

## MEMORANDUM

TO: File  
FROM: James P. Sinnott  
RE: Business conduct consultation with the National Futures Association (“NFA”)  
DATE: August 10, 2010

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On August 4, 2010, Lourdes Gonzalez, Joanne Rutkowski and Cindy Oh of the Securities and Exchange Commission and Phyllis Cela, Katherine Driscoll, Ted Kneller, Barry McCarty, Michael Solinsky, Peter Sanchez, Todd Prono, Yousuf Siddiqui and Vivek Jain of the Commodities Futures Trading Commission consulted with Regina Thoele (NFA), Cynthia Cain (NFA) and Dan Driscoll (NFA).

The participants reviewed the statutory language regarding business conduct and discussed the business conduct rules that currently apply to NFA members. In addition, the participants discussed areas that may require additional rules or revised rules based on the statutory language.

## NFA's Business Conduct Rules

### I. Exchange Traded Futures Contracts

1. Supervision
  - A. NFA Compliance Rule 2-9—Supervision
    1. NFA Interpretive Notice ¶9010—Information Available from NFA regarding Background of Prospective Employees
    2. NFA Interpretive Notice ¶9019—Compliance Rule 2-9: Supervision of Branch Offices and Guaranteed IBs
    3. NFA Interpretive Notice ¶9020—Compliance Rule 2-9: Self-Audit Questionnaire
    4. NFA Interpretive Notice ¶9021—Compliance Rule 2-9: Enhanced Supervisory Requirements
    5. NFA Interpretive Notice ¶9037—Compliance Rule 2-9: Supervisory Procedures for E-Mail and the Use of Web Sites
    6. NFA Interpretive Notice ¶9039—Compliance Rules 2-29 and 2-9: NFA's Review and Approval of Certain Radio and Television Advertisements
    7. NFA Interpretive Notice ¶9051—Compliance Rule 2-9: Ethics Training Requirements
    8. NFA Interpretive Notice ¶9055—NFA Bylaw 1101, Compliance Rules 2-9 and 2-29: Guidelines relating to the Registration of Third-party Trading System Developers and the Responsibility of NFA Members for Promotional Material that Promotes Third-party Trading System Developers and their Trading Systems
2. Disclosures
  - A. NFA Compliance Rule 2-30—Customer Information and Risk Disclosure
    1. NFA Interpretive Notice ¶9013—Compliance Rule 2-30: Customer Information and Risk Disclosure
  - B. NFA Compliance Rule 2-34—CTA Performance Reporting and Disclosures
    1. NFA Interpretive Notice ¶9054—Compliance Rule 2-34: Performance Reporting and Disclosures
  - C. NFA Compliance Rule 2-35—CPO/CTA Disclosure Documents
    1. NFA Interpretive Notice ¶9035—Compliance Rule 2-35: CPO/CTA Disclosure Documents
  - D. NFA Compliance Rule 2-13—CPO/CTA Regulations
    1. NFA Interpretive Notice ¶9006—Interpretation of NFA Compliance Rule 2-13: Guideline for the Disclosure by CPOs and CTAs of "Up Front" Fees and Organizational and Offering Expenses
    2. NFA Interpretive Notice ¶9023—Compliance Rule 2-13: Break-Even Analysis
  - E. NFA Compliance Rule 2-4—Just and Equitable Principles of Trade
    1. NFA Interpretive Notice ¶9059—Compliance Rule 2-4: Disclosure Guidelines for FCMs Offering Sweep Accounts
3. Sales Practices and Dealing with Customers
  - A. NFA Compliance Rule 2-4—Just and Equitable Principles of Trade

1. NFA Interpretive Notice ¶9005—Interpretation of NFA Compliance Rule 2-4: Guideline for the Disclosure by FCMs and IBs of Costs Associated with Futures
  2. NFA Interpretive Notice ¶9014—Compliance Rule 2-4: Confidentiality Language in Release Agreements
  3. NFA Interpretive Notice ¶9057—Commissions, Fees and Other Charges
  4. NFA Interpretive Notice ¶9061—Compliance Rule 2-4: Misuse of Trade Secrets and Proprietary Information
  - B. NFA Compliance Rule 2-29—Communications with the Public and Promotional Material
    1. NFA Interpretive Notice ¶9033—Compliance Rule 2-29: Deceptive Advertising
    2. NFA Interpretive Notice ¶9038—Compliance Rule 2-20: High-Pressure Sales Tactics
4. Promotional Material
- A. NFA Compliance Rule 2-29—Communications with the Public and Promotional Material
    1. NFA Interpretive Notice ¶9003—Compliance Rule 2-29: Communications with the Public and Promotional Material
    2. NFA Interpretive Notice ¶9009—Compliance Rule 2-29: Review of Promotional Material Prior to its First Use
    3. NFA Interpretive Notice ¶9025—Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results
    4. NFA Interpretive Notice ¶9033—Compliance Rule 2-29: Deceptive Advertising
    5. NFA Interpretive Notice ¶9034—Compliance Rule 2-29: Deceptive Advertising
    6. NFA Interpretive Notice ¶9039—Compliance Rules 2-29 and 2-9: NFA’s Review and Approval of Certain Radio and Television Advertisements
    7. NFA Interpretive Notice ¶9055—NFA Bylaw 1101, Compliance Rules 2-9 and 2-29: Guidelines relating to the Registration of Third-party Trading System Developers and the Responsibility of NFA Members for Promotional Material that Promotes Third-party Trading System Developers and their Trading Systems
5. Know Your Customer
- A. NFA Compliance Rule 2-30—Customer Information and Risk Disclosure
    1. NFA Interpretive Notice ¶9004—Compliance Rule 2-30: Customer Information and Risk Disclosure
    2. NFA Interpretive Notice ¶9013—Compliance Rule 2-30: Customer Information and Risk Disclosure
6. Recordkeeping
- A. NFA Compliance Rule 2-10—Recordkeeping
    1. NFA Interpretive Notice ¶9029—The Allocation of Bunched Orders for Multiple Accounts
7. Reporting to Regulators

- A. NFA Financial Requirements (many of which incorporate CFTC Regulations covering the Commission’s Minimum Financial and Related Reporting Requirements)
    - 1. NFA Interpretive Notice ¶9028—NFA Financial Requirements: The Electronic Filing of Financial Reports
  - B. NFA Compliance Rule 2-11—Customer Accounts
  - C. NFA Compliance Rule 2-33—FCM Receipt of Funds from Omnibus Accounts
  - D. NFA Compliance Rule 2-38—Business Continuity and Disaster Recovery
  - E. NFA Compliance Rule 2-46—CPO Quarterly Reporting Requirements
- 8. Reporting to Customers (in addition to customer reporting requirements under CFTC Regulations)
    - A. NFA Compliance Rule 2-34—CTA Performance Reporting and Disclosures
      - 1. NFA Interpretive Notice ¶9054—Performance Reporting and Disclosures
- 9. Anti-Money Laundering
    - A. NFA Compliance Rule 2-9(c)—Supervision
      - 1. NFA Interpretive Notice ¶9045—Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program
- 10. Automated Order-Routing Systems
    - A. NFA Compliance Rule 2-9—Supervision
      - 1. NFA Interpretive Notice ¶9046—Compliance Rule 2-9: Supervision of the Use of Automated Order-Routing Systems
- 11. Prohibition on Doing Business with Non-Members
    - A. NFA Bylaw 1101—Prohibition
      - 1. NFA Interpretive Notice ¶9007—Compliance with NFA Bylaw 1101
      - 2. NFA Interpretive Notice ¶9055—NFA Bylaw 1101, Compliance Rules 2-9 and 2-29: Guidelines relating to the Registration of Third-party Trading System Developers and the Responsibility of NFA Members for Promotional Material that Promotes Third-party Trading System Developers and their Trading Systems
- 12. Segregation
    - A. NFA Financial Requirements Section 8—Additional Information Requests
- 13. Investing Customer Funds
    - A. NFA Financial Requirements Section 4—Financial Requirements and Treatment of Customer Property
- 14. Order Entry
    - A. NFA Compliance Rule 2-10—Recordkeeping
- 15. Customer Eligibility under CFTC Regulation 4.7
    - A. NFA Compliance Rule 2-13—CPO/CTA Regulations
- 16. Other Conduct and Requirements
    - A. NFA Compliance Rule 2-5—Cooperation in NFA Investigations and Proceedings
    - B. NFA Compliance Rule 2-6—Expelled or Suspended Member or Associate

1. NFA Interpretive Notice ¶9056—Compliance Rule 2-6: Conducting Commodity Futures Business with an Expelled or Suspended Member or Associate
- C. NFA Compliance Rule 2-38—Business Continuity and Disaster Recovery
  1. NFA Interpretive Notice ¶9052—Business Continuity and Disaster Recovery Plan
- D. NFA Compliance Rule 2-45—Prohibition of Loans by Commodity Pools to CPOs and Affiliated Entities
  1. NFA Interpretive Notice ¶9052— NFA Compliance Rule 2-45: Prohibition of Loans by Commodity Pools to CPOs and Related Entities

## II. Off-Exchange Traded Futures Contracts

1. Supervision
  - A. NFA Compliance Rule 2-36—Requirements for Forex Transactions
    1. NFA Interpretive Notice ¶9053—Forex Transactions with Forex Dealer Members
2. Disclosures
  - A. NFA Compliance Rule 2-36—Requirements for Forex Transactions
    1. NFA Interpretive Notice ¶9053—Forex Transactions with Forex Dealer Members
  - B. NFA Compliance Rule 2-41—Forex Pool Operators and Trading Advisors
3. Promotional Material
  - A. NFA Compliance Rule 2-36—Requirements for Forex Transactions
    1. NFA Interpretive Notice ¶9053—Forex Transactions with Forex Dealer Members
4. Sales Practices and Dealing with Customers
  - A. NFA Compliance Rule 2-36—Requirements for Forex Transactions
    1. NFA Interpretive Notice ¶9053—Forex Transactions with Forex Dealer Members
5. Reporting to Regulators
  - A. NFA Compliance Rule 2-40—Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business
    1. NFA Interpretive Notice ¶9058—Compliance Rule 2-40: Procedures for the Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business
  - B. NFA Compliance Rule 2-42—Forex Pool Reporting
    1. NFA Interpretive Notice ¶9053—Forex Transactions with Forex Dealer Members
  - C. Proposed NFA Compliance Rule 2-48—FDM Trade Reporting System
6. Reporting to Customers
  - A. NFA Compliance Rule 2-43—Forex Orders
    1. NFA Interpretive Notice ¶9053—Forex Transactions with Forex Dealer Members
  - B. NFA Compliance Rule 2-44—Forex Customer Statements

1. NFA Interpretive Notice ¶9053—Forex Transactions with Forex Dealer Members
- C. NFA Compliance Rule 2-42—Forex Pool Reporting
  1. NFA Interpretive Notice ¶9053—Forex Transactions with Forex Dealer Members
7. Automated Order-Routing Systems
  - A. NFA Compliance Rule 2-36—Requirements for Forex Transactions
    1. NFA Interpretive Notice ¶9060—Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems
8. Other Conduct and Requirements
  - A. NFA Compliance Rule 2-39—Soliciting, Introducing, or Managing Forex Transactions or Accounts

### III. Security Futures Transactions

1. Supervision
  - A. NFA Compliance Rule 2-9—Supervision
    1. NFA Interpretive Notice ¶9042—Compliance Rule 2-9: Special Supervisory Requirements for Members registered as Broker-Dealers under Section 15(b)(11) of the Securities Exchange Act of 1934
2. Disclosures
  - A. NFA Compliance Rule 2-29—Communications with the Public and Promotional Material
    1. NFA Interpretive Notice ¶9043—Compliance Rule 2-29: Use of Past or Projected Performance; Disclosing Conflicts of Interest for Security Futures Products
  - B. NFA Compliance Rule 2-30—Customer Information and Risk Disclosure
    1. NFA Interpretive Notice ¶9050—Compliance Rule 2-30(b): Risk Disclosure Statement for Security Futures Contracts
3. Sales Practices and Dealing with Customers
  - A. NFA Compliance Rule 2-4—Just and Equitable Principles of Trade
    1. NFA Interpretive Notice ¶9041—Obligations to Customers and Other Market Participants
    2. NFA Interpretive Notice ¶9044—Compliance Rule 2-4: Broker-Dealer Registration Requirements for Security Futures Products
    3. NFA Interpretive Notice ¶9048—Compliance Rule 2-4: The Best Execution Obligation of NFA Members Registered as Broker-Dealers under Section 15(b)(11) of the Securities Exchange Act of 1934
  - B. NFA Compliance Rule 2-37—Security Futures Products
    1. NFA Interpretive Notice ¶9047—Compliance Rule 2-37: Fair Commissions
4. Other Conduct and Requirements
  - A. NFA Compliance Rule 2-7—Branch Office Managers and Designated Security Futures Principals
    1. NFA Interpretive Notice ¶9049—Compliance Rules 2-7 and 2-24 and Registration Rule 401: Proficiency Requirements for Security Futures Products