

December 6, 2010

Via Federal Express

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

Re: National Futures Association: FDM Financial Requirements – Proposed Amendments to NFA's Financial Requirements Sections 11(b) and 14(c) and (d) and the Interpretive Notice Regarding Forex Transactions*

Dear Mr. Stawick:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended, National Futures Association (“NFA”) hereby submits to the Commodity Futures Trading Commission (“CFTC” or “Commission”) proposed amendments to NFA Financial Requirements Sections 11(b) and 14(c) and (d) and the Interpretive Notice regarding Forex Transactions. This proposal was approved by NFA’s Board of Directors (“Board”) on November 18, 2010.

NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”) and will 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.

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

FINANCIAL REQUIREMENTS

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SECTION 11. FOREX DEALER MEMBER FINANCIAL REQUIREMENTS.

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- (b) A Forex Dealer Member may not include assets held by an affiliate (unless approved by NFA) or an unregulated person in its current assets for purposes of determining its adjusted net capital under CFTC Rule 1.17. An affiliate is any person that controls, is controlled by, or is under common control with the Forex Dealer Member.

For purposes of this section and section (c), a person is unregulated unless it is:

- (i) ~~a financial institution~~ bank or trust company regulated by a U.S. banking regulator;
- (ii) a broker-dealer registered with the U.S. Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority;
- (iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;
- (iv) a retail foreign exchange dealer registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;
- (v) a bank or trust company regulated in a money center country which has in excess of \$1 billion in regulatory capital ~~an insurance company regulated by any U.S. state~~; or
- (vi) any other entity approved by NFA.

* * *

SECTION 14. ASSETS COVERING LIABILITIES TO RETAIL FOREX CUSTOMERS.

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(c) For assets held in the United States, a qualifying institution is:

- (i) a bank or trust company regulated by a U.S. banking regulator;

(ii) a broker-dealer registered with the U.S. Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority; or

(iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA.

(d) For assets held in a money center country as defined in CFTC Regulation 1.49, a qualifying institution is:

~~(i) a bank or trust company regulated in the money center country 4) which has in excess of \$1 billion in regulatory capital or 2) whose commercial paper or long term debt instrument or, if part of a holding company system, its holding company's commercial paper or long term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization; or~~

~~(ii) an entity regulated in the money center country as an equivalent of a broker-dealer or futures commission merchant 1) which has in excess of \$100 million in regulatory capital or 2) whose commercial paper or long-term debt instrument or, if part of a holding company system, its holding company's commercial paper or long term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization; or~~

~~(iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA~~

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INTERPRETIVE NOTICES

¶9053 - FOREX TRANSACTIONS

* * *

3. Financial Requirements Section 11(b)

Section 11(b) prohibits a Forex Dealer Member from including assets held by an affiliate (unless approved) or an unregulated person in the firm's current assets for purposes of determining its adjusted net capital under CFTC Rule 1.17. This means an FDM may not count any part of those assets for capital purposes.¹⁷

An unregulated person is any person that is **not**:

- (i) a ~~financial institution~~ bank or trust company regulated by a U.S. banking regulator;
- (ii) a broker-dealer registered with the U.S. Securities and Exchange Commission and a member of FINRA;
- (iii) a futures commission merchant registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;
- (iv) a retail foreign exchange dealer registered with the U.S. Commodity Futures Trading Commission and a Member of NFA;
- (v) a bank or trust company regulated in a money center country which has in excess of \$1 billion in regulatory capital ~~an insurance company regulated by any U.S. state;~~ or
- (vi) any other entity approved by NFA.

EXPLANATION OF PROPOSED AMENDMENTS

Financial Requirements ("FR") Section 11(b) prohibits Forex Dealer Members (FDMs) from including assets held at unregulated persons as current assets for the purposes of determining adjusted net capital. The rule defines a person as unregulated unless it is one of the persons identified in FR Section 11(b). As originally adopted, these persons included financial institutions regulated by a U.S. banking regulator; FCMs registered with the CFTC and broker-dealers registered with the SEC, as well as any entity regulated as a foreign equivalent of any of these entities. In August 2008, NFA amended the list to include retail forex exchange dealers (RFEDs)

registered with the CFTC. FR Section 11 also provides that NFA may approve an entity not otherwise regulated.

Earlier this year, NFA amended FR Section 11 and the related interpretive notice to remove foreign equivalents from the list of persons listed in Section 11(b). Since foreign regulated equivalents to broker-dealers, FCMs and RFEDs are not authorized counterparties under the Commodity Exchange Act, NFA did not believe it was appropriate that FDMs be permitted to count assets held at these entities as current. Moreover, NFA was concerned, especially in light of the new RFED category, that FDMs could use lightly regulated and thinly capitalized foreign equivalents to RFEDs to hold FDM assets.

Although this amendment addressed NFA's concern regarding foreign Forex firms holding FDM assets, it may have been too broad of a solution. In addition to removing the foreign equivalent of a broker-dealer, FCM and RFED from the list of enumerated entities, it also removed highly capitalized foreign banks, which several FDMs have historically used to hold substantial assets.

Although NFA could approve these entities on a case-by-case basis as locations to hold current assets, NFA believes a more appropriate way to address this issue is to amend FR Section 11(b) to include foreign banks regulated in a money center country and which maintain regulatory capital in excess of \$1 billion. FR Section 11(b) is also being amended to remove insurance companies from the list of regulated entities since, beginning in July 2011, insurance companies are no longer an eligible counterparty under Section 2(c)(2)(B)(II) of the Commodity Exchange Act, and NFA is unaware of any FDM that currently holds assets at an insurance company. The same amendments will be made to the related interpretive notice entitled *Forex Transactions*.

FR Section 14, which defines foreign institutions qualified for holding assets covering liabilities to retail Forex customers, is being amended to eliminate foreign equivalent broker-dealers and FCMs as qualifying institutions for holding assets covering liabilities to retail Forex customers. Financial Requirement Section 14 is also being amended to eliminate reference to bank or trust companies that meet certain commercial paper or long-term debt ratings since these entities would not meet the

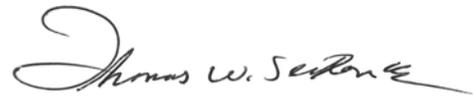
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requirements of Commission Regulation 5.8. These amendments are necessary to keep FR Section 11 and FR Section 14 consistent.

As mentioned earlier, NFA is invoking the “ten-day” provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make the amendments to NFA Financial Requirements Sections 11(b) and 14(c) and (d) and the Interpretive Notice regarding Forex Transactions effective ten days after receipt of this submission by the Commission, unless the Commission notifies NFA that the Commission has determined to review the proposal for approval.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas W. Sexton". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas W. Sexton
Senior Vice President and
General Counsel

* The proposed amendments to NFA's Financial Requirements Sections 11(b) and 14(c) and (d) and the Interpretive Notice Regarding Forex Transactions will become effective February 1, 2011.