum:

- a description of the steps taken to supervise and monitor calls which identify how often monitoring of recordings will take place; who will conduct the monitoring; and how the results of monitoring will be documented;
- specific information identifying the recording equipment being used;
- a description of the steps taken to supervise and monitor APs' electronic written communications with customers which identify how the Member will monitor them, how often the Member will monitor them, who will conduct the monitoring and how the results of that monitoring will be documented;
- a description of the method for cataloging and maintaining recordings and written electronic communications; and
- a description and sample format of the daily logs prepared by APs that includes, at a minimum, the identity of each customer or prospective customer the AP spoke or transmitted an electronic written communication with on each day and the method of communication.

Member firms shall also maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which the designation is or was effective. Additionally, a Member meeting the criteria shall file with NFA's Compliance Department a report relating to the Member firm's compliance with the supervisory requirements contained herein within 15 days after the end of each calendar quarter. Member firms shall retain the internal record and report(s) for a period of five years, the first two years in an easily accessible place.

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EXPLANATION OF PROPOSED AMENDMENTS

NFA's Interpretive Notice to Compliance Rule 2-9 entitled *Compliance Rule 2-9: Enhanced Supervisory Requirements* (Notice) requires a Member to adopt certain enhanced supervisory requirements (Requirements) based upon the regulatory background of either its associated persons (APs) or principals. The Notice is designed to, among other things, minimize the likelihood of a Member engaging in deceptive sales practices. One of the more important Requirements with respect to minimizing sales practice problems is the requirement that firms make audio recordings of all telephone conversations between APs and customers. At the time this Notice was adopted, telephone communications were the most common method that APs used to solicit customers. However, since that time, other electronic written communications, such as text or instant messages, have become one of the primary methods of communication between APs and customers. NFA's Notice, however, does not specifically require a Member firm subject to the Requirements to maintain a record of electronic written communications, prepare a catalog of electronic written communications and require its APs to maintain a log of those communications. NFA relies on the catalog of communications and the AP sales solicitation logs when examining a Member for compliance with the Requirements.

Given the popularity of electronic written communications, NFA's Board is amending the Notice to explicitly state that all Members subject to the Requirements are required to maintain a record of all electronic written communications, including but not limited to, emails, text messages, instant messages and any other communication that occurs in a chat room or on any social media platform. Likewise, NFA's Board is amending the Notice to require Member firms subject to the Requirements to prepare a catalog of electronic written communications and require APs to maintain a log of those written electronic communications. This modification to the Notice merely parallels the current cataloging and AP log requirement for telephone sales solicitations and ensures that, for firms subject to the Requirements, all sales solicitations—regardless of the method by which they occur—are maintained, cataloged and logged by the firm's APs.

NFA's FCM, IB and CPO/CTA Advisory Committees support the proposed amendments to the Interpretive Notice. NFA's Board unanimously approved the proposed amendments to the Interpretive Notice.

Mr. Christopher J. Kirkpatrick

November 27, 2017

As mentioned earlier, NFA is invoking the “ten-day” provision of Section 17(j) of the CEA. NFA intends to make the proposed amendments to NFA's Interpretive Notice entitled *Compliance Rule 2-9: Enhanced Supervisory Requirements* 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.

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 tail at the end.

Carol A. Wooding
Vice President and General Counsel