

March 7, 2017

**Via Federal Express**

Ms. Christopher J. Kirkpatrick  
Secretary  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

Re: National Futures Association: Proposed Amendments to NFA Financial Requirements Section 16 and its Related Interpretive Notice Entitled: *FCM Financial Practices and Excess Segregated Funds/Secured Amount/Cleared Swaps Customer Collateral Disbursements\**

Dear Mr. Kirkpatrick:

Pursuant to Section 17(j) of the Commodity Exchange Act ("CEA"), as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") the proposed amendments to [NFA Financial Requirements Section 16](#) and its related [Interpretive Notice](#). NFA's Board of Directors ("Board") unanimously approved the proposals on February 16, 2017.

NFA is invoking the "ten-day" provision of Section 17(j) of the CEA and plans to make these proposals effective ten days after receipt of this submission by the Commission unless the Commission notifies NFA that the Commission has determined to review the proposals for approval.

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**PROPOSED AMENDMENTS**  
**(additions are underscored and deletions are ~~stricken through~~)**

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**FINANCIAL REQUIREMENTS**

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**SECTION 16. FCM FINANCIAL PRACTICES AND EXCESS SEGREGATED FUNDS/SECURED AMOUNT/CLEARED SWAPS CUSTOMER COLLATERAL DISBURSEMENTS.**

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(d) Unless acting pursuant to relief granted by the Commission in CFTC Letter No. 17-03,<sup>2</sup> No no Member FCM via a single or multiple transaction(s) may withdraw, transfer or otherwise disburse collateral (disbursement) from any cleared swaps customer collateral account(s) as identified under CFTC Regulation 22.2 that exceed twenty-five percent (25%) of the FCM's residual interest in the cleared swaps customer collateral based upon the daily cleared swaps customer collateral calculation required by CFTC Regulation 22.2(g) unless:

(i) The FCM has prepared the daily segregation calculation required by Regulation 22.2(g) as of the close of business on the previous business day;

(ii) The FCM's CEO, CFO or Financial Principal pre-approves in writing the cleared swaps customer collateral disbursement whereby the FCM exceeds or will exceed the twenty-five percent (25%) threshold referred to in (d) above; and

(iii) The FCM files written notice signed by the FCM's CEO, CFO or Financial Principal that pre-approved the withdrawal in the form and manner prescribed by in writing the disbursement whereby the FCM exceeds or will exceed the twenty-five percent (25%) threshold referred to in (d) above, which includes the following:

(1) Notification that the FCM has made or intends to make a disbursement(s) from cleared swaps customer collateral that exceeds or will exceed twenty-five percent (25%) of the FCM's residual interest in cleared swaps customer collateral based upon the daily cleared swaps customer collateral calculation required by CFTC Regulation 22.2(g) computed as of the close of business on the previous business day;

(2) A description of the reason(s) for and the name and the amount provided to each recipient of the single or multiple transaction(s) that results or will result in the disbursement(s) that exceeds the twenty-five percent (25%) threshold;

<sup>2</sup>See CFTC Letter No. 17-03 – *No-Action Position Regarding Regulation 22.17(b) Withdrawals of Residual Interest* (January 26, 2017).

(3) Confirmation that the FCM's CEO, CFO or Financial Principal pre-approved in writing the disbursement whereby the FCM exceeds or will exceed the twenty-five percent (25%) threshold; and

(4) The current estimate of the FCM's remaining total residual interest in the cleared swaps customer collateral account(s) after the disbursement, and a representation from the CEO, CFO or Financial Principal, that to the best of that person's knowledge and reasonable belief, after due diligence, the FCM remains in compliance with the cleared swaps customer collateral requirements after the disbursement.

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#### **INTERPRETIVE NOTICES**

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#### **9066 - NFA FINANCIAL REQUIREMENTS SECTION 16: FCM FINANCIAL PRACTICES AND EXCESS SEGREGATED FUNDS/SECURED AMOUNT/CLEARED SWAPS CUSTOMER COLLATERAL DISBURSEMENTS**

##### **INTERPRETIVE NOTICE**

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Additionally, subsections 16(b)(ii)(1), (c)(ii)(1) and (d)(ii)(1) require an FCM to utilize the daily segregated funds, secured amount funds and cleared swaps customer collateral calculations as of the close of business on the previous business day, respectively, to determine whether the FCM has made or intends to make disbursement(s) that exceeds or will exceed 25% of the FCM's residual interest in segregated funds, secured amount funds and cleared swaps customer collateral. Therefore, unless acting pursuant to relief granted by the Commission related to cleared swaps customer accounts in CFTC Letter No. 17-03<sup>3</sup>, an FCM is prohibited from making any disbursement(s) from the account for

<sup>3</sup>See CFTC Letter No. 17-03 – *No-Action Position Regarding Regulation 22.17(b) Withdrawals of Residual Interest* (January 26, 2017).

which the calculation as of the close of business on the previous day has not been completed (i.e., the customer segregated, secured amount funds or cleared swaps customer collateral account(s)), unless the disbursement is to or for the benefit of customers, until the required calculation(s) is completed and submitted to NFA.

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### **EXPLANATION OF PROPOSED AMENDMENTS**

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CFTC Regulation 22.17 contains similar provisions to NFA Financial Requirements Section 16 and the related Interpretive Notice. In particular, both rules limit an FCM's ability to withdraw funds from any cleared swaps customer collateral account until the FCM has prepared the required daily segregation calculation as of the close of the previous business day and require FCMs to file notice with the CFTC or NFA, as applicable, of any withdrawal that exceeds 25% of the FCM's residual interest in those funds computed as of the close of the previous business day. On January 26, 2017, the CFTC's Division of Swap Dealer and Intermediary Oversight issued a no-action letter (CFTC Letter No. 17-03) to FCMs regarding these requirements. NFA agrees with DSIO's reasoning for providing FCMs with this relief, and therefore, is amending NFA Financial Requirements Section 16 and the related Interpretive Notice to ensure that FCMs acting in accordance with the CFTC's no-action letter are not in violation of NFA Requirements.

DSIO's no-action letter addresses an issue unique to cleared swaps customer collateral. Specifically, without the no-action letter, CFTC Regulation 22.2 requires that prior to the time of clearing settlement with a DCO, an FCM must maintain residual interest in the cleared swaps customer collateral account that is equal to or exceeds the aggregate amount by which each cleared swaps customer is undermargined. While the undermargined amount decreases as margin payments are received, the FCM is unable to withdraw the corresponding amounts of excess residual interest until after it has completed its cleared swaps customer collateral segregation computation as of the prior business day, limiting an FCM's access to significant amounts of liquid capital for the duration of the day. The no-action letter addresses this timing gap by permitting FCMs, under certain circumstances, to withdraw excess residual interest to the extent that margin payments have been deposited to reduce the undermargined amount, and without notifying the Commission of any withdrawals that exceed 25% of the FCM's prior day's residual interest balance.

NFA is amending NFA Financial Requirements Section 16 and the related Interpretive Notice to provide that an FCM acting pursuant to the relief granted by the

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CFTC in CFTC Letter No. 17-03 will not be deemed to be in violation of Financial Requirements Section 16 or the related Interpretive Notice.

As mentioned earlier, NFA is invoking the “ten-day” provision of Section 17(j) of the CEA. NFA intends to make the proposed amendments to NFA Financial Requirements 16 and its related Interpretive Notice effective ten days after receipt of this submission by the Commission, unless the Commission notifies NFA that the Commission has determined to review the proposals for approval.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carol A. Wooding".

Carol A. Wooding  
Vice President and General Counsel

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\*The proposed amendments to NFA Financial Requirements Section 16 and its related Interpretive Notice became effective March 29, 2017.