

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 2

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-7

File No. \* SR - 2014 - \* 05

Amendment No. (only for Amendments)

Proposed Rule Change by \* National Futures Association  
 Pursuant to Rule 19b-7 under the Securities Exchange Act of 1934

Initial \*  Amendment \*  Withdrawal

Submit Form As Paper Document  Exhibit 1.0 as Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Proposed change to the Interpretive Notice to NFA Compliance Rule 2-9: Enhanced Supervisory Requirements

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \* Carol Last Name \* Wooding  
 Title \* Associate General Counsel  
 E-mail \* cwooding@nfa.futures.org  
 Telephone \* (312) 781-1409 Fax (312) 559-3476

**SRO Governing Body Action**

Describe action on the proposed rule change taken by the members or board of directors or other governing body of the SRO (limit 250 characters, required \*).

NFA's Board of Directors approved the proposed rule change on May 15, 2014

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 06/18/2014 Senior Vice-President, General Counsel and Secretary  
 By Thomas W. Sexton III  
 (Name \*) (Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1396648970759

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-7 instructions please refer to the EFFS website.

**Exhibit 1 - Notice of Proposed Rule Change (required when Initial)**

[Add](#) [Remove](#) [View](#)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal.

The Notice section of this Form 19b-7 must comply with the guidelines for publication in the Federal Register, as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC and CFTC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases and Commodities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

[Add](#) [Remove](#) [View](#)

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction E, they shall be filed in accordance with Instruction F.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

[Add](#) [Remove](#) [View](#)

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. If such documents cannot be filed electronically in accordance with Instruction E, they shall be filed in accordance with Instruction F.

Exhibit Sent As Paper Document

**Exhibit 4 - Proposed Rule Text**

[Add](#) [Remove](#) [View](#)

The self-regulatory organization must attach as Exhibit 4 proposed changes to rule text. Exhibit 4 shall be considered part of the proposed rule change.

**Exhibit 5 - Date of Effectiveness of Proposed Rule Change (required when Initial)**

The self-regulatory organization must attach one of the following:

- CFTC Certification
- CFTC Request that Review of Proposed Rule Change is not Necessary
- Request for CFTC Approval of Proposed Rule Change
- CFTC Determination that Review of Proposed Rule Change is not Necessary
- Indication of CFTC Approval of Proposed Rule Change

CFTC Request that Proposed Rule Change is not Necessary: Attach a copy of any request submitted to the CFTC for determination that review of the proposed rule change is not necessary.

[Add](#) [Remove](#) [View](#)

Exhibit Sent As Paper Document

**Partial Amendment**

[Add](#) [Remove](#) [View](#)

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission staff's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-\_\_\_\_\_; File No. SR-NFA-2014-05)

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Change to the Interpretive Notice to NFA Compliance Rule 2-9: Enhanced Supervisory Requirements

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-7 under the Exchange Act,<sup>2</sup> notice is hereby given that on June 18, 2014 National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On June 18, 2014, NFA also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC") and requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary. The CFTC has not yet made such determination.

I. Self-Regulatory Organization's Description and Text of the Proposed Rule Change

NFA Compliance Rule 2-9(b) and its related Interpretive Notice entitled "NFA Compliance Rule 2-9: Enhanced Supervisory Requirements" ("Notice") requires Member firms that meet certain criteria identified by NFA's Board of Directors ("Board") to comply with specific enhanced supervisory requirements

---

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

that are designed to prevent abusive sales practices. One way a Member firm triggers the enhanced supervisory requirements is to employ a certain specified number or percentage of associated persons (APs) that have a previously been associated with other firms that have been disciplined for fraud (as defined in the Notice). The Notice, however, permits a Member firm to exclude certain of those APs and principals who meet very specific criteria identified by the Board from its determination of whether it triggers the enhanced supervisory requirements. The amendment to the Notice revises this criterion to provide limited additional relief to a few individual principals who would currently not be excluded from a Member firm's determination of whether it triggers the enhanced supervisory requirements.

The text of the Interpretive Notice is available on NFA's Web site at [www.nfa.futures.org](http://www.nfa.futures.org), the Commission's Web site at [www.sec.gov](http://www.sec.gov), the self-regulatory organization's office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NFA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NFA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

Section 15A(k) of the Exchange Act<sup>3</sup> makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members ("Members") who are registered as brokers or dealers under Section 15(b)(11) of the Exchange Act.<sup>4</sup> The Interpretive Notice entitled: "NFA Compliance Rule 2-9: Enhanced Supervisory Requirements" applies to all FCM and IB Members, including those that are registered as security futures brokers or dealers under Section 15(b)(11) of the Exchange Act.

NFA Compliance Rule 2-9(b) authorizes NFA's Board to require Members, which meet certain criteria established by the Board, to comply with specific enhanced supervisory requirements designed to prevent abusive sales practices. The related Notice specifies the criteria which subjects a Member firm to the enhanced supervisory requirements and the enhanced supervisory requirements that must be followed. NFA Compliance Rule 2-9(b) also provides that a Member may seek a waiver of the requirements from NFA's Telemarketing Procedures Waiver Committee ("Waiver Committee"), a Board appointed panel consisting of three members of NFA's Business Conduct Committee or Hearing Committee.

Under Compliance Rule 2-9(b) and the Notice, a Member firm with a certain number or percentage of APs who were previously employed or

---

<sup>3</sup> 15 U.S.C. 78o-3(k).

<sup>4</sup> 15 U.S.C. 78o(b)(11).

associated with a firm that was disciplined (as defined in the Notice) by NFA or the CFTC ("Disciplined Firm") is required to comply with the enhanced supervisory requirements. The Notice also provides that any Member firm with a principal who is or was a principal at a firm that was required to comply with the enhanced supervisory requirements must itself adopt the enhanced supervisory requirements or seek a waiver. The Notice further provides, however, that if the principal satisfies certain criteria in the Notice, that principal will not cause the Member firm to comply with the enhanced supervisory requirements.

NFA's Waiver Committee suggested that NFA make a minor modification to the Notice to provide limited additional relief to a few individual principals who the Waiver Committee believes are similarly situated to the current exempt group of principals but who do not benefit from the relief contemplated in creating the exemption because the principal does not satisfy the criteria that he/she was a principal at only one firm that was subject to the enhanced supervisory requirements. The Waiver Committee is concerned with respect to situations where a Member firm becomes subject to the enhanced supervisory requirements by virtue of having a significant percentage of APs who had formerly worked at Disciplined Firms. If a principal of that firm is also a principal of another Member firm, then the second firm automatically is subject to the enhanced supervisory requirements simultaneously with the original firm because the second firm now has a principal who is a principal of another firm (i.e., the first firm) that is subject to the enhanced supervisory requirements. There have been several instances where both firms have successfully petitioned

the Waiver Committee for full waivers; however, the principals of those firms do not qualify for the current exemption because they have been principals of more than one such firm subject to the enhanced supervisory requirements.

The Waiver Committee requested that NFA modify the exemption to eliminate the requirement that the principal could only have been a principal of one firm that has been subject to the enhanced supervisory requirements and replace it with the requirement that the most recent firm in the principal's history that was subject to the enhanced supervisory requirements either had received a full waiver from those requirements or had abided by the requirements for two years and is no longer subject to the requirements. The proposed amendments do not eliminate any of the other requirements including that the individual principal must never have been personally subject to CFTC or NFA disciplinary action or a principal or an AP of a current Disciplined Firm; and that no firm in the principal's history that was subject to the enhanced supervisory requirements has become subject to a sales practice or promotional material based disciplinary action by NFA or the CFTC since becoming subject to the enhanced supervisory requirements.

#### Amendments to the Interpretive Notice regarding NFA Compliance

Rule 2-9: Enhanced Supervisory Requirements were previously filed with the SEC in SR-NFA-2003-01, Exchange Act Release No. 34-47533 (Mar. 19, 2003), 68 FR 14733 (March 26, 2003); SR-NFA-2005-01, Exchange Act Release No. 34-52808 (Nov. 18, 2005), 70 FR 71347 (Nov. 28, 2005); SR-NFA-2006-01, Exchange Act Release No. 34-53568 (Mar. 29, 2006), 71 FR 16850, (Apr. 4,

2006), SR-NFA-2007-03, Exchange Act Release 34-55710 (May 4, 2007), 72 FR 26858 (May 11, 2007); SR-NFA-2007-07, Exchange Act Release No. 34-5172 (Jan. 14, 2008), 73 FR 3502 (Jan. 18, 2008); and SR-NFA-2008-01, Exchange Act Release No. 34-57640 (Apr. 9, 2008), 73 FR 20341 (Apr. 15, 2008); and SR-NFA-2010-04, Exchange Act Release No. 34-63602 (Dec. 22, 2010), 76-FR-202 (Jan. 3, 2011).

## 2. Statutory Basis

NFA believes that the proposed rule change is authorized by, and consistent with, Section 15A(k)(2)(B) of the Exchange Act.<sup>5</sup> That section sets out requirements for rules of a futures association, registered under Section 17 of the Commodity Exchange Act, that are a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products pursuant to Section 15(b)(11) of the Exchange Act. Under Section 15A(k)(2)(B), the rules of such a limited purpose national securities association must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest in connection with security futures products in a manner reasonably comparable to the rules of a registered national securities association applicable to securities futures products. NFA believes Compliance Rule 2-9 and the Notice meet these requirements by imposing enhanced supervisory requirements on Member firms that meet certain criteria that NFA's Board has determined indicates a greater potential for sales practice fraud to occur. The proposed rule change does not

---

<sup>5</sup> 15 U.S.C. 78o-3(k)(2)(D).



diminish the effectiveness of Compliance Rule 2-9 and the Notice but merely extends relief to certain principals whose background the Board has determined do not raise the supervisory concerns that Compliance Rule 2-9 and the Notice were intended to address.

B. Self-Regulatory Organization's Statement on Burden on Competition

NFA does not believe that the proposed rule changes would impose any burden on competition. The amendments merely extend existing relief to certain individual principals whose background the Board has determined do not raise the supervisory concerns that Compliance Rule 2-9 and the Notice were intended to address.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule changes to its membership for comment.

NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is not effective because the CFTC has not yet determined that review of the proposed rule change is not necessary.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily temporarily suspend the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NFA-2014-05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Kevin M. O'Neill, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NFA-2014-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in

the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

Copies of such filing also will be available for inspection and copying at the principal office of NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NFA-2014-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register.]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Kevin M. O'Neill  
Deputy Secretary

Form19b-7/caw/2014-05 Exhibit 1

---

<sup>6</sup> 17 CFR 200.30-3(a)(73).

**Exhibit 2**

(Not applicable)

**Exhibit 3**

(Not applicable)

**Exhibit 4**

**INTERPRETIVE NOTICES**

**COMPLIANCE RULE 2-9: ENHANCED SUPERVISORY REQUIREMENTS**

**III. QUALIFICATION FOR THE ENHANCED SUPERVISORY REQUIREMENTS**

\* \* \*

**B. Criteria that obligate a Member to adopt the enhanced supervisory requirements**

Member firms will be required to adopt the enhanced supervisory requirements if they fall into any of the categories described below.

**1. Obligation based on employment histories of APs and principals**

Firms that meet any of the following numerical criteria are required to adopt the enhanced supervisory requirements:

- For firms with less than five APs, 2 or more of its APs have been employed by one or more current Disciplined Firms;
- For firms with at least 5 but less than 10 APs, 40 percent or more of its APs have been employed by one or more current Disciplined Firms;
- For firms with at least 10 but less than 20 APs, four or more of its APs have been employed by one or more current Disciplined Firms; or
- For firms with at least 20 APs, 20 percent or more of its APs have been employed by one or more current Disciplined Firms.<sup>1</sup>

**2. Obligation based on affiliations of principals**

Once a Member firm meets the criteria to adopt the enhanced supervisory requirements any other Members of which the principals of that Member firm are, or become, principals must also adopt the enhanced supervisory requirements or seek a waiver therefrom subject to the following exception.

As is the case with some APs, the Board recognizes that there is a limited group of individuals who have been principals of firms that have qualified for the enhanced supervisory requirements who are otherwise free of additional factors that raise concern about their ability to effectively supervise their firms. Therefore, a Member will not qualify for the enhanced supervisory requirements under this section if the principal whose history would cause the qualification meets the following criteria:

- the principal has not been personally subject to a disciplinary action by NFA or the CFTC;
- [the principal has been a principal of only one firm that has qualified for the enhanced supervisory requirements;]
- the principal has never been a principal or an AP of a current Disciplined Firm;
- the [one] most recent firm in the principal's history that qualified for the enhanced supervisory requirements either received a full waiver from abiding by those requirements or abided by those requirements for at least two years and is no longer subject to the enhanced supervisory requirements; and
- [the one] no firm in the principal's history that qualified for the enhanced supervisory requirements has [not] become subject to a sales practice or promotional material based disciplinary action by NFA or the CFTC since qualifying for the enhanced supervisory requirements.

3. Obligation based on assessing commissions, fees and other charges well above the industry norm

Any Member firm that charges 50% or more of its active customers round-turn commissions, fees and other charges that total \$100 or more per futures, forex or option contract is required to adopt the enhanced supervisory requirements. Any Member that charges 50% or more of its active customers round-turn commissions, fees and other charges in the amount specified above must promptly inform NFA of that fact. In addition, upon request by NFA, Members shall have the burden of demonstrating to NFA that they charge more than 50% of their active customers' round-turn commissions, fees and other charges that are less than the specified amounts. The term "active customers" as used in this section means any customers who are entitled to a monthly statement under the provisions of CFTC Regulations Section 1.33(a). For purposes of this section, any Member whose customer initiates an options contract that would result in total commissions, fees and other charges of \$100 or more if the trade was liquidated will be deemed to have charged total commissions, fees and other charges of \$100 even if the contract is not ultimately liquidated.

#### 4. Obligation based on the initiation of disciplinary action

##### a. Members that have fulfilled the enhanced supervisory requirements that become subject to subsequent disciplinary action

Any Member that has previously been required to adopt the enhanced supervisory requirements; has, in fact, fulfilled that requirement either by adopting the enhanced supervisory requirements for a prescribed period or by receiving a full or partial waiver from the enhanced supervisory requirements from the Telemarketing Procedures Waiver Committee; and subsequently becomes subject to a CFTC or NFA enforcement or disciplinary proceeding alleging deceptive sales practices, shall, within 30 days of being served with notice of the action, adopt all of the enhanced supervisory requirements and may not seek a waiver therefrom. This obligation shall continue until after the disciplinary or enforcement proceeding is closed and all appeals are completed or the time for appeal has passed without an appeal being filed or perfected.

##### b. Members already subject to the enhanced supervisory requirements

If an NFA Business Conduct Committee disciplinary proceeding or CFTC enforcement proceeding has been filed against a Member firm required to adopt the enhanced supervisory requirements, then the enhanced supervisory requirements will remain in effect for the applicable time period specified or until after the disciplinary or enforcement proceeding is closed and all appeals are completed or the time for appeal has passed without an appeal being filed or perfected, whichever occurs latest.



**Exhibit 5**

- (a) June 18, 2014 letter from Thomas W. Sexton to Melissa D. Jurgens



June 18, 2014

**Via Federal Express**

Ms. Melissa D. Jurgens  
Secretary  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

Re: National Futures Association: Enhanced Supervisory Procedures –  
Proposed Amendments to NFA's Interpretive Notice Entitled "Compliance  
Rule 2-9: Enhanced Supervisory Procedures"

Dear Ms. Jurgens:

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's Interpretive Notice entitled "Compliance Rule 2-9: Enhanced Supervisory Procedures." NFA's Board of Directors ("Board") approved the proposal on May 15, 2014.

NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("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 underscored and deletions are ~~stricken through~~)**

---

**COMPLIANCE RULE 2-9: ENHANCED  
SUPERVISORY REQUIREMENTS**

\* \* \*

**INTERPRETIVE NOTICE**



Ms. Melissa D. Jurgens

June 18, 2014

\* \* \*

### III. QUALIFICATION FOR THE ENHANCED SUPERVISORY REQUIREMENTS

\* \* \*

#### **B. Criteria that obligate a Member to adopt the enhanced supervisory requirements**

Member firms will be required to adopt the enhanced supervisory requirements if they fall into any of the categories described below.

##### 1. Obligation based on employment histories of APs and principals

Firms that meet any of the following numerical criteria are required to adopt the enhanced supervisory requirements:

- For firms with less than five APs, 2 or more of its APs have been employed by one or more current Disciplined Firms;
- For firms with at least 5 but less than 10 APs, 40 percent or more of its APs have been employed by one or more current Disciplined Firms;
- For firms with at least 10 but less than 20 APs, four or more of its APs have been employed by one or more current Disciplined Firms; or
- For firms with at least 20 APs, 20 percent or more of its APs have been employed by one or more current Disciplined Firms.<sup>1</sup>

##### 2. Obligation based on affiliations of principals

Once a Member firm meets the criteria to adopt the enhanced supervisory requirements any other Members of which the principals of that Member firm are, or become, principals must also adopt the enhanced supervisory requirements or seek a waiver therefrom subject to the following exception.





Ms. Melissa D. Jurgens

June 18, 2014

As is the case with some APs, the Board recognizes that there is a limited group of individuals who have been principals of firms that have qualified for the enhanced supervisory requirements who are otherwise free of additional factors that raise concern about their ability to effectively supervise their firms. Therefore, a Member will not qualify for the enhanced supervisory requirements under this section if the principal whose history would cause the qualification meets the following criteria:

- the principal has not been personally subject to a disciplinary action by NFA or the CFTC;
- ~~the principal has been a principal of only one firm that has qualified for the enhanced supervisory requirements;~~
- the principal has never been a principal or an AP of a current Disciplined Firm;
- the ~~one~~ most recent firm in the principal's history that qualified for the enhanced supervisory requirements either received a full waiver from abiding by those requirements or abided by those requirements for at least two years and is no longer subject to the enhanced supervisory requirements; and
- ~~the on~~ no firm in the principal's history that qualified for the enhanced supervisory requirements has not become subject to a sales practice or promotional material based disciplinary action by NFA or the CFTC since qualifying for the enhanced supervisory requirements.

3. Obligation based on assessing commissions, fees and other charges well above the industry norm

Any Member firm that charges 50% or more of its active customers round-turn commissions, fees and other charges that total \$100 or more per futures, forex or option contract is required to adopt the enhanced supervisory requirements. Any Member that charges 50% or more of its active customers round-turn commissions, fees and other charges in the amount specified above must promptly inform NFA of that fact. In addition, upon request by NFA, Members



Ms. Melissa D. Jurgens

June 18, 2014

shall have the burden of demonstrating to NFA that they charge more than 50% of their active customers' round-turn commissions, fees and other charges that are less than the specified amounts. The term "active customers" as used in this section means any customers who are entitled to a monthly statement under the provisions of CFTC Regulations Section 1.33(a). For purposes of this section, any Member whose customer initiates an options contract that would result in total commissions, fees and other charges of \$100 or more if the trade was liquidated will be deemed to have charged total commissions, fees and other charges of \$100 even if the contract is not ultimately liquidated.

4. Obligation based on the initiation of disciplinary action

- a. Members that have fulfilled the enhanced supervisory requirements that become subject to subsequent disciplinary action

Any Member that has previously been required to adopt the enhanced supervisory requirements; has, in fact, fulfilled that requirement either by adopting the enhanced supervisory requirements for a prescribed period or by receiving a full or partial waiver from the enhanced supervisory requirements from the Telemarketing Procedures Waiver Committee; and subsequently becomes subject to a CFTC or NFA enforcement or disciplinary proceeding alleging deceptive sales practices, shall, within 30 days of being served with notice of the action, adopt all of the enhanced supervisory requirements and may not seek a waiver therefrom. This obligation shall continue until after the disciplinary or enforcement proceeding is closed and all appeals are completed or the time for appeal has passed without an appeal being filed or perfected.

- b. Members already subject to the enhanced supervisory requirements

If an NFA Business Conduct Committee disciplinary proceeding or CFTC enforcement proceeding has been filed against a Member firm required to adopt the enhanced supervisory requirements, then the enhanced supervisory requirements will remain in effect for the applicable time period specified or until after the disciplinary or enforcement proceeding is closed and all appeals are





Ms. Melissa D. Jurgens

June 18, 2014

completed or the time for appeal has passed without an appeal being filed or perfected, whichever occurs latest.

---

### EXPLANATION OF PROPOSED AMENDMENTS

---

NFA Compliance Rule 2-9's Interpretive Notice entitled "Enhanced Supervisory Requirements" (Notice) requires Member firms that trigger the Requirements of the Notice to record all telephone conversations with customers and prospects, pre-submit promotional material, adopt written supervisory procedures and either operate under a guarantee agreement or maintain an enhanced capital level. One of the triggers of the Requirements is based on the regulatory background of the Member firm's APs and/or principals. Recently, NFA's Telemarketing Procedures Waiver Committee (Waiver Committee) asked NFA to make a minor modification to the Notice to provide limited additional relief to a limited number of individual principals who would currently qualify for the Requirements based on their previous affiliation with a Member firm that was subject to the Requirements.<sup>1</sup>

As way of background, NFA amended the Notice in 2006 after recognizing that the principals of several firms that had triggered the Requirements had avoided them by simply closing their firms and opening other firms that had a mix of APs that did not trigger the Requirements. The new firms typically had APs from a closed firm who had worked at Disciplined Firms, but their percentage ratios to the overall AP population of the new firms were below the triggering point for imposing the Requirements.<sup>2</sup> The amendments to the Notice dealt with this issue by providing that, once a firm had triggered the Requirements, then any other firms of which the principals of the qualifying firm are also principals would become subject to the Requirements.

---

<sup>1</sup> NFA's Telemarketing Procedures Waiver Committee was established pursuant to the Notice and acts on petitions for full or partial waivers from the Requirements submitted by Members that become subject to them.

<sup>2</sup> Historically, the only way that a Member could have triggered the Requirements was to have a defined percentage of APs who had previously worked for a firm that had been disciplined for misleading sales practices or promotional material (Disciplined Firm).



Ms. Melissa D. Jurgens

June 18, 2014

In 2011, NFA revised the strict criteria that caused a principal's background to trigger the Requirements in recognition that the 2006 criteria affected some individuals and firms whose backgrounds suggested that they were not part of the population that the amendment was designed to impact. Specifically, the revision exempted individuals who had been principals of firms that had qualified for the Requirements from triggering an obligation to abide by the Requirements for additional firms of which they became principals if they met the following criteria.

- the principal has not been personally subject to a disciplinary action by NFA or the CFTC;
- the principal has been a principal of only one firm that has qualified for the enhanced supervisory requirements;
- the principal has never been a principal or an AP of a current Disciplined Firm;
- the one firm in the principal's history that qualified for the enhanced supervisory requirements either received a full waiver from abiding by those requirements or abided by those requirements for at least two years and is no longer subject to the enhanced supervisory requirements; and
- the one firm in the principal's history that qualified for the enhanced supervisory requirements has not become subject to a sales practice or promotional material based disciplinary action by NFA or the CFTC since qualifying for the enhanced supervisory requirements.

NFA's Waiver Committee has dealt with the practical application of the exemption created in 2011 for three years. During that time it has encountered a number of instances involving individual principals and Members who are similarly situated to the exempt group but who do not benefit from the relief contemplated in creating the exemption. This is the result, in part, of language in the current Notice which provides that the exemption is available to individuals who were principals at only one firm that had qualified for the Requirements.





Ms. Melissa D. Jurgens

June 18, 2014

A representative example of the situation occurs when a firm qualifies for the Requirements by virtue of having a significant percentage of APs who had formerly worked at firms that had been disciplined for sales practice or promotional material deficiencies. If the principals of that firm are also principals of another Member firm, then the second firm automatically qualifies for the Requirements simultaneously with the original firm as the second firm now has principals who were principals of another firm (i.e. the first firm) that qualified for the Requirements. There have been several instances where both firms have successfully petitioned the Waiver Committee for full waivers; however, the principals of those firms do not qualify for the 2011 exemption because they have been principals of more than one such firm meeting the Requirements.

The Waiver Committee requested NFA staff to explore whether it would be possible and prudent to slightly expand the 2011 exemption to provide an exemption to those principals who were previously a principal of a Member firm that previously received a full waiver from the Waiver Committee. In other words, once the Waiver Committee has determined that a Member firm that triggers the Requirements based on the background of its principals is deserving of a waiver from the Requirements, then going forward firms for which these individuals are listed principals are presumed to be without the need of the Requirements. These principals will therefore be exempt from triggering the Requirements at their future firms.

NFA found that 36 Members have qualified for the Requirements in the past five years based on having a principal who was previously a principal at a firm that had qualified for the Requirements. The Waiver Committee granted full waivers to ten of those 36 Member firms. None of the ten firms have been subject to any disciplinary action by NFA or the Commission. Moreover, the ten firms obtaining a full waiver had 21 listed individual principals who became principals of five subsequent firms. None of these five firms or 21 individuals has been subject to any disciplinary action by NFA or the Commission. These 21 individual principals are the ones who would qualify for the new exemption.

NFA determined that the current exemption can be slightly broadened so that once the Waiver Committee has determined that a Member firm that triggers the Requirements based on the background of its principals is deserving of a waiver from





Ms. Melissa D. Jurgens

June 18, 2014

the Requirements, then the firm's principals will be exempt from triggering the Requirements at their future firms. The proposed amendments do not suggest any changes to the other criteria for qualifying for the exemption – the individual principal must never have been personally subject to CFTC or NFA disciplinary action; must never have been a principal or an AP of a current Disciplined Firm; and that no firm in their history that qualified for the Requirements has become subject to a sales practice or promotional material based disciplinary action by NFA or the CFTC since qualifying for the Requirements.

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

A handwritten signature in black ink, appearing to read "Thomas W. Sexton", is written over a circular stamp or seal.

Thomas W. Sexton  
Senior Vice President and  
General Counsel

cc: Gary Barnett  
Frank Fisanich  
Tom Smith

TWS:jac(m:/jac/SubmissionLtrs\InterpNotc\_CR2-9\_EnhancSupervProc 051514)