



April 11, 2010

Mr. David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

Re: Requirements for Processing, Clearing, and Transfer of Customer Positions (RIN 3038-AC98)

Dear Mr. Stawick:

National Futures Association (NFA) appreciates this opportunity to comment on the Commission's proposed rules relating to Requirements for Processing, Clearing, and Transfer of Customer Positions. NFA will limit its comments to the portion of the rulemaking governing transfer of customer positions and related funds under proposed Commission Regulation 39.15(d).

Proposed Regulation 39.15(d) would require a derivatives clearing organization (DCO) to have rules that require the DCO, *upon the request of a customer*, to promptly transfer all or part of the customer's portfolio and related funds from the carrying clearing member to another clearing member of the DCO, without closing out and re-booking the positions. Although the proposed Regulation will apply to futures and cleared swaps positions, the Commission indicates that the proposed Regulation is designed to address delays that occur when a customer requests to transfer its cleared swap positions from one FCM to another, because under current practices, the party seeking to transfer the cleared swap positions and related funds must either enter into an offsetting position without terminating its original position, or "unwind" the position with the clearinghouse. The proposed amendment will require that cleared swaps positions be transferred without closing out and re-booking in the same way that futures positions are currently transferred.

NFA fully supports the Commission's purpose of ensuring that swaps positions and related collateral have the same portability as futures positions and related collateral. In fact, in order to ensure portability in the futures industry, in 1985, NFA adopted Compliance Rule 2-27 to govern customer requests to transfer their open positions and balances from one FCM to another FCM. This Rule has worked well over the years and NFA recommends that the Commission modify slightly its current



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proposal to recognize that Compliance Rule 2-27 establishes the current industry requirements governing customer requests to the carrying FCM to transfer account open positions and balances.

Under current practice in the futures industry, when a customer seeks to transfer its open futures and options positions from one FCM to another, the customer notifies the carrying FCM. The carrying FCM is then required to complete this transfer in accordance with the requirements of NFA Compliance Rule 2-27. Among other things, Compliance Rule 2-27 requires that upon the request of a customer, and agreement from the receiving Member FCM, the Member FCM carrying the customer's positions and other balances (e.g., money, securities and other property) must transfer the customer's balances and *positions* to the receiving Member FCM.<sup>1</sup> Therefore, under this Rule, the positions are transferred without closing out and re-booking the positions.

NFA does not see any difference in the relationship between an FCM and its customers holding futures positions and an FCM and its customers holding cleared swaps positions that would call for a change in the manner in which these transfers are governed. As is true with futures customers, the customer seeking to transfer cleared swaps positions has a relationship with the carrying FCM, not the DCO. In fact, especially in the context of futures positions, the DCO would not have any information identifying a particular customer's positions. Therefore, the customer is the appropriate party to make the transfer request to the FCM, and NFA's Compliance Rule 2-27 will govern that request.<sup>2</sup>

If the Commission's ultimate goal is to impose requirements on the DCO to ensure that the DCO effectuates the transfer without closing out and re-booking the positions, NFA recommends that the Commission modify its proposed rule to require that the DCO have rules providing that when one of its clearing members requests a transfer of customer positions to another clearing member (and upon that clearing member's consent), the DCO will promptly complete the transfer without requiring the close-out and rebooking of the positions. By adopting the Regulation in this manner,

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<sup>1</sup> NFA staff believes that Compliance Rule 2-27 should be applied in a manner to ensure that the requesting customer has deposited any additional required margin with the transferring FCM to support the customer's outstanding positions remaining at the FCM provided the FCM's margin request is reasonably made pursuant to an established policy and the request for margin is not for the purposes of preventing the customer from transferring its account and/or positions.

<sup>2</sup> NFA Compliance Rule 2-27 is not limited to futures positions. Since the entity carrying the customer's cleared swaps positions will be an NFA Member FCM, the Rule will apply to requests to transfer cleared swaps positions.



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the Commission will achieve its goal, without impacting the established relationships between the parties.

If you have any questions concerning these comments, please do not hesitate to contact me at 312-781-1413 or [tsexton@nfa.futures.org](mailto:tsexton@nfa.futures.org).

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized initial 'T' followed by a series of loops and a long horizontal stroke.

Thomas W. Sexton, III  
Senior Vice President and  
General Counsel

(caw:Regulatory\_Comment Letter Processing\_Clearing)