



COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by the National Futures Association Related to Notices of Swap Valuation Disputes Filed by Swap Dealers and Major Swap

Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) is authorizing the National Futures Association (“NFA”) to receive, review, maintain, and serve as the official custodian of records for notices provided by swap dealers (“SDs”) and major swap participants (“MSPs”) of swap valuation disputes in excess of \$20 million U.S. dollars (or its equivalent in any other currency), as provided in Commission regulation 23.502(c).

EFFECTIVE DATE: March 1, 2016.

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SUPPLEMENTARY INFORMATION:

I. Background and Authority

Section 8a(10) of the Commodity Exchange Act¹ (the “Act” or “CEA”) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law. The performance of such functions shall be undertaken in accordance with rules adopted by such person and approved by the Commission or reviewed by the Commission pursuant to Section 17(j) of the Act.²

The purpose of the Act is explained in CEA Section 3(a)³ as serving the public interest “through a system of effective self-regulation of . . . market participants and market professionals under the oversight of the Commission.” Section 17(o) of the Act⁴ provides that the Commission may require NFA to perform Commission registration functions in accordance with the Act and NFA rules. The Commission has delegated to NFA the authority to conduct many functions previously conducted by the Commission. Such delegated functions include: processing applications for registration of intermediaries under the Act;⁵ reviewing disclosure documents, and providing the Commission with related summaries and periodic reports;⁶ and acting as the

¹ 7 U.S.C. 12a(10) (2014).

² 7 U.S.C. 21(j) (2014).

³ 7 U.S.C. 5(a) (2014).

⁴ 7 U.S.C. 21(o) (2014).

⁵ See, e.g., 48 FR 35158 (Aug. 3, 1983) (introducing brokers and associated persons thereof); 49 FR 39593 (Oct. 9, 1984) (futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons thereof); 51 FR 34490 (Sep. 29, 1986) (floor brokers); 58 FR 19657 (Apr. 15, 1993) (floor traders); and 77 FR 2708 (Jan. 19, 2012) (swap dealers and major swap participants).

⁶ See 62 FR 52088 (Oct. 6, 1997); 64 FR 29273 (June 1, 1999).

Commission’s official custodian of records.⁷ The Commission has found that NFA exercises its delegated authority with proficiency.⁸ Authorizing NFA to perform such functions allows the Commission to devote resources to other aspects of its regulatory mission.

CEA Section 4s(f)(1) authorizes the Commission to require SDs and MSPs to “make such reports as are required by the Commission by rule or regulation regarding the transactions and positions . . .” of SDs and MSPs.⁹ Upon consideration, the Commission has determined to authorize NFA, to receive and review notices of swap valuation disputes, as specified in Regulation 23.502(c).¹⁰ Regulation 23.502(c) requires SDs and MSPs to notify the Commission of swap valuation disputes in excess of \$20 million U.S. dollars (or its equivalent in any other currency), if not resolved within certain stated time frames. While those notices are currently submitted directly to the Commission, NFA is capable of receiving and reviewing those notices on the Commission’s behalf.

NFA Compliance Rule 2-49 is capable of being used by NFA to collect notices of swap valuation disputes. That rule states:

A Swap Dealer or Major Swap Participant Member must promptly submit any reports, documents or notices, including those required under CFTC Regulation 3.3 or Part 23 of the CFTC’s regulations, and any other supplemental information, to NFA and CFTC, as required by NFA, in the form and manner prescribed by NFA.

⁷ See, e.g., 49 FR 39593 (Oct. 9, 1984) (regarding the registration records of future commission merchants, commodity pool operators, and commodity trading advisors); 66 FR 43227 (Aug. 17, 2001) (regarding notice registration filings as futures commission merchants or introducing brokers); 67 FR 77470 (Dec. 18, 2002) (regarding commodity pool operator annual financial reports required by regulation 4.22 and 4.7(b)(3)); 75 FR 55310 (Sep. 10, 2010) (regarding the registration records of retail foreign exchange dealers); and 77 FR 2708 (Jan. 19, 2012) (regarding registration records of swap dealers and major swap participants).

⁸ See, e.g., 67 FR 77470 (Dec. 18, 2002).

⁹ 7 U.S.C. 6s(f)(1) (2014).

¹⁰ Commission regulations referred to herein may be found at 17 CFR Ch. I (2014).

Under this rule, NFA has already required SDs and MSPs to submit copies of the Chief Compliance Officer annual reports required under Regulation 3.3,¹¹ and periodic risk exposure reports required under Regulation 23.600(c)(2)(ii).¹² Because notices of swap valuation disputes are also required under Part 23, NFA is able to require SDs and MSPs to submit those notices to NFA under Compliance Rule 2-49.

NFA has confirmed its willingness to perform the functions described herein and Commission staff has made NFA staff aware of the requirements that shall apply to NFA in maintaining these records. In particular, NFA, its officers, employees and agents shall ensure the confidentiality of those nonpublic portions of the Commission's records furnished to, compiled or maintained by NFA, including any reports generated by NFA based on the swap valuation dispute notices received by NFA except as allowed by existing or future Commission orders or regulations.¹³ In addition, NFA will maintain these records in accordance with the Commission's Records Disposition Schedule. Further, the work of the Commission requires that Commission staff have ready electronic access to the information contained in the documents encompassed by this Order. Commission staff will have electronic access to a database containing the pertinent information contained in the subject filings. Moreover, NFA will make physical copies of any of the documents encompassed by this Order available to the Commission, Commission staff, the Department of Justice, the Securities and Exchange Commission, and all applicable prudential regulators promptly.

¹¹ See NFA Notice to Members I-14-22.

¹² See NFA Notice to Members I-14-20.

¹³ See Performance of Registration Functions by National Futures Association, 49 FR 39593, 39596 n.23 (Oct. 9, 1984) ("In this regard, NFA shall take special precautions to protect any information which appears in these [] records but which, by its nature, is among the types of information described in sections 8(a), 8(e), and 8a(6) of the Act, so that any such information will not be disclosed inadvertently or without authority.").

In light of NFA's experience in receiving and reviewing disclosure documents on behalf of the Commission, the Commission has determined to delegate to NFA the responsibility to receive and review notices of swap valuation disputes required to be filed pursuant to Regulation 23.502(c), to provide the Commission with such summaries and periodic reports as the Commission, through the Director of DSIO, may determine are necessary for the effective oversight of SDs and MSPs, and to maintain and serve as the official custodian of records for those documents. This determination is based upon NFA's representations regarding procedures for maintaining and safeguarding all such records. In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed on it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary and acceptable to the Commission to accomplish the following: ensure the security and integrity of the records in NFA's custody; facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise safeguard the confidentiality of the records. NFA shall also make such reports regarding those notices as shall be specified by the Commission or the Director of DSIO.

II. Conclusion and Order

The Commission has determined, in accordance with Sections 4s(f)(1), 8a(10) and 17(o)(1) of the CEA, to authorize NFA to perform the following functions:

- (1) To receive in the form and manner prescribed by NFA, and conduct reviews of, the notices of swap valuation disputes specified in Regulation 23.502(c), as described above; and
- (2) To maintain and serve as the official custodian of those Commission records.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations and orders promulgated thereunder, and shall provide the Commission with such summaries and periodic reports regarding those records and their contents as the Commission or the Director of DSIO may determine are necessary for the effective oversight of this program.

These determinations are based, in part, on the Commission's authority to delegate to NFA portions of the Commission's responsibilities under the CEA, in furtherance of carrying out these responsibilities in the most efficient and cost-effective manner, and upon NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions.

This Order does not, however, authorize NFA to render "no-action" positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order or in CEA Sections 8a(10) or 17(o) shall affect the Commission's authority to review NFA's performance of Commission functions listed above.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from

exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matter regarding the functions delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of any previous Orders issued by the Commission.

Issued in Washington, DC, on January 14, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

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