

June 3, 2011

Mr. David A. Stawick  
Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st St. NW  
Washington, DC 20581

Re: RIN 3038–AD50 and Part 3

Dear Mr. Stawick:

National Futures Association ("NFA") appreciates the opportunity to comment on the Commission's proposed rulemaking regarding Registration of Intermediaries. NFA's comments relate to the proposed definition of principal and the proposed rules governing the reporting of deficiencies, inaccuracies and changes.

#### **Definition of Principal**

As noted in the release's accompanying comments, these proposed rules do not contain the changes to the Commission's Part 3 registration rules proposed in other rulemakings. The Commission has previously proposed to amend the definition of principal to include Chief Compliance Officers (CCO) of Futures Commission Merchants (FCM), Swap Dealers (SD) and Major Swap Participants (MSP) in its November 19, 2010 rulemaking concerning the designation of a CCO. Neither the Registration of Intermediaries rulemaking nor the November 19, 2010 rulemaking addresses whether CCOs of Retail Foreign Exchange Dealers (RFED) should also be included in the principal definition. Commission Regulation 5.18(j) requires RFEDs to designate a principal as its CCO, whose specified duties and responsibilities are similar to but not as extensively detailed as the duties of FCM, SD and MSP CCOs. NFA suggests that for consistency the Commission include RFED CCOs in the definition of principal and amend Commission Regulation 5.18(j) to conform to the inclusion of RFED CCOs as principals.

#### **Deficiencies, Inaccuracies and Changes**

Proposed Regulations 3.31(a)(3)-(5) significantly amend the current process for reporting changes in a registrant's form of organization. As stated in the

accompanying comments, the Commission is proposing Regulations 3.31(a)(3)-(5) "to improve transparency and predictability of the re-registration requirements." NFA believes that these proposed rules will not accomplish their intended purposes and, in fact, may reduce transparency to the investing public and create additional uncertainty for registrants. Therefore, for the several reasons discussed below, NFA respectfully recommends that the Commission not adopt proposed Regulations 3.31(a)(3)-(5) ("3.31 rules").

Currently, Regulation 3.31(a)(2) provides that if a registrant reports a change in its form of organization by filing a Form 3-R<sup>1</sup>, the registrant will be liable for all of the regulatory obligations of the pre-existing organization. The current regulation does not specifically address name changes. The proposed 3.31 rules permit a registrant to update its registration records to report a change in its form of organization or a name change only if it does not add a new principal. If the registrant adds a principal<sup>2</sup> and either changes its name or its form of organization, the registrant must file a Form 7-W to withdraw its registration, and the firm with the new name or form of organization must file a Form 7-R to apply for registration.

The effect of the proposed 3.31 rules re-registration requirement, as the accompanying comments recognize, will make it more difficult for members of the public to uncover the "new" firm's true disciplinary information. NFA's BASIC system connects disciplinary information to firms based upon their NFA ID numbers, and NFA does not re-use any of those numbers. If a registrant changes its name and one new principal, under the proposed 3.31 rules, the registrant would withdraw its registration and file a new application. As part of the new application process, NFA will assign a different NFA ID number to the "new" firm. Consequently, even if there has been no substantial change in the firm or its management, a member of the public will not find the disciplinary history associated with the firm's prior NFA ID without conducting more detailed research. In NFA's view, whatever benefits that may be associated with the proposed 3.31 rules would not outweigh the negative impact of the increased opacity that it would create.

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<sup>1</sup> For the purpose of this comment letter, NFA will refer to that electronic reporting process as updating registration records and use the term registrant to include applicant.

<sup>2</sup> NFA notes that NFA Registration Rule 208 requires new principals to file a Form 8-R and fingerprint cards (results are normally received within 24 hours after submission of the fingerprints to the FBI) and that NFA may suspend the firm's registration upon the filing of a Notice of Intent alleging that the firm is disqualified because the new principal is unfit.

Additionally, NFA believes that the proposed 3.31 rules do not provide the predictability of the re-registration requirement that the Commission seeks because the proposal does not address the timing of the changes that would require a new registration. Arguably, as written, the proposed 3.31 rules require re-registration if the registrant simultaneously, or perhaps contemporaneously, reports the addition of a principal and a name change or new form of organization. However, it is not possible for a registrant to simultaneously report a change in name and/or form of organization and add a new principal in NFA's Online Registration System (ORS).

A registrant reports a change in form of organization, a name change or the addition of a new entity principal (holding company), by electronically updating its registration records in ORS. A registrant may report its new name and form of organization in one electronic update filing but must make a separate electronic update filing to add a holding company as a principal. Moreover, if the new principal is an individual, the registrant cannot simply update its registration records to reflect the new principal; the registrant must file an electronic Form 8-R for the new individual principal, which that individual must review and verify in a separate electronic filing.

Registrants could make the changes requiring a new registration on the same day or over a period of days, weeks, months or even years. For example, a registrant might add a new individual principal today and one year later change either its name or form of organization. Read literally, the proposed 3.31 rules would require re-registration, but whether that is the proposed rules' intent is unclear. Instead of registrants being able to reliably predict when re-registration is required, they will be left in a state of uncertainty as to the applicability of the proposed 3.31 rules' re-registration requirement.

Completely apart from the potential opacity and uncertainty that the proposed rules create, NFA suggests that not every change in a registrant's form of organization or a name change combined with the addition of a principal should require or justify a new registration application. For example, a registrant that is a large corporate entity with many officers, who are by definition principals, could make a minor change to its name and promote one person to an officer position without making any change in the way it conducts its business, treats its customers or complies with regulations. Nonetheless, the proposed 3.31 rules would require the firm to withdraw its existing registration and file a new registration application.

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Additionally, if the Commission determines to adopt the proposed 3.31 rules, NFA suggests modification of some of the proposed terminology. Specifically, proposed Regulation 3.31(a)(2) uses the phrase, "where the deficiency or inaccuracy is created by a change in the 'form of organization' field on the Form 7-R." Proposed Regulation 3.31(a)(3) uses similar language referring to the "firm name" field on the Form 7-R. This terminology implies that the electronic update reporting the change creates the deficiency or inaccuracy. NFA suggests, for purposes of clarity, that final Regulations 3.31(a)(2) and (3), if adopted, instead use the phrases, "where a registrant has changed its form of organization" and "where a registrant has changed its name, if a non-natural person, or changed its form of organization," respectively.

Finally, the phrase contained in proposed Regulation 3.31(a)(4), "[w]here the deficiency or inaccuracy is created by the addition of a principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration)," is not completely accurate. An applicant or registrant no longer lists its principals who are individuals on its application for registration; only holding companies are listed. Therefore, NFA suggests that final Regulation 3.31(a)(4) substitute the phrase, "Where any person becomes a principal of an applicant or registrant subsequent to the filing of the applicant's or registrant's current Form 7-R."

If you have any questions concerning this letter, please do not hesitate to contact the undersigned at (312) 781-1413 or [tsexton@nfa.futures.org](mailto:tsexton@nfa.futures.org) or Michael J. Crowley at (312) 781-1388 or [mcrowley@nfa.futures.org](mailto:mcrowley@nfa.futures.org).

Respectfully submitted,

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Senior Vice President and  
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