

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53568; File No. SR-NFA-2006-01)

March 29, 2006

Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Interpretive Notice to Compliance Rule 2-9

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Exchange Act”)¹, and Rule 19b-7 under the Exchange Act², notice is hereby given that on February 27, 2006, 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 prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (“CFTC”).

NFA, on February 27, 2006, requested that the CFTC make a determination that review of the proposed rule change is not necessary. By letter dated March 8, 2006, the CFTC notified NFA of its determination not to review the proposed rule change.³

I. Self-Regulatory Organization’s Description of the Proposed Rule Change

Section 15A(k) of the Exchange Act⁴ 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 in security futures products under Section 15(b)(11) of the Exchange Act.⁵

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ See Letter from Lawrence B. Patent, Deputy Director, CFTC, to Thomas W. Sexton, III, Esq., General Counsel, NFA (Mar. 8, 2006).

⁴ 15 U.S.C. 78o-3(k).

⁵ 15 U.S.C. 78o(b)(11).

NFA's Interpretive Notice titled "Compliance Rule 2-9: Enhanced Supervisory Requirements" ("Interpretive Notice") applies to all Members, including Members registered under Section 15(b)(11), who meet the criteria specified in the Interpretive Notice.

The proposed rule change, which would modify the Interpretive Notice, would exempt certain associated persons ("APs") from being counted in the calculation for determining whether a Member is required, pursuant to NFA Compliance Rule 2-9(b) (discussed below), to adopt the enhanced supervisory procedures described in the Interpretive Notice. In particular, the proposed rule change would exclude from the calculation the individuals who meet all of the following criteria:

- The AP has only worked for one Disciplined Firm;⁶
- The AP has not worked for a Disciplined Firm in more than ten years;
- The AP has not worked for a Member that has been subject to a sales practice action by NFA or the CFTC since leaving the Disciplined Firm;
- The AP has not been personally subject to a disciplinary action by NFA or the CFTC; and
- The AP has been an NFA Member or Associate Member for at least eight of the preceding ten years.

⁶ For purposes of the Interpretive Notice, a Disciplined Firm is defined as one that meets the following three criteria: (1) the firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices or promotional material; (2) those charges have been resolved; and (3) the firm has been permanently barred from the industry as a result of those charges. In addition, a Disciplined Firm is defined to include any broker-dealer that, in connection with sales practices involving the offer, purchase, or sale of any security futures product, as defined in Section 1a(32) of the CEA has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the SEC revoking its registration as a broker-dealer. See Interpretive Notice, p. 4.

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

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

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

1. Purpose

NFA Compliance Rule 2-9, titled “Supervision,” provides in paragraph (b) that the NFA’s Board of Directors (“Board”) may require Members that meet specific criteria established by the Board, relating to the employment history of their APs, to adopt supervisory procedures specified by the Board for the supervision of telemarketing. The Interpretive Notice describes these enhanced supervisory procedures and provides that a Member would be required to undertake these procedures if its sales force included a specified number of APs who have previously worked at Disciplined Firms. The Interpretive Notice and an enabling provision of NFA Compliance Rule 2-9(b) provide that affected Members may petition the Telemarketing Procedures Waiver Committee (“Waiver Committee”) for relief from the enhanced supervisory procedures.

From time to time, the Board has amended the Interpretive Notice’s numerically-based criteria to exempt certain APs who have worked at Disciplined Firms from having to be counted for purposes of determining whether a Member that hires them is required to adopt the enhanced

supervisory procedures. According to NFA, these exempted APs, based upon their history, are not likely to pose a risk to the public.⁷

APs who may not pose a risk to the public remain in the population of APs who could trigger enhanced supervisory procedures. For example, a prospective AP who worked at one Disciplined Firm for more than sixty days a number of years ago but who otherwise had an unblemished personal and employment history in the industry would currently be afforded relief only if the firm seeking to hire the AP applied for a waiver. NFA's Waiver Committee often takes these individual factors into consideration when deciding whether to grant a waiver to a firm.

Without an exemption, these individuals may not ever reach the Waiver Committee. Employers, and small firms in particular, may be wary of hiring these individuals merely because their hiring might trigger enhanced supervisory procedures and require the firm to apply for a waiver. In addition, some firms are simply loath to hire an individual who would be counted on their staff as having come from a Disciplined Firm even if hiring them would not trigger enhanced supervisory procedures.

NFA performed an analysis of registration and disciplinary data and found that a significant number of currently active APs who have long tenures in the industry meet the criteria proposed for the exemption. Specifically, applying the proposed criteria would exempt 82 currently active APs, who are employed by 67 Member firms, from being counted as APs

⁷ For example, in 2003, the Interpretive Notice was amended to exempt APs who had worked at Disciplined Firms for less than sixty days more than ten years ago. Securities Exchange Act Release No. 47533 (Mar. 19, 2003); 68 FR 14733 (Mar. 26, 2003). Last year the Board amended the Interpretive Notice to reduce this period from ten years to five years, while retaining the

who had worked at a Disciplined Firm for purposes of determining whether their current sponsor or any prospective sponsors would trigger an obligation to undertake the enhanced supervisory procedures.

NFA believes that adding these exemptions will reduce the burden on the membership while still imposing enhanced supervision on firms that cause concern. Exempting APs who worked at a single Disciplined Firm more than ten years ago, have since been employed by compliant Members, and have good personal compliance histories could help to make the Waiver Committee more efficient since an increased number of non-problematic firms and individuals will be removed from the waiver process.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.⁸

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

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the Commodity Exchange Act ("CEA"). In fact, it will lessen the burden on competition by exempting additional firms and individuals from the enhanced supervision requirement.

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 change to the membership for comment. NFA did not receive comment letters concerning the rule change.

requirement that the individual must have worked at such a firm for less than sixty days. Securities Exchange Act Release No. 52808 (Nov. 18, 2005); 70 FR 71347 (Nov. 28, 2005).

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

NFA submitted, on February 27, 2006, the proposed amendments to the Interpretive Notice regarding NFA Compliance Rule 2-9 to the CFTC for approval. NFA invoked the “ten-day” provision of Section 17(j) of the CEA, stating that it intended to make the proposed amendments effective ten days after receipt of the proposals by the CFTC, unless the CFTC determined to review the proposed amendments for approval and notified NFA of this determination. By letter dated March 8, 2006, the CFTC notified NFA of its determination not to review the proposed rule change.⁹ The proposed rule change has become effective on March 8, 2006.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate 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.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts 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

⁸ 15 U.S.C. 78o-3(k).

⁹ See Letter, *supra* note 3.

¹⁰ 15 U.S.C. 78s(b)(1).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NFA-2006-01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-NFA-2006-01. 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 Internet Web site (<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 inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the 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 available

publicly. All submissions should refer to File No. SR-NFA-2006-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

¹¹ 17 CFR 200.30-3(a)(73).