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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Pilot Programs prior to its expiration on May 8, 2023, and maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Pilot Programs to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Programs. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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 email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2023–035 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–CboeEDGX–2023–035. This file number should be included on the subject line if email 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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeEDGX–2023–035, and should be submitted on or before June 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–10037 Filed 5–10–23; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97444; File No. SR–NFA–2023–01]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Change to NFA Compliance Rule 2–9(c) and the Interpretive Notice Entitled ''NFA Compliance Rule 2–9: FCM and IB Anti-Money Laundering Program''

May 5, 2023.

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 March 28, 2023, 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.

In its filing with the Commission (File No. SR–NFA–2023–01), NFA stated the following: NFA also filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'') in five separate filings in October 2011, August 2012, June 2018, May 2020, and September 2022; on October 13, 2011, NFA requested that the CFTC make a determination that review of the proposed rule change of NFA included in the October 2011 filing was not necessary; [3] on November 16, 2011, the CFTC notified NFA that it had determined not to review the proposed rule change; [4] on August 27, 2012, NFA

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter dated October 13, 2011 from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA, to David A. Stawick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(a) of File No. SR–NFA–2023–01.

[4] *See* letter dated November 16, 2011 from Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Thomas W. Sexton, Senior Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(b) of File No. SR–NFA–2023–01.

requested that the CFTC make a determination that review of the proposed rule change of NFA included in the August 2012 filing was not necessary; [5] on August 27, 2013, the CFTC notified NFA that it had determined not to review the proposed rule change; [6] on June 15, 2018, NFA also filed a proposed rule change with the CFTC and requested that the CFTC make a determination that review of the proposed rule change of NFA was not necessary; [7] by letter dated June 28, 2018, the CFTC notified NFA of its determination not to review the proposed rule change; [8] on May 28, 2020, NFA filed a proposed rule change with the CFTC and requested that the CFTC make a determination that review of the proposed rule change of NFA was not necessary; [9] in an email on May 29, 2020, the CFTC requested clarification of NFA's proposed rule change filed on May 28, 2020; [10] by letter dated June 8, 2020, the CFTC notified NFA of its determination not to review the proposed rule change; [11] on September 22, 2022, NFA filed a proposed rule change with the CFTC and requested that the CFTC make a determination that review of the proposed rule change of NFA was not necessary; [12] by letter dated October 19, 2022, the CFTC notified NFA of its determination not to review the proposed rule change.[13]

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

The proposed amendments to the Interpretive Notice entitled *NFA Compliance Rule 2–9: FCM and IB Anti-Money Laundering Program* (''Interpretive Notice'') update the Interpretive Notice to incorporate changes the Financial Crimes Enforcement Network (''FinCEN'') made to Bank Secrecy Act (''BSA'') regulations regarding suspicious activity report (''SAR'') confidentiality, as well as advisories issued by FinCEN regarding sharing SARs between and among affiliates.[14] The amendments also provide Members with additional guidance regarding the timing of SAR filings and record retention requirements, the frequency of the employee training and independent audit requirements and incorporate existing BSA requirements related to Reports of Foreign Bank and Financial Accounts and Reports of International Transportation of Currency or Monetary Instruments. Further, the amendments revise the references to the Code of Federal Regulations to reflect the adoption of Chapter X for BSA requirements.[15] (October 2011 Amendments)

The amendments also revise the Customer Identification Program (''CIP'') subsection of the Interpretive Notice, which describes guidance that FinCEN and the CFTC issued in 2006 (FIN–2006–G004—*Frequently Asked Questions Regarding Customer Identification Programs for Futures Commission Merchants and Introducing Brokers,* February 14, 2006) related to CIP obligations with respect to omnibus accounts.[16] Due to concerns that the language in NFA's Interpretive Notice could be read to provide that a firm is never required to obtain information on beneficial owners, the language was revised to indicate that for omnibus accounts where the intermediary is the account holder, an FCM should treat the intermediary as the customer and the FCM does not have to apply its CIP requirements to the underlying beneficiary. (August 2012 Amendments).

The proposed amendments to NFA Compliance Rule 2–9(c) as well as the related Interpretive Notice incorporate changes FinCEN made to the BSA regulations on May 11, 2016 that require financial institutions to identify and verify the identity of beneficial owners of legal entity (''LE'') customers and amend the Anti-Money Laundering Program (''AML'') requirements for FCMs and IBs to require appropriate risk-based procedures to conduct ongoing customer due diligence (collectively, ''CDD Rule''). (June 2018 Amendments).

The amendments also incorporate guidance issued by the Commission [sic] in consultation with FinCEN to CFTC Interpretive Letter No. 19–18 entitled *Interpretive Guidance Regarding Voice Broker Customer Identification Program and Beneficial Ownership Rule Requirements.* The proposed amendments also made minor amendments to unrelated footnotes to reflect technical citation changes and re-numbered existing footnotes. (May 2020 Amendments).

Moreover, the amendments also closely align NFA's Interpretive Notice with the exact language included in the BSA and its implementing regulations. Further, the amendments include the deletion of two footnotes that are no longer applicable as well as amendments to other footnotes that include outdated language and website links that are no longer operable. (September 2022 Amendments).

The text of the proposed amendments—October 2011 Amendments, August 2012 Amendments, June 2018 Amendments, May 2020 Amendments, and September 2022 Amendments—to the Interpretive Notice and NFA Compliance Rule 2–9(c) is found in Exhibit 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 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.

[5] *See* letter dated August 27, 2012 from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA to David A. Stawick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(c) of File No. SR–NFA–2023–01.

[6] *See* letter dated August 27, 2013 from Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(d) of File No. SR–NFA–2023–01.

[7] *See* letter dated June 15, 2018 from Carol A. Wooding, Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(e) of File No. SR–NFA–2023–01.

[8] *See* Letter dated June 28, 2018 from Matthew Kulkin, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(f) of File No. SR–NFA–2023–01.

[9] *See* letter dated May 28, 2020 from Carol A. Wooding, Senior Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(g) of File No. SR–NFA–2023–01.

[10] *See* email dated May 29, 2020 from Christopher W. Cummings, Special Counsel, Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA. This correspondence can be found in Exhibit 5(h) of File No. SR–NFA–2023–01.

[11] *See* letter dated June 8, 2020 from Joshua Sterling, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(i) of File No. SR–NFA–2023–01.

[12] *See* letter dated September 22, 2022 from Carol A. Wooding, Senior Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC. This letter can be found in Exhibit 5(j) of File No. SR–NFA–2023–01.

[13] *See* letter dated October 19, 2022 from Amanda L. Olear, Director, Market Participants Division, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA. This letter can be found in Exhibit 5(k) of File No. SR–NFA–2023–01.

[14] NFA notified Members of these changes through Notices to Members outlining these new requirements at the time FinCEN originally issued or adopted the requirements/advisories.

[15] *See* ''Transfer and Reorganization of Bank Secrecy Act Regulations; Final Rule,'' 75 FR 65806 (Oct. 26, 2010).

[16] 31 CFR 1026.220(a)(2)(ii)(C) (2015).

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 Act [17] makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members who are registered as brokers or dealers in security futures products under section 15(b)(11) of the Exchange Act.[18] NFA's Interpretive Notice and NFA Compliance Rule 2–9(c) apply to all NFA Member FCMs and IBs and require them to develop and implement an AML program reasonably designed to achieve and monitor a Member's compliance with the requirements of the BSA and the implementing regulations promulgated thereunder and could apply to NFA Members registered as security futures brokers or dealers under section 15(b)(11) of the Exchange Act.[19]

NFA is amending the Interpretive Notice to include amendments to the BSA regulations that specify that the BSA's confidentiality provisions prohibit FCMs and IBs from revealing any information which would reveal the existence of a SAR. NFA's amendments also clarify that the disclosure prohibition is not limited to the person involved in the transaction that is the subject of the SAR, but rather applies to all persons except as specifically authorized by the regulation. NFA's amendments also incorporate FinCEN's guidance that permits FCMs and IBs to share SARs or any information that would reveal the existence of a SAR with an affiliate provided that the affiliate is subject to a SAR regulation issued by FinCEN or another regulatory agency, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the SEC. NFA's amendments also add existing BSA requirements related to the timing for filing a SAR, SAR documentation retention requirements, FCM and IB requirements for filing a Report of Foreign Bank and Financial Accounts, and the FCM requirements for filing a Report of International Transportation of Currency or Monetary Instruments. The amendments revise all references to the Code of Federal Regulations to reflect the adoption of Chapter X for BSA requirements.[20]

Moreover, the amendments also revise the CIP subsection of the Interpretive Notice, which describes guidance that FinCEN and the CFTC issued in 2006 (FIN–2006–G004—*Frequently Asked Questions Regarding Customer Identification Programs for Futures Commission Merchants and Introducing Brokers,* February 14, 2006) related to CIP obligations with respect to omnibus accounts. Due to concerns that the language in NFA's Interpretive Notice could be read to provide that a firm is never required to obtain information on beneficial owners, the revised language indicates that for omnibus accounts where an intermediary is the account holder an FCM should treat the intermediary as the customer and the FCM does not have to apply its CIP requirements to the underlying beneficiary.[21]

Further, on August 12, 2016, NFA notified Members of the upcoming FinCEN CDD Rule requirements; instructed them to begin considering modifications to their AML programs in order to comply with these new requirements; and informed them that NFA Compliance Rule 2–9(c) and the related Interpretive Notice would be updated to incorporate FinCEN's new requirements. FCMs and IBs were required to comply with FinCEN's CDD Rule on or before May 11, 2018.

Currently, NFA Compliance Rule 2–9(c) requires an FCM's and IB's AML program to, at a minimum, have four enumerated components—(1) policies, procedures and internal controls reasonably designed to assure compliance with the applicable provisions of the BSA and the implementing regulations; [22] (2) independent testing; (3) designation of a compliance officer responsible for day-to-day compliance; and (4) ongoing training for appropriate personnel. NFA is amending Compliance Rule 2–9(c) and the Interpretive Notice to incorporate the fifth component that FinCEN added to its AML Program Requirements that requires firms to adopt and implement appropriate risk-based procedures for conducting ongoing customer due diligence, including: (i) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (ii) conducting ongoing monitoring to identify and report suspicious transactions, and, on a risk basis, to maintain and update customer information.

NFA is also amending the Interpretive Notice to add a separate section requiring that FCMs and IBs establish and implement written procedures that are reasonably designed to identify and verify the identity of beneficial owners of LE customers. Specifically, in accordance with FinCEN's requirements, the Interpretive Notice requires FCM and IB Members to obtain certain identifying information, including a required certification,[23] from the natural person opening the account on behalf of the LE. After a firm identifies the beneficial owner(s), it is also required to verify the identity using risk-based procedures that, at a minimum, contain the same elements as required for verifying the identity of customers that are individuals under the CIP requirements. As with CIP requirements, the CDD Rule and NFA's Interpretive Notice permit a financial institution to enter into a reliance agreement with another financial institution to perform these obligations.

NFA is further amending the Interpretive Notice to incorporate the CDD Rule's new recordkeeping requirements for FCMs and IBs. Namely, firms will be required to make and maintain records of all beneficial owners and retain those records for five years after the account is closed. Additionally, firms must also make and maintain records of the description of the documents and any non-documentary methods used to verify the identity of a beneficial owner for a period of five years after the record was made. Firms are expected to use the beneficial ownership information obtained to ensure they comply with Office of Foreign Assets Controls (''OFAC'') Regulations and OFAC-administered sanctions. NFA's amendments merely incorporate the requirements of FinCEN's beneficial ownership rule and do not impose any additional requirements on FCM and IB Members.

Moreover, NFA is amending the Interpretive Notice to incorporate CFTC guidance as provided in the July 22,

[17] 15 U.S.C. 78o–3(k).

[18] 15 U.S.C. 78o(b)(11).

[19] *Id.*

[20] *See* ''Transfer and Reorganization of Bank Secrecy Act Regulations, Final Rule,'' 75 FR 65806 (Oct. 26, 2010).

[21] 31 CFR 1026.220(c)(2)(ii)(C) (2015).

[22] Without explanation, FinCEN also modified this component to require that the policies, procedures, and internal controls be designed to *prevent the financial institution from being used for money laundering or the financing of terrorist activities.* NFA is amending Compliance Rule 2–9(c) to incorporate this change.

[23] Firms may choose to comply with the certification requirement by using FinCEN's Certification Form (as adopted as an appendix A to the rulemaking) or by obtaining the information required by FinCEN's form, along with a certification by the natural person regarding the accuracy of the information.

2019, CFTC Interpretive Letter No.19–18 entitled *Interpretive Guidance Regarding Voice Broker Customer Identification Program and Beneficial Ownership Rule Requirements* (''CFTC Interpretive Guidance'') addressing FCMs' and IBs' compliance with applicable requirements of the BSA and its implementing regulations related to CIP and Beneficial Ownership and granting relief from the CIP and Beneficial Ownership requirements to IBs that do not introduce an account to an FCM and do not have customers or accounts for the purposes of the CIP rule. NFA amended footnote 6 in the Interpretive Notice to provide a hyperlink to and a brief description of the Interpretive Guidance and to clarify that these IBs are not required to establish and implement a CIP or apply Beneficial Ownership requirements with respect to their voice brokerage business under NFA's Interpretive Notice. The footnote also clarifies that these IBs are required to conduct suspicious activity reviews and comply with other applicable NFA requirements using the information available to them. NFA also amended the Interpretive Notice to more closely align with the exact language in the BSA and its implementing regulations in two unrelated footnotes (*i.e.,* new footnotes 18 and 41) to reflect technical citation changes, as well as amendments to make required re-numbering of existing footnotes.

Furthermore, NFA's amendments closely align NFA's Interpretive Notice with the exact language included in the BSA and its implementing regulations. These amendments also include the deletion of two footnotes that are no longer applicable as well as amendments to other footnotes that include outdated language and website links that are no longer operable.

Amendments to the Interpretive Notice were previously filed with the SEC in SR–NFA–2006–03, Exchange Act Release No. 34–54956 (Dec. 18, 2006), 71 FR 77431 (Dec. 26. 2006); SR–NFA–2007–06 (withdrawn); SR–NFA–2008–01, Exchange Act Release No. 34–57640 (Apr. 9, 2008), 73 FR 20341 (Apr. 15, 2008); and SR–NFA–2011–01 (withdrawn). This is the first amendment filing for NFA Compliance Rule 2–9(c) since it was initially filed with the SEC in SR–NFA–2002–03, Exchange Act Release No. 34–45887 (May 7, 2002), 67 FR 32072 (May 13, 2002).

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.[24] That section sets out requirements for rules of a futures association, registered under section 17 of the Commodity Exchange Act, that are 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 pursuant to section 15(b)(11) of the Exchange Act.[25] Under section 15A(k)(2)(B) of the Exchange Act,[26] 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 the proposed rule change would meet these requirements by: specifying that the BSA's confidentiality provisions prohibit FCMs and IBs from revealing any information which would reveal the existence of a SAR; clarifying that the disclosure prohibition is not limited to the person involved in the transaction that is the subject of the SAR, but rather applies to all persons except as specifically authorized by the BSA regulation; incorporating FinCEN's guidance that permits FCMs and IBs to share SARs or any information that would reveal the existence of a SAR with an affiliate provided that the affiliate is subject to a SAR regulation issued by FinCEN or another regulatory agency, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the SEC; clarifying timing requirements for AML training and AML independent testing; adding existing BSA requirements related to the timing for filing a SAR, SAR documentation retention requirements, FCM and IB requirements for filing a Report of Foreign Bank and Financial Accounts and the FCM requirements for filing a Report of International Transportation of Currency or Monetary Instruments; revising all references to the Code of Federal Regulations to reflect the recent adoption of Chapter X for BSA; and clarifying CIP responsibilities with respect to omnibus accounts.

The proposed rule change further protects investors and the public interest in connection with security futures products by requiring FCMs and IBs to modify their AML programs to incorporate FinCEN's new regulations requiring financial institutions to identify and verify the identity of beneficial owners of LE customers and to conduct ongoing customer due diligence. Accordingly, NFA is amending Compliance Rule 2–9(c) to modify language and to specifically require appropriate risk-based procedures for conducting customer due diligence.

Further, NFA is amending the Interpretive Notice to add a separate section on identifying and verifying beneficial owners pursuant to FinCEN requirements; to amend the suspicious activity reporting section to add a requirement that FCMs and IBs develop risk-based ongoing CDD procedures in accordance with FinCEN's requirements; to amend the Ongoing Compliance Responsibilities—OFAC section to clarify that FCMs and IBs should use the beneficial ownership information to help ensure that they are in compliance with OFAC regulations; and to clarify that voice broker IBs that negotiate/facilitate block futures and cleared swap transactions do not have customers or accounts for purposes of the CIP Rule and are not required to establish and implement a CIP or apply Beneficial Ownership requirements with respect to their voice broker business but still required to adopt and implement an AML program to conduct suspicious activity reviews and comply with other applicable NFA requirements using the information available to them. NFA is also amending the Notice [sic] to more closely align the language with the exact wording in the BSA and its implementing regulations.

This proposal is not designed to regulate, by virtue of any authority conferred by the Exchange Act, matters not related to the purposes of the Exchange 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 securities laws.

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

NFA does not believe that the proposed rule changes would impose any burden on competition. With the exception of the amendment clarifying

[24] 15 U.S.C. 78o–3(k)(2)(B).

[25] 15 U.S.C. 78o(b)(11).

[26] 15 U.S.C. 78o–3(k)(2)(B).

the timing requirements related to training of employees and the independent audit, the amendments update the Notice [sic] to incorporate or clarify requirements and guidance under the BSA, to which NFA Member FCMs and IBs are currently subject. NFA also believes that the amendment clarifying the timing of employee training and the independent audit will not impose any burden on competition because FCM and IB Members are currently required to have annual employee training and an annual audit.

At first glance, the rule change may appear to impose additional burdens on FCMs and IBs. However, these new obligations have already been imposed by rules adopted by FinCEN in order to prevent and detect money laundering activities, and NFA's amendments merely incorporate FinCEN's requirements into NFA's rules. The rule changes require FCMs and IBs to identify and verify the identity of all beneficial owners of LE customers, to adopt new recordkeeping requirements, to make and maintain records of all beneficial owners, and to require appropriate risk-based procedures to conduct ongoing customer due diligence. NFA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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 the membership for comment. NFA did not receive comment letters concerning the rule change. NFA Member FCM and IB Advisory Committees fully supported the proposed amendments to the Interpretive Notice and NFA Compliance Rule 2–9(c).

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

NFA filed the proposed rule changes with the CFTC in five separate filings filed on the following dates: October 13, 2011,[27] August 27, 2013,[28] June 15, 2018,[29] May 28, 2020,[30] and September 22, 2022.[31] On November 16, 2011, August 27, 2013, June 28, 2018, and June 8, 2020, the CFTC notified NFA that it had determined not to review the proposed rule changes.[32] However, as for the June 2018 Amendments, FinCEN's rule required FCMs and IBs to comply with the CDD Rule on or before May 11, 2018. NFA did not concurrently file the proposed rule changes with the SEC. Section 19(b)(7)(B) of the Act provides that a proposed rule change filed with the SEC pursuant to section 19(b)(7)(A) of the Act shall be filed concurrently with the CFTC.

Section 19(b)(7)(C) of the Exchange Act provides, *inter alia* that ''[a]ny proposed rule change of a self-regulatory organization that has taken effect pursuant to section 19(b)(7)(B) of the Exchange Act may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of the title, the rules and regulations thereunder and applicable Federal law. 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NFA–2023–01 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–2023–01. This file number should be included on the subject line if email 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 (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR–NFA–2023–01 and should be submitted on or before June 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–10030 Filed 5–10–23; 8:45 am]

BILLING CODE 8011–01–P

[27] *See* Letter dated October 13, 2011 from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA to David A. Stawick, Office of the Secretariat, CFTC.

[28] *See* Letter dated August 27, 2012 from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA to David A. Stawick, Office of the Secretariat, CFTC.

[29] *See* Letter dated June 15, 2018 from Carol A. Wooding, Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC.

[30] *See* Letter dated May 28, 2020 from Carol A. Wooding, Senior Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC.

[31] *See* Letter dated September 22, 2022 from Carol A. Wooding, Senior Vice President and General Counsel, NFA to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC.

[32] *See* Letter dated November 16, 2011 from Gary Barnett, Director, Division of Swap and Intermediary Oversight, CFTC to Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA; Letter dated August 27, 2013 from Gary Barnett, Director Division of Swap and Intermediary Oversight, CFTC to Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA; Letter dated June 28, 2018 from Matthew Kulkin, Director Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Vice President and General Counsel, NFA; Letter dated June 8, 2020 from Joshua Sterling, Director, Division of Swap Dealer and Intermediary Oversight, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA; and Letter dated October 19, 2022 from Amanda L. Olear, Director, Market Participants Division, CFTC to Carol A. Wooding, Senior Vice President and General Counsel, NFA.

[33] 17 CFR 200.30–3(a)(73).