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Submitted via CFTC Agency Website Portal

Mr. David Stawick  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
3 Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington D.C. 20581

**RE: RIN 3038-AD31  
Ownership and Control Reports, Forms 102/102S, 40/40S, and 71**

Dear Mr. Stawick:

North American Derivatives Exchange, Inc. ("Nadex") submits this letter in response to the Notice of Proposed Rulemaking concerning "Ownership and Control Reports" ("Proposed Rules") published by the Commodity Futures Trading Commission (the "CFTC" or the "Commission"). 77 FR 43968 (July 26, 2012). Nadex appreciates the opportunity to comment on the Proposed Rules and asks the Commission to narrow the scope of the Proposed Rules with respect to reportable trading volume levels ("RVTL") to better achieve the Commission's stated objectives and allow for greater flexibility in the application of any final rules to promote competition.

Nadex is a Designated Contract Market ("DCM") and Derivatives Clearing Organization ("DCO"). Nadex originally was designated as a contract market and registered as a derivatives clearing organization in 2004 (then operating under the name "HedgeStreet, Inc."). Nadex is unique among DCMs and DCOs in that it provides retail traders with a DCM/DCO alternative to over-the-counter retail markets. As such, Nadex offers retail clients unique contracts (binary options and spread contracts on a wide range of underlyings) that are fully collateralized. These contracts typically have very small notional values relative to traditional futures contracts. Most contracts are valued at \$100 although the largest Nadex contract has a notional value of \$1,000. The pricing and settlement of these contracts are driven primarily by the underlying markets (such as the spot forex market or the Nymex Crude Oil futures market). Since the Commission amended Nadex's DCM and DCO Orders on March 30, 2010, Nadex has been permitted to offer and clear contracts that are intermediated through a Futures Commission Merchant ("FCM") Member in addition to Nadex's existing non-intermediated model.

*RTVL Should Be Adjusted to Reflect the Markets Under Surveillance and  
Minimize the Proposed Regulations' Impact on Retail Accounts*

The Proposed Rules add to the existing regime for reporting based on large positions a new reporting regime based on trading volume. Specifically, proposed Regulation §15.04 defines a reportable trading volume level (“RTVL”) that would trigger volume-based reporting for a “Volume Threshold Account”. The proposed RTVL is set at 50 or more contracts, during a single trading day, in all instruments that a DCM designates with the same product identifier (including purchases and sales, and inclusive of all expiration months). Moreover, once an account is reported as a Volume Threshold Account, it is anticipated that the Form 102B for that account needs to be updated if the previously disclosed information changes and, in any event, must be refreshed at 6 months intervals. Proposed Reg. §17.02(c). The obligations to update and refresh the Form 102B expires only upon notice to the Commission that the subject account has not traded any contracts in any market at the subject DCM over the preceding six months. *Id.*

To be clear, it appears that a day trader who buys 25 lots and then sells 25 lots of the same futures contract in a single day is reportable. If that same trader does a 1-lot day trade every few months over the next 5 years, that trader would remain reportable as a Volume Threshold Account and the reporting entity would continue to be required to file updated/refreshed Form 102Bs over that five year period.

The application of such a standardized reporting and identification regime for all contracts does not appear to achieve the Commission’s stated objective in adding this new regime. The NOPR states that the volume-based reporting level is calibrated to “minimiz[e] the proposed regulations’ impact on low-volume accounts whose trading activity does not warrant inclusion in the proposed reporting and identification regime.” 77 FR at 43957 n.67. Nadex suggests that the Commission amend the RTVL to recognize the different relevance of trading activity in traditionally sized contracts and contracts with dramatically smaller notional values.

Nadex believes that trading activity in contracts like its \$100 binary options<sup>1</sup> should not be evaluated like, or have RTVLs at the same level as, much larger institutional contracts. Take, for example, the CME’s S&P 500 futures contract with a notional value of approximately \$350,000 per contract and an initial margin requirement of \$21,850 per contract. At the proposed 50-contract RTVL level, it is clear that the activity at issue in connection with the trading of the very small Nadex contract is insignificant relative to the trading in the larger contract:

<b>Quantity and Price</b>	<b>Contract</b>	<b>Notional Value</b>	<b>Margin/ Collateral</b>	<b>Notional Value</b>
50 lots at \$1,400	CME S&P 500 Future	~\$350,000	\$1,092,500	\$17,500,000
50 lots at \$50	Nadex US 500 Binary	\$100	\$2,500 0.23%	\$5,000 0.03%

<sup>1</sup> A similarly small contract that is traded on an exchange other than Nadex is the CME E-micro Crude Oil Futures with a notional value of approximately \$100 per contract.

It is difficult to imagine the Commission’s interest in regularly receiving information regarding the owners and controllers of accounts that trade a total notional value of only \$5,000 in Nadex Binary Options in a particular product in a day. The same could be said about traders of the CME E-micro Crude Oil Futures and other very small notional value contracts. More importantly, these markets are intended to provide an exchange-traded alternative for retail customers. Requiring the type of reporting by or about individual retail customers to the Commission will undoubtedly deter such customers from participating in these exchange-traded markets. Nadex expects that, ironically, many customers may opt to return to the over-the-counter retail forex market or the retail spot gold and silver markets (or other unregulated trading sites) rather than be subject to potential special calls and reporting obligations. Clearly, the intent of the Dodd-Frank Act was not to push market participants away from exchange-traded markets to over-the-counter markets.

Nadex suggests that the Commission establish an easy-to-administer adjustment to the proposed rule. For any contract with a notional value of \$1,000 or less, the RTVL could be increased to 5,000 (i.e., 1,000 times the standard RTVL of 50). This would still result in the Commission capturing information with respect to a relatively insignificant amount of trading activity in terms of notional value, but would be significantly less burdensome for the DCMs that offer these contracts, FCMs carrying accounts that hold these contracts and, most importantly, the customers who trade these products. Taking the examples above and adjusting the RTVL for the Nadex \$100 contract to a level of 5,000 contracts yields the following comparison.

<u>Quantity and Price</u>	<u>Contract</u>	<u>Margin/Collateral</u>	<u>Notional Value</u>
50 lots at \$1,400	CME S&P 500 Future	\$1,092,500	\$17,500,000
5,000 lots at \$50	Nadex US 500 Binary	\$250,000	\$500,000

Thus, the suggested higher RTVL for these very small contracts would still result in the Commission getting access to trading activity in terms of notional value at a far smaller level than the activity level for traditional contracts.

Nadex notes that this approach is similar to what the Commission has approved in the past with respect to traditional position-based reportable levels. In existing Regulation §15.3, the Commission established much higher reporting levels for small contracts like “HedgeStreet Products” (125,000 contracts) and “TRAKRS” (50,000 contracts). A similar distinction should be made for volume-based reporting levels.

*Any Standardized Volume Trigger Should Include A Broad Waiver Provision*

As noted above, the Proposed Rules should not apply a RTVL level of 50 contracts to extremely small contracts. However, if the Commission does impose a standard RTVL level of general applicability, the stated level should be accompanied by broadly available waiver provisions. Specifically, Nadex believes that DCMs should have the opportunity to obtain a waiver from the standard RTVL level with an appropriate alternative to be determined after consultation between the relevant market and CFTC Staff.

*Conclusion*

Nadex acknowledges the Commission's interest in obtaining information about the identities of market participants who engage in a meaningful level of trading, particularly with respect to markets that perform significant price discovery functions. At the same time, Nadex supports the Commission's stated intent to minimize impact of its new reporting regulations on low-volume accounts whose trading activity does not warrant inclusion in the proposed reporting and identification regime. We believe the determination of what constitutes a "low volume account" should include not just the number of contracts traded but also some recognition of the nominal value of the trading at issue. In so doing, the Commission can, without losing access to any significant information, avoid placing undue burdens on retail market participants and further encourage such market participants to utilize exchange-traded products rather than the over-the-counter markets.

Should you have any questions regarding the above, please do not hesitate to contact me by telephone at (312) 884-0171 or by email at [tim.mcdermott@nadex.com](mailto:tim.mcdermott@nadex.com).

Sincerely,



Timothy G. McDermott  
General Counsel

cc: Sebastian Pujol Schott – Associate Director, DMO, Commodity Futures Trading Commission  
Yossi Beinart – CEO, Nadex