

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56667; File No. SR-NFA-2007-04)

October 17, 2007

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Compliance Rule 2-4: Misuse of Trade Secrets and Proprietary Information

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ and Rule 19b-7 under the Exchange Act,² notice is hereby given that on August 20, 2007, National Futures Association (“NFA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which Items have been substantially 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 August 17, 2007, submitted the proposed rule change to the CFTC for approval and invoked the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”).³ By letter dated September 5, 2007, the CFTC notified NFA of its determination not to review the proposed rule change.⁴

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

Text of Proposed Rule Changes

INTERPRETIVE NOTICE

NFA COMPLIANCE RULE 2-4:

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 21(j).

⁴ See letter from Lawrence B. Patent, Deputy Director, CFTC, to Thomas W. Sexton, III, General Counsel, NFA (“Letter”).

MISUSE OF TRADE SECRETS AND PROPRIETARY INFORMATION

National Futures Association (“NFA”) Compliance Rule 2-4 provides that Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business. Over the years, NFA’s Board of Directors (“Board”) has provided guidance on certain issues to ensure that Members and Associates understand their responsibilities to observe just and equitable principles of trade and to act honestly, fairly, and in the best interests of customers.

Compliance Rule 2-4 prohibits Members and Associates from knowingly obtaining or seeking to obtain another Member’s or Associate’s confidential information or trade secrets without that person’s permission. It also prohibits Members and Associates from knowingly or recklessly misusing confidential information or trade secrets in their possession. Although that rule does not seek to regulate business disputes between Members or to extend beyond commodity futures activities, it does reach conduct that could potentially harm customers.

Conduct that may violate Compliance Rule 2-4 includes:

- Misusing customer information, such as misappropriating social security numbers or purposefully violating the firm’s privacy statement;
- Disclosing customer orders prior to execution (except as permitted by exchange rules); or
- Obtaining or attempting to obtain information disclosing a CTA’s historical trading positions without the CTA’s permission.

These are merely examples of conduct that could potentially harm customers. Any Member or Associate that knowingly obtains or seeks to obtain confidential information or

trade secrets of another Member or Associate without that person's permission or that knowingly or recklessly misuses trade secrets and/or proprietary information in the conduct of its commodity futures business violates Compliance Rule 2-4.

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 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. 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 Act⁵ 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.⁶ The new interpretive notice applies to all Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11).

NFA Compliance Rule 2-4 requires Members and Associates to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business. The proposed notice makes clear that Members and Associates violate NFA

⁵ 15 U.S.C. 78o-3(k).

⁶ 15 U.S.C. 78o(b)(11).

Compliance Rule 2-4 if they knowingly obtain or seek to obtain another Member's or Associate's confidential information or trade secrets without that person's permission or knowingly or recklessly misuse confidential information or trade secrets in their possession when these activities may harm futures customers. It also clarifies that this prohibition is limited to a Member's commodity futures business and does not reach into areas beyond NFA's normal jurisdiction.

The notice is narrowly drawn, focusing on behaviors that could harm customers. It gives three examples of behavior that violates the rule: 1) misusing customer information, 2) disclosing customer orders, and 3) obtaining or attempting to obtain confidential information disclosing a CTA's historical trading positions.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.⁷ This Section requires NFA to have rules that are 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. The proposed rule change accomplishes this by prohibiting the misuse of nonpublic information.

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

The rule change will not impose any burden on legitimate competition. It should, however, prevent Members from using illegitimate means to gain a competitive advantage when those means could harm customers.

⁷ 15 U.S.C. 78o-3(k).

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

NFA did not publish the rule change to the membership for comment but did discuss it with NFA's FCM, IB, and CPO/CTA Advisory Committees, which generally supported it. NFA did not receive comment letters concerning the rule change.

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

NFA, on August 17, 2007, submitted the proposed Interpretive Notice entitled "NFA Compliance Rule 2-4: Misuse of Trade Secrets and Proprietary Information" to the CFTC for approval and invoked the "ten-day" provision of Section 17(j) of the CEA.⁸ The CFTC notified NFA of its determination not to review the proposed rule change.⁹ The proposed rule change has become effective on September 5, 2007.

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 is consistent with the Exchange Act.

Comments may be submitted by any of the following methods:

⁸ 7 U.S.C. 21(j).

⁹ See Letter, supra note 4.

¹⁰ 15 U.S.C. 78s(b)(1).

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. Please include File Number SR-NFA-2007-04 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 Number SR-NFA-2007-04. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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 available publicly. All submissions should refer to File Number SR-NFA-2007-04 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

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(75).