

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72514; File No. SR-NFA-2014-05)

July 2, 2014

Self-Regulatory Organizations; National Futures Association; Notice of Filing of Proposed Rule Change Relating to the NFA Interpretive Notice Entitled “NFA Compliance Rule 2-9: Enhanced Supervisory Requirements”

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-7 thereunder,² 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 as 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.³

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.

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ NFA previously filed amendments to the Notice regarding Rule 2-9(b) with the Commission. See Exchange Act Release No. 47533 (Mar. 19, 2003), 68 FR 14733 (Mar. 26, 2003) (SR-NFA-2003-01); Exchange Act Release No. 52808 (Nov. 18, 2005), 70 FR 71347 (Nov. 28, 2005) (SR-NFA-2005-01); Exchange Act Release No. 53568 (Mar. 29, 2006), 71 FR 16850 (Apr. 4, 2006) (SR-NFA-2006-01); Exchange Act Release No. 55710 (May 4, 2007), 72 FR 26858 (May 11, 2007) (SR-NFA-2007-03); Exchange Act Release No. 57142 (Jan. 14, 2008), 73 FR 3502 (Jan. 18, 2008) (SR-NFA-2007-07); Exchange Act Release No. 57640 (Apr. 9, 2008), 73 FR 20341 (Apr. 15, 2008) (SR-NFA-2008-01); and Exchange Act Release No. 63602 (Dec. 22, 2010), 76 FR 202 (Jan. 3, 2011) (SR-NFA-2010-04).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NFA Compliance Rule 2-9(b) ("Rule 2-9(b)") and its related Interpretive Notice entitled "NFA Compliance Rule 2-9: Enhanced Supervisory Requirements" ("Notice") require NFA member firms ("Members") that meet certain criteria identified by NFA's Board of Directors ("Board") to comply with specific enhanced supervisory requirements 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 previously been associated with another firm that was a "Disciplined Firm" (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 proposed rule change is available at the principal office of NFA, on NFA's website at <http://www.nfa.futures.org>, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 15A(k) of the Exchange Act⁴ makes NFA a national securities association for the limited purpose of regulating the activities of Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.⁵ The Notice entitled: “NFA Compliance Rule 2-9: Enhanced Supervisory Requirements” applies to all Members who meet the criteria in the Notice and could apply to Members registered as security futures brokers or dealers under Section 15(b)(11) of the Exchange Act.

Rule 2-9(b) authorizes NFA’s Board to require Members that 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 that subject a Member firm to the enhanced supervisory requirements and the enhanced supervisory requirements that must be followed.⁶ Rule 2-9(b) and the Notice⁷ also provide that a Member may seek a waiver

⁴ 15 U.S.C. 78o-3(k).

⁵ 15 U.S.C. 78o(b)(11).

⁶ See Notice at II (Obligations of Members Subject to Enhanced Supervisory Requirements).

from 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.

As stated above, under Rule 2-9(b) and the Notice, a Member firm with a certain number or percentage of APs who were previously employed or associated with a Disciplined Firm is required to comply with the enhanced supervisory requirements. The Notice also provides that any Member with a principal who is or was a principal at another Member 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, the principal will not cause the Member 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 Member firm automatically is subject to the enhanced supervisory requirements simultaneously with the original firm because the second Member firm now has a principal who is a principal of another Member (i.e., the first

⁷ See Notice at IV (Waiver Procedure).

Member) that is subject to the enhanced supervisory requirements. There have been several instances where both Members have successfully petitioned the Waiver Committee for full waivers; however, the principals of those Members do not qualify for the current exemption because they have been principals of more than one such Member 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.

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. That section sets out requirements for rules of a futures association, registered under Section 17 of the Commodity Exchange Act, that is 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 under 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 Rule 2-9(b) and the Notice meet these requirements by imposing enhanced supervisory requirements on Members that meet criteria that NFA's Board has determined indicates a greater potential for sales practice fraud to occur. The proposed rule change does not diminish the effectiveness of Rule 2-9(b) and the Notice but merely extends relief to certain principals whose background the Board has determined do not raise the supervisory concerns that Rule 2-9(b) 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 change would impose any burden on competition. The amendments merely extend existing relief to certain individual principals whose backgrounds the Board has determined do not raise the supervisory concerns that Rule 2-9(b) 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 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.

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 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. Please include File Number SR-NFA-2014-05 on the subject line.

Paper Comments:

- Send paper comments in triplicate to 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 Internet 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 10:00 a.m. and 3:00 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.⁸

Jill M. Peterson
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(73).