

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61280; File No. SR-NFA-2009-01)

January 4, 2010

National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Compliance Rule 2-29(h) and the Adoption of an Interpretive Notice Regarding the Use of On-Line Social Networking Groups to Communicate with the Public

Pursuant to Section 19b(7) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-7 under the Act,² notice is hereby given that on December 4, 2009, 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 self-regulatory organization.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed this proposed rule change concurrently with the Commodity Futures Trading Commission (“CFTC”).

On December 4, 2009, the NFA requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary. On December 24, 2009, the CFTC notified the NFA that the CFTC has determined not to review the proposed rule change.⁴

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ NFA filed a letter from the CFTC notifying the NFA that it had determined not to review the proposed rule change. See note 4

⁴ See letter from William Penner, Deputy Director, CFTC, to Thomas W. Sexton, III, Esq., General Counsel, NFA, dated December 24, 2009.

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

The amendments to Compliance Rule 2-29(h) require that certain audio and video advertisements that appear on the Internet – like similar radio and television advertisements – be submitted to NFA in advance for review and approval. The proposed Interpretive Notice reminds Members that on-line communications are subject to the same standards as other types of communications.

The text of the proposed rule change and Interpretive Notice is available on the NFA's Web site (www.nfa.futures.org), at the NFA's principal 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, the self-regulatory organization 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. The self-regulatory organization 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 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 under Section 15(b)(11) of the Act.⁶ NFA Compliance Rule 2-29(h) applies to all Members including those registered under Section 15(b)(11).

In December 2008, NFA's FCM, IB, and CPO/CTA Advisory Committees considered the growing use of social networking groups such as blogs, chat rooms, and forums to communicate with and solicit customers. As a result of those discussions, all three committees felt it would be helpful to issue written guidance reminding Members of their responsibilities in connection with these on-line communications.

As part of the process, NFA staff reviewed guidance from the Financial Industry Regulatory Authority ("FINRA") on the same issue. FINRA guidance states that blogs and bulletin boards are considered advertisements and are subject to the same requirements as other advertisements, while participating in a chat room is a public appearance subject to FINRA rules. The guidance also states that "[m]ember firms must supervise the operation of any securities-related blog, bulletin board or chat room hosted by [a registered representative] or by the firm itself to ensure compliance with FINRA Conduct Rules and the federal securities laws."⁷ The FINRA guidance also reminds FINRA members that their supervisory procedures can prohibit employees from using electronic media to discuss securities investments if the firm decides the medium is too hard to supervise.

⁵ 15 U.S.C. 78o-3(k).

⁶ 15 U.S.C. 78o(b)(11).

⁷ FINRA, "Guide to the Internet for Registered Representatives," www.finra.org/Industry/Issues/Advertising/p006118, accessed July 20, 2009.

FINRA has also produced several podcasts discussing on-line communications. In one podcast, FINRA staff suggest limiting posting access to a firm's blog or bulletin board to the firm's registered representatives. If the firm opens it up to a wider audience, however, FINRA staff advise requiring users to register and agree to the firm's terms of use.⁸ In another podcast, FINRA staff states that publicly available social networking sites are advertisements and those with restricted access are sales literature, subject to the same content, pre-approval, filing, and recordkeeping requirements applicable to other types of advertisements and sales literature.⁹

The proposed Interpretive Notice provides guidance that is similar to the FINRA guidance. It reminds Members that on-line communications are subject to the same standards as other types of communications.

NFA has also noticed that profit claims that used to appear on radio and television are moving to the Internet and showing up on sites such as YouTube. Therefore, the proposed amendments to Compliance Rule 2-29(h) require that these videos – like similar radio and television advertisements – be submitted to NFA in advance for review and approval. Amendments to Compliance Rule 2-29 were previously filed in SR-NFA-2001-01.

⁸ FINRA February 23, 2009 podcast on “Electronic Communications: Blogs, Bulletin Boards and Chat Rooms,” www.finra.org/Industry/Education/OnlineLearning/Podcasts/index.htm, accessed July 20, 2009.

⁹ FINRA March 10, 2009 podcast on “Electronic Communications: Social Networking Sites,” www.finra.org/Industry/Education/OnlineLearning/Podcasts/index.htm, accessed July 20, 2009.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k)(2)(B) of the Act.¹⁰ That 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, including rules governing sales practices and advertising of security futures products. The NFA believes the proposed rule change accomplishes this by requiring that videos showing profit claims that appear on the Internet – like similar radio and television advertisements – be submitted to NFA in advance for review and approval. Additionally, the NFA believes the proposed Interpretive Notice makes clear that communications through on-line social networking groups are subject to the same standards as other types of communications.

This proposal is not designed to regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the association. To the extent that this proposal regulates activities and transactions other than security futures, the authority for regulating those activities and transactions comes from the Commodity Exchange Act rather than the federal securities laws.

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

The proposed rule change will have little or no impact on competition. The proposed Interpretive Notice does not impose new requirements on Members, but rather makes clear that existing requirements regarding communications with the public are the same regardless of the medium used for such communications. Similarly, the proposed amendments to Compliance Rule 2-29(h) require that audio or video advertisements that

¹⁰ 15 U.S.C. 78o-3(k)(2)(B).

would have to be submitted to NFA for prior approval if used on the radio or television must also be submitted to NFA if they are distributed through publicly accessible media, e.g., the Internet. Although there may be some burden on members who have avoided this requirement by only using the Internet to distribute such advertisements, it is necessary and appropriate to ensure that communications by NFA Members are not misleading or otherwise inappropriate.

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

NFA worked with Member Committees in developing the rule change. NFA did not, however, publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

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

On December 24, 2009, the CFTC notified the NFA that it had determined not to review the proposed rule change and, therefore, NFA, is permitted to make the amendments effective as of this date.¹¹ 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 Act.

¹¹ See note 4.

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-2009-01.

Paper Comments

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

All submissions should refer to File Number SR-NFA-2009-01. 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, 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-2009-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(73).